

**THE AUTHORITY**

and

**[SUPPLIER]**

Call-off Terms and Conditions for a Contract  
for the supply of  
Horticultural and Landscape Goods

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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 for the supply of horticultural and landscape goods.
- (B) Where the Supplier is selected to supply the Goods, 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.

**Applicable Laws:** means any statutes, statutory instruments or other legislative provisions (including, without limitation any successor, replacement or amendment statute, statutory instrument or other legislative provision) governing or otherwise relevant to the supply of the Goods.

**Associated Company:** means 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:** shall be the Key Personnel for the Authority and for the Supplier, the persons being set out in Schedule 4 (Contract Management and Authorised Representatives).

**Authority Assets:** means any materials, plant or equipment owned or held by the Authority and provided by the Authority for use in the delivery of the Goods.

**Best Industry Practice:** means the standards which fall within the upper quartile in the relevant industry for the provision of comparable goods which are substantially similar to the Goods 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:** means 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 for horticultural and landscape goods.

**Catastrophic Failure:** means any action by the Supplier, whether in relation to the Goods and

this Contract or otherwise, which in the reasonable opinion of the Authority's Representative has or may cause significant harm to the reputation of the Authority.

**CEDR:** means the Centre for Effective Dispute Resolution.

**Change:** means any change to this Contract agreed between the Parties in accordance with the Change Control Procedure.

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

**Commencement Date:** means the delivery date or collection date set out in the Order Form.

**Commercially Sensitive Information:** means the information listed in Schedule 6 (Commercially Sensitive Information) 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.

**Confidential Information:** means all data and information supplied by the Authority (or the Authority on the Authority's behalf) to the Supplier and/or the Personnel (or any of them) or the supply of which is procured by the Authority, whether in the form of written and/or printed documents oral communication, data stored on magnetic or electronic media or data communicated over communication lines, but does not include:

- (a) information which is or which subsequently becomes within the public domain other than by reason of a breach of this Contract by the Supplier;
- (b) information which the Supplier can reasonably demonstrate was known by it, under no obligation of confidence, prior to its receipt of such information; or
- (c) information which becomes otherwise lawfully available to the Supplier other than as a result of a breach of any duty of confidence owed to the Authority.

**Consistent Failure:** shall mean:

- (a) a failure rate of two (2) or more instances of failure to deliver and supply the Goods in a manner that is consistent with the Specification in every rolling three (3) month period for this Contract;
- (b) the Authority serving two (2) Remediation Notices in a rolling six (6) month period; or
- (c) the Authority serving two (2) or more Default Notices for instances of failure to deliver the Goods in a manner that is consistent with the Specification in a rolling six (6) month period.

**Contract:** means a legally binding agreement for the supply of the Goods 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;

**Contract Price:** means the respective sums of money set out by the Supplier in the Tender or such variation of these sums as may be provided for or agreed in accordance with these Call-off Terms and Conditions.

**Contract Schedules:** means the schedules specifying details of the Goods to be supplied under this Contract, and other information submitted by the Supplier and supplied by the Authority as part of the Tender.

**Contract Year:** means a period of a calendar year, commencing on the Commencement Date.

**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 DPA (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:** means any breach of the obligations of the relevant Party under a Contract (including fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other).

**Dispute Resolution Procedure:** means the procedure set out in Clause 20 (Dispute resolution and assistance in legal proceedings).

**Discrimination Acts:** has the meaning given to it in Clause 16 (Employees: TUPE and equal opportunities).

**DPA:** means the Data Protection Act 2018.

**DPS:** means a dynamic purchasing system awarded in accordance with regulation 34 of the Procurement Regulations.

**DPS Agreement:** means the terms of the agreement made between the Authority and the Supplier and accepted by the Supplier as a condition of the appointment of the Supplier by the Authority as an eligible supplier to join the Authority's DPS for the supply of horticultural and landscape Goods (following the Supplier's submission of the standard selection questionnaire submitted to the Authority).

**Environmental Information Regulations** or **EIR:** means 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.

**Expiry Date:** means the last day on which the Goods are either delivered or collected as set out in the Order Form.

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

**Force Majeure:** the occurrence of any event beyond the reasonable control of a Party to this Contract (excluding any strike, lockout or industrial action involving that Party's employees or any other failure in the Supplier's supply chain) which directly causes that Party to be unable to comply with all or a material part of its obligations under this Contract where that event does not arise from the act, omission or negligence of that Party.

**General Specification:** refers to that part of the Specification set out in Schedule 1 (Goods and Specification).

**Goods:** the goods to be supplied by or on behalf of the Supplier under this Contract, as described in the relevant Invitation to Tender.

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

**Intellectual Property:** means any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, 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 customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

**Intellectual Property Rights:** means patents, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including the United Kingdom) and the right to sue for passing off.

**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 Goods and a Contract.

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

**Loss:** means losses, liabilities, claims, costs, charges and outgoings of every description (including legal expenses), compensation payable under contracts with suppliers and or customers, loss of normal operating profits, loss of opportunity, loss of goodwill, loss of revenue from related contracts and pure economic loss and the reasonable cost to the Authority for the time spent by its officers in terminating this Contract and in making alternative arrangements for the supply of the Goods.

**Modern Slavery Legislation:** means the legislation referred to in section 54 of the Modern Slavery Act 2015.

**Necessary Consents:** means all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the supply of the Goods as set out in the General Specification.

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

**Party or Parties:** means the Authority and the Supplier.

**Personnel:** means all persons engaged by the Supplier from time to time in connection with the supply of the Goods 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.

**Price:** means the price which shall become due and payable by the Authority to the Supplier in response to the Invitation to Tender for the provision of Goods in accordance this Contract.

**Procurement Regulations:** means the Public Contracts Regulations 2015 (SI 2015/102).

**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.

**Relevant Transfer:** means a relevant transfer for the purposes of TUPE.

**Remediation Notice:** means a notice served by the Authority in accordance with Clause 30 (Termination for breach).

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

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

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

**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.

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

**Sub-Contractor:** means any contractor or supplier that enters into a Sub-Contract with the Supplier.

**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 supply of the Goods under this Contract and having the authority to contractually bind the Supplier on all matters relating to the Goods.

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

**Tender:** means the Supplier's submission including its Price in response to an Invitation to Tender for the Goods.

**Term:** means the period commencing on the Commencement Date to the Expiry Date or such earlier date of termination of the Contract in accordance with the law or the provisions of this Contract.

**Termination Date:** means the last day on which the Goods are either delivered or collected as set out in the Order Form or termination of this Contract.

**TUPE:** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

**TUPE Event:** means the transfer of an identifiable economic unit for the purposes of TUPE.

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

1.2 In this Contract, unless the context otherwise requires:

1.2.1 Clause, schedule and paragraph headings are for convenience of reference only and shall not affect the interpretation or construction of this Contract;

1.2.2 a person includes a natural person, corporate or unincorporated body and partnerships (whether or not having separate legal personality);

1.2.3 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;

1.2.4 a reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established;

1.2.5 a reference to any person include references to any human being, company, body corporate, association, joint venture, partnership, trust and any legal entity capable of suing and being sued;

1.2.6 words in the singular shall include the plural and vice versa;

1.2.7 a reference to one gender shall include a reference to the other genders;

1.2.8 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;

1.2.9 a reference to writing or written includes email but not faxes;

1.2.10 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;

1.2.11 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;

1.2.12 references to Clauses and schedules are to the Clauses and schedules of this Contract; references to paragraphs are to paragraphs of the relevant schedule;

1.2.13 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:

1.2.13.1 the Clauses of the Contract;

1.2.13.2 the Price(s) submitted in response to the relevant Invitation to Tender issued pursuant to this Contract;

1.2.13.3 Schedule 1 (Goods and Specification) to this Contract;

1.2.13.4 the remaining schedules to this Contract.

1.2.14 Any words following the terms "**including**", "**include**", "**in particular**" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.2.15 Reference to the Supplier shall include the Supplier's sub-contractors unless expressly excluded.

1.2.16 Reference to "this Contract" is to the Call-off Terms and Conditions as part of the

Contract.

## **2. Term**

2.1 Each Contract shall take effect on the Commencement Date and shall continue for the Term.

## **3. Consents**

3.1 The Supplier shall ensure that all Necessary Consents are in place to supply the Goods and the Authority shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.

3.2 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 Goods.

3.3 The Supplier shall at its own expense obtain and keep in force any licence necessary to supply the Goods and shall ensure that the requirements of that licence are observed at all times. Failure to comply may result in the Authority terminating this Contract in accordance with Clause 30.1.1 (Termination for breach).

