

**THE AUTHORITY**

and

**[SUPPLIER]**

Call-off Terms and Conditions for a Contract  
for the provision of  
Horticultural and Landscape Services

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**THIS CONTRACT** is made

**BETWEEN**

- (1) the entity which is set out in the Order Form issued to the Supplier by the Authority (the “**Authority**”); and
- (2) the entity which as a sole trader, partnership or with another trading status has its principal place of business (or as a limited company has its company number and registered office) as set out in the Order Form issued to the Supplier by the Authority (the “**Supplier**”).

**Background**

- (A) This Contract has been awarded to the Supplier following the establishment by the Authority for eligible suppliers to be appointed to the Authority’s DPS to provide horticultural and landscaping services.
- (B) Where the Supplier is selected to provide the Services, the Authority will issue an Order Form to the Supplier. Each Order Form will incorporate these Call-off Terms and Conditions.
- (C) These Call-off Terms and Conditions do not contain pricing information. Each Contract shall be awarded to an eligible supplier at the Price set out in its tendered pricing schedule.

**NOW IT IS AGREED AS FOLLOWS:**

**1. Definitions and Interpretation**

- 1.1 The definitions and rules of interpretation in this Clause 1.1 apply in these Call-off Terms and Conditions.

**Associated Company:** any holding company from time to time of the Supplier and any subsidiary from time to time of the Supplier, or any subsidiary of any such holding company.

**Authorised Representatives:** the persons respectively designated as such by the Authority and the Supplier, the first such persons being set out in Schedule 4.

**Best Industry Practice:** the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the service levels, the term, the pricing structure and any other relevant factors.

**Bribery Act:** the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

**Call-off Terms and Conditions:** means the written Contract between the Authority and the Supplier consisting of the Order Form and these Clauses (which are defined as Call-off Terms and Conditions and set out in Schedule 5 to the DPS Agreement) that shall apply to all of the Authority's Order Form horticultural and landscaping services.

**Change:** any change to this Contract including to any of the Services.

**Change Control Procedure:** the procedure for changing this Contract, as set out in Schedule 5.

**Charges:** the charges which shall become due and payable by the Authority to the Supplier in response to the Invitation to Tender for the provision of Services in accordance this Contract.

**Commencement Date:** the date set out in the Order Form.

**Commercially Sensitive Information:** the information listed in Schedule 6 comprising the information of a commercially sensitive nature relating to the Supplier, its intellectual property rights or its business or which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss.

**Contract:** means a legally binding agreement for the provision of the Services made between the Authority and the Supplier comprising an Order Form, its schedules and/or appendices (if any) and these Call-off Terms and Conditions.

**Contract Manager:** means the contract manager of the Authority named in the Order Form.

**Contracting Authority:** shall mean any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015.

**Data Protection Legislation:** shall mean all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.

**Default Notice:** is defined in clause 5.2.

**Dispute Resolution Procedure:** the procedure set out in clause 20.

**Domestic Law:** the law of the United Kingdom or a part of the United Kingdom.

**EIRs:** the Environmental Information Regulations 2004 (*SI 2004/3391*) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**Find a Tender Notice** means the contract notice published on [www.find-tender.service.gov.uk](http://www.find-tender.service.gov.uk)

**Fraud:** means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the Authority

**FOIA:** the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**Force Majeure:** any cause affecting the performance by a party of its obligations under this Contract arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Supplier, the Supplier's Personnel or any other failure in the Supplier's supply chain.

**Information:** has the meaning given under section 84 of FOIA.

**Intellectual Property:** any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of the Authority's, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

**Invitation to Tender or ITT:** means the Authority's invitation to tender to eligible DPS Suppliers to compete in a mini-competition for the award of Services and a Contract.

**Key Personnel:** those personnel identified in Schedule 4 (Contract Management and Authorised Representatives) for the roles attributed to such personnel, as modified pursuant to clause 13.

**Law:** the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services or with which the Supplier must comply.

**Necessary Consents:** all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Services. **Payment Plan:** the plan for payment of the Charges as set out in 3.

**Order Form:** means the Authority's written instruction as a purchase order (issued by the Authority using its electronic purchasing system) to provide the Services and subject to, the Call-off Terms and Conditions set out in Schedule 5 to the DPS Agreement.

**Personal Data:** as defined in the Data Protection Legislation.

**Personnel:** means all persons engaged by the Supplier from time to time in connection with the provision of the Services in any manner employed by the Supplier or by other contractors of the Supplier or are employed on their own account as independent contractors or the Supplier's Sub-Contractors, servants or agents.

**Processor:** as defined in the Data Protection Legislation.

**Prohibited Act:** the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
  - (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;
- (c) committing any offence:
  - (i) under the Bribery Act;
  - (ii) under legislation creating offences concerning fraudulent acts;
  - (iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the Authority; or
  - (iv) defrauding, attempting to defraud or conspiring to defraud the Authority.

**Regulated Activity:** in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

**Regulated Activity Provider:** shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.

**Regulatory Bodies** those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Authority and "Regulatory Body" shall be construed accordingly.

**Remediation Notice:** a notice served by the Authority in accordance with clause 30.1(a).

**Replacement Services:** any services that are identical or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the termination or expiry of this Contract, whether those services are provided by the Authority internally or by any Replacement Supplier.

**Replacement Supplier:** any third party Supplier of Replacement Services appointed by the Authority from time to time.

**Request for Information:** a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.

**Review Meeting:** has the meaning given to it in clause 17.2 (Reporting, meeting and complaints).

**Specification:** means the detailed specification included in the relevant Invitation to Tender.

**Supplier Party:** the Supplier's agents and contractors, including each Sub-Contractor.

**Supplier Representative:** means the person appointed by the Supplier, in accordance with clause 13 (Key personnel and representatives), to be its prime contact point for managing and monitoring the provision of the Services under this Contract and having the authority to contractually bind the Supplier on all matters relating to the Services.

**Supplier's Personnel:** all employees, staff, other workers, agents and consultants of the Supplier and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

**Supplier's Tender:** the tender submitted by the Supplier to the Authority in response to the Authority's Invitation to Tender to provide the Services.

**Services:** the services to be delivered by or on behalf of the Supplier under this Contract, as more particularly described in Schedule 1 (Services and Specification), including the Social Value Commitments if applicable .

**Sub-Contract:** any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the Services from that third party.

**Sub-Contractor:** the contractors or Suppliers that enter into a Sub-Contract with the Supplier.

**Supplier Incentive Scheme:** means the Authority's programme to improve its pay to purchase processes to enable the Supplier to benefit from the early payment of their invoices in return for a small rebate of the Charges. If the Supplier's Tender indicated that they wished to be a part of the scheme in relation to this Contract, the terms of the Supplier Incentive Scheme are set out at Schedule 3.

**Term:** the period from the Commencement Date to the date of expiry set out in the Order Form , or such earlier date of termination of the Contract in accordance with the Law or the provisions of the of the Initial Term as may be varied by:

**Termination Date:** the date of expiry or termination of this Contract.

**UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

**Working Day:** Monday to Friday, excluding any public holidays in England and Wales.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Contract.

- 1.3 A **person** includes a natural person, corporate or unincorporated body and partnerships (whether or not having separate legal personality).
- 1.4 The schedules form part of this Contract and shall have effect as if set out in full in the body of this Contract and any reference to this Contract includes the schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.9 A reference to **writing** or **written** includes email but not faxes.
- 1.10 Any obligation in this Contract on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this Contract) at any time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this Contract; references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 Where any statement is qualified by the expression **so far as [PARTY] is aware** or **to [PARTY]'s knowledge** or any similar expression, that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.
- 1.14 Where there is any conflict or inconsistency between the provisions of the Contract, such conflict or inconsistency shall be resolved according to the following order of priority:
  - (a) the clauses of the Contract;
  - (b) the Charges submitted in response to the relevant Invitation to Tender issued pursuant to this Contract;
  - (c) Schedule 1 (Services and Specification) to this Contract;
  - (d) the remaining schedules to this Contract.

