

Terms and Conditions of Contracts for Goods

Dated 20

SOLIHULL METROPOLITAN BOROUGH COUNCIL

-and-

[THE CONTRACTOR]

AGREEMENT

relating to

[.....]

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BETWEEN

- (1) **SOLIHULL METROPOLITAN BOROUGH COUNCIL** of **P O BOX 18 COUNCIL HOUSE SOLIHULL B91 9QS** (“Solihull MBC”); and
- (2) **##### LIMITED** (company registered number (**###**)) whose registered office is at (**#####**) (the “Contractor”).

RECITALS

- (A) Solihull MBC is acting through (set out Committee/officer with delegated power)
- (B) Solihull MBC and the Contractor have agreed that the Contractor shall provide and Solihull MBC shall co-operate with it in providing the Goods in the manner and upon the terms hereinafter set out.
- (C) (Set out details of Tender process/OJEU notice number etc.)

A. GENERAL PROVISIONS

A1 Definitions and Interpretations

A1.1 Definitions

In this Agreement unless the context otherwise requires the following terms shall have the meaning given to them below:

“Approval” and “Approved” means the written consent of the Contract Manager.

“Client Property” means any property, other than real property, issued or made available to the Contractor by Solihull MBC in connection with the Contract.

“Commencement Date” means (#####).

“Commercially Sensitive Information” means the subset of Confidential Information listed in the Commercially Sensitive Information Schedule comprised of information:

- (a) which is provided by the Contractor to Solihull MBC in confidence for the period set out in that Schedule; and/or
- (b) that constitutes a trade secret.

“Commercially Sensitive Information Schedule” means the Schedule containing a list of the Commercially Sensitive Information.

“Confidential Information” means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, Goods, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, [all personal data and sensitive personal data within the meaning of the Data Protection Act 1998] and the Commercially Sensitive Information.

“Contract” means this agreement between Solihull MBC and the Contractor consisting of these clauses and any attached Schedules, the Invitation to Tender, the Contractor’s Tender and any other documents or parts thereof agreed by Solihull MBC.

“Contract Manager” means the person for the time appointed by Solihull MBC as being authorised to administer the Contract on behalf of Solihull MBC or such person as may be nominated by the Contract Manager to act on its behalf.

“Contract Price” means the price exclusive of any applicable Tax, payable to the Contractor by Solihull MBC under the Contract, as set out in the Pricing Schedule, for the full and proper performance by the Contractor of its obligations under the Contract but before taking into account the effect of any adjustment of price in accordance with clause C4.

“Contracting Authority” means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006 other than Solihull MBC.

“Contractor’s Representative” means the individual authorised to act on behalf of the Contractor for the purposes of the Contract.

“Default” means any breach of the obligations of either Party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either Party, its employees, agents or sub-contractors 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.

“Environmental Information Regulations” means the Environmental Information Regulations 2004.

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.

“General Change in Law” means a change in Law which comes into effect after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Contractor) or which would affect or relate to a comparable supply of goods of the same or a similar nature to the supply of the Goods.

“Goods” means any such goods as are to be supplied by the Contractor (or by the Contractor’s Sub-Contractor) under the Contract as specified in the Specification.

“Information” has the meaning given under section 84 of the Freedom of Information Act 2000.

“Initial Term” means the period of duration of the Contract in accordance with clause A4.

“Invitation to Tender” means Solihull MBC’s invitation to contractors to submit tenders for the supply of the Goods **dated #####** .

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

“Law” means any applicable Act of Parliament, sub-ordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of Section 2 of the European Communities

Act 1972, law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body of which the Contractor is bound to comply.

“Month” means calendar month.

“Party” means a party to this Contract and “Parties” shall be construed accordingly.

“Premises” means the location where the Goods are to be delivered.

“Pricing Schedule” means the Schedule containing details of the Contract Price.

“Replacement Contractor” means any third party contractor appointed by Solihull MBC from time to time, to provide any goods which are substantially similar to any of the Goods, and which Solihull MBC receives in substitution for any of the Goods following the expiry, termination or partial termination of this Contract, whether those goods are provided by Solihull MBC internally and/or by any third party.

“Requests for Information” shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations.

“Schedule” means a schedule attached to this Contract.

“Specification” means the description of the Goods to be provided under the Contract and attached as the Specification Schedule.

“Specification Schedule” means the Schedule containing details of the Specification.

“Specific Change in Law” means a change in Law which comes into effect after the Commencement Date that relates specifically to the business of Solihull MBC, and which would not affect a comparable supply of goods of the same or a similar nature to the supply of the Goods.