## **4. Supplier's Warranty and Due Diligence**

4.1 The Supplier acknowledges and confirms that:

4.1.1 it has had an opportunity to carry out a thorough due diligence exercise in relation to the Goods and has asked the Authority all the questions it considers to be relevant for the purpose of establishing whether it is able to supply the Goods in accordance with the terms of this Contract;

4.1.2 it has received all information requested by it from the Authority pursuant to Clause 4.3.7 to enable it to determine whether it is able to provide the Goods in accordance with the terms of this Contract;

4.1.3 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 4.3.7

4.1.4 it has raised all relevant due diligence questions with the Authority before the Commencement Date; and

4.1.5 it has entered into this Contract in reliance on its own due diligence.

4.2 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.

4.3 The Supplier warrants and undertakes to the Authority that:

4.3.1 it has full capacity and authority to supply the Goods;

4.3.2 the Goods shall be supplied with all reasonable skill and care and that it shall ensure that the Personnel shall have the necessary skills and competencies, experience, equipment and other resources to enable them properly and expeditiously to supply the Goods;

4.3.3 the Goods shall at all times conform to the Specification;

4.3.4 it shall not without the written permission of the Authority advertise the fact that it is

supplying the Goods to the Authority;

4.3.5 neither it nor any person engaged by it to supply the Goods shall solicit any gratuity, tip or other form of reward or charge for supplying the Goods other than the Price set out in this Contract;

4.3.6 the Goods and the supply of them by the Supplier will not infringe the Intellectual Property Rights of any third party; and

4.3.7 it shall promptly notify the Authority in writing if it becomes aware during the performance of this Contract for the supply of the Goods of any inaccuracies in any information provided to it by the Authority during such due diligence which materially and adversely affects its ability to supply the Goods.

4.4 The Supplier shall not be entitled to recover any additional costs from the Authority which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Authority by the Supplier in accordance with Clause 4.3.7 save where such additional costs or adverse effect on performance have been caused by the Supplier having been provided with fundamentally misleading information by or on behalf of the Authority and the Supplier could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Supplier shall be entitled to recover such reasonable additional costs from the Authority or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.

4.5 Nothing in this Clause 4 shall limit or exclude the liability of the Authority for fraud or fraudulent misrepresentation.

## **5. Conditions of Supply and Good Faith**

5.1 The purchase of Goods by the Authority pursuant to this Contract shall, unless otherwise expressly agreed in the Order Form, be on a non-exclusive basis and the Supplier acknowledges that the Authority may appoint any other person to provide goods the same as or similar to the Goods provided pursuant to the Call-off Terms and Conditions.

5.2 The Supplier acknowledges that the Authority shall have no obligation to issue an Order Form pursuant to these Call-off Terms and Conditions.

5.3 The Supplier acknowledges that the Goods provided (including for the avoidance of doubt, any agreed pricing, pursuant to the Call-off Terms and Conditions ) may be for the benefit of other companies within the Authority's Group (if applicable) and that any such company may enforce the terms of the Contract subject to and in accordance with the terms of these Call-off Terms and Conditions and the provisions of the Contracts (Rights of Third Parties) Act 1999.

5.4 Both Parties shall co-operate with, and act in good faith towards each other in relation to all matters arising under this Contract to enable the Authority to derive the full benefit of this Contract and in particular each Party shall inform the other fully and as soon as possible of any circumstance which might alter the burden of the obligations of each Party under this Contract.

5.5 Both Parties shall do all things reasonably within their power which are necessary or desirable to give effect to the spirit and intent of this Contract and its fundamental purpose.

5.6 Any act, omission, decision, requirement, Contract or any other step of any kind taken by either Party shall be taken reasonably and in good faith. Any reference (express or implied) to any period, time, occasion, or any other similar matter shall be subject to the qualification or reasonableness, unless the context otherwise requires.

5.7 Where the Authority's consent is required to do anything under this Contract there shall not be implied (unless expressly stated) any presumption that such consent shall not be unreasonably withheld or delayed.

5.8 The Parties acknowledge that, without prejudice to the Authority's rights to terminate the DPS Agreement in accordance with clause 17 of the DPS Agreement, if a right to terminate the DPS Contract arises in accordance with clause 17 of the DPS Agreement, the Authority may suspend the Supplier's right to Contracts from the Authority by giving notice in writing to the Supplier. If the Authority provides notice to the Supplier in accordance with clause 18 of the DPS Agreement, the Supplier's appointment shall be suspended immediately for the period set out in the notice or such other period notified to the Supplier by the Authority in writing from time to time.

## **6. Performance**

6.1 If the Supplier fails to deliver Goods by the delivery date and time specified in the Order Form, it shall be liable for and shall pay to the Authority as compensation the corresponding liquidated damages as set out below. For the avoidance of doubt the Authority's principles for calculating liquidated damages shall assume:

6.1.1 a blended hourly or day rate per employee of the Authority or its sub-contractors, (whether in a management or administrative capacity or as operatives) for the number of such employees reasonably expected to be deployed by or on behalf of the Authority to procure, manage or use the Goods where such rate per employee shall be applied for any delay period exceeding one (1) hour of waiting time following the due delivery date and time for the Goods; and

6.1.2 the daily rates of hire for any plant and equipment which the Authority has hired (and cannot cancel or reasonably redeploy elsewhere),

in each case where resources have been allocated to activities where delayed Goods incurs waiting time costs.

6.2 The Authority shall ensure that any invoice issued pursuant to Clause 11.1 takes full account of any liquidated damages validly incurred in respect of an Order Form.

6.3 The Parties agree that all liquidated damages (as applicable) represent a genuine pre-estimate of the relevant loss or damage incurred by the Authority and could not be construed as a penalty in the circumstances in which they fall due as being extravagant or unconscionable. Payment of liquidated damages shall be without prejudice to any other right or remedy of the Authority under the Contract.

6.4 Where the Parties have not agreed for liquidated damages (or it is determined that liquidated damages shall not apply) the Supplier shall be liable for general damages at large due to its failure to deliver Goods by the delivery date and/or in accordance with the lead time specified in the Order Form.

## **7. Standards**

7.1 The Supplier warrants that it shall supply the Goods, or procure that they are provided:

7.1.1 diligently and with all skill and care as can be reasonably expected of an appropriately qualified and competent supplier or contractor experienced in the supply of the Goods and at all times in compliance with the Authority's requirements set out in this Contract including, but not limited to, the Specification;

7.1.2 promptly (and in any event within any time targets as may be set out in the Specification), strictly in accordance with this Contract and the Specification;

7.1.3 (except with the Authority's prior written approval) continuously during the periods set out in the Specification;

7.1.4 in a professional and courteous manner so as to reflect and promote the image of the Authority;

- 7.1.5 ensuring that the delivery of the Goods does not in any way interrupt or interfere with any other activities carried on elsewhere.
- 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 Goods 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 supplying the Goods the Authority is reliant at all times on the Supplier's skill and judgement.
- 7.3 The Supplier warrants that the Goods and the supply of them by the Supplier will comply in each and every respect with all Applicable Laws and all relevant legal, regulatory, quality and safety standards and other requirements for the time being in force (including any codes of practice issued by any governmental or regulatory body).
- 7.4 For the avoidance of doubt, following the United Kingdom's exit from the European Union (the scope and timing for which shall be set out and ratified by primary legislation and/or devolved legislation within the laws of England and Wales) the Supplier shall not be entitled to claim protection for extensions of time or additional costs or any other remedy or relief caused by exit from the European Union including where:
- 7.4.1 the United Kingdom government imposes specific costs which adversely affect the Goods or the supply of them;
- 7.4.2 there is a divergence between the rules applicable in the United Kingdom and the European Union which adversely affects the Goods or the supply of them;
- 7.4.3 the Supplier suffers passporting issues within its labour force and/or supply chain issues (and the Authority notes the Supplier, as a competent and commercial contractor, should acting reasonably have foreseen these issues as at the Commencement Date as likely consequences of exit from the European Union);
- 7.4.4 there are any changes to tariffs or other specific costs imposed on Goods or the supply of them on account of exit from the European Union which adversely affect the Goods or the supply of them; and/or
- 7.4.5 for any other matter which the Supplier considers (acting reasonably) shall be attributable to a change in Law specific to the Supplier's business on account of exit from the European Union.
- 7.5 The Supplier will ensure that (where notified by the Authority in its Order Form with details of any applicable regulation or policy that Supplier Personnel comply with all applicable staff, contractors' and other applicable regulations of the Authority whilst on the Authority's premises and with any such regulations imposed by any agent or contractor of the Authority when on their premises (including, where applicable, the Authority's Drugs and Alcohol Policy and any other policy concerning matters of health and safety or the Authority's statutory and regulatory obligations as a local authority).
- 7.6 Without limiting the general obligation set out in Clause 16.3 the Supplier shall (and shall procure that the Supplier's Personnel shall):
- 7.6.1 at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Contract. The Supplier shall also undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998; and
- 7.6.2 not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination in employment.

