BIRMINGHAM CITY COUNCIL
TERMS AND CONDITIONS

1. THE CONTRACT BETWEEN US

1.1 This contract is made between you (the "Provider") and Birmingham City Council ("the Council") and is described in the purchase order, goods and/or the supply of services ("the Order"), and these Terms and Conditions, (together the "Contract"). Nothing discussed prior to the Provider's signature of the Order forms part of the Contract unless it is specifically set out in this Contract. No variations to the Order or these Terms and Conditions shall be permitted or authorised unless the variations are documented and agreed in writing between us ("the Parties") or individually ("the Party").

1.2 If the Provider has already started work, (e.g. supplied goods or are providing the services) then the Provider agrees that this Contract applies retrospectively from the start of the Provider's work.

1.3 The definitions set out in these Terms and Conditions, and in the Order (including in any appendices or enclosures) shall have the same meaning throughout this Contract. If there is a conflict between these Terms and Conditions and the Order, these Terms and Conditions shall prevail.

Commencement, expiry and duration

1.4 The Contract shall begin from the date specified in the Order ("the Commencement Date") and expire on the date specified in the Order ("the Expiry Date"). Unless the Contract is terminated earlier, the Contract shall be in force from the Commencement Date to the Expiry Date ("the Term")

1.5 The Council shall nominate a contract manager to act on its behalf ("the Council's Representative") for the purposes of managing this Contract.

1.6 The Provider shall identify to the Council a competent contract manager ("Providers Representative"), with full authority to act and deliver on all matters arising under this Contract on behalf of the Provider.

Contracting parties, assignment, publicity and conflict

1.7 This Contract is between the Council and the Provider. The Provider agrees that the Provider's relationship is solely with the Council as the entity contracting with the Provider to receive the goods and/or services in accordance with the Order.

1.8 In entering into this Contract nothing shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Council and the Provider.

1.9 The Order is personal to the Provider and the Provider shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract without first obtaining the written consent of the Council.

1.10 The Provider agrees that the Provider shall not advertise or communicate to third parties that the Provider is providing goods or services to the Council, unless the Provider has obtained the Council's prior written consent.

1.11 In entering into this Contract the Provider confirms that:

a) it is not aware of any conflict of interest which may affect the performance of this Contract;
b) The Council reserves the right to terminate this Contract immediately by giving notice in writing to the Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the Provider's pecuniary or personal interests and the duties owed to the Council under the provisions of this Contract. The action of the Council pursuant to this Condition shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council;
c) it is not party to any existing or previous arrangement or arrangements which prevent the Provider from entering into this Contract;
d) it shall not perform Services or supply Goods similar to, or in the nature of those to be provided under this Contract for any person or body if such performance could in the reasonable opinion of the Council lead to a conflict with the Provider's obligations under this Contract;
e) it shall safeguard the Council against fraud generally and, in particular, fraud on the Provider's part or the Provider's staff. The Provider shall notify the Council immediately if the Provider has reason to suspect that any fraud has occurred or is occurring or is likely to occur. The Council reserves the right to terminate this Contract where fraud has occurred, or in the reasonable opinion of the Council, is likely to occur. The action of the Council pursuant to this Condition shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

2. SPECIFICATION

The scope and or description of the goods and/or services to be supplied to the Council under this Contract (together the "Goods" and/or "Services") are as described in the Order. The Provider shall use all reasonable efforts to supply the Goods and/or Services in accordance with the Council's requirements specified and any timetable referred to in the Order or otherwise specified by the Council in writing.

Data Protection, Confidentiality and Information

2.1 Where in the performance of the Goods or Services the Provider is required to process personal data, the Provider shall comply fully with the Data Protection Act 1998 ("the Act") and all subordinate Legislation including the 8 Data Protection Principles contained in Schedule 1 of the Act, at all times. Where necessary the Council may require the Provider to enter into a separate data processing agreement, in the form as may be supplied by the Council.

2.2 Where the Provider is in possession of information about the Council that is by its nature confidential, or is designated as such by the other (whether in writing or orally), including this Contract ("Confidential Information"), the Provider undertakes to:-

(i) keep it confidential;
(ii) use it only in connection with providing the Goods or Services; and
(iii) not to disclose it to any other person without the Council's prior written consent.

2.3 The Provider will be entitled to disclose Confidential Information:
2.3.1 that is reasonably required by persons engaged in the performance of its obligations under the Contract.
2.3.2 any Confidential Information which a Party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of Condition 2.2.
2.3.3 any disclosure to enable a determination to be made under the Condition 9 (Dispute Resolution);
2.3.4 any disclosure which is required by any Legislation (including any order of a court of competent jurisdiction), and Parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of law;
2.3.5 any disclosure of Confidential Information which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party;
2.3.6 any disclosure by the Council of Confidential Information relating to the provision of Goods or Services and such other information as may be reasonably required for the purpose of conducting a due diligence exercise for any proposed successor provider should the Council decide to re-tender the Contract;
2.3.7 any examination pursuant to the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Council has used its resources;
2.3.8 disclosure to a Party's professional advisers; or
2.3.9 any disclosure by the Council under the Freedom of Information Act 2000.
2.4 The Provider shall return to the Council any data and Confidential Information belonging to the Council in the Provider's possession, power or control, either in its then current format or in a format nominated by the Council (in which event the Council will reimburse the Provider's reasonable data conversion expenses), together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Council.