## 2. Term

The Contract shall take effect on the Commencement Date and shall expire automatically on the date set out in the Order Form unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated.,

## 3. Not used

## 4. Consents, Supplier's Warranty and Due Diligence

- 4.1 The Supplier shall ensure that all Necessary Consents are in place to provide the Services and the Authority shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 4.2 Where there is any conflict or inconsistency between the provisions of the Contract and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Supplier



has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services.

4.3 The Supplier acknowledges and confirms that:

- (a) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Authority all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this Contract;
- (b) it has received all information requested by it from the Authority pursuant to clause 4.3(a) to enable it to determine whether it is able to provide the Services in accordance with the terms of this Contract;
- (c) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority pursuant to clause 4.3(b);
- (d) it has raised all relevant due diligence questions with the Authority before the Commencement Date; and
- (e) it has entered into this Contract in reliance on its own due diligence.

4.4 Save as provided in this Contract, no representations, warranties or conditions are given or assumed by the Authority in respect of any information which is provided to the Supplier by the Authority and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by Law.

4.5 The Supplier as at the Commencement Date, warrants and represents that:

- (a) all information contained in the Supplier's Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract; and
- (b) it shall promptly notify the Authority in writing if it becomes aware during the performance of this Contract of any inaccuracies in any information provided to it by the Authority during such due diligence which materially and adversely affects its ability to perform the Services. (c) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Supplier;
- (c) in entering the Contract it has not committed any Fraud;
- (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- (e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- (f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
- (g) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property that are necessary for the performance of its obligations under the Contract;

(h) in the 3 years prior to the date of the Contract:

- (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
- (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

4.6 Nothing in this clause 4 shall limit or exclude the liability of the Authority for Fraud or fraudulent misrepresentation.

## **5. Supply of Services**

5.1 The Supplier shall provide the Services to the Authority with effect from the Commencement Date and for the Term at all times in accordance with the provisions of this Contract.

5.2 In the event that the Supplier does not comply with the provisions of clause 5.1 in any way, the Authority may serve the Supplier with a notice in writing setting out the details of the Supplier's default (a **Default Notice**).

## **6. Not used**

## **7. Service Standard**

7.1 Without prejudice to clause 6, the Supplier warrants that it shall provide the Services, or procure that they are provided:

- (a) in accordance with Best Industry Practice;
- (b) at all times in compliance with the Authority's requirements set out in this Contract;
- (c) in all respects in accordance with the Authority's policies (if any) as set out in an Invitation to Tender; and
- (d) in accordance with all applicable Laws.

7.2 The Supplier shall use as appropriate first class quality materials, skills and workmanship of their respective kinds and undertakes that the design workmanship and materials used will be fit to achieve the purpose for which the Services are required either as specified by the Authority expressly in this Contract or as may be implied from this Contract and the Supplier further acknowledges that in performing the Services the Authority is reliant at all times on the Supplier's skill and judgement.

7.3 Without limiting the general obligation set out in clause 7.1, the Supplier shall (and shall procure that the Supplier's Personnel shall) at all times when supplying the Services do so with all due skill, care and diligence and that the Supplier's Personnel supplying the Services shall possess such qualifications, skills and experience as is necessary for the proper supply of the Services.

## **8. Health and Safety**

8.1 The Supplier shall promptly notify the Authority of any health and safety hazards, which may arise in connection with the performance of the Contract. The Authority shall promptly notify the Supplier of any health and safety hazards that may exist or arise at the Authority's Premises and that may affect the Supplier in the performance of the Contract.

- 8.2 While on the Authority's Premises, the Supplier shall comply with any health and safety measures implemented by the Authority in respect of staff and other persons working on the Authority's Premises.
- 8.3 The Supplier shall notify the Authority immediately in the event of any incident occurring in the performance of the Contract on the Authority's Premises where that incident causes any personal injury or damage to property that could give rise to personal injury.
- 8.4 The Supplier shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to staff and other persons working on the Authority's Premises in the performance of the Contract.
- 8.5 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Authority on request.

**9. Not used**

**10. Not used**

**11. Charges and Payment**

- 11.1 The Supplier shall invoice the Authority for the Charges in accordance with the terms set out in this clause 11 and Schedule 2. Invoices shall be submitted electronically at all times to the following email address:  
lccinvoices@lancashire.gov.uk
- 11.2 The Charges for the Services shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Services. Unless otherwise agreed in writing by the Authority, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 11.3 The Supplier shall invoice the Authority as specified in the Contract. Each invoice shall include such supporting information required by the Authority to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.
- 11.4 In the event of an underpayment of an invoice due to the Supplier's failure to submit the correct supporting information required pursuant to clause 11.2, the Authority's sole liability shall be to pay the underpayment within 30 days of notification of the same.
- 11.5 In the event the Authority incorrectly overpays an invoice incurring a loss either accidentally or on reliance upon incorrect, misleading or false information provided by the Supplier pursuant to clause 11.2, the Supplier shall reimburse the Authority the full overpayment within 14 days of identifying the overpayment, or being notified of the same by the Authority.
- 11.6 In consideration of the supply of the Services by the Supplier, the Authority shall pay the Supplier the invoiced amounts no later than 30 days after receipt of a valid invoice which includes a valid Purchase Order Number. The Authority may, without prejudice to any other rights and remedies under the Contract, withhold or reduce payments in the event of unsatisfactory performance.
- 11.7 Where the Supplier submits an invoice to the Authority in accordance with clause 11.2, the Authority will consider and verify that invoice in a timely fashion.
- 11.8 The Authority shall pay the Supplier any sums due under such an invoice no later than a period of 30 days from the date on which the Authority has determined that the invoice is valid and undisputed.

- 11.9 Where the Authority fails to comply with clause 11.6 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of clause 11.7 after a reasonable time has passed.
- 11.10 Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:
- (a) provisions having the same effect as clauses 11.2 to 11.8 of this Contract; and
  - (b) a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clauses 11.2 to 11.8 of this Contract.
- 11.11 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Authority shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Services.
- 11.12 If there is a dispute between the parties as to the amount invoiced, the Authority shall pay the undisputed amount. The Supplier shall not suspend the supply of the Services for a failure to pay undisputed sums. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 20.
- 11.13 If any sum of money is recoverable from or payable by the Supplier under the Contract (including any sum which the Supplier is liable to pay to the Authority in respect of any breach of the Contract), that sum may be deducted unilaterally by the Authority from any sum then due, or which may come due, to the Supplier under the Contract or under any other Contract or contract with the Authority. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Authority in order to justify withholding payment of any such amount in whole or in part.
- 11.14 If payment is not made when due under clause 11.1 the Supplier may charge interest at three percent (3%) per annum above the base rate of National Westminster Bank plc at the time on all unpaid amounts. The time for payment is not of the essence. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause 11.14 shall not apply to payments the defaulting party disputes in good faith.
- 11.15 If as part of the Supplier's Tender, the Supplier indicated that they wished to utilise the Supplier Incentive Scheme in relation to any Order and its Contract, the supplemental terms outlined in Schedule 3 shall apply. In the event of any conflict between the terms of Schedule 3 and this Clause 11, the provisions in Schedule 3 shall take priority until expiry or termination of Schedule 3 in which case only this Clause 11 shall apply.

## **12. Not used**

## **13. Key Personnel and Representatives**

- 13.1 Each party shall appoint the persons named as such in Schedule 4 (Contract Management and Authorised representatives) as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each party as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of their respective party on the matters for which they are expressed to be responsible.