**8. Health and Safety**

- 8.1 The Supplier shall satisfy itself that no product shall be supplied or used in the supply of the Goods to the Authority which shall endanger the health of others or is derived from threatened species or environments.
- 8.2 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.
- 8.3 While on the Authority's premises, the Supplier shall comply with any health and safety measures Authority's premises.
- 8.4 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.
- 8.5 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.
- 8.6 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.
- 8.7 The Authority is committed to using the resources entrusted to it to ensure best value for money at the least possible cost to the environment.
- 8.8 As part of this commitment to the environment, the Authority's policies shall, wherever practicable, focus on specifying less environmentally damaging products, promoting greater use of renewable sources and encouraging suppliers to use environmentally friendly practices throughout the production process.
- 8.9 The Supplier shall provide on request evidence of practices and procedures as they relate to the protection of the environment.

**9. Authority's Assets**

- 9.1 The Supplier shall ensure that:
- 9.1.1 where using any Authority Assets (if at all) they are kept properly secure and it will comply and cooperate with the Authority's Authorised Representative's reasonable directions regarding the security of the same;
- 9.1.2 any Authority Assets used by the Supplier are maintained (or restored at the end of the Term) in the same or similar condition as at the Commencement Date (fair wear and tear excepted) and are not removed unless expressly permitted under this Contract or by the Authority's Authorised Representative.
- 9.2 The Authority shall maintain and repair the Authority Assets, however, where such maintenance or repair arises directly from the act, omission, default or negligence of the Supplier or its representatives (fair wear and tear excluded) the costs incurred by the Authority in maintaining and repairing the same shall be recoverable from the Supplier as a debt.
- 9.3 The Supplier shall notify the Authority immediately on becoming aware of any damage caused by the Supplier, its agents, employees or Sub-Contractors to any property of the Authority or to any property of any other recipient of the Goods in the course of providing the Goods.

**10. Price**

10.1 The Price shall for each Contract shall remain fixed for the period of supply stated on the Order Form. Where a Contract is for a period of three months or longer the Supplier may, request a Price increase which must be supported by independent evidence in respect of the increase in cost to the Supplier.

10.2 No increases to the Contract Price shall take effect unless confirmed in writing by the Authority.

## 11. Payment

11.1 The Supplier shall invoice the Authority for the Price 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 Except as otherwise agreed in writing by the Authority, payment of invoices will be made to the bank account nominated in writing by the Supplier thirty (30) days after the date of a valid and proper VAT invoice in the correct format (such format to be agreed with the Authority but which shall include as a minimum the date of the Order, the invoice number, the Authority's order number, the Supplier's VAT registration number, Authority Code if available and any supporting documents that the Authority may reasonably require). Invoices may not be dated or otherwise issued by the Supplier except in accordance with the terms of Clause 11.1. If the Authority disputes any invoice in good faith, it shall be entitled to withhold payment of the disputed amount pending resolution of the dispute but will pay the undisputed amount in accordance with the terms of this Clause 11.2. The provisions of Clause 11.6 shall not apply to any disputed amounts except, if the dispute is finally resolved in the Supplier's favour, Clause 11.6 shall apply to any period after the dispute has been finally resolved.

11.3 Save as the context requires or as otherwise stated in these Call-off Terms and Conditions, all references to payments made in these Call-off Terms and Conditions are references to such payments exclusive of any Value Added Tax chargeable in respect of the supply of the Goods and where such payments fall to be made under these Call-off Terms and Conditions such Value Added Tax shall be added to the amount at the rate applicable, if any, and paid in addition thereto subject to production of a valid and properly numbered VAT invoice.

11.4 The Authority will be entitled at its sole discretion to set off any liability of the Authority to the Supplier against any liability of the Supplier to the Authority (in either case however such liability arises and whether or not it is present or future, liquidated or unliquidated and irrespective of the currency of its denomination). Any exercise by the Authority of its rights under this Clause 11.4 does not affect any other rights and remedies it may have under these Call-off Terms and Conditions or otherwise.

11.5 Where the Authority is owed sums by the Supplier (whether under these Call-off Terms and Conditions or otherwise) which are in excess of the amounts payable by the Authority to the Supplier, the Authority will be entitled to suspend all payments to the Supplier under these Call-off Terms and Conditions until the balance owing to the Authority has been recouped by way of set off against the payments suspended.

11.6 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 11.6 shall not apply to payments the defaulting Party disputes in good faith.

11.7 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.

11.8 In the event that the Authority has not made a payment of an authorised and agreed invoice when due and that payment has not been made within 7 days of the Supplier notifying the Authority that it has failed to make the payment, the Supplier may suspend the supply of the Goods under the Contract until the payment has been made or may terminate the Contract. For the avoidance of doubt where invoices are in dispute or where a credit note is to be issued there will be no right to suspend payment and/or terminate the Contract.

## **12. Authority Self-help Remedy**

12.1 Where the Supplier fails to supply the Goods in whole or in part, the Authority may issue a notice outlining details of the Default as a written warning to the Supplier and in the event of subsequent unreasonable failures to supply the Goods the Authority may be able to terminate this Contract in accordance with the termination events set out in Clause 30 (Termination for Breach). This is without prejudice to the Authority's rights, under Clause 30 (Termination for Breach), to terminate this Contract in the event of Consistent Failure for substantial or persistent breach.

12.2 If the Supplier is unable to make alternative arrangements satisfactory to the Authority to fulfil its obligations under this Contract then the Authority will make alternative arrangements and invoice the Supplier for the full cost of providing the alternative arrangement plus administrative costs based on Authority staff costs and time taken to put the arrangements in place.

12.3 If the Supplier fails to supply the Goods in whole or in part strictly in accordance with the terms of this Contract (in a manner that complies with the Specification ) or gives the Authority insufficient notice of the Supplier's inability to supply the Goods or a Supplier termination then, without prejudice to any other remedy available to the Authority, the Authority may make arrangements for the supply of the Goods , by its own staff or the staff of another supplier, such Goods or any part of them which the Supplier fails to fulfill.

12.4 For the avoidance of doubt, the arrangements made by the Authority pursuant to Clause 12.3 may include:

12.4.1 arranging for the provision of appropriate management or supervisory staff to enable the supply of the Goods; or

12.4.2 the provision of adequate equipment, materials and consumables to be used to enable the supply of the Goods.

12.4 The operation of this Clause 12 shall not relieve the Supplier of any obligations under this Contract in respect of the supply of the Goods as a whole, nor restrict the Authority's right to terminate this Contract under Clause 30 (Termination for Breach).

## **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 supply of the Goods. 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 Goods**

14.1 At all times, the Supplier shall ensure that:

14.1.1 each of the Supplier's Personnel is suitably qualified, adequately trained and capable of supplying the applicable Goods in respect of which they are engaged;

14.1.2 there is an adequate number of Supplier's Personnel to efficiently and timeously



supply the Goods; and

14.1.3 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 the supply of the Goods.

14.2 The Authority may refuse to grant access to, and remove, any of the Supplier's Personnel who present a security threat.

**15 Not used**

**16 TUPE**

As at the date of this Contract the Authority and the Supplier do not envisage that a relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) will apply in relation to the supply of the Goods under any Contract. Where the Authority and Supplier consider that a relevant transfer shall occur for an Order then they shall use all reasonable endeavours to allow discussion of the necessary strategy and consultation for such a transfer and an additional schedule addressing employment and pensions matters (including pre-transfer and post-transfer liabilities) shall be included in the relevant Contract's set of Call-off Terms and Conditions.

**17 Reporting, Meetings and Complaints**

17.1 The Supplier Representative and the Contract Manager shall be the respective prime contact points between the Parties and shall have responsibility for monitoring the supply of the Goods 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 Supplier 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 supply of the Goods 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 Goods, the Supplier shall immediately notify the Key Personnel of the Authority.

## **18 Monitoring**

18.1 The Authority may monitor the performance of this Contract for the supply of the Goods 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.

18.3 The Authority shall carry out checks to ensure that the Goods are being supplied in accordance with this Contract. The Supplier shall allow the Authority to carry out those checks.