2.5 **Access to Information Legislation**

2.5.1 The Parties recognise and accept that the Council is a Public Authority for the purposes of Access to Information Legislation, including the provisions of the Freedom of Information Act 2000 and Environmental Information Regulations 1998, and is obliged to disclose information held by itself, or on its behalf, unless the information falls under one or more exemptions, and that the Council may be required to disclose the information where the public interest test lies in disclosure.

2.5.2 In the event that the Provider receives either:-
(i) a request under the Access to Information Legislation; or
(ii) request for an internal review in respect of a decision not to disclose information requested under the Access to Information Legislation, where the information requested is deemed to be exempt from disclosure, where the requests relate to information of Personal Data processed in the course of carrying out its obligations under this Contract, the Provider shall within 2 working days of the receipt of either request for either the information or a request for an internal review against a decision to withhold information requested under the Access to Information Legislation, notify the Council with details of the request.

2.5.3 In the event that the Council receives either:-
(i) a request under the Access to Information Legislation; or
(ii) a request for an internal review in respect of a decision not to disclose information requested under the Access to Information Legislation, where the information requested is deemed to be exempt from disclosure, where the requests relate to information of Personal Data processed in the course of carrying out its obligations under this Contract, the Council shall within 2 working days of the receipt of either request for either the information or a request for an internal review against a decision to withhold information requested under the Access to Information Legislation, notify the Provider with details of the request.

2.5.3 The Provider shall provide the Council with a copy of all information in its possession or power in the form that the Council requires within 5 Working Days (or such other period as the Council may specify) of the Council requesting that information from the Provider.

2.5.5 Following the Council notifying the Provider of the request or asking the Provider to provide comments, the Provider shall provide any such comments, with detailed reasoning, within 5 working days (or other such period as the Council may specify), as to what Confidential Information, if any, should be withheld and the reasons why, to allow the Council to consider the public interest considerations applicable under the relevant Access to Information Legislation.

2.5.6 In the event that such comments, with detailed reasoning are not received within the 5 working days, the Council shall be entitled to consider the applicability of an exemption without further reference to the Provider, save for the provisions of Condition

2.5.7 The Council shall provide to the Provider, no less than 3 working days prior to the release of any information requested, a copy of the response to the request.

2.5.8 The Council shall be responsible for determining at its absolute discretion whether any information:
(i) Is exempt from disclosure in accordance with the provisions of the Access to Information Legislation;
(ii) Is to be disclosed in response to a request and in no event shall the Provider respond directly to a request unless expressly authorised to do so by the Council.

2.5.9 The Provider shall ensure that all information produced in the course of this Contract or relating to the Contract is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

2.5.10 The Provider acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose the Confidential Information.

2.6 Transparency
2.6.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the text of this Contract, and any Schedules to this Contract, are not confidential information. The Council shall be responsible for determining in its absolute discretion whether any part of the Contract or its Schedules is exempt from disclosure in accordance with the provisions of the FOIA.
2.6.2 Notwithstanding any other term of this Contract, the Provider hereby gives its consent for the Council to publish this Contract and its Schedules in their entirety including from time to time agreed changes to the Contract, to the general public in whatever form the Council decides.

Marking of Tender Documents
2.7 If the Provider considers that any other part of its tender (other than price) apart from Parts entitled "Payment by BACS", "Financial References Authority", "Statement of Insurance Cover", "Tenderer's Proposals/Method Statement" and "Tender Pricing Summary" is confidential it should appropriately mark that part of its document and explain the justification for so doing. It would in all circumstances be inappropriate merely to mark all parts of a tender as confidential. In law confidentiality will not arise by simply marking a document confidential.

3. COUNCIL'S RESPONSIBILITIES

3.1 The Council shall issue an Order containing the instructions, specification and/or scope of the Goods or Services to be provided.

3.2 The Council may specify the requirements as to performance of the Goods or Services, the timetable, the level of Charges or fees to be paid, in the Order or separately in writing following the Provider's acceptance of the Order in accordance with Condition 4.2.

3.3 The Council shall be entitled to, but not required to, order the provision of Goods or Services at any time during the Contract Term.

3.4 The Council shall make payment for Goods delivered or Services rendered in accordance with Condition 7.

3.5 The Council shall make known to the Provider all requirements concerning the conduct of the Provider at the Council's premises and the Provider shall ensure compliance with all such requirements and shall otherwise act at all times in a lawful and proper manner.

3.6 If required, the Council may assist the Provider in performing the Goods or Services by:
(i) taking decisions and obtaining management approvals promptly; and
(ii) give the Provider full and prompt access to the Council's personnel and premises, together with all necessary administrative support;
(iii) obtain any approvals, licences and security clearances promptly (including any relating to third parties, and any subcontractors); and
(iv) keep the Provider promptly informed of any proposals or developments affecting the provision of Goods or the Services to be provided under this Contract.

The Council shall monitor the performance of the Contract throughout the Term and may specify the frequency of meetings, submission of performance reports, records and any other relevant information required to effectively monitor the Provider's performance, either in the Order or separately, in writing following acceptance of the Order.

4. PROVIDERS RESPONSIBILITIES

4.1 The Provider shall provide the provision of Goods or Services with all due care, skill and ability and use best endeavours to promote the interests of the Council.