“Staff” means all persons employed by the Contractor to perform the Contract together with the Contractor’s servants, agents and sub-contractors used in the performance of the Contract.

“Tax” means Value Added Tax, and any other tax or duty payable.

“Tender” means the Contractor’s response to the Invitation to Tender.

A1.2 Interpretation

The interpretation and construction of this Contract shall be subject to the following provisions:

The terms and expressions set out in A1.1 shall have the meanings ascribed therein;

Words importing the singular meaning include where the context so admits the plural meaning and vice versa;

Words importing the masculine include the feminine and the neuter;

Reference to a clause is a reference to the whole of that clause unless stated otherwise;

References to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

References to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted;

The words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”;

Headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract.

A2 Solihull MBC’s Obligations

A2.1 Solihull MBC shall perform its obligations under the Contract in its capacity as a Party to this Contract but nothing in this Contract shall operate as an obligation upon, or in any way fetter or constrain Solihull MBC in the exercise of its duties and powers in any other capacity.

A3 Contractor’s Obligations

A3.1 The Contractor shall perform its obligations under the Contract.

A4 Initial Term

A4.1 The Contract shall take effect on the Commencement Date and shall expire automatically on (the date specified in the Specification) (

~~#####~~ 20) unless it is otherwise terminated in accordance with this Contract, or otherwise lawfully terminated.

A4.2 Solihull MBC may seek to extend the duration of the Contract in accordance with clause F7. During the extension, the obligations under the Contract shall continue (subject to any variation) until the expiry of the period specified in accordance with clause F7.

A5 Entire Agreement

A5.1 The Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this Clause shall not exclude liability in respect of any fraudulent misrepresentation.

A5.2 In the event of and only to the extent of any conflict between the body of the Contract, the Specification, Invitation to Tender, [Contractor's Tender] [and other documents referred to or attached to the Contract], the conflict shall be resolved in accordance with the following order of precedence:

VARIABLE TO BE SPECIFIED BY SOLIHULL MBC PRIOR TO CONTRACT AWARD

- (1) the body of the Contract shall prevail over;
- (2) the Schedules;
- (3) the Invitation to Tender;
- (4) the contractor's tender, and subsequent clarification;
- (5) any other document referred to in this Contract.

Unless expressly agreed, a document varied pursuant to Condition F3 shall not take higher precedence than specified here.

A6 Scope of Contract

A6.1 Nothing in the Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between Solihull MBC and the Contractor.

A7 Notices

A7.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.

A7.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), or by facsimile transmission or electronic mail. Such notice or communication shall be addressed to the other Party in the manner referred to in Clause A7.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 working days after the day on which the letter was posted, or four hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

A7.3 For the purposes of Clause A7.2 the address of each Party shall be:

- (a) For Solihull MBC:
Solihull MBC
Customer Services Directorate
Corporate Procurement Service
PO Box 18
Solihull
West Midlands. B91 9QS
For the attention of:
Tel: to be confirmed
Fax: to be confirmed
Email: to be confirmed

- (b) For the Contractor:
[]
[Address:]
[]
For the attention of:
Tel:
Fax:
Email:

A7.4 Either Party may change its address for service by serving a notice in accordance with this clause.

A8 Inspection of Premises

A8.1 Save as Solihull MBC may otherwise direct, the Contractor is deemed to have inspected the Premises before tendering and to have made appropriate enquiries so as to have understood the nature and extent of the Contract to be carried out and be satisfied

in relation to all matters connected with the performance of the Contract.

A8.2 Solihull MBC shall, at the request of the Contractor, grant such access as may be reasonable for the purpose referred to in Clause A8.1.

A9 Mistakes in Information

A9.1 The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to Solihull MBC by the Contractor in connection with the provision of the Goods and shall pay Solihull MBC any extra costs occasioned by any discrepancies, errors or omissions therein.

A10 Conflicts of Interest

A10.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any employee, servant, agent, supplier or sub-contractor is placed in a position where in the reasonable opinion of Solihull MBC there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or such persons and the duties owed to Solihull MBC under the provisions of the Contract. The Contractor will disclose to Solihull MBC full particulars of any such conflict of interest which may arise.

A10.2 The provisions of this clause shall apply during the continuance of this Contract and for a period of two years after its termination or expiry.

A11 Fraud

A11.1 The Contractor shall take all reasonable steps, in accordance with good industry practice, to prevent any fraudulent activity by the Staff, the Contractor (including its shareholders, members, directors) and/or any of the Contractor's suppliers in connection with the receipt of monies from Solihull MBC. The Contractor shall notify Solihull MBC immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

B. THE GOODS

B1 The Specification

B1.1 The quantity, quality and description of the Goods shall be as specified by Solihull MBC in the Specification.