18.4 The Supplier shall allow the Contract Manager and their nominated auditors, to have access and right to inspect the premises and records of the Supplier in relation to the operation of this Contract, with prior arrangement.

18.5 The Supplier shall at his or her own expense co-operate with the Authority in providing information or documentation should the Authority receive a request pursuant to Data Protection Legislation, FOIA or EIR.

18.6 The Authority reserves the right to carry out any other checks that may reasonably be required to ensure that the Goods are supplied in accordance with this Contract.

18.7 The Supplier shall notify the Authority immediately of any breach of this Contract setting out the details and reasons for such a breach.

## **19 Change Control, Benchmarking and Continuous Improvement**

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

19.2 If the Authority requests the Supplier to make a change or addition to the supply of the Goods, the Parties shall discuss in good faith the detail of any Changes to be made.

19.3 If the Parties agree to make such Change:

19.3.1 the Authority shall, so far as it is able and to the extent agreed with the Supplier, provide reasonable assistance in relation to the developing, testing and introduction of such Change or addition as part of the supply of the Goods by the Supplier; and

19.3.2 the description of the Goods, the Price and any other aspects of this Contract identified shall be amended or supplemented as appropriate to reflect the Change.

19.4 The Authority shall notify the Supplier in writing the detail of any Changes to be made as soon as practicably possible.

19.5 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements in relation to the supply of the Goods.

19.6 Any potential Changes highlighted as a result of the Supplier's reporting in accordance with Clause 19.5 shall be addressed by the Parties using the Change Control Procedure.

19.7 Any Change that may be agreed between the Parties shall be sent electronically to the Supplier by the Authority's Contract Manager (in accordance with Clause 19.1 and Schedule 5 (Change Control)) specifying the reference, nature and terms of the Change and the date from which it is to be operative. If the Supplier does not agree with the proposed Change, then it must give notice to the Authority within seven (7) Working Days of the date of issue. Otherwise the Change shall be deemed to be effective from the date of issue of the proposed Change or as otherwise agreed.

- 19.8 If the Parties cannot reach agreement on a proposed Change to this Contract requested by the Authority, acting reasonably, then the Authority may terminate this Contract by giving four (4) weeks' notice or the relevant Contract notice period if shorter, unless a shorter termination period is mutually agreed.
- 19.9 Without prejudice to Clause 19.7 and Schedule 5 (Change Control) the Authority may vary this Contract, acting reasonably, by issuing a letter of amendment or re-issuing this Contract in its entirety. Where any amendment or re-issue would substantially affect this Contract, the Authority will first consult with the Supplier. Any amendment or re-issue shall be effective immediately after notice has been given to the Supplier.

## **20 Dispute Resolution and Assistance in Legal Proceedings**

- 20.1 Either Party may call an extraordinary meeting of the Parties by service of not less than five (5) Working Days' written notice (or such other period as may be agreed in writing) and each Party agrees to procure that its Key Personnel together with any other member of staff requested to attend by the Authority (if any) shall attend all extraordinary meetings called in accordance with this Clause 20.1.
- 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 Contract Manager (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 ten (10) Working 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 agreement within five (5) Working Days of receipt of such request, appointed, at the request of either Party, by the CEDR or such other similar body as is agreed.
- 20.3 The Parties shall then submit to the supervision of the mediation by the CEDR 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 fifteen (15) Working 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.
- 20.7 While the Dispute Resolution Procedure referred to in this Clause 20 is in progress and any Party has an obligation to make a payment to another Party or to allow a credit in respect of such payment, the sum relating to the matter in dispute shall be paid into an interest bearing deposit account to be held in the names of the relevant Parties at a clearing bank and such payment shall be a good discharge of the Parties' payment obligations under this Contract. Following resolution of the dispute, whether by mediation or legal proceedings, the sum held in such account shall be payable as determined in accordance with the mediation or legal proceedings, and the interest accrued shall be allocated between the Parties pro rata according to the split of the principal sum as between the Parties.

- 20.8 Both Parties agree to continue in good faith with the performance of this Contract during any dispute process.
- 20.9 Where requested by the Contract Manager, the Supplier shall promptly provide to the Authority any relevant information (including, but not limited to, documentation and statements from Personnel) in connection with:
- 20.9.1 any legal inquiry, arbitration, court proceedings or hearings in which the Authority may become involved (and the Supplier shall, if required, give evidence in such inquiries, arbitrations, court proceedings or hearings); or
- 20.9.2 any disciplinary hearing internal to the Authority.
- 20.10 Where the Supplier or any of its Personnel become aware of any incident, accident or other matter which may give rise to a claim or legal proceedings in respect of the provision or failure to provide the Goods, the Supplier shall notify the Contract Manager immediately in writing. Such notification shall include all relevant information to enable the Contract Manager to investigate the matter fully.
- 20.11 Information provided or assistance rendered pursuant to the obligation in Clause 20.9 and/or Clause 20.10 respectively, in whatever form, shall be at no cost to the Authority.

## **21 Sub-contracting and Assignment**

- 21.1. Subject to Clause 21.3 neither Party shall 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 other Party (and in the event of such consent being granted by the Authority any transfer, novation or assignment shall be subject to such conditions as the Authority may think fit but such consent, if given, shall not relieve the Supplier from any liability or obligation under this Contract), neither may the Supplier sub-contract the whole or any part of its obligations under this Contract except with the express prior written consent of the Authority.
- 21.2 In the event that the Supplier enters into any Sub-Contract in connection with this Contract it shall:
- 21.2.1 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;
- 21.2.2 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
- 21.2.3 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 The Authority shall be entitled to novate the Contract to any other body which substantially performs any of the functions that previously had been performed by the Authority.

## **22 Indemnities**

The Supplier shall indemnify and keep indemnified the Authority against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of this Contract, to the extent that any such loss or claim is due to the act, omission, breach of Contract, negligence, wilful default or fraud of itself or of its employees or of any of its Representatives or sub-contractors arising out of or in connection with this Contract and the performance of it, with the exception of death or personal injury resulting from negligence by the Authority, save to the extent that the same is directly caused by or directly arises from the negligence, breach of this Contract or applicable Law by the Authority or its Representatives (excluding any Supplier's Personnel). For the avoidance of doubt the indemnity is subject to the cap on liability in Clause 23.4.2.

**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, anticipated savings, 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:
- 23.3.1 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 a this Contract (other than a failure to pay any of the Price that is properly due and payable and for which the Authority shall remain fully liable), shall in no event exceed seventy five percent (75%) percent of the total value of the Contract.
- 23.4 Subject to Clause 23.5, the Supplier's total aggregate liability:
- 23.4.1 in respect of the indemnities given by the Supplier in Clause 29 (Intellectual property) unlimited; and
- 23.4.2 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 one hundred and fifty (150%) percent of the total value of the Contract.
- 23.5 Notwithstanding any other provision of this Contract neither Party limits or excludes its liability for:
- 23.5.1 fraud or fraudulent misrepresentation;
- 23.5.2 death or personal injury caused by its negligence;
- 23.5.3 damage to property and the public highway network (which will include all remedial costs of works to rectify any damage caused by any defect in the Goods) or
- 23.5.4 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 such policies of insurance as are reasonably required for the supply of the Goods including but not limited to the following:
- 24.1.1 public liability insurance with a limit of indemnity of not less than five million pounds (£5,000,000) in relation to any one (1) 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;
- 24.1.2 employer's liability insurance with a limit of indemnity of not less than ten million pounds (£10,000,000) in relation to any one (1) claim or series of claims; and
- 24.1.3 product liability insurance with a limit of indemnity of not less than two million pounds (£2,000,000) 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.

(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.

- 24.2 The Supplier shall give the Authority, on request, copies of all insurance policies referred to in this Clause 24 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. The Authority may approach the Supplier's insurers to verify any information regarding insurance submitted to the Authority and the Supplier must authorise any such approach.
- 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.
- 24.5 The Supplier shall give immediate notice by letter or e-mail to the Authority if for any reason whatsoever any Required Insurance required to meet the requirements of Clauses 24.1 to 24.3 is cancelled or becomes inoperative. Failure to have the correct insurance at any time during this Contract may result in the Authority terminating this Contract in accordance with Clause 30.1.1 (Termination for breach).