4.2 The Order will lapse unless unconditionally accepted by the Provider in writing within seven days of its date.

4.3 Where the Council does not or cannot specify the method of working, the Provider shall endeavour to determine the best method and shall endeavour to provide the provision of Goods or Services in the most effective way

4.4 The Provider shall comply with the Health and Safety at Work Act 1974, the Management of Health and Safety at Work Regulations, and all Legislation relating to health and safety in the performance of this Contract.

Equality Act 2010 and Equality Policy
4.5 The Provider shall adopt a policy to comply with all statutory obligations under the Equality Act 2010 and with all regulations and Codes of Practice, made under the Equality Act 2010.

Living Wage
4.6 Where instructed by the Council, the Provider shall implement the Council's rate of pay ("the Living Wage") to all staff engaged in the provision of Goods or Services as per Appendix 1 to this Contract.

Business Charter
4.7 Where instructed by the Council, the Provider shall comply with the Council's policy relating to the improvement of the economical, social and environmental well-being of Birmingham ("the Business Charter") as per Appendix 1 to this Contract.

Goods
4.8 The Provider shall in the provision of Goods:
4.8.1 supply to the Council the quantities of Goods stated in the Order or as may be specified elsewhere in writing;
4.8.2 exercise all the skill, care and diligence in the discharge of the supply of the Goods to be expected of an appropriately qualified competent supplier experienced in carrying out the supply of the relevant nature, size, scope and complexity as described in the Order;
4.8.3 ensure that the Goods delivered maintain the standards set out in the Order;
4.8.4 deliver the Goods to the premises identified on the Order.
4.8.5 execute all Orders with reasonable dispatch, or by the time specified (if time is specified) in the Order.
4.8.6 Provide all necessary labour, materials and equipment required for the off loading and placing in position of any Goods.
4.8.7 shall supply a delivery note, quoting the Order number with all Goods supplied.
4.8.8 The Goods shall be transported and off loaded at the sole risk of the Provider.
4.8.9 The Goods shall be at the Providers risk until delivery in accordance with the Order.
4.8.10 Title in the Goods shall pass to the Council on delivery of the Goods in accordance with Condition 4.8.9 above

4.9 The Council shall at all times have full power to inspect the Goods at all stages of the manufacture and shall be at liberty at all such times to reject any Goods which do not comply with this Contract. If the Council fails to reject Goods this shall not constitute an acceptance or prejudice the Council's right to reject Goods after delivery.

4.10 In the event that the Provider fails to deliver the Goods at the agreed time or fail to perform an obligation under this Contract the Council may recover from the Provider for late performance or non-performance liquidated damages, and not by way of penalty, a sum equivalent to the additional cost incurred by the Council as a direct result of such late performance, provided that the sum so recoverable shall be directly attributable to that part of this Contract that is the subject of the late or non-performance.

4.11 The Council may cancel any specific Orders issued against this Contract if delivery of any Goods has not been made within the time prescribed under this Contract.

4.12 In the event the Council elects to cancel an Order or any part of it the Council shall not be liable to the Provider for such cancellation.

4.13 Goods supplied in accordance with this Contract must comply at the time of their supply with:
4.13.1.1 the express terms of this Contract;
4.13.1.2 any applicable implied conditions, warranties and terms contained in the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982 and any related statutes and any re-enactments or modifications;
4.13.1.3 all applicable European Union Directives relevant and applicable to the Goods and to the extent that they are applicable all Goods supplied must be endorsed as being fully compliant with such standards by the application of the CE mark in a position on the Goods which shall meet the requirements of the applicable European Union Directive;
4.13.1.4 any specification of the British Standards Institute (or equivalent) which is relevant to the Goods at the time of supply.

Services
4.14 In the provision of Services, the Provider confirms that:-
4.14.1 it is a Provider having the service expertise specified in the Order and the Provider agrees to perform the Services in accordance with the instructions of the Council and to comply with Terms and Conditions of this Contract;
4.14.2 it shall exercise all the skill, care and diligence in the discharge of the Services to be expected of an appropriately qualified competent Provider experienced in carrying out Services of the relevant nature, size, scope and complexity as described in the Order;
4.14.3 shall comply promptly with all reasonable instructions given to the Provider by the Council on any matter connected with the Services;
4.14.4 Service deliverables (including all records, reports, documents, papers, drawings, designs, transparencies, photos, graphics, logos, typographical arrangements, software programmes, inventions, ideas, discoveries, developments, improvements or innovations and all materials in whatever form, including but not limited to hard copy and electronic form), ("the Deliverables") prepared by the Provider in connection with the provision of the Goods or Services shall be supplied in a timely manner or in accordance with the time specified in the Order (if so specified).
4.14.5 The Council shall use Deliverables for the purpose stated in the Order and shall reasonably seek the express consent of the Provider where it seeks to use it for any other purpose.

Staff

4.15 The Provider shall engage appropriately qualified, experienced and competent staff in the delivery of the Goods and/or performance of the Services. The Council may at any time require the replacement of any personnel where his or her performance or conduct is or has been unsatisfactory. The Provider shall remove and replace promptly the person specified.

4.16 The Provider shall give to the Council, if so requested, full particulars of all persons who are or may be at any time engaged in the performance of this Contract.