## **14. Other Personnel used to Provide the Services**

- 14.1 At all times, the Supplier shall ensure that:

- (a) each of the Supplier's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
  - (b) there is an adequate number of Supplier's Personnel to provide the Services properly;
  - (c) only those people who are authorised by the Supplier (having regard to any authorisation procedure agreed in writing between the parties, in the event that such exists) are involved in providing the Services; and
  - (d) all of the Supplier's Personnel comply with all of the Authority's policies including those that apply to persons who are allowed access to the applicable Authority's Premises.
- 14.2 The Authority may refuse to grant access to, and remove, any of the Supplier's Personnel who do not comply with any such policies, or if they otherwise present a security threat.
- 14.3 The Supplier shall replace any of the Supplier's Personnel who the Authority reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Supplier's Personnel for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
- 14.4 The Supplier shall maintain up-to-date personnel records on the Supplier's Personnel engaged in the provision of the Services and, on request, provide reasonable information to the Authority on the Supplier's Personnel. The Supplier shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.
- 14.5 The Supplier shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good as the prevailing industry norm for similar services, locations and environments.
- 15. Safeguarding Children and Vulnerable Adults**
- 15.1 The parties acknowledge that, in the event that the Supplier in the delivery of the Services is a Regulated Activity Provider, then they shall have ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
- 15.2 The Supplier shall ensure that all individuals engaged in the provision of the Services are:
  - (a) subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service including a check against the adults' barred list or the children's barred list, as appropriate; and
  - (b) the Supplier shall monitor the level and validity of the checks under this clause 15.2 for each member of staff.
- 15.3 The Supplier warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Supplier in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 15.4 The Supplier shall immediately notify the Authority of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 15 have been met.
- 15.5 The Supplier shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to any service users/children/vulnerable adults.

- 15.6 The Supplier shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users.

**16. Not used**

**17. Reporting, Meetings and Complaints**

- 17.1 The Authorised Representative and the Contract Manager shall be the respective prime contact points between the parties and shall have responsibility for monitoring the provision of the Services by the Supplier under this Contract.
- 17.2 The terms of this Contract shall be reviewed in accordance with the provisions of this clause 17. Such reviews may be carried out by way of a meeting between the Contract Manager and the Authorised Representative (the “**Review Meeting**”) who shall be obliged to attend such meeting.
- 17.3 Review Meetings shall be carried out when required by a party on the provision of reasonable written notice to the other.
- 17.4 Each party must submit to the other details of those matters that it requires to be discussed at the appropriate Review Meeting in writing prior to the date of such meeting. Such meetings shall be minuted by the Authority and copies of such minutes circulated to the Supplier. Any complaints or problems relating to the provision of the Services shall be referred by the Contract Manager to the Supplier Representative and shall be discussed at such meeting and appropriate action shall be taken. Any unresolved problems emerging from such meetings (which are not classified by either party as a dispute to be resolved by the process set out in clause 20 (Dispute resolution and assistance in legal proceedings)) shall be referred immediately to a more senior representative who shall attempt to resolve the issue.
- 17.5 If, as a result of a Review Meeting, changes are proposed to be made to this Contract, such changes shall be made in accordance with the provisions of clause 19.1 (Change control, benchmarking and continuous improvement) and Schedule 5 (Change Control).
- 17.6 If any outstanding matters referred to in a Review Meeting cannot be settled to the satisfaction of both parties, either party may refer such outstanding matter for dispute resolution in accordance with the terms of clause 20 (Dispute resolution and assistance in legal proceedings)
- 17.7 The Supplier shall provide the Authority with details of all complaints received in connection with the performance of this Contract, together with copies or details of the Supplier's responses thereto, within five (5) Working Days of the complaint being received by the Supplier.
- 17.8 The Supplier shall keep a record of all suggestions received from Personnel regarding this Contract and shall forward relevant suggestions to the Authority for consideration.
- 17.9 If it becomes impossible to provide any part of the Services, the Supplier shall immediately notify the Key Personnel of the Authority.

**18. Monitoring**

- 18.1 The Authority may monitor the performance of the Services by the Supplier.
- 18.2 The Supplier shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Authority in carrying out the monitoring referred to in clause 18.1 at no additional charge to the Authority.

**19. Change Control**

- 19.1 Any requirement for a Change shall be subject to the Change Control Procedure.



**20. Dispute resolution**

- 20.1 Either party may call an extraordinary meeting of the parties by service of not less than 7 days' written notice (or such other period as may be agreed in writing) and each party agrees to procure that its Authorised Representative together with any other member of Key Personnel requested to attend by the Authority (if any) shall attend all extraordinary meetings called in accordance with this clause.
- 20.2 The members of the relevant meeting shall use their best endeavours to resolve disputes arising out of this Contract. If any dispute referred to a meeting is not resolved at that meeting then either party, by notice in writing to the other, may refer the dispute to the Supplier's Managing Director or the Authority's nominated representative (or other senior officers of the parties as may be appropriate and agreed from time to time) who shall co-operate in good faith to resolve the dispute as amicably as possible within 14 days of service of such notice. If the officers referred to in this clause 20.2 fail to resolve the dispute in the allotted time, then the parties shall, within that period, on the written request of either party enter into an alternative Dispute Resolution Procedure with the assistance of a mediator agreed by the parties or, in default of such Contract within seven days of receipt of such request, appointed, at the request of either party, by the Centre for Dispute Resolution or such other similar body as is agreed.
- 20.3 The parties shall then submit to the supervision of the mediation by the Centre for Dispute Resolution for the exchange of relevant information and for setting the date for negotiations to begin.
- 20.4 Recourse to this Dispute Resolution Procedure shall be binding on the parties as to submission to the mediation but not as to its outcome. Accordingly all negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the parties in any future legal proceedings. Except for any party's right to seek interlocutory relief in the courts, no party may commence other legal proceedings under the jurisdiction of the courts or any other form of arbitration until 21 days after the parties have failed to reach a binding settlement by mediation (at which point the Dispute Resolution Procedure shall be deemed to be exhausted).
- 20.5 If, with the assistance of the mediator, the parties reach a settlement, such settlement shall be reduced to writing and, once signed by the duly Authorised Representative of each of the parties, shall remain binding on the parties.
- 20.6 The parties shall bear their own legal costs of this Dispute Resolution Procedure, but the costs and expenses of mediation shall be borne by the parties equally.

**21. Sub-Contracting and Assignment**

- 21.1 The Supplier shall not be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this Contract without the prior written consent of the Authority, neither may the Supplier sub-contract the whole or any part of its obligations under this Contract except with the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed
- 21.2 In the event that the Supplier enters into any Sub-Contract in connection with this Contract it shall:
- (a) remain responsible to the Authority for the performance of its obligations under the Contract notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;
  - (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this Contract and shall procure that the Sub-Contractor complies with such terms; and

- (c) provide a copy, at no charge to the Authority, of any such Sub-Contract on receipt of a request for such by the Authority's Authorised Representative.
- 21.3. Subject to clause 21.5, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
  - (a) any Contracting Authority; or
  - (b) any other body established by the Authority or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
  - (c) any private sector body which substantially performs the functions of the Authority,

provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations under the Contract.
- 21.4 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause 21.3, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Authority.
- 21.5 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to a body which is not a Contracting Authority or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the "**Transferee**"):
  - (a) the rights of termination of the Authority in clauses 30 (Termination For Breach) shall be available to the Supplier in the event of respectively, the bankruptcy or insolvency, of the Transferee; and
  - (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Supplier.
- 21.6 The Authority may disclose to any Transferee any confidential information of the Supplier which relates to the performance of the Supplier's obligations under the Contract. In such circumstances the Authority shall authorise the Transferee to use such confidential information only for purposes relating to the performance of the Supplier's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such confidential information.
- 21.7 Each party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other party reasonably requires from time to time for the purpose of giving that other party the full benefit of the provisions of the Contract.

## 22. Indemnities

- 22.1 Subject to Clause 22.2, the Supplier shall indemnify and keep indemnified the Authority against all liabilities, costs, expenses, damages and losses incurred by the Authority arising out of or in connection with:
  - (a) the Supplier's breach or negligent performance or non-performance of this Contract;
  - (b) any claim made against the Authority arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Contract by the Supplier or Supplier Personnel;
  - (c) the enforcement of this Contract.



- 22.2 The indemnity under Clause 22.1 shall apply except insofar as the liabilities, costs, expenses, damages and losses incurred by the Authority are directly caused (or directly arise) from the negligence or breach of this Contract by the Authority or its Representatives.

### **23. Limitation of Liability**

- 23.1 Subject to clause 23.5, neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the Contract which shall include, without limitation, any loss of or damage to profit, revenue, contracts, savings (whether anticipated or otherwise), goodwill or business opportunities whether direct or indirect.

- 23.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this Contract.