## **25 Freedom of Information**

- 25.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations 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:
- 25.2.1 transfer the Request for Information to the Authority as soon as practicable after receipt and in any event within two (2) Working Days of receiving a Request for Information;
- 25.2.2 provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires in a timely manner but in any event within five (5) Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and
- 25.2.3 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 Environmental Information Regulations.
- 25.3 The Authority shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:
- 25.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations; and/or
- 25.3.2 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 Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, July 2018), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:

25.5.1 without consulting with the Supplier; or

25.5.2 following consultation with the Supplier and having taken its views into account,

provided always that where Clause 23.5.2 applies the Authority shall, in accordance with any recommendations of the Code referred to in Clause 23.5, 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**

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. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA or EIR, the content of this Contract is not Confidential Information. The Supplier and the Supplier's staff shall regard as confidential and shall not disclose to any person other than a person authorised by the Authority or the Authority any information acquired by the Supplier or the Supplier's staff in or in connection with the provision of the Goods under this Contract concerning the Authority or its staff or its procedures.

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

27.2.1 required by any applicable law, provided that Clause 25 (Freedom of information) shall apply to any disclosures required under the FOIA or the Environment Information Regulations;

27.2.2 that is reasonably required by persons engaged by a Party in the performance of such Party's obligations under this Contract;

27.2.3 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.

27.2.4 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;

27.2.5 to enable a determination to be made under Clause 20 (Dispute resolution and assistance in legal proceedings);

27.2.6 which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party;

27.2.7 by the Authority to any other department, office or agency of the Government; and

27.2.8 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 Authority's employees or rate-payers, are delivered up to the Authority or securely destroyed.

## **28 Audit**

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

28.1.1 to verify the accuracy of the Contract Price and Price (and proposed or actual variations to them in accordance with this Contract) and/or the costs of all suppliers (including Sub-Contractors) of the Goods;

28.1.2 to review the integrity, confidentiality and security of any data relating to the Authority or any pupils;

28.1.3 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 Goods;

28.1.4 to review any records created during the provision of the Goods;

28.1.5 to review any books of account kept by the Supplier in connection with the provision of the Goods;

28.1.6 to carry out the audit and certification of the Authority's accounts;

28.1.7 to carry out an examination of the economy, efficiency and effectiveness with which the Authority has used its resources;

28.1.8 to verify that Goods have been supplied as set out in any Order Form 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 supply of the Goods.

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:

28.4.1 all information requested by the above persons within the permitted scope of the audit;

28.4.2 reasonable access to any sites controlled by the Supplier and to any equipment used (whether exclusively or non-exclusively) for the supply of the Goods; and

28.4.3 access to the Supplier's Personnel.

28.5 The Authority shall endeavour to (but is not obliged to) provide at least fifteen (15) Working 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 28, 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.



28.7 If an audit identifies that:

28.7.1 the Supplier has failed to perform its obligations under this Contract in any material manner: the Parties shall agree and implement a remedial plan. If the Supplier's failure relates to a failure to provide any information to the Authority about the Contract Price or Price, proposed Price or the Supplier's costs, then the remedial plan shall include a requirement for the provision of all such information;

28.7.2 the Authority has overpaid any Price: the Supplier shall pay to the Authority the amount overpaid within twenty (20) Working Days. The Authority may deduct the relevant amount from the Price if the Supplier fails to make this payment; and

28.7.3 the Authority has underpaid any Price: the Authority shall pay to the Supplier the amount of the under-payment less the cost of audit incurred by the Authority if this was due to a default by the Supplier in relation to invoicing within twenty (20) Working Days.

28.8 The Supplier shall allow the Authority and its Authorised Representative access to, and permission to take copies of, all records relevant to this Contract and its performance at the Supplier's premises at any reasonable time and shall give such explanations of records as may be required. Failure to provide the information will be considered as a breach counting towards a Consistent Failure for the purposes of Clause 30.1.4 (Termination for breach).

## 29 Intellectual Property

29.1 In the absence of prior written Contract by the Authority to the contrary, all Intellectual Property created by the Supplier or any employee, agent or Sub-Contractor of the Supplier:

29.1.1 in the course of supplying the Goods; or

29.1.2 exclusively for the purpose of supplying the Goods, shall vest in the Authority on creation.

29.2 The Supplier shall indemnify the Authority against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Goods, except to the extent that they have been caused by or contributed to by the Authority's acts or omissions.

## 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:

30.1.1 if the Supplier is in breach of any material obligation under this Contract it may terminate the Contract forthwith:

30.1.1.1 (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 fourteen (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;

30.1.1.2 where the Authority has specified in this Contract such a breach as an irremediable material breach for the purposes of this Clause 30.1.1. ;

30.1.2 if the Supplier is in default of any duty or care or any fiduciary duty or statutory duty owed to the Authority, employees or agents of the Authority;

30.1.3 if the Supplier purports to assign or sub-contract this Contract in breach of the terms of this Contract;

30.1.4 if a Consistent Failure has occurred;

30.1.5 if a Catastrophic Failure has occurred;

30.1.6 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 (or has anything similar or analogous happen in relation to it in any jurisdiction outside England and Wales);

30.1.7 if the Supplier ceases or threatens to cease to carry on business in the United Kingdom;

30.1.8 (unless previously approved in writing by the Authority) if there is a change of control (where the Supplier is a company as defined in section 574 of the Capital Allowances Act 2001) of the Supplier to which the Authority reasonably objects; or

30.1.9 notwithstanding the occurrence of any Consistent Failure the Supplier persistently, and without reasonable cause, fails to supply Goods in accordance with this Contract and to the entire satisfaction of the Authority.

30.1.10 the Supplier has, at the time of award of the agreement, been subject to a conviction as proscribed by regulation 57(1), including as a result of the application of regulation 57(2) of the Procurement Regulations, and should therefore have been excluded from the procurement procedure.

30.2 The Authority may terminate this Contract in accordance with the provisions of Clause 33 (Prevention of bribery and modern slavery).

30.3 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 Supplier.

30.4 The Supplier may terminate this Contract in the event that the Authority commits a Termination Payment Default by giving thirty (30) days' written notice to the Authority. In the event that the Authority remedies the Termination Payment Default in the thirty (30) day notice period, the Supplier's notice to terminate this Contract shall be deemed to have been withdrawn.

### **31 Termination on Notice**

31.1. Either Party may terminate this Contract at any time by giving where time permits, not less than four (4) weeks' written notice

31.2 This Contract shall terminate at any time by mutual consent.

31.3 The Authority may terminate this Contract following a Force Majeure Event in accordance with the provisions of Clause 32 (Force majeure).

31.4 The Authority may terminate this Contract if:

31.4.1 this Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of the Procurement Regulations; or

31.4.2 this Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations under the Procurement Regulations.

### **32 Force Majeure**

- 32.2 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 delay or 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:
- 32.2.1 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;
- 32.2.2 use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Contract; and
- 32.2.3 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 in any Order Form of the supply of Goods and which continues for more than twenty (20) Working Days.

### **33 Prevention of Bribery and Modern Slavery**

- 33.1 The Supplier:
- 33.3.1 shall not, and shall procure that any Supplier Party and all Supplier Personnel shall not, in connection with this Contract commit a Prohibited Act;
- 33.3.2 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:
- 33.2.1 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;

- 33.2.2 within ten (10) 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 seven (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:
- 33.6.1 with the authority; or
- 33.6.2 with the actual knowledge;
- of any one (1) or more of the directors of the Supplier or the Sub-Contractor (as the case may be); or
- 33.6.3 in circumstances where any one (1) 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:
- 33.7.1 the nature of the Prohibited Act;
- 33.7.2 the identity of the Party whom the Authority believes has committed the Prohibited Act; and
- 33.7.3 the date on which this Contract will terminate.
- 33.8 Notwithstanding the provisions of Clause 20 (Dispute resolution and assistance in legal proceedings), any dispute relating to:
- 33.8.1 the interpretation of Clause 33; or
- 33.8.2 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.

33.10 The Authority may, following termination of this Contract pursuant to Clause 33.6 (including for committing a Prohibited Act) recover from the Supplier any resulting loss.

33.11 The Supplier undertakes to the Authority that:

In performing its obligations under these Call-off Terms and Conditions, the Supplier and its sub-contractors (if any) shall comply with all Law concerning anti-slavery and human trafficking (including but not limited to the Modern Slavery Act 2015).

If the Supplier or Supplier Personnel commit an offence under the Modern Slavery Act 2015 or other Law concerning anti-slavery and human trafficking in relation to this Contract or any other Contract or any other contract with the Authority then the Authority may terminate this Contract by written notice to the Supplier with immediate effect (and terminate any other Contract or other contract the Supplier has with the Authority) and recover from the Supplier the amount of any losses suffered by the Authority resulting from the termination including the cost reasonably incurred by the Authority in making other arrangements for the supply of the Goods for the remainder of the Term of this Contract had it not been terminated).