4.17 The Provider shall be entirely responsible for the employment and conditions of service of the staff engaged for the purpose of this Contract.
4.18 When instructed by the Council The Provider shall ensure:-
(a) that all individuals involved in the provision of the Goods or Services, are subject to a valid [enhanced] disclosure check undertaken through the Disclosure and Barring Service established under the Protection of Freedoms Act 2012, including a check against the adults' barred and the children's barred list, as appropriate; and

(b) that the level and validity of checks is monitored for each individual.

5. NOTICE

5.1 Any notice given under this Contract shall be in writing and signed by or on behalf of the Party giving it and shall be served by delivering it personally, or sending it by pre-paid recorded delivery or registered post to the relevant Party at the address identified by the respective Parties or by sending it by fax to the fax number notified by the relevant Party.

5.2 Any such notice shall be deemed to have been received:-
(a) if delivered personally, at the time of delivery;
(b) in the case of pre-paid recorded delivery or registered post, [48] hours from the date of posting, or
(c) in the case of fax, at the time of transmission]
(d) [in the case of electronic mail, [at the time of transmission

5.3 In providing such service it shall be sufficient to prove that the envelope containing such notice was addressed to the address of the relevant Party and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery or registered post (or that the notice was transmitted by fax to the fax number of the relevant Party).

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

5.5 For the purposes of Condition 5.1 the address of the Parties shall be that contained in the Order.

Ownership and intellectual property
5.6 The copyright and all other intellectual property and proprietary rights whatsoever ("Intellectual Property Rights") in any document, material, idea, data or other information (including systems and methodologies, reports, preparatory works, drafts, working papers, correspondence and advice, patents, trade marks, designs, design rights, copyright, inventions, trade secrets, know-how and confidential information)) developed by the Provider in connection with the performance of the provision of Goods or Services shall vest in the Council upon the date of such production or provision. Where such IPR rights can not be transferred, the Provider shall ensure that the Council has a royalty free licence to permit it to utilise such information. The Provider shall do all things reasonably necessary at the Council's request to perfect such vesting, both during and after the expiry of this Contract.

5.7 Condition 5.6 shall not apply to intellectual property rights not created by the Provider at the request of the Council or specifically for the purpose of performing the provision of Goods or Services and shall not, subject to Conditions 2.2, 2.3, 2.4 and 2.6 operate to prevent the Provider from making use of the principles and ideas created or produced by the Provider in any document, material, idea, data or other information, (including systems and methodologies, reports, preparatory works, drafts, working papers, correspondence and advice), except those created or supplied by the Council, in future assignments or in relation to potential future assignments.

5.8 Where pre-existing deliverables are incorporated into the provision of Goods or Services, the Council has a non-exclusive irrevocable worldwide royalty free licence to use, modify and distribute such pre-existing works, for the purposes of this Contract only.

5.9 The Provider hereby assigns to the Council all existing and future IPR in the Deliverables and all materials embodying these rights to the fullest extent permitted by law. Insofar as they do not vest automatically by operation of law or under this Contract, the Provider holds legal title in these rights on trust for the Council.

5.10 The Provider undertakes:
(a) not to register nor attempt to register any of the IPR in the Deliverables unless requested to do so by the Council; and
(b) to do all acts necessary to confirm that absolute title in all IPR in the Deliverables has passed, or will pass, to the Council

5.11 The Provider warrants that:
(a) the Provider has not given and will not give permission to any third party to use any of the Deliverables nor any of the IPR in the Deliverables;
(b) the Provider is unaware of any use by any third party of any of the Deliverables or IPR in the Deliverables; and
(c) the use of the Deliverables or the IPR in the Deliverables by the Council will not infringe the rights of any third party.

5.12 Notwithstanding any other provision of this Contract, and for the avoidance of doubt, nothing in this Contract shall operate to give any right of ownership or use of the methods and systems employed by the Council.

5.13 The Provider agrees to indemnify the Council and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by the Council, or for which the Council may become liable, with respect to any intellectual property infringement claim or other claim relating to the Deliverables supplied by the Provider to the Council during the course of the providing the Goods or Services.

5.14 The Provider acknowledge that no further remuneration or compensation other than that provided for in this Contract is or may become due to the Provider in respect of the performance of the Provider's obligations under these Conditions 5.6 to 5.14.

6. LIABILITY AND INSURANCE PROVISIONS

6.1 The Provider will perform the provision of Goods and Services with reasonable skill and reasonable care.

6.2 The Provider shall have liability for and shall indemnify the Council against any and all direct losses, and losses arising out of any claims, demands fines, penalties, actions, investigations or proceedings and costs (including reasonable legal costs),

arising out of the negligent performance or non-performance of the provision of Goods or Services and shall accordingly maintain in force during the Contract Term full and comprehensive insurance policies.

6.3 Subject to the provisions of Condition 6.2 above, neither Party shall have any liability to the other under, or in connection with this Contract howsoever arising in respect of indirect or consequential loss or damage however caused.