B2 The Goods

B2.1 If required by Solihull MBC, samples of Goods shall be submitted by the Contractor to Solihull MBC for evaluation and approval at the Contractor's cost and expense and all subsequent deliveries of the Goods shall be equal in quality to or better than approved samples.

B2.2 The Goods shall be fully compatible with Solihull MBC's equipment.

B2.3 Solihull MBC relies on the skill and judgment of the Contractor in the supply of the Goods and the carrying out of all of the Contractor's obligations under this Contract.

B3 Delivery

- B3.1 The Goods shall be delivered at the times and dates specified in the Specification, or as instructed by Solihull MBC.
- B3.2 Unless otherwise stated in the Specification, where the Goods are delivered by the Contractor, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises in accordance with any requirements of B3.3. Where the Goods are collected by Solihull MBC, the point of delivery shall be when the Goods are loaded on Solihull MBC's vehicle.
- B3.3 Except where otherwise provided in the Contract, delivery shall include the unloading, stacking or installation of the Goods by the Staff or the Contractor's suppliers or carriers at such place as Solihull MBC or duly authorised person shall reasonably direct.
- B3.4 Where any access to Solihull MBC's Premises is necessary in connection with delivery or installation, the Contractor and the Contractor's sub-contractors or suppliers shall at all times comply with the reasonable requirements of Solihull MBC's security procedures.
- B3.5 Time of delivery shall be of the essence and failure to deliver within the time promised or specified shall enable Solihull MBC (at Solihull MBC's option) to release itself from any obligation to accept and pay for the Goods and/or cancel all or part of the Contract, in either case without prejudice to other rights and remedies.
- B3.6 Solihull MBC shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If Solihull MBC elects not to accept such over-delivered Goods it shall be entitled to give notice in writing to the Contractor to remove them within 7 days

of receipt by the Contractor of such notice and to refund to Solihull MBC any expenses incurred by Solihull MBC as a result of such over-delivery (including but not limited to the costs of moving and storing them) failing which Solihull MBC shall be entitled to dispose of such Goods and to charge the Contractor for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Contractor until they are collected by or on behalf of the Contractor or disposed of or purchased by Solihull MBC, as appropriate.

B3.7 Solihull MBC shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Specification.

B3.8 Unless expressly agreed to the contrary, Solihull MBC shall not be obliged to accept delivery by instalments. If, however, Solihull MBC does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to any other rights or remedies of Solihull MBC, entitle Solihull MBC to terminate the whole of any unfulfilled part of the Contract without further liability to Solihull MBC.

B3.9 If Solihull MBC is affected by circumstances of Force Majeure, Solihull MBC shall be entitled to suspend partially or totally the date or dates for delivery of the Goods until such time as the circumstances of Force Majeure have ceased and such suspension shall not give rise to any claim by the Contractor against Solihull MBC nor entitle the Contractor to terminate the Contract.

B4 Property and Risk

B4.1 Property and risk in the Goods shall without prejudice to any other rights or remedies of Solihull MBC (including Solihull MBC's rights

and remedies under Condition B6 hereof) pass to Solihull MBC at the time of acceptance of delivery.

B5 Damage in Transit

B5.1 On dispatch of any consignment of the Goods the Contractor shall send to Solihull MBC at the address for delivery of the Goods an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. Where the Goods are either damaged in transit or having been placed in transit fail to be delivered to Solihull MBC, Solihull MBC shall elect:

- (a) to reject the consignment; or
- (b) require the Contractor free of charge to Solihull MBC, to repair or replace the damaged Goods, and deliver the repaired or replaced Goods in accordance with the timescales specified in the Contract provided that:
 - (i) in the case of damage to such Goods in transit Solihull MBC shall within thirty days of delivery give notice to the Contractor that the Goods have been damaged;
 - (ii) in the case of non-delivery Solihull MBC shall (provided that Solihull MBC has been advised in writing of the dispatch of the Goods) within ten days of the notified date of delivery give notice to the Contractor that the Goods have not been delivered.

B6 Inspection, Rejection and Guarantee

B6.1 The Contractor shall permit Solihull MBC or authorised representatives to make any inspections or tests which may reasonably be required and the Contractor shall afford all reasonable facilities and assistance free of charge at the Contractor's premises. No failure to make complaint at the time of such inspection or tests and no approval given during or after such tests or inspections shall constitute a waiver by Solihull MBC of any rights or remedies in respect of the Goods and, in particular, Solihull MBC retains the right to reject the Goods.