- 23.3 Subject to clause 23.5, the Authority's total aggregate liability:

- (a) in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Contract (other than a failure to pay any of the Charges that are properly due and payable and for which the Authority shall remain fully liable), shall in no event exceed 75% of the aggregate Charges paid under or pursuant to this Contract.

- 23.4 Subject to clause 23.5, the Supplier's total aggregate liability:

- (a) in respect of the indemnity given by the Supplier in clause 29.5 is unlimited; and
- (b) in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Contract, shall in no event exceed , 150% of the aggregate Charges paid under or pursuant to this Contract.

- 23.5 Notwithstanding any other provision of this Contract neither party limits or excludes its liability for:

- (a) Fraud or fraudulent misrepresentation;
- (b) death or personal injury caused by its negligence;
- (c) breach of the Data Protection Legislation;
- (d) breach of any obligation as to title implied by statute; or
- (e) any other act or omission, liability for which may not be limited under any applicable law.

### **24. Insurance**

- 24.1 The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the levels of cover as follows:-

- (a) public liability insurance with a limit of indemnity of not less than £5,000,000 (FIVE MILLION POUNDS) in relation to any one claim arising out of each and every event without limit on the number of claims in any one year or other period and such insurance shall expressly by its terms confer its benefits on the Authority; and
- (b) employer's liability insurance with a limit of indemnity of not less than £5, 000, 000 (FIVE MILLION POUNDS).

(the "**Required Insurances**") in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.

- 24.2 The Supplier shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 24.3 If, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 24.4 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract.

## **25. Freedom of Information**

- 25.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs and shall assist and co-operate with the Authority (at the Supplier's expense) to enable the Authority to comply with these information disclosure requirements.
- 25.2 The Supplier shall and shall procure that its Sub-Contractors shall:
- (a) transfer the Request for Information to the Authority as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
  - (b) provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and
  - (c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIRs.
- 25.3 The Authority shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:
- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the EIRs; and/or
  - (b) is to be disclosed in response to a Request for Information.
- 25.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 25.5 The Supplier acknowledges that the Authority may, acting in accordance with the Cabinet Office Freedom of Information Code of Practice (issued under section 45 of the FOIA, July 2018), be obliged under the FOIA or the EIRs to disclose Information:
- (a) without consulting with the Supplier; or
  - (b) following consultation with the Supplier and having taken its views into account,

provided always that where clause 25.5(b) applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

25.6 The Supplier shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

25.7 The Supplier acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with clause 25.5.

## **26. Data Protection**

26.1 The parties agree to ensure that they shall at all times comply with the provisions and obligations imposed by Data Protection Legislation in relation to the storing and processing of personal data and all personal data acquired by either party from the other shall be returned to the disclosing party on request. Both parties agree to indemnify each other in respect of any unauthorised disclosure or processing of personal data or breach of Data Protection Legislation to the extent it applies to this Contract.

## **27. Confidentiality**

27.1 Subject to clause 27.2, the parties shall keep confidential all matters relating to this Contract and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to any person of any matters relating hereto.

27.2 Clause 27.1 shall not apply to any disclosure of information:

- (a) required by any applicable law, provided that clause 25.1 shall apply to any disclosures required under the FOIA or the Environment Information Regulations;
- (b) that is reasonably required by persons engaged by a party in the performance of such party's obligations under this Contract;
- (c) where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 27.1;
- (d) by the Authority of any document to which it is a party and which the parties to this Contract have agreed contains no commercially sensitive information;
- (e) to enable a determination to be made under clause 20;
- (f) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- (g) by the Authority to any other department, office or agency of the Government; and
- (h) by the Authority relating to this Contract and in respect of which the Supplier has given its prior written consent to disclosure.

27.3 On or before the Termination Date the Supplier shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the Authorities' employees, rate-payers or service users, are delivered up to the Authority or securely destroyed.

## **28. Audit**

28.1 During the Term and for a period of 7 years after the Termination Date, the Authority may conduct or be subject to an audit for the following purposes:

- (a) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this Contract) and/or the costs of all Suppliers (including Sub-Contractors) of the Services;

- (b) to review the integrity, confidentiality and security of any data relating to the Authority or any service users;
  - (c) to review the Supplier's compliance with the DPA, the FOIA, in accordance with clause 26 (Data Protection) and clause 25 (Freedom of Information) and any other legislation applicable to the Services;
  - (d) to review any records created during the provision of the Services;
  - (e) to review any books of account kept by the Supplier in connection with the provision of the Services;
  - (f) to carry out the audit and certification of the Authority's accounts;
  - (g) to carry out an examination pursuant to sections 7ZA of the National Audit Act 1983 (as amended) of the economy, efficiency and effectiveness with which the Authority has used its resources;
  - (h) to verify the accuracy and completeness of the Management Reports delivered or required by this Contract.
- 28.2 Except where an audit is imposed on the Authority by a Regulatory Body, the Authority may not conduct an audit under this clause 28 more than twice in any calendar year.
- 28.3 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.
- 28.4 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- (a) all information requested by the above persons within the permitted scope of the audit;
  - (b) reasonable access to any sites controlled by the Supplier and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
  - (c) access to the Supplier's Personnel.
- 28.5 The Authority shall endeavour to (but is not obliged to) provide at least 15 days notice of its or, where possible, a regulatory body's, intention to conduct an audit.
- 28.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this Contract in any material manner by the Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.
- 29. Intellectual Property**
- 29.1. All Intellectual Property in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "**IP Materials**"):
- (a) furnished to or made available to the Supplier by or on behalf of the Authority shall remain the property of the Authority; and
  - (b) prepared by or for the Supplier on behalf of the Authority for use, or intended use, in relation to the performance by the Supplier of its obligations under the Contract shall belong to the Authority;

and the Supplier shall not, and shall ensure that the Supplier's Personnel shall not, (except when necessary for the performance of the Contract) without prior written approval of the Authority, use or disclose any Intellectual Property in the IP Materials.

- 29.2 The Supplier hereby assigns to the Authority, with full title guarantee, all Intellectual Property which may subsist in the IP Materials prepared in accordance with clause 29.1 (b). The Supplier shall execute all documentation necessary to execute this assignment.
- 29.3 The Supplier shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Contract or the performance of the Contract.
- 29.4 The Supplier shall ensure that the third party owner of any Intellectual Property that are or which may be used to perform the Contract grants to the Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Authority to sub-license, transfer, novate or assign to other Contracting Authorities, the replacement Supplier or to any other third party supplying services to the Authority.
- 29.5 The Supplier shall not infringe any Intellectual Property of any third party in supplying the Services and shall, during and after the Contract, indemnify and keep indemnified and hold the Authority harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or the Authority may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from:
- (a) items or materials based upon designs supplied by the Authority ; or
  - (b) the use of data supplied by the Authority which is not required to be verified by the Supplier under any provision of the Contract.
- 29.6 The Authority shall notify the Supplier in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property in materials supplied or licensed by the Supplier.
- 29.7 The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property in materials supplied or licensed by the Supplier, provided always that it:
- (a) shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
  - (b) shall take due and proper account of the interests of the Authority ; and
  - (c) shall not settle or compromise any claim without the prior written approval of the Authority (not to be unreasonably withheld or delayed).
- 29.8 The Authority shall at the request of the Supplier afford to the Supplier all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority or the by a third party for infringement or alleged infringement of any third party Intellectual Property in connection with the performance of the Supplier's obligations under the Contract and the Supplier shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Supplier shall not, however, be required to indemnify the Authority in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in clause 29.5(a) or (b).
- 29.9 The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any

Intellectual Property by the Authority or the Supplier in connection with the performance of its obligations under the Contract.

- 29.10 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property is made in connection with the Contract or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall notify the Authority and, at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed), use its best endeavours to:
- (a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutatis mutandis to such modified Services or to the substitute Services; or
  - (b) procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Authority, and in the event that the Supplier is unable to comply with clauses 29.7(a) or (b) within 20 Working Days of receipt of the Supplier's notification the Authority may terminate the Contract with immediate effect by notice in writing.
- 29.11 The Supplier grants to the Authority a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property that the Supplier owned or developed prior to the Commencement Date and which the Authority reasonably requires in order to exercise its rights and take the benefit of this Contract including the Services provided.