6.4 The Provider shall take out and maintain for the duration of the Services with reputable insurers:-
(a) Public liability insurance of an appropriate level for any one event or series of connected events; and/or
(b) Professional indemnity insurance of an appropriate level of per annum in aggregate of all claims in connection with this Contract or otherwise; and/or
(c) Employers' liability insurance as required by the Employers' Liability (Compulsory Insurance) Act 1969, as amended

6.5 In any event, or notwithstanding any other term in this Contract, the Providers liability in contract, tort (including negligence or statutory duty) or otherwise arising by reason of or in connection with this Contract (except in relation to death or personal injury caused by negligence) shall be limited in aggregate per year to:
(a) Where under the terms of Condition 6.4 or otherwise under this Contract, the Provider are obliged to hold insurance in respect of the matter from which the liability arises, the insurance levels set by the Provider under Condition 6.4 or otherwise required under this Contract;
(b) In respect of matters for which the Provider are not obliged to hold insurance under the terms of Condition 6.4, or otherwise under this Contract, the Price payable by the Council to the Provider in the year in which the liability arises

6.6 The Council's liability in contract, tort (including negligence or statutory duty) or otherwise arising by reason of or in connection with this Contract (except in relation to death or personal injury caused by negligence) shall be limited to in aggregate per year to [one hundred per cent (100%) of the Fee] payable by the Council to the Provider in the year in which the liability arises.

6.7 For the purposes of Conditions 6.4 and 6.5 "year" shall mean the period of 12 months from the Commencement Date or any anniversary thereof.

6.8 The Provider shall on request supply to the Council copies of the insurance policies and evidence that the relevant premiums have been paid.

7. PRICE AND PAYMENT

7.1 The Council shall pay the fee ("the Price") for the Goods or Services to the Provider as stated in the Order or in any subsequently agreed Variation.

7.2 The Provider may invoice the Council on or at any time after delivery of the Goods or performance of the Services, as the case may be, and each invoice shall quote the number of the Order.

7.3 Payment of any undisputed invoice will be made no later than thirty (30) days following the date of receipt of the invoice by the Council.

7.4 The Council reserves the right to withhold payment of the relevant part of the Price without payment of interest where the Provider have either failed to provide the provision of Goods or Services at all or have provided the Services inadequately and any invoice relating to such Goods or Services will not be paid unless or until the Goods or Services have been performed to the Council's satisfaction.

7.5 Any overdue sums will bear interest from the due date until payment is made at 3% per annum over the Co-operative Bank plc base rate from time to time. The Provider is not entitled to suspend provision of the Goods or Services as a result of any overdue sums.

7.6 The Council may set off against the Price any sums owed to the Council by the Provider.

8 TERMINATION

8.1 Subject to the provisions of condition [10] (Force Majeure) the Council may terminate the Contract with immediate effect by notice in writing to the Provider on or at any time if the Provider:-
a) becomes bankrupt, insolvent, makes any composition with its creditors, has a receiver appointed under the Mental Health Act 1983 or dies;
b) are convicted of a criminal offence;
c) ceases or threatens to cease to carry on the Provider's business;
d) has a change in Control which the Council believes will have a substantial impact on the performance of the Contract;
e) 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;
f) is in breach of any of the Provider's 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;
g) there is a material or substantial breach by the Provider of any of the Provider's obligations under this Contract which is incapable of remedy; or
h) the Provider commits persistent minor breaches of this Contract whether remedied or not.

8.2 The Council reserves the right to terminate the Contract in part in the case of termination under Conditions 8.1 (f), (g) and (h).

8.3 The Council has the right to terminate any individual Order or Orders or the whole Contract under the provisions of Condition 8.1.

8.4 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.

Prevention of Corruption

8.5 The Council shall be entitled forthwith to terminate this Contract by delivery of written notice to the Provider if the Provider shall have:-

a) offered, promised or given a financial or other advantage to another person; and either:
b) the Provider intended the advantage to induce a person to perform improperly a relevant function or activity in relation to the obtaining or execution of the Contract or any other contract with the Council; or
c) The Provider knows or believes that the acceptance of the advantage would itself constitute the improper performance of the relevant function or activity in relation to the obtaining or execution of the Contract or any other contract with the Council; or
d) If the like act or acts shall have been done by any person employed by the Provider or associated with the Provider (whether with or without the Provider's knowledge); or
e) If in relation to any contract with the Council the Provider or any person employed by the Provider or associated with the Provider shall have:-
    (i) committed an offence or offences under the Bribery Act 2010; or
    (ii) given any fee or reward to an officer of the Council the acceptance of which is an offence under Section 117(2) Local Government Act 1972.

8.6 Such termination shall not affect the continuing application of any provisions of the Contract, which are expressed as or are capable of having effect after the termination of the Contract.

Consequences Of Termination

8.7 If this Contract is terminated in whole or in part the Council shall:
a) only be liable to pay to the Provider for 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; and/or
b) except for termination under Condition 8.1 (d), be entitled to deduct from any sum or sums which would have been due from the Council to the Provider under this Contract or any other contract and to recover the same from the Provider 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 provision of Goods or Services or any parts of them; and/or
c) where termination arises under Condition 8.1 (d), pay the Provider for any reasonable, direct and quantifiable costs reasonably incurred by the Provider due to early termination subject to the maximum liability provision in Condition 6.5 and/or
d) in the event that any sum of money owed by the Provider to the Council (the Provider's debt) exceeds any sum of money owed by the Council to the Provider (the Council's debt) under this Contract then the Council shall, at its sole discretion, be entitled to deduct the Provider's debt from any future Council's debt or to recover the Provider's debt as a civil debt.

8.8 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.

Termination by the Provider

8.9 If the Council shall fail to pay to the Provider any sum due under this Contract and the Council shall fail to remedy such breach within [28 days] of the service of a written notice upon the Council specifying such breach, then the Provider shall be entitled to terminate this Contract by [28 days] written notice to the Council.