B6.2 Solihull MBC may by written notice to the Contractor reject any of the Goods which fail to conform to the approved sample or fail to meet the Specification. Such notice shall be given within a reasonable time after delivery to Solihull MBC of the Goods concerned. If Solihull MBC shall reject any of the Goods pursuant to this Condition Solihull MBC shall be entitled (without prejudice to other rights and remedies) either:

- (a) to have the Goods concerned as quickly as possible and in any event within 7 days either repaired by the Contractor or (as Solihull MBC shall elect) replaced by the Contractor with Goods which conform in all respects with the approved sample or with the Specification and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or
- (b) to treat the Contract as discharged by the Contractor's breach and require a refund from the Contractor in respect of the Goods concerned together with payment of any additional expenditure over and above the price reasonably incurred by Solihull MBC in obtaining other goods in replacement.

- B6.3 The issue by Solihull MBC of a receipt note for the Goods shall not constitute any acknowledgement of the condition or nature of those Goods.
- B6.4 Unless agreed otherwise, the Contractor shall guarantee the Goods for the shorter of 12 months from putting into service or 18 months from delivery. If Solihull MBC shall within such guarantee period or within 30 days thereafter give notice in writing to the Contractor of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use, the Contractor shall (without prejudice to any other rights and remedies which Solihull MBC may have) as quickly as possible remedy such defects (whether by repair or replacement as Solihull MBC shall elect) without cost to Solihull MBC.
- B6.5 Any Goods rejected or returned by Solihull MBC as described in B6.2 shall be returned to the Contractor at the Contractor's risk and expense.

B7 Labelling and Packaging

- B7.1 The Goods shall be packed and marked in a proper manner and in accordance with Solihull MBC's instructions and any statutory requirements and any requirements of the carriers. In particular the Goods shall be marked with the order number (or other reference number if appropriate) and the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.
- B7.2 All packaging materials will be considered non-returnable and will be destroyed unless the Contractor's advice note states that such materials will be charged for unless returned. Such materials shall

be collected by the Contractor free of charge or delivered to the Contractor at the Contractor's cost. Solihull MBC accepts no liability in respect of the non-arrival at the Contractor's premises of empty packages returned by Solihull MBC unless the Contractor shall within ten days of receiving notice from Solihull MBC that the packages have been dispatched notify Solihull MBC of such non-arrival.

B8 Training

B8.1 Where indicated in the Specification, the Contract Price shall include the cost of instruction of Solihull MBC's personnel in the use and maintenance of the Goods, such instruction to be in accordance with the requirements of the Contract in accordance with the training specified in the Specification.

B9 Manner of Carrying out the Installation Work

B9.1 The Contractor shall make no delivery of materials, plant or other things nor commence any work on Solihull MBC's Premises without obtaining prior Approval.

B9.2 Access to Solihull MBC's Premises shall not be exclusive to the Contractor but shall be limited to such Staff and Contractor's suppliers as are necessary to enable the performance of the Contract concurrently with the execution of work by others. The Contractor shall co-operate with such others as Solihull MBC may reasonably require.

B9.3 Solihull MBC shall have the right at any time during the progress of the Contract to order in writing:

- (a) the removal from Solihull MBC's Premises of any materials which in the opinion of Solihull MBC are either hazardous, noxious or not in accordance with the Contract; and/or
- (b) the substitution of proper and suitable materials; and/or
- (c) the removal and proper re-execution notwithstanding any previous test thereof or interim payment therefor of any work or Goods which, in respect of material or workmanship, is not in the opinion of Solihull MBC in accordance with the Contract.

B9.4 On completion of the Contract the Contractor shall remove the Contractor's plant, equipment and unused materials and shall clear away from Solihull MBC's Premises all rubbish arising out of the Contract and leave Solihull MBC's Premises in a neat and tidy condition.

C PAYMENT AND CONTRACT PRICE

C1 Contract Price

C1.1 In consideration of the performance of the Contractor's obligations under the Contract by the Contractor, Solihull MBC shall pay the Contract Price in accordance with clause C2.

C1.2 In the event that the cost to the Contractor of performing its obligations under the Contract increases or decreases as a result of a change of Law within the scope of C6, the provisions of C6 shall apply.

C1.3 Solihull MBC shall, on the production of a valid Tax invoice, pay the Contractor, in addition to the Contract Price, a sum equal to the Tax

chargeable on the value of the Goods provided in accordance with the Contract.

C2 Payment and Tax

C2.1 Solihull MBC shall pay the undisputed sums due to the Contractor in cleared funds within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for works completed and goods supplied to the satisfaction of Solihull MBC.