### **30. Termination for Breach**

- 30.1 The Authority may terminate this Contract in whole or part with immediate effect by the service of written notice on the Supplier in the following circumstances:
- (a) if the Supplier is in breach of any material obligation under this Contract provided that if the breach is capable of remedy, the Authority may only terminate this Contract under this clause 30.1 if the Supplier has failed to remedy such breach within 14 days (or such other longer period if stipulated by the Authority in writing) of receipt of notice from the Authority (a **Remediation Notice**) to do so;
  - (b) if a resolution is passed or an order is made for the winding up of the Supplier (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Supplier becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the Supplier's property or equipment;
  - (c) if the Supplier ceases or threatens to cease to carry on business in the United Kingdom;
  - (d) if there is a change of control (as defined in section 574 of the Capital Allowances Act 2001) of the Supplier to which the Authority reasonably objects.
- 30.2 The Authority may terminate this Contract in accordance with the provisions of clause 32 and clause 33.
- 30.3 If this Contract is terminated by the Authority for cause such termination shall be at no loss or cost to the Authority and the Supplier hereby indemnifies the Authority against any such losses or costs which the Authority may suffer as a result of any such termination for cause.

### **31. Termination on Mandatory Grounds**

- 31.1 The Authority is required by virtue of Regulation 73 of the Public Contracts Regulations 2015 to ensure that all contracts which it awards contain provisions enabling the Authority to terminate



those contracts under certain circumstances. Thus the Authority will terminate the whole of this Contract with immediate effect by the service of a written notice on the Supplier in the following circumstances:

31.1.1 where the Contract has been subject to a substantial modification which will include any change in the Contract irrespective of the monetary value and which meets one or more of the following conditions:

- i) materially alters the character of the Contract; or
- ii) would have allowed other potential Suppliers to participate in the procurement procedure other than those initially selected or allowed for the acceptance of a tender other than that originally accepted; or
- iii) attracted additional Suppliers in the procurement procedure; or
- iv) the modification changes the economic balance of the Contract in favour of the Supplier in a manner which was not provided for in the original Contract; or
- v) the modification extends the scope of the Contract considerably; or
- vi) a new Supplier replaces the Supplier other than where the change arises from a clear and precise unequivocal review clause or the exercising of an option which outlines the scope and nature of the possible modification as well as the conditions under which the option can be exercised and that the option exercised does not alter the overall nature of the Contract or following a universal or partial succession into the position of the Supplier following corporate restructuring such as a takeover, merger, acquisition or insolvency and provided that this does not entail other substantial modifications and where the purpose of the modification is not aimed at circumventing procurement law.

31.1.2 where post-award of the Contract it is discovered that the Supplier should have been excluded from the procurement procedure on certain mandatory exclusion grounds for a breach of Regulation 57 of the Public Contracts Regulations 2015. These exclusion grounds are where the Supplier has been convicted of any of the offences that are detailed in Regulation 57.

31.2 The Authority shall have the right to terminate this Contract forthwith in the event that any of the matters specified in The Local Government (Exclusion of Non-Commercial Considerations) (England) Order 2022, or any other legislation having a similar purpose, as ceasing to be non-commercial matters for the purposes of section 17(5)(e) of the Local Government Act 1988 applies to the Provider.

## **32. Force Majeure**

32.1 Subject to the remaining provisions of this clause 32, neither party to this Contract shall be liable to the other for any delay or non-performance of its obligations under this Contract to the extent that such non-performance is due to a Force Majeure Event.

32.2 In the event that either party is delayed or prevented from performing its obligations under this Contract by a Force Majeure Event, such party shall:

- (a) give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
- (b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Contract; and
- (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

32.3 A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.

- 32.4 The Supplier cannot claim relief if the Force Majeure Event is one where a reasonable Supplier should have foreseen and provided for the cause in question.
- 32.5 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Contract. Where the Supplier is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.
- 32.6 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this Contract. Following such notification, this Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
- 32.7 The Authority may, during the continuance of any Force Majeure Event, terminate this Contract by written notice to the Supplier if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than 20 Working Days.

### **33. Prevention of Bribery**

- 33.1 The Supplier:
- (a) shall not, and shall procure that any Supplier Party and all Supplier Personnel shall not, in connection with this Contract commit a Prohibited Act;
  - (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority, or that an Contract has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Authority before execution of this Contract.
- 33.2 The Supplier shall:
- (a) if requested, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
  - (b) within 14 Working Days of the Commencement Date, and annually thereafter, certify to the Authority in writing (such certification to be signed by an officer of the Supplier) compliance with this clause 33 by the Supplier and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Supplier shall provide such supporting evidence of compliance as the Authority may reasonably request.
- 33.3 The Supplier shall have an anti-bribery policy (which shall be disclosed to the Authority) to prevent any Supplier Party or Supplier Personnel from committing a Prohibited Act and shall enforce it where appropriate.
- 33.4 If any breach of clause 33.1 is suspected or known, the Supplier must notify the Authority immediately.
- 33.5 If the Supplier notifies the Authority that it suspects or knows that there may be a breach of clause 33.1, the Supplier must respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documentation. This obligation shall continue for 7 years following the expiry or termination of this Contract.



33.6 The Authority may terminate this Contract by written notice with immediate effect if the Supplier, Supplier Party or Supplier Personnel (in all cases whether or not acting with the Supplier's knowledge) breaches clause 33.1. In determining whether to exercise the right of termination under this clause 33.6, the Authority shall give all due consideration, where appropriate, to action other than termination of this Contract unless the Prohibited Act is committed by the Supplier or a senior officer of the Supplier or by an employee, Sub-Contractor or supplier not acting independently of the Supplier. The expression "not acting independently of" (when used in relation to the Supplier or a Sub-Contractor) means and shall be construed as acting:

- (a) with the authority; or,
- (b) with the actual knowledge;

of any one or more of the directors of the Supplier or the Sub-Contractor (as the case may be); or

- (c) in circumstances where any one or more of the directors of the Supplier ought reasonably to have had knowledge.

33.7 Any notice of termination under clause 33.6 must specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the party whom the Authority believes has committed the Prohibited Act; and
- (c) the date on which this Contract will terminate.

33.8 Notwithstanding the provisions of clause 20 (Dispute resolution), any dispute relating to:

- (a) the interpretation of clause 33; or
- (b) the amount or value of any gift, consideration or commission,

shall be determined by the Authority and its decision shall be final and conclusive.

33.9 Any termination under clause 33.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

#### **34. Consequences of Termination**

34.1 On the expiry of the Term or if this Contract is terminated in whole or in part for any reason the Supplier shall co-operate fully with the Authority to ensure an orderly migration of the Services to the Authority or, at the Authority's request, a Replacement Supplier.

34.2 The provisions of clause 6.3 (provision of records), clause 22 (Indemnities), clause 24 (Insurance), clause 25 (Freedom of Information), clause 26 (Data Protection), clause 28 (Audit), clause 30 (Termination for Breach) and this clause 34 (Consequences of termination) shall survive termination or expiry of this Contract.

#### **35. Non-solicitation**

Neither party shall (except with the prior written consent of the other) during the Term of this Contract, and for a period of one year thereafter, solicit the services of any senior staff of the other party who have been engaged in the provision of the Services or the management of this Contract or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other party.

**36. Waiver**

No forbearance or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach. In particular, but without limitation to the generality of the foregoing, any prior acceptance or approval communicated by the Authority to the Supplier in respect of the Services or any omission on the part of the Authority to communicate such prior acceptance or approval shall not relieve the Supplier of its obligations to deliver the Services in accordance with the provisions of this Contract.

**37. Culmination of Remedies**

Subject to the specific limitations set out in this Contract, no remedy conferred by any provision of this Contract is intended to be exclusive of any other remedy except as expressly provided for in this Contract and each and every remedy shall be cumulative and shall be in addition to every other remedy given thereunder or existing at law or in equity by statute or otherwise.

**38. Severability**

If any of the provisions of this Contract is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced.

**39. Partnership or Agency**

At all times during for the duration of the Contract the Supplier shall be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the parties and accordingly neither party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other party save as expressly permitted by the terms of the Contract.