Consequences of Termination by the Provider

8.10 If the Provider shall terminate this Contract under Condition 8.9 the Provider shall be entitled to receive:-
a) payment for the performance of the Services up to the date of termination; and
b) any direct loss and/or expense arising out of the termination of the Contract.

9 DISPUTE RESOLUTION

9.1 If a dispute arises between the Council and the Provider in connection with this Contract, the Council's Representative and the Providers Representative shall each use reasonable endeavours to resolve such dispute by means of prompt discussion.

9.2 If a dispute is not resolved within fourteen (14) days of referral under Condition 9.1 then either party may refer it to a senior manager 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.

Mediation

9.3 If any dispute is not resolved under Conditions 9.1 & 9.2, either of the Parties may initiate mediation by giving an Alternative Dispute Resolution ("ADR Notice") to the other in writing requesting mediation. A copy of the ADR Notice shall also be sent to Centre for Effective Dispute Resolution (CEDR).

9.4 The Procedure in the CEDR's Model Procedure shall be amended to take account of:-
any relevant provision in this Contract; and
any other additional agreement which the Parties may enter into in relation to the conduct of the mediation.

9.5 The Procedure in the CEDR's Model Procedure shall be amended to take account of:-
any relevant provision in this Contract; and
any other additional agreement which the Parties may enter into in relation to the conduct of the mediation.
9.6 The mediation will start not later than 4 weeks after the date of the ADR Notice
9.7 Neither of the Parties may terminate the mediation until each of the Parties has made its opening presentation and the mediator has met each of the parties separately for 1 hour. Thereafter Paragraph 14 of the Model Procedure will apply.

10 GENERAL TERMS

Force majeure
10.1 Neither Party shall be liable for failure to perform its obligations under the Contract if such failure results from any event or occurrence which is outside the reasonable control of the Party concerned and which is attributable to any act or failure to take preventative action by that Party including strike, lock-out, fire, explosion or accident or any stoppage of either Party's business or work beyond the Party's control or any other event or circumstance (whether arising from natural causes human agency or otherwise) beyond the control of the Party concerned ("Force Majeure").

10.2 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 or Services until the circumstances of the Force Majeure have ceased. The suspension shall not give rise to any claim by the Provider against the Council nor entitle the Provider to terminate the Contract.

10.3 Industrial action by, or illness or shortage of the Provider's staff, agents or subcontractors, failure or delay by any of the Provider's suppliers to supply goods, components, services or materials and breach of any of the Provider's warranties under Conditions 1.11, 4.8 and 4.18 shall not be regarded as an event of Force Majeure.

10.4 If the event of Force Majeure continues for more than two (2) months either Party may give written notice to the other to terminate the Contract immediately or on a set termination date.

10.5 If the Contract is terminated in accordance with Condition 10.4 neither Party will have any liability to the other except that any rights and liabilities which accrued prior to termination will continue to exist.

Governing law jurisdiction
10.6 The Contract and our relationship is governed by and interpreted in accordance with English law. A claim may only be brought against the other Party (in contract, tort or otherwise) if it can be brought in English law without reference to the law of any other country.

10.7 The Courts of England and Wales shall have exclusive jurisdiction to settle any dispute (including claims for set-off and counterclaim) that may arise in connection with any aspect of the legal relationship established by the Contract or otherwise arising in connection with this Contract. The Parties each submit irrevocably to the jurisdiction of the Courts of England and Wales.

Third Party Rights
10.8 Subject to Condition 4.6, a person who is not party to this Contract ("Third Party") has no right to enforce any term of this Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the Contracts (Rights of Third Parties) Act 1999. If the Parties rescind this contract or vary any of its terms in accordance with the relevant provisions of this contract, such rescission or variation will not require the consent of any Third Party.

10.9 Notwithstanding the provisions of Condition 10.8, any of the Benefitting Employees shall have the right to enforce their rights under Condition 4.6 (Payment of Living Wage) of this Contract.

No Waiver
10.10 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.

Severance
10.11 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.

PLEASE CONSIDER APPLICATION OF THIS APPENDIX AND ADVISE THE PROVIDER AS TO ITS REQUIREMENTS TO COMPLY WITH CONDITIONS 4.6 & 4.7

APPENDIX 1

The Provider shall comply with the following provisions in respect of its compliance with Condition 4.6 of the Contract at all times and where applicable:

The following definitions shall apply in relation to Condition 4.6:

"Benefitting Employees" means any of the Provider's Workforce who are engaged in the provision of Goods and/or Services for two or more hours in any day during any week for eight or more consecutive weeks during the term of this Contract on either:-

(a) Council premises;
(b) property owned or occupied by the Council; or
(c) land which the Council is responsible for maintaining or on which the Provider is required to work.

"Living Wage" means the UK Living Wage as set annually in November, or as amended from time to time by the Living Wage Foundation (Charity number 1107264) or any successor body. The Living Wage as at the Commencement Date is £7.65 per hour.

1. Payment of Living Wage

1.1 The Living Wage shall be payable where the Council estimates the annual value of an Order to be issued in a financial year is likely to exceed two hundred thousand pounds (£200,000) or the aggregate value of Orders to be placed under this Contract and/or any other orders, placed under any other contract with the Council is likely to exceed five hundred thousand (£500,000).