### **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 transition, at the Authority's request, to a Replacement Supplier.

34.2 On termination of this Contract the Supplier shall:

34.2.1 procure that all data and other material belonging to the Authority (and all media of any nature containing information and data belonging to the Authority or relating to the supply of the Goods), shall be delivered to the Authority forthwith and the Supplier's Authorised Representative or Chief Executive Officer (or equivalent) shall certify full compliance with this Clause 34;

34.2.2 return all documentation, manuals, statements and other materials (and all copies thereof) supplied under or in connection with the supply of the Goods which contains Confidential Information. If requested the Supplier shall certify in writing that it has fully complied in all respects with this provision after the return of such documentation;

34.2.3 agree that upon termination of this Contract for any reason or expiry of this Contract it shall not be entitled to make a claim against the Authority in relation to costs incurred by the Supplier for the supply of the Goods or in engaging third parties in connection with the Goods (whether or not such costs were amortised in the calculation of the Price payable by the Authority under this Contract). For the avoidance of doubt, the Supplier shall not be restricted from making any claim in respect of such Price to the extent it is outstanding, due and payable; and

34.2.4 (subject to Clause 26 (Data protection), Clause 27 (Confidentiality) and Clause 28 (Audit)) retain all papers, files and records relating to the provision of the Goods for the period of seven (7) years after the date of the termination of this Contract and thereafter shall not destroy them but where requested by the Authority deliver them to the Authority.

34.3 Where any notice of termination has been served under this Contract, the Supplier undertakes to continue to supply the Goods to the Authority in accordance with this Contract until expiry of the period of notice and the Authority undertakes to continue to pay the Supplier for the Goods in accordance with the terms of this Contract.

34.4 Termination or variation of this Contract shall not prejudice the rights, duties or liabilities of either Party that have arisen on or before the date of termination or the date of the Change.

34.5 If this Contract is terminated, the Authority shall:

34.5.1 cease to be under any obligation to make payment in respect of any period after the

date of termination;

34.5.2 cease to be under any obligation to make payment in respect of any period prior to the date of termination until the costs, loss and/or damage resulting from or arising out of the termination have been calculated and provided such calculation shows a sum or sums due to the Supplier;

34.5.3 be entitled to exercise a lien over any of the materials, clothing, equipment or other goods belonging to the Supplier for any sum due hereunder or otherwise from the Supplier to the Authority;

34.5.4 be entitled to employ and pay other persons to supply the Goods or any part thereof; and

34.5.5 be entitled to recover from the Supplier any losses arising as a result of any antecedent breach of this Contract by the Supplier.

34.5.6 If this Contract is terminated by the Authority for Supplier breach in accordance with Clauses 30 (Termination for breach) or 31 (Termination on notice ) 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 resulting from or arising out of the termination which the Authority may suffer (and which the Authority shall be entitled to deduct from any sums which would have been due from the Authority to the Supplier under this Contract or any other Contract or recover from the Supplier as a debt) including the reasonable cost to the Authority of the time spent by its officers in terminating this Contract and in making alternative arrangements for the provision of the Goods or any part thereof.

34.6 The provisions of 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) and any other clauses in this Contract which expressly or impliedly have effect after termination or expiry 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 (1) year thereafter, solicit the services of any senior staff of the other Party who have been engaged in the supply of the Goods 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**

36.1 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.

36.2 Failure by the Authority at any time to enforce the provisions of this Contract or to require performance strictly or otherwise by the Supplier of any provisions of this Contract or any failure or delay by the Supplier to exercise any act right or remedy shall not be construed as a waiver of or as creating an estoppel in connection with any such provisions and shall not affect the validity of this Contract or any part thereof or the right of the Supplier to enforce any provision.

36.3 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 Goods 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 supply the Goods in accordance with the provisions of this Contract.

**37 Cumulation 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**

39.1 Nothing contained in this Contract shall constitute a partnership or joint venture or employment or agency with or between either of the Parties and no Party shall hold itself out as an agent or an employee of the other Party. Neither the Supplier nor its Personnel shall in any circumstances hold itself or themselves out as:

39.1.1 being the servant or agent of the Authority otherwise than in circumstances expressly permitted by this Contract;

39.1.2 being authorised to enter into any Contract on behalf of the Authority or in any other way to bind the Authority to the performance, variation, release or discharge of any obligation; or

39.1.3 having the power to make, vary, discharge or waive any by-law or any regulation of any kind.

**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:

41.1.1 make any press announcements or publicise this Contract or its contents in any way; or

41.1.2 use the Authority's name or brand in any promotion or marketing or announcement of orders,

without the prior written consent of the Authority.

**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**

This Contract, the schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement between the Parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the Parties relating to that subject matter.

#### **44 Governing Law and Jurisdiction**

44.1 This Contract and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales.

44.2 The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Contract or its subject matter.

#### **45 Assistance in Legal Proceedings**

45.1 Where requested by the Contract Manager, the Supplier shall promptly provide to the Authority any relevant information (including, but not limited to, documentation and statements from Personnel) in connection with:

45.1.1 any legal inquiry, arbitration, court proceedings or hearings in which the Authority may become involved (and the Supplier shall, if required, give evidence in such inquiries, arbitrations, court proceedings or hearings); or

45.1.2 any disciplinary hearing internal to the Authority.

45.2 Where the Supplier or any of its Personnel become aware of any incident, accident or other matter which may give rise to a claim or legal proceedings in respect of the provision or failure to provide the Goods, the Supplier shall notify the Contract Manager immediately in writing. Such notification shall include all relevant information to enable the Contract Manager to investigate the matter fully.

45.3 Information provided or assistance rendered pursuant to the obligation in Clause 46.1 and/or Clause 46.2 respectively, in whatever form, shall be at no cost to the Authority.

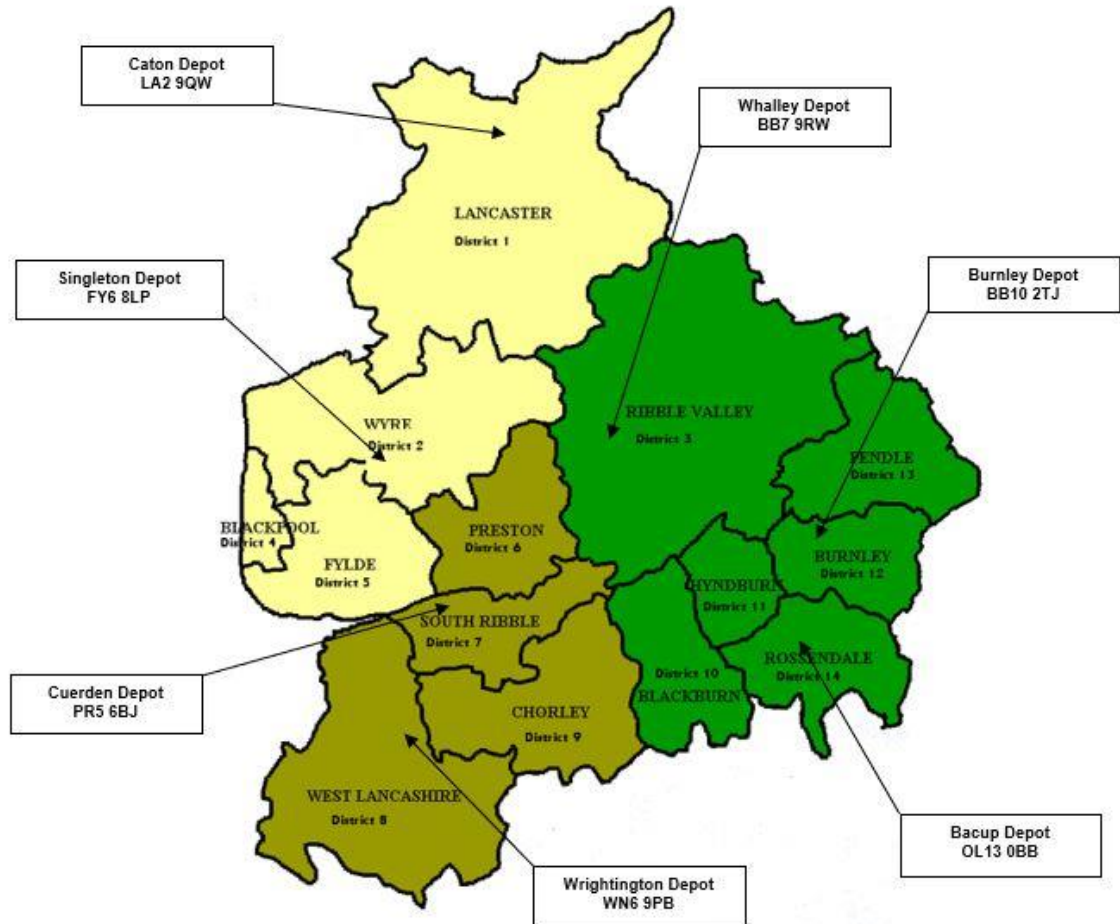


## Schedule 1: Goods and Specification

### Part 1 – Goods

#### 1. Delivery

Deliveries will be to depots of Lancashire County Council, Highway Services, and sites of work within Lancashire. The Authority reserves the right to add or remove depot locations throughout the term of the DPS Agreement. The Authority's current Highway Services depot locations are:



- 1.1. It is an essential and fundamental term of this Contract that the Supplier makes delivery (a "**Delivery**") of Goods to the Authority's premises specified in the Order ("**Delivery Location**") during the delivery hours by the delivery vehicle where specified (or as instructed by the Authority) as stated in the Order (the "**Due Date and Time**").
- 1.2. The Supplier shall ensure that:
- Deliveries to Highway Services depots are programmed for delivery during off-peak store hours, and unless previously agreed, deliveries **will not** be accepted outside of these hours:  
09:00 to 14:30 - Monday to Thursday; and  
09:00 to 14:00 - Friday
  - adequate mechanical handling equipment and/or numbers of personnel to offload or load Goods are provided. The Authority will not guarantee the availability of any

equipment or staff to assist in the offloading or loading of Goods.

- (c) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 1.3. The Supplier shall not deliver the Goods in instalments without the Authority's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all, or any defect in an instalment shall entitle the Authority to the remedies set out in paragraph 1.5.
- 1.4. In respect of Goods, proof of Delivery will be established through signature of the Authority (see paragraph 4) on a Delivery note clearly detailing the Goods and the quantity Delivered.
- 1.5. Where the Supplier fails to deliver the Goods in accordance with this Contract (or as otherwise required by the Authority in writing) and/or fails to deliver the Goods to the Delivery Location by the Due Date and Time (other than as a result of the act or omission of the Authority) and/or the Goods do not comply with the Supplier's warranty at paragraph 7.1, the Authority may (in addition to any of its other rights or remedies, and whether or not the Authority has accepted the Goods) exercise any one (1) or more of the following remedies:
- 1.5.1. terminate or vary the whole (or any uncompleted part) of this Contract without incurring any further obligation to the Supplier;
- 1.5.2. purchase substitute Goods elsewhere and recover from the Supplier any costs incurred by the Authority in obtaining substitute goods from a third party;
- 1.5.3. deduct from the amounts payable to the Supplier any costs, expenses and losses incurred by the Authority as a reasonably foreseeable consequence of the failure to deliver;
- 1.5.4. delay payment until Delivery is complete;
- 1.5.5. reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
- 1.5.6. require the Supplier to repair or replace the rejected Goods or to provide a full refund of the price of the rejected Goods;
- 1.5.7. refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make; and/or
- 1.5.8. claim damages for any other costs, loss or expenses incurred by the Authority which are in any way attributable to the Supplier's failure to carry out its obligations under this Contract.
- 1.6. Any Delivery note or other document accompanying a Delivery which is signed by the Authority is simply an acknowledgement of Delivery and will not constitute an acceptance by the Authority that the Goods comply with this Contract. The Authority will not be considered to have accepted any Goods until after it has had a reasonable time to inspect the Goods or, if later, following a reasonable time after any latent defect in the Goods has become apparent.
- 1.7. If the Supplier notifies the Authority that it will be late delivering Goods (having regard to the original Due Date and Time), the Authority may (at its option) agree a revised Delivery date with the Supplier. Any revised Delivery date must be agreed by the Authority in writing and shall not affect or prejudice other terms and conditions applicable to the relevant Order. If the Supplier is late delivering, or fails to deliver the Goods, then the Authority shall be entitled to treat the Delivery as late or failed from the original Due Date and Time.
- 1.8. The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.
- 1.9. The Authority may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such

inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.

- 1.10. If following such inspection or testing the Authority considers that the Goods do not conform or are unlikely to comply with the Supplier's warranty at paragraph 7.1 below, the Authority shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 1.11. The Authority may conduct further inspections and tests after the Supplier has carried out its remedial actions.
- 1.12. For the avoidance of doubt, Goods substituted by the Supplier in place of the Goods set out in the Specification (and/or which are to be satisfied by the Goods referred to in the Supplier's Tender) are not permitted without the prior approval of the Authority. Unless otherwise agreed by the Authority, any such substituted Goods must be of equal or better quality and will be charged at no more than the price for the Goods which are being substituted.

## **2. Risk Assessment of Delivery Location(s)**

- 2.1. The Supplier shall be deemed to have inspected the premises of the Delivery Location(s) and acquainted itself with the Delivery Location(s) in relation to their obligation to deliver the products and accordingly no claim by the Supplier for additional payment or extension of time will be allowed on the grounds of any matter relating to the premises of the Delivery Location(s).
- 2.2. The Supplier must appreciate the risk potential of the type of Delivery Location(s) to which it is delivering. The Supplier must perform a thorough risk assessment exercise and ensure that all of its operatives are particularly diligent and safety conscious.
- 2.3. The Supplier shall be responsible for observing the instructions and requirements in any site rules for a Delivery Location and any such booklets, guidance and notices as are provided to it or to its employees from time to time by the Authority.

## **3. Duty of Care during Delivery**

- 3.1. The Supplier must not bring a vehicle onto any Delivery Location(s) used in connection with a site whereon it has notice that the entry of vehicles is forbidden.
- 3.2. Due to the location of some Delivery Location(s) overnight parking outside the Authority's depots and/or sites is not permitted.
- 3.3. All drivers and any assistants must wear, at all times, suitable personal protective equipment (hard hat and high visibility top is mandatory), be properly trained and instructed with regard to the task(s) to be performed and must also carry a form of identification from the company they represent.
- 3.4. Unloading or loading of vehicles must be carried out in accordance with the risk assessments and method statements provided to the Authority.
- 3.5. A valid lifting equipment insurance certificate must be carried on each vehicle.
- 3.6. Personal hygiene of the driver must be of the highest standard and the vehicle interior shall be maintained in a clean hygienic condition, as should all the storage equipment used in the vehicle.

## **4. Acceptance and Rejection of Delivery**

- 4.1. If electronic signatures for the receipt of Goods is not currently available, a Delivery note must accompany all Goods products delivered and a copy should be left at the individual Delivery Location(s) with each Delivery.
- 4.2. The clear signature and printed name of a person authorised to receive the Goods must be obtained by the driver.
- 4.3. The Goods products ordered shall be delivered by the Supplier to the Delivery Point specified on the Order. The Goods products must be offloaded by the Supplier and placed in position as directed by the Authority's staff.

- 4.4. Goods products must not under any circumstances be left outside or on the doorstep of any Delivery Location(s).
- 4.5. The Supplier's delivery person must record any collection or return of any Goods products for whatever reason and any short Deliveries on the Delivery note.
- 4.6. Any Delivery may be subject to examination of any of the Authority's authorised officers and agents who shall have the right at any time to reject the Goods which have not been ordered, or in their opinion are not of the quality or kind specified.

## 5. Rejected Goods

- 5.1. The Authority has the right to reject any Goods ("Rejected Goods") if:
  - 5.2. having had a reasonable time to inspect them, it discovers that they fail to comply with the requirements of the relevant Order and/or the Specification;
  - 5.3. the Supplier delivers less than ninety-five per cent (95%) of the quantity of Goods ordered; or
  - 5.4. the Supplier delivers more than one hundred and five per cent (105%) of the quantity of Goods ordered,
- 5.5. provided that the Authority may at its discretion reject the Goods or the excess Goods and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and the Authority accepts the delivery, the invoiced sum for the Goods shall be calculated based on the quantity of the Goods accepted by the Authority.
- 5.6. Rejected Goods will be collected by the Supplier at the Supplier's cost and (at the Authority's election) either replaced or credited in full and the Authority will be under no liability to pay for Rejected Goods. If the Supplier fails to collect Rejected Goods within a reasonable period after notification by the Authority that they are available for collection the Authority shall have the right to charge the Supplier storage costs and sell or dispose of the Rejected Goods. If the Authority sells the Rejected Goods it will provide to the Supplier the proceeds of sale after deducting its storage costs and its reasonable costs and expenses in connection with the sale.
- 5.7. To the extent that the Supplier has been paid by the Authority in respect of Rejected Goods, the Authority will be entitled to recover the sums paid, together with the costs incurred for their return, and all losses and expenses incurred by the Authority as a reasonably foreseeable result of their rejection. The recovery will be by means of either:
  - 5.8. deduction from amounts due to the Supplier; or
  - 5.9. invoicing the Supplier for payment of the amount in question.