**40. Third Party Rights**

- 40.1 No term of this Contract is intended to confer a benefit on, or to be enforceable by, any person who is not a Party to this Contract.
- 40.2 The Authority and the Supplier agree that they do not intend that any third party which may benefit from this Contract or any part of it shall have any rights of enforcement under the terms of the Contracts (Rights of Third Parties) Act 1999.

**41. Publicity**

- 41.1 The Supplier shall not:
- (a) make any press announcements or publicise this Contract or its contents in any way; or
  - (b) use the Authority's name or brand in any promotion or marketing or announcement of orders,
- without the prior written consent of the Authority.
- 41.2 The Supplier shall take reasonable steps to ensure that their servants, employees, agents, Sub-Contractors, Suppliers, professional advisors and consultants comply with clause 41.1.

**42. Notices**

- 42.1 Any notice, which expression includes any other communication whatsoever which is made in accordance with this Contract, shall without prejudice to any other method of giving it, be sufficiently given if it is sent by post, delivered by hand (for which a receipt has been obtained) or by e-mail (with a hard copy confirmation letter to follow):

42.1.1 in the case of the Supplier to the address stated at the head of this Contract and by e-mail to the Supplier's Representative named in Clause 30.3 of the DPS Agreement (as amended by Supplier notification to the Authority from time to time); and

42.1.2 in the case of the Authority to the Contract Manager named in the Order Form.

Any e-mail notice shall be deemed to have been properly given by a Party after four (4) hours or sooner where the e-mail receipt has been acknowledged by the other Party. Notices posted shall be deemed to have been properly given after five (5) days in the case of notices sent inland and ten (10) days in the case of notices sent overseas.

### **43 Entire Agreement**

43.1 This Contract, the schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement and understanding between the parties relating to the subject matter hereof and supersede all prior arrangements and understandings between the parties relating to that subject matter, except that this clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

### **44 Discrimination**

44.1 The Supplier shall not unlawfully discriminate either directly or indirectly within the meaning and scope of any Law. Furthermore the Supplier will ensure that it provides equality of treatment for anyone who shares a protected characteristic (whether it is on such grounds as maternity, gender, transgender, marital status, ethnicity, disability, age, religion and belief and sexual orientation or otherwise in the provision of the Services and in the employment of the Supplier's Personnel ) including but not limited to the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

44.2 The Supplier shall take all reasonable steps to secure the observance of clause 44.1 by all Supplier Personnel.

### **45 Environmental Requirements**

45.1 The Supplier shall, when working on the Authority's Premises, perform its obligations under the Contract in accordance with the Authority's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

### **46 Governing Law and Jurisdiction**

46.1 This Contract and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the parties submit.

## **Schedule 1: Services and Specification**

As set out in the relevant Invitation to Tender for each Contract.

## Schedule 2: Processing Procedures for Orders and Invoices

### Part 1: Lancashire County Council (LCC)

#### 1.1 Issuing Orders

Order	LCC will issue an electronic Order to the Supplier for the services that it requires.
Order Content	<p>The Order will include:</p> <ul style="list-style-type: none"> <li>• A unique LCC Order Number.</li> <li>• Contact name and contact details of the LCC Requisitioner.</li> <li>• Description of the services required.</li> <li>• Price(s) to be paid to the Supplier (exclusive of VAT).</li> <li>• Quotation / Contract Reference Number.</li> <li>• Delivery Date and Time / Completion Date.</li> <li>• Delivery Address / Site Location.</li> <li>• Any special instructions relating to the Order.</li> </ul>

#### 1.2 Order Amendments

Order Amendment	LCC will issue an electronic Order Amendment to a Supplier where additional charges or changes to the original requirement as stated in the Order are acknowledged.
Order Amendment Content	<p>The Order Amendment will include:</p> <ul style="list-style-type: none"> <li>• A unique LCC Order Amendment Number.</li> <li>• Contact name and contact details of the LCC Requisitioner.</li> <li>• Description of the amendment to the original Order.</li> <li>• Revised Price(s) to be paid to the Supplier (exclusive of VAT).</li> <li>• Quotation / Contract Reference Number.</li> <li>• Delivery Date and Time / Completion Date.</li> <li>• Delivery Address / Site Location.</li> <li>• Any special instructions relating to the Order.</li> </ul>

#### 1.3 Verbal Orders and Emergency Instructions

LCC will not issue Verbal Orders or Emergency Instruction except in the following circumstances and by authorised personnel only:

Verbal Orders	The LCC Purchase to Pay (P2P) Team is the only team who can issue a Verbal Order to a supplier, for example, to secure a time sensitive delivery slot, to book a manufacturing slot or to secure delivery of hire equipment. In such circumstances the P2P Team will quote a unique LCC Order Number and send a copy of the official Order to the Supplier electronically within 24 hours.
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Emergency Instruction	<p>LCC may issue an Emergency Instruction to a Supplier to provide works, services, or goods where an emergency situation has been declared (e.g., where there is a threat to life).</p> <p>LCC will provide to the Supplier, the name and contact details of the requesting Officer along with the name of the Manager/Director who has declared the emergency.</p> <p>In such circumstances LCC will issue an official Order containing a unique LCC Order Number and other details necessary for invoicing purposes and send to the Supplier electronically within 48 hours.</p>
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#### 1.4 Receipting Orders

Receipting	LCC will receipt the agreed services that have been carried out to enable the invoice to be processed for payment.
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#### 1.5 Acceptance or Rejection of Services Completed

LCC approval and acceptance that the Services have been completed in accordance with the requirements stated in Schedule 1 of the Call-off Terms and Conditions of the DPS Agreement.

LCC will reject a request for payment for Services which have not been ordered, or in their opinion have not been completed in accordance with the requirements stated in Schedule 1 of the Call-off Terms and Conditions of the DPS Agreement.

#### 1.6 Invoices and Credit Notes

LCC will only process for payment invoices or credit notes which have been submitted electronically by email to [ccinvoices@lancashire.gov.uk](mailto:ccinvoices@lancashire.gov.uk). LCC will not process for payment any invoice or credit note which has been delivered by post or by hand.

#### 1.7 No Order, No Pay Policy

LCC operates a 'No Order, No Pay Policy', it will automatically reject any invoice submitted for payment or process any credit note that doesn't include the official Order Number.

#### 1.8 Receiving and Processing of Invoices

Invoices	LCC will process for payment compliant invoices which have been submitted electronically by email to <a href="mailto:ccinvoices@lancashire.gov.uk">ccinvoices@lancashire.gov.uk</a>
Payment Terms	LCC will pay compliant invoices in accordance with Clause 11 of the Call-off Terms and Conditions of the DPS Agreement after the date of when the invoice is submitted electronically by email to <a href="mailto:ccinvoices@lancashire.gov.uk">ccinvoices@lancashire.gov.uk</a>
Payment Method	LCC will make payment by BACS which can take up to two days from submission to reach the Supplier's nominated bank account.
Invoice Matching	LCC will match invoices against the requirement stated in the LCC Order or in the Order Amendment (where issued).
Invoice Rejection	LCC will only process for payment invoices which match and contain all of the required information specified in point 2.6 of this Schedule 2, Part 2 – Supplier Responsibilities. Failure to include the required information will lead to the invoice being rejected.

Disputed Invoice	LCC will put 'a hold' on the payment of any invoice where the delivery is incomplete or where the works, services or goods are found to be faulty or have been rejected. The Payment Term period will only commence once the invoice is correctly matched against the Order or the Order Amendment.
Remittance Advice	LCC will issue a Remittance Advice electronically (by email) to the Supplier's contact email address held in the Oracle Fusion i-Supplier portal.

## Part 2: The Supplier

### 2.1 Supplier's Registered Details

It is the responsibility of the Supplier to ensure their registered details, including email addresses, are kept up to date using the self-service area in the Oracle Fusion i-Supplier portal.

### 2.2 Receiving and Processing Orders

LCC will issue an electronic Order to the Supplier for the services that it requires. Details of the requirement will be stated in the Order (an example of an official Order is attached).

A supplier should only provide the services which are stated in the Order.

A supplier must not accept or act upon a verbal instruction except in the circumstances permitted below (see Verbal Orders and Emergency Instructions).