1.2 Within 5 calendar days of issuing an Order, the Council shall issue a further notice in writing to the Provider notifying as to whether the obligation to pay the Living Wage:-

1.2.1 has started and if so the effective date (which shall be a reasonable time not exceeding [30 Calendar days] from the date of such notice);
1.2.2 has ceased and if so the date of cessation; or
1.2.3 is continuing;

Provided that the Council may at any time following the issue of a notice under Condition 1.2 issue a further notice to amend the requirements of any previous notice issued under Condition 1.2

1.3 On receipt of the Notice issued under Condition 1.2, the Provider shall pay to each of the Benefitting Employees the Living Wage in respect of their time spent engaged in activities comprised in the Services from the date specified on the Notice.

1.4 The Council shall give notice to the Provider of any change to the Living Wage within thirty (30) Calendar days of the change being announced by the Living Wage Foundation. The Council will implement the change in the Living Wage which it pays to its employees within 6 months of such announcement. The Council will confirm to the Provider as soon as practicable following such announcement the date of such implementation by the Council. The Provider shall implement the change to the Living Wage with effect from the date on which it is implemented by the Council.

1.5 The Provider shall:

1.5.1 carry out appropriate promotional activities to publicise to the Provider's Workforce the entitlement of Benefitting Employees to be paid the Living Wage;
1.5.2 maintain a register of all of the Benefitting Employees who are entitled to be paid the Living Wage under Condition 1.2 and provide a copy of the register to the Council on request;
1.5.3 make available for inspection by the Council's employees or agents nominated for the purpose at all reasonable times upon reasonable notice the books and accounts of the Provider together with all supporting documents in the possession or under the control of the Provider as may

reasonably be requested by the Council in order for the Council to verify the Provider's compliance with Condition 1.2.

1.5.4 on or before the anniversary of the Living Wage Commencement Date, the Provider shall provide the Council with an assurance certificate signed on the Provider's behalf confirming that it has complied with the requirements of this Condition 1.5.4.

1.5.5 If the Provider fails to comply with its obligations under Condition 1.2 the Council shall be entitled to issue a written notice in accordance with Condition 8 (Termination) specifying the breach of this Contract and requiring its remedy within such time as may reasonably be specified by the Council (not exceeding four weeks) and if the Provider shall fail to remedy the breach the Council shall be entitled to terminate this Contract in accordance with Condition 8 (Termination).

The Provider shall comply with the following provisions in respect of its compliance with Condition 4.7 of the Contract at all times and where applicable:

2 Business Charter and Social Policy

2.1 Contract

The Provider agrees to sign up to the Council's Business Charter for Social Responsibility ("the Charter) as set out in this Appendix 1. The Provider agrees to meet the standards required by the Charter throughout the duration of this Contract.

2.2 Action Plan

In fulfilling it obligations under the Charter, the Provider shall develop and implement, an action plan, approved by the Council. The Provider's action plan shall include sufficient detail as to how the principles of the Charter shall be implemented during the duration of this Contract.

2.3 Annual Statement

The Provider shall provide to the Council on each anniversary date, beginning from the Commencement Date, an annual statement confirming how the principles of the Charter has been implemented or are yet to be implemented.

Birmingham Business Charter for Social Responsibility

This Charter is a set of guiding principles to which Birmingham City Council (BCC) will adhere to and to which it will invite its contracted suppliers, the wider business community, other public sector bodies (including schools), and third sector organisations (including grant recipients), to adopt.

Charter signatories will consider and describe how they can improve the economic, social and environmental well-being of Birmingham that result from their activities. This includes indirect outcomes through commissioning and procurement.

Charter signatories will commit to the principles below, either by fully adopting the Charter at the time of signature or alternatively making a commitment to full adoption within a clear timetable.

Future commissioning and contracting decisions will take account of the principles of this charter and it will form part of the terms of new BCC contracts, and Conditions of Grant Aid (COGA). All the principles and policies of the Charter will be mandatory for organisations with individual contracts or grants over £200,000 per annum and for those that have aggregate annual contracts or grants above £500,000. Contracts and grants below these thresholds have aspects of the Charter that are mandatory and aspects that are voluntary.

Charter Principles:

- Local Employment
- Buy Birmingham First
- Partners in Communities
- Good Employer
- Green and Sustainable
- Ethical Procurement

Local Employment

Charter signatories will create employment and training opportunities for local people especially in target areas:

Mandatory for all

- Commit to create employment and training opportunities for local residents, including people with disabilities and support people into work and work experience placements.
- Adopt an approved Jobs and Skills policy and apply this policy at every stage of the procurement process. BCC's Policy Toolkit for Jobs and Skills provides an example of an approved policy approach.

Mandatory above Threshold, and Voluntary below Threshold

- Seek opportunities to work with schools to help to ensure that the young people of Birmingham are equipped with the right skills to match the requirements of the labour market.
- Support the local economy and create much needed jobs and apprenticeships by adopting procurement strategies that remove barriers to local businesses.

Buy Birmingham First

Charter Signatories will take account of the social and economic impacts of buying locally when commissioning and contracting, thereby reducing unemployment and raising the skill level of the local workforce.