## 6. Title and Risk

- 6.1. Unless otherwise stated in this Contract, title to Goods supplied will pass to the Authority on the earlier of:
  - 6.1.1. Delivery of the Goods or (in the case of Delivery by instalments, upon Delivery of each instalment); or
  - 6.1.2. payment for the Goods by the Authority to the Supplier.
- 6.2. Unless otherwise agreed in writing by the Authority, risk in the Goods will pass to the Authority on Delivery.
- 6.3. Where storing any Goods in relation to which title has vested (or will vest) in the Authority pursuant to this Schedule (including any Goods being assembled or developed in stages) ("**Retained Goods**"), the Supplier shall:
  - 6.3.1. hold the Retained Goods on a fiduciary basis as the Authority's bailee;
  - 6.3.2. store the Retained Goods separately from other goods held by the Supplier so that they remain readily identifiable as the Authority's property; and
  - 6.3.3. maintain the Retained Goods securely and in good condition.
- 6.4. If the Supplier becomes Insolvent (or the Authority has reasonable grounds to suspect it may become Insolvent) at any time when holding the Retained Goods then, without prejudice to

any other right or remedy of the Authority, the Authority may require the Supplier to deliver up the Retained Goods and, if the Supplier fails to do so promptly, enter any premises of the Supplier (or any third party storing the Retained Goods on its behalf) in order to recover them.

## **7. Warranty**

- 7.1. The Supplier warrants and represents that when Delivered, the Goods:
  - 7.1.1. correspond with their description and will meet the Specification;
  - 7.1.2. will be of the correct quantity as specified in the Specification or the Order;
  - 7.1.3. will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended), fit for the purpose for which Goods of the kind in question are commonly supplied or any purpose held out by the Supplier (or any particular purpose made known expressly or by implication to the Supplier by the Authority, and in this respect the Authority relies on the Supplier's skill and judgment) and free from any defects;
  - 7.1.4. will be safe and will not cause death, injury, loss or damage when properly used;
  - 7.1.5. (where they are manufactured products) be free from defects in design, material and workmanship and remain so for a period being the longer of any product warranty or guarantee period set out in the Supplier's Tender or a minimum of twelve (12) months after Delivery; and
  - 7.1.6. comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 7.2. Where any sample of the Goods is supplied to and approved by the Authority, the Goods will correspond to the approved sample.
- 7.3. Without prejudice to any other rights or remedies of the Authority if, within twelve (12) months of Delivery or, if longer, within any period of any product warranty or guarantee specified in the Specification, Order and/or the Supplier's Tender, it is discovered that the Goods supplied do not comply with the requirements of this Contract then the Authority shall have the right, at its discretion, to require the Supplier, free of charge and within thirty (30) days, to either remedy any defect in the Goods or to supply replacement Goods which comply with the requirements of this Contract.
- 7.4. The Supplier will pass to the Authority the benefit of all manufacturer and other warranties and guarantees relating to the Goods. The Supplier will ensure that any such warranties or guarantees are fully insured and will produce evidence of such insurance to the Authority as the Authority may reasonably request.

## **Part 2: 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 Goods 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 Goods 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.
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>

#### 1.4 Receiving Orders

Receiving	LCC will check the Delivery Note to receipt goods against those which have been Ordered to enable the invoice to be processed for payment.
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#### 1.5 Delivery and Acceptance or Rejection of Goods

Delivery and the Acceptance or Rejection of Goods is in accordance with the terms set out 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 [ccinvoic@lancashire.gov.uk](mailto:ccinvoic@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:ccinvoic@lancashire.gov.uk">ccinvoic@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:ccinvoic@lancashire.gov.uk">ccinvoic@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 Goods that it requires. Details of the requirement will be stated in the Order (see below example of an official Order).

A supplier should only provide the Goods 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 Goods without receiving an Order Amendment.  Provision of any Goods 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 submitting the invoice.

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

Delivery and Collection Notes shall be in accordance with the terms set out in Schedule 1 of the Call-off Terms and Conditions of the DPS Agreement.

#### 2.6 Invoices and Submission of Invoices

An invoice must always be submitted for the payment of all Goods 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 Goods that have been provided and is being invoiced for.</li> </ul>
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	<ul style="list-style-type: none"> <li>• The Unit of Measure (the actual unit in which the quantity of the Goods is measured).</li> <li>• The Quantity of the Goods (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 Goods were supplied.</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>
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 when the goods have been fully delivered.</p> <p>Invoices for the part payment of Goods 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><a href="mailto:ccinvoices@lancashire.gov.uk">ccinvoices@lancashire.gov.uk</a></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</p>

	<p>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><a href="mailto:AccountsPayable.Statements@lancashire.gov.uk">AccountsPayable.Statements@lancashire.gov.uk</a></p> <p><a href="mailto:highwaysrequisitions@lancashire.gov.uk">highwaysrequisitions@lancashire.gov.uk</a></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 Goods that are being credited.</li> <li>• The Unit of Measure (the actual unit in which the quantity of the Goods is measured).</li> <li>• The Quantity of the Goods 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>
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	The preferred format is a secure non-changeable format (PDF). Other formats such as Microsoft Word etc will be accepted.
Submission of Credit Notes (Except PAMS Orders)	<p>Credit notes must always be sent electronically to the following address:</p> <p><a href="mailto:ccinvoices@lancashire.gov.uk">ccinvoices@lancashire.gov.uk</a></p> <p>Credit notes 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 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><a href="mailto:AccountsPayable.Statements@lancashire.gov.uk">AccountsPayable.Statements@lancashire.gov.uk</a></p> <p><a href="mailto:highwaysrequisitions@lancashire.gov.uk">highwaysrequisitions@lancashire.gov.uk</a></p>

Example of official Order:



**Lancashire**  
County Council

Purchase Order Number:  
**LCC** [REDACTED]

*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.*


Please supply in accordance with the instructions below and conditions attached, and deliver to:

[REDACTED ADDRESS]

Purchase Card Number: [REDACTED]

Expiry: [REDACTED]

Contact Name: [REDACTED]



Telephone Number: [REDACTED]

Supplier: [REDACTED]

Invoice To: LCCInvoices@lancashire.gov.uk

Order Date: [REDACTED]

Deliver on or Before: [REDACTED]

Line	Description of Goods & Services	Unit of Measure	Unit Price	Qty	Price
1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Total Value (VAT Exclusive)					[REDACTED]

*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 [purchasingcorporate@lancashire.gov.uk](mailto:purchasingcorporate@lancashire.gov.uk)) shall apply.*  
*All values quoted are in GB Pounds Sterling unless otherwise noted.*  
*A detailed delivery note quoting the purchase order number must accompany all deliveries.*

### **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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## Schedule 5: Change Control

### 1. General Principles

- 1.1 (Subject to the Price variation procedure set out in Clause 10 (Price) and Clause 19 (Change control, benchmarking and continuous improvement)), where the Authority or the Supplier sees a need to vary this Contract, the Authority may at any time request, and the Supplier may at any time recommend to the Authority, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 5. For the avoidance of doubt, the Authority is not obliged to pursue any Supplier recommendation for a Change.
- 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 requested by the Authority or for a Change recommended by the Supplier which the Authority agrees to consider as a Change shall result in any one of the following:
  - (a) no further action being taken;
  - (b) a request to change this Contract by the Authority; or
  - (c) a recommendation to change this Contract by the Supplier.
- 2.2 Where an electronic written request for an amendment is received from the Authority, the Supplier shall, unless otherwise agreed, submit a Change Control Note electronically signed by the Supplier to the Authority within three (3) Working Days of the date of the request.
- 2.3 A recommendation to amend this Contract by the Supplier shall be submitted directly as an electronic written request to the Authority in the form of a Change Control Note electronically signed by the Supplier at the time of such recommendation. The Authority shall give its response electronically in writing to the Change Control Note within three (3) Working Days.
- 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 Price;
  - (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 the Change Control Note to be electronically signed by or on behalf of the Authority and returned to the Supplier; or
  - (iii) notify the Supplier of the rejection of the Change Control Note.

2.6 A Change Control Note electronically signed by both 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]