Receipt of an Order or an Order Amendment	Upon receipt, the Supplier must check the content of any Order or Order Amendment.
Order Discrepancies	The supplier must contact the LCC Requisitioner named on the Order if any of the details or content of the Order or Order Amendment is found to be incorrect and request that an Order Amendment or subsequent Order Amendment be issued.
Additions to an Order	The Supplier must not provide additional services without receiving an Order Amendment.  Provision of any services that are not included in the Order or in an Order Amendment is done solely at the Supplier's own risk and any invoice submitted for payment that does not match the details contained in the Order or in the Order Amendment will be rejected.
Changes to an Order or an Order Amendment	If the Supplier requires a change be made to an Order or an Order Amendment, the Supplier must agree the change with the LCC Requisitioner named on the Order, and where the change is agreed, request that an Order Amendment be issued.

### 2.3 Verbal Orders and Emergency Instructions

A Supplier can only accept Verbal Orders or Emergency Instructions in the following circumstances:

Authorised Verbal Orders	A Supplier should only accept a Verbal Order from a member of the LCC Purchase to Pay (P2P) Team which is the only team authorised to issue Verbal Orders on behalf of LCC to secure a time sensitive delivery slot, to book a manufacturing slot or to secure delivery of hire equipment. In such circumstances the P2P Team will quote the unique Order Number and send a copy of the official Order to the Supplier electronically within 24 hours.
Unauthorised Verbal Orders	A Supplier should not accept a Verbal Order from anyone other than a member of the P2P Team.  Accepting a Verbal Order from unauthorised personnel is done solely at the Supplier's risk. In such circumstances the Supplier must obtain a copy of the official Order prior to fulfilling the order and before submitting the invoice for payment.



Emergency Instruction	<p>A Supplier should only accept an Emergency Instruction to provide works, services, or goods where an emergency situation has been declared by LCC (e.g., where there is a threat to life).</p> <p>In accepting an Emergency Instruction, the Supplier must obtain the name and contact details of the requesting Officer along with the name of the Manager/Director who has declared the emergency.</p> <p>In such circumstances LCC will issue an official Order containing a unique Order Number and other details necessary for invoicing purposes and send to the Supplier electronically within 48 hours.</p>
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## 2.4 No Order, No Pay Policy

LCC operates a 'No Order, No Pay Policy' and as such the Supplier must be in possession of an official LCC Order prior to providing the services otherwise the invoice will not be paid.

Invoices which are submitted without a valid unique LCC Order Number will automatically be rejected, and the supplier will have to contact the LCC officer who gave the instruction to request the Order Number so the invoice can be resubmitted for payment.

## 2.5 Delivery and Collection Notes

Not used.

## 2.6 Invoices and Submission of Invoices

An invoice must always be submitted for the payment of all services that are provided by the Supplier.

As part of LCC's environmental commitment and sustainability invoices and credit notes shall be submitted electronically at all times. Paper invoices or paper credit notes will no longer be accepted, and any invoice or credit note delivered by post or by hand will not be processed.

Invoice Content	<p>Prior to generating and submitting the invoice to LCC, the Supplier shall ensure that it includes:</p> <ul style="list-style-type: none"> <li>• A clear indication that it is an "Invoice".</li> <li>• A unique invoice reference / identification number.</li> <li>• The Company Registration Number if the supplier is a limited company.</li> <li>• The VAT number (if the Supplier is VAT registered).</li> <li>• The tax point date / invoice date.</li> <li>• The Supplier's company name and address.</li> <li>• Payment Bank Details.</li> <li>• LCC's name and address (the customer being invoiced).</li> <li>• A valid unique LCC Order Number (a single invoice may be submitted for multiple valid Order Numbers).</li> <li>• Price(s) that match with the price(s) shown in the Order or the Order Amendment.</li> <li>• A clear description of the services that have been provided and is being invoiced for.</li> <li>• The same number of Invoice lines to match the respective lines as shown in the Order or the Order Amendment (LCC</li> </ul>
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	<p>will only pay for the lines which are included in the Order or the Order Amendment).</p> <ul style="list-style-type: none"> <li>• The Unit of Measure (the actual unit in which the quantity of the services are measured).</li> <li>• The Quantity of the services (where the value linked to each line in the invoice must not exceed the value of the respective line shown in the Order or Order Amendment).</li> <li>• The date of when the services were provided.</li> <li>• The net amount due to two decimal places (excluding VAT).</li> <li>• The VAT amount (if the Supplier is VAT registered).</li> <li>• The gross amount (including VAT).</li> <li>• For CIS contractors, the CIS deduction to show how much is being transferred to HMRC (usually included in the cost breakdown above the total amount due).</li> </ul>
Incomplete or Incorrect Invoices	<p>The Supplier should not submit an invoice which doesn't contain the required invoice content or doesn't match the details in the Order or the Order Amendment as it cannot be processed for payment and will be rejected.</p> <p>Any discrepancy should be resolved directly with the LCC Requisitioner named on the Order.</p>
Unauthorised Changes to Invoices	<p>Any changes that are made after the invoice has been generated will be treated as unauthorised changes, and the invoice will be rejected.</p> <p>Any discrepancy should be resolved directly with the LCC Requisitioner named on the Order.</p>
Invoice Format	<p>The preferred format is a secure non-changeable format (PDF). Other formats such as Microsoft Word etc will be accepted.</p>
Generation of Invoices	<p>Invoices should only be generated and submitted for payment upon completion of the service.</p> <p>Invoices for the part payment of services may be submitted where this has been agreed in the Call-off Terms and Conditions of the DPS Agreement.</p>
Submission of Invoices (Except PAMS Orders)	<p>Invoices must always be sent electronically to the following address:</p> <p>lccinvoices@lancashire.gov.uk</p> <p>Invoices sent directly to any other email address will result in your payment being delayed or rejected.</p> <p>Do not send a copy of the Order, the Order Amendment, or the job sheets to the above email address unless you have been specially asked to do so.</p>
Multiple Copies of Invoices	<p>Do not resubmit multiple copies of invoices as a reminder for payment. Suppliers can check the status of an invoice using the self-service area in the Oracle Fusion i-Supplier portal.</p> <p>Where an invoice status is shown as being on 'hold', the Supplier should contact directly the LCC Requisitioner named on the Order for further details.</p>

Supplier's Self-service	<p>Suppliers who are registered on the Oracle Fusion i-Supplier portal can access the self-service area to monitor payments and check the status of invoices etc.</p> <p>For queries relating to delays in payment or invoices shown as being on 'hold', the Supplier should contact directly the LCC Requisitioner named on the Order for further details.</p>
Statements	<p>Statements should always be sent electronically to the following address:</p> <p>AccountsPayable.Statements@lancashire.gov.uk</p> <p>highwaysrequisitions@lancashire.gov.uk</p>


## 2.7 Credit Notes and Submission of Credit Notes

As part of LCC's environmental commitment and sustainability credit notes shall be submitted electronically at all times. Paper credit notes will no longer be accepted, and any credit note delivered by post or by hand will not be processed.