Mandatory for all

- Support the local economy by choosing suppliers close to the point of service delivery where possible.
- Use Find it in Birmingham as the primary method of sourcing suppliers for contracts in Birmingham, increasing the accessibility of opportunities to local businesses throughout the Supply Chain.
- Encourage their suppliers to endorse the principle of 'Buy Birmingham First' throughout their supply chains.

Mandatory above Threshold, and Voluntary Below Threshold

- Commit to purchasing from pre-qualified businesses on the Find it in Birmingham website where possible.

Partners in Communities

Charter signatories will play an active role in the local community and community support organisations, especially in those areas and communities with the greatest need.

Mandatory above Threshold, and Voluntary below Threshold

- Build capacity by supporting community organisations with resources and expertise in areas with the greatest need, for example mentoring and working with youth organisations and services.
- Make a local impact by improving local facilities and areas, for example staff volunteering schemes.
- Provide support to third sector organisations and work with third sector organisations to deliver services and contracts.
- Work with schools and colleges, offering work experience and business awareness to students, especially those from disadvantaged areas or communities.
- Support the Birmingham Baccalaureate as it is developed.
- Make accessible all sub-contracting opportunities to a diverse supply base including the third sector and local suppliers and provide mentoring and support to assist these organisations to tender for and deliver these supply opportunities where necessary.

Good Employer

Charter signatories will support staff development and welfare and adopt the Birmingham Living Wage within their own organisation and within their supply chain.

Mandatory for all

- Ensure that employees are given a fair reward for their labours and help foster a loyal and motivated workforce by paying the Birmingham Living Wage.
- Recognise employees' rights of freedom of association and collective bargaining, including not using blacklists in recruitment processes.
- Provide a safe and hygienic working environment.
- Comply with working hour's legislation and industry standards.
- Not discriminate in respect of recruitment, compensation, access to training, promotion, termination of employment or retirement based upon race, caste, national origin, religion, age, disability (including learning disability), mental health issues, gender, marital status, sexual orientation, union membership or political affiliation.
- Comply with employment and social security legislation;
- Not employ harassment or intimidation.
- Have and comply with a whistle blowing policy.

Green and Sustainable

Charter signatories will commit to protecting the environment, minimising waste and energy consumption and using other resources efficiently. These commitments will also apply to their supply chain.

Mandatory for all

- Eliminate unnecessary waste by adopting the “reduce, reuse, recycle” philosophy.

- Be a good neighbour, minimise negative local impacts (noise, air quality), improve green areas (e.g. biodiversity, visual attractiveness).

- Reduce Carbon footprint – be aware of main impacts on carbon emissions including the indirect carbon used in manufacturing processes and the direct impact of operations and logistics.

Mandatory for above Threshold, and Voluntary Below Threshold

- Measure carbon emissions and ensure a plan is being implemented using carbon measurement tools. Specific targets to be included in major contracts.
- Protect the environment and minimise adverse impacts and instil this approach throughout suppliers’ supply chains.

Ethical Procurement

Charter signatories will commit to employing the highest ethical standards in their own operations and those within their supply chain.

Mandatory for all

- Work to the highest standards of business integrity and ethical conduct.
- Pay their fair share of taxes
- Ensure the well-being and protection of work forces which must be supported by robust systems and procedures.
- Support the principles of the Universal Declaration of Human Rights;
- Support the Fundamental International Labour Organisation Conventions;
- Not engage in or support the use of child labour.
- Adopt best practice when procuring goods and services e.g. procure low energy products and avoid the use of rainforest timber from unmanaged sources.
- Pay suppliers no later than the terms stated in the primary contract.

NOT SURE WHERE THESE BELONG

10.10 Access to Information Legislation

10.10.1 The Parties recognise and accept that the Council is a Public Authority for the purposes of Access to Information Legislation, including the provisions of the Freedom of Information Act 2000 and Environmental Information Regulations 1998, and is obliged to disclose information held by itself, or on its behalf, unless the information falls under one or more exemptions, and that the Council may be required to disclose the information where the public interest test lies in disclosure.

10.10.2 In the event that the Provider receives either:-

(i) a request under the Access to Information Legislation; or

(ii) request for an internal review in respect of a decision not to disclose information requested under the Access to Information Legislation, where the information requested is deemed to be exempt from disclosure,

2.5.10 The Provider acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose the Confidential Information.

10.11

10.12 The Provider will be entitled to disclose Confidential Information:-

10.12.1 that is reasonably required by persons engaged in the performance of its obligations under the Contract.

10.12.2 any Confidential Information which a Party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of Condition 2.2.

10.12.3 any disclosure to enable a determination to be made under the Condition 9 (Dispute Resolution);

10.12.4 any disclosure which is required by any Legislation (including any order of a court of competent jurisdiction), and Parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of law;

10.12.5 any disclosure of Confidential Information which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party;

10.12.6 any disclosure by the Council of Confidential Information relating to the provision of Goods or Services and such other information as may be reasonably required for the purpose of conducting a due diligence exercise for any proposed successor provider should the Council decide to re-tender the Contract;

10.12.7 any examination pursuant to the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Council has used its resources;

10.12.8 disclosure to a Party's professional advisers; or

10.12.9 any disclosure by the Council under the Freedom of Information Act 2000.

10.13 The Provider shall return to the Council any data and Confidential Information belonging to the Council in the Provider's possession, power or control, either in its then current format or in a format nominated by the Council (in which event the Council will reimburse the Provider's reasonable data conversion expenses), together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Council.