Credit Note Content	<p>Prior to generating and submitting the credit note to LCC, the Supplier shall ensure that it includes:</p> <ul style="list-style-type: none"> <li>• A clear indication that it is a "Credit Note".</li> <li>• A unique credit note reference / identification number.</li> <li>• The unique invoice reference / identification number to which the credit note relates to.</li> <li>• The Company Registration Number if the supplier is a limited company.</li> <li>• The VAT number (if the Supplier is VAT registered).</li> <li>• The tax point date / credit note date.</li> <li>• The Supplier's company name and address.</li> <li>• Payment Bank Details.</li> <li>• LCC's name and address (the customer being invoiced).</li> <li>• The valid unique LCC Order Number to which the credit note relates to (a single credit note may be submitted for multiple valid Order Numbers).</li> <li>• A clear description of the services that are being credited.</li> <li>• The Unit of Measure (the actual unit in which the quantity of the services are measured).</li> <li>• The Quantity of the services that are being credited.</li> <li>• The net amount due to two decimal places (excluding VAT).</li> <li>• The VAT amount (if the Supplier is VAT registered).</li> <li>• The gross amount (including VAT).</li> </ul>
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Incomplete or Incorrect Credit Notes	<p>The Supplier should not submit credit notes that don't contain the required content as they cannot be processed and will be rejected.</p> <p>Any queries should be resolved directly with the LCC Requisitioner named on the Order.</p>
Credit Note Format	<p>The preferred format is a secure non-changeable format (PDF). Other formats such as Microsoft Word etc will be accepted.</p>
Submission of Credit Notes (Except PAMS Orders)	<p>Credit notes must always be sent electronically to the following address:</p> <p>lccinvoices@lancashire.gov.uk</p> <p>Invoices sent directly to any other email address will result in your payment being delayed or rejected.</p> <p>Do not send a copy of the Order, the Order Amendment, or the job sheets to the above email address unless you have been specially asked to do so.</p>
Multiple Copies of Credit Notes	<p>Do not resubmit multiple copies of credit notes as a reminder to process the associated invoice for payment. Suppliers can check the status of a credit note and the associated invoice using the self-service area in the Oracle Fusion i-Supplier portal.</p> <p>Where a credit note and the associated invoice status is shown as being on 'hold', the Supplier should contact directly the LCC Requisitioner named on the Order for further details.</p>
Supplier's Self-service	<p>Suppliers who are registered on the Oracle Fusion i-Supplier portal can access the self-service area to monitor payments and check the status of credit notes and associated invoices etc.</p> <p>For queries relating to delays in processing credit notes and payment of associated invoices, or invoices shown as being on 'hold', the Supplier should contact directly the LCC Requisitioner named on the Order for further details.</p>
Statements	<p>Statements should always be sent electronically to the following address:</p> <p>AccountsPayable.Statements@lancashire.gov.uk</p> <p>highwaysrequisitions@lancashire.gov.uk</p>

Example of official Order:

		<p>Please supply in accordance with the instructions below and conditions attached, and deliver to:</p> <p>[Redacted Address]</p>		<p>Purchase Order Number: <b>LCC</b> [Redacted]</p> <p>Must be quoted on all invoices and correspondence. Failure to do so, or sending the invoice to an address other than that detailed below, will delay payment.</p>	
<p>Contact Name [Redacted]</p> <p>Telephone Number [Redacted]</p>		<p>Purchase Card Number: [Redacted]</p> <p>Expiry: [Redacted]</p>		<p>Supplier: [Redacted]</p> <p>Invoice To: LCCInvoices@lancashire.gov.uk</p>	
<p>Order Date: [Redacted]</p>		<p>Deliver on or Before: [Redacted]</p>			
Line	Description of Goods or Services	Unit of Measure	Unit Price	Qty	Price
1	[Redacted Description]	[Redacted Unit]	[Redacted Price]	[Redacted Qty]	[Redacted Price]
<p><i>This Order has been issued pursuant to the terms of a framework agreement or contract entered into between the County Council and the Supplier, in which case the terms of that framework agreement or contract shall apply to this purchase order, the County Council's standard Terms and Conditions (to request a copy contact <a href="mailto:purchasingcorporate@lancashire.gov.uk">purchasingcorporate@lancashire.gov.uk</a>) shall apply.</i></p> <p><i>All values quoted are in GB Pounds Sterling unless otherwise noted.</i></p> <p><i>A detailed delivery note quoting the purchase order number must accompany all deliveries.</i></p>					<p>Total Value (VAT Exclusive) [Redacted]</p>

### **Schedule 3: Supplier Incentive Scheme**

[TO ONLY BE INCLUDED WHERE THE SUPPLIER HAS INDICATED THAT THEY WISH TO BE A MEMBER OF THE SCHEME FOR THIS DPS AGREEMENT]

## Schedule 4: Contract Management and Authorised Representatives

### 1. Contract Management

1.1 Management of the Contract by the Authority shall be the Contract Manager named in the Order Form.

1.2 Management of a Contract by the Supplier shall be:

[Category 1 - Plants:]	[INSERT]
[Category 2 - Planting Products:]	[INSERT]
[Category 3 - Growing Media]	[INSERT]
[Category 4 - Vegetation & Surface Treatment Products]	[INSERT]
[Category 5 – Plant Establishment]	[INSERT]
[Category 6 – Plant & Tree Aftercare & Maintenance]	[INSERT]
[Category 7 – Treatment Services]	[INSERT]

### 2. Authorised Representatives

2.1 The Authority's Key Personnel is:

Highway Operations Manager	[INSERT]
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2.2 The Supplier's Key Personnel is:

[Category 1 - Plants:]	[INSERT]
[Category 2 - Planting Products:]	[INSERT]
[Category 3 - Growing Media]	[INSERT]
[Category 4 - Vegetation & Surface Treatment Products]	[INSERT]
[Category 5 – Plant Establishment]	[INSERT]
[Category 6 – Plant & Tree Aftercare & Maintenance]	[INSERT]

[Category 7 – Treatment Services]	[INSERT]
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<b>Other Roles / Area of Responsibility:</b>	
Account Manager:	Insert Name, Telephone No., Email Address:
Local Sales Representative:	Insert Name, Telephone No., Email Address:
Email address where Purchase Orders should be sent to:	Insert Email Address:
Person or Team responsible for the management and processing of Purchase Orders:	Insert Name, Telephone No., Email Address:
Person or Team responsible for shipping, transport and Logistics:	Insert Name, Telephone No., Email Address:
Person or Team responsible for Invoicing and Credit Control:	Insert Name, Telephone No., Email Address:



## **Schedule 5: Change Control**

### **1. General Principles**

- 1.1 Where the Authority or the Supplier sees a need to change this Contract, the Authority may at any time request, and the Supplier may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 5 .
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Authority and the Supplier shall, unless otherwise agreed in writing, continue to perform this Contract in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the Authority and the Supplier in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 1.4 Any work undertaken by the Supplier and the Supplier's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 5 , shall be undertaken entirely at the expense and liability of the Supplier.

### **2. Procedure**

- 2.1 Discussion between the Authority and the Supplier concerning a Change shall result in any one of the following:
  - (a) no further action being taken; or
  - (b) a request to change this Contract by the Authority; or
  - (c) a recommendation to change this Contract by the Supplier.
- 2.2 Where a written request for an amendment is received from the Authority, the Supplier shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Supplier to the Authority within three weeks of the date of the request.
- 2.3 A recommendation to amend this Contract by the Supplier shall be submitted directly to the Authority in the form of two copies of a Change Control Note signed by the Supplier at the time of such recommendation. The Authority shall give its response to the Change Control Note within three weeks.
- 2.4 Each Change Control Note shall contain:
  - (a) the title of the Change;
  - (b) the originator and date of the request or recommendation for the Change;
  - (c) the reason for the Change;
  - (d) full details of the Change, including any specifications;
  - (e) the price, if any, of the Change;
  - (f) a timetable for implementation, together with any proposals for acceptance of the Change;
  - (g) a schedule of payments if appropriate;

- (h) details of the likely impact, if any, of the Change on other aspects of this Contract including:
    - (i) the timetable for the provision of the Change;
    - (ii) the personnel to be provided;
    - (iii) the Charges;
    - (iv) the Documentation to be provided;
    - (v) the training to be provided;
    - (vi) working arrangements;
    - (vii) other contractual issues;
  - (i) the date of expiry of validity of the Change Control Note; and
  - (j) provision for signature by the Authority and the Supplier.
- 2.5 For each Change Control Note submitted by the Supplier the Authority shall, within the period of the validity of the Change Control Note:
- (a) allocate a sequential number to the Change Control Note; and
  - (b) evaluate the Change Control Note and, as appropriate:
    - (i) request further information;
    - (ii) arrange for two copies of the Change Control Note to be signed by or on behalf of the Authority and return one of the copies to the Supplier; or
    - (iii) notify the Supplier of the rejection of the Change Control Note.
- 2.6 A Change Control Note signed by the Authority and by the Supplier shall constitute an amendment to this Contract.

**Schedule 6: Commercially Sensitive Information**

[INSERT COMPLETED SCHEDULE IF SUBMITTED IN SUPPLIER'S REQUEST TO PARTICIPATE]