C2.2 Each invoice shall contain all appropriate references and a detailed breakdown of the Goods and shall be supported by any other documentation required by the Contract Manager to substantiate the invoice.

C2.3 Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing the Contract, it shall cause a term to be included in such a sub-contract which requires payment to be made of undisputed sums by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the sub-contract requirements.

C2.4 Tax, where applicable, shall be shown separately on valid tax invoices as a strictly net extra charge.

C2.5 Solihull MBC may reduce or withhold payment in respect of any Goods which the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of Solihull MBC.

C2.6 The Contractor shall not suspend the supply of the Goods or related services unless the Contractor is entitled to terminate the Contract under H2.3 for failure to pay undisputed sums.

C3 Recovery of Sums Due

C3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to Solihull MBC in respect of any breach of this Contract), Solihull MBC may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Contract or under any other agreement or contract with Solihull MBC.

C3.2 Any overpayment by Solihull MBC to the Contractor, whether of the Contract Price or of Tax, shall be a sum of money recoverable by Solihull MBC from the Contractor under C3.1 above.

C3.3 The Contractor shall make any payments due to Solihull MBC without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by Solihull MBC to the Contractor.

C4 Price adjustment on extension of the Initial Term

C4.1 The Contract Price shall be firm for the Initial Term. In the event of an extension of the Initial Term being considered by Solihull MBC pursuant to clause F7, Solihull MBC will (as part of such consideration) review the Contract Price with the Contractor in the six months prior to the expiry of the Contract.

C4.2 If a Contract Price variation is agreed with Solihull MBC as part of its consideration relating to an extension of the Initial Term, the revised Contract Price will take effect from the first day of any extension of the Initial Term pursuant to F7 and shall remain firm for the period of extension of the Initial Term.

C4.3 Any increase in the Contract Price will only be considered if the increase does not exceed the percentage change in the Office of National Statistics' Consumer Prices Index (CPI) (or another such index specified in a Schedule to this Contract) between the Commencement Date and the date of the first date of any extension of the Initial Term.

C5 Euro

C5.1 Any legislative requirement to account for the Goods in euro (or to prepare for such accounting), instead of and/or in addition to sterling, shall be implemented by the Contractor at nil charge to Solihull MBC.

C5.2 Solihull MBC shall provide all reasonable assistance to facilitate such changes.

C6 Change of Law

C6.1 The Contractor shall neither be relieved of its obligations to supply the Goods in accordance with the terms of this Contract nor be entitled to an increase in the Contract Price as the result of:

- (a) a General Change in Law; or
- (b) a Specific Change in Law where the effect of that Specific Change in Law on the Goods is known at the Commencement Date.

C6.2 If a Specific Change in Law occurs or will occur during the Initial Term (other than those referred to in C6.1), the Contractor shall notify Solihull MBC of the likely effects of that change, including:

- (a) whether any Variation is required to the Goods, the Contract Price or this Contract; and
- (b) whether any relief from compliance with the Contractor's obligations is required, including any obligation to achieve any milestones or to meet any service level requirements at any time.

C6.3 As soon as practicable after any notification in accordance with C6.1 the Parties shall discuss and agree the matters referred to and any ways in which the Contractor can mitigate the effect of the Specific Change of Law, including:

- (a) providing evidence that the Contractor has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its subcontractors;
- (b) demonstrating that a foreseeable Specific Change in Law had been taken into account by the Contractor before it occurred;
- (c) giving evidence as to how the Specific Change in Law has affected the Contract Price; and
- (d) demonstrating that any expenditure that has been avoided has been taken into account in amending the Contract Price.

C6.4 Any increase in the Contract Price or relief from the Contractor's obligations agreed by the parties pursuant to C6 shall be implemented in accordance with F3.

D. STATUTORY OBLIGATIONS AND REGULATIONS

D1 Prevention of Corruption

D1.1 The Contractor shall not offer or give, or agree to give, to any employee, agent, servant or representative of Solihull MBC any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this Contract or any other contract with Solihull MBC, or for showing or refraining from showing favour or disfavour to any person in relation to this Contract or any such contract. The attention of the Contractor is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916.

D1.2 The Contractor shall not enter into this Contract if in connection with it commission has been paid or is agreed to be paid to any employee or representative of Solihull MBC by the Contractor or on the Contractor's behalf, unless before this Contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to Solihull MBC.

D1.3 Where the Contractor or Contractor's employees, servants, sub-contractors, suppliers or agents or anyone acting on the Contractor's behalf, engages in conduct prohibited by D1.1 or D1.2 in relation to this or any other contract with Solihull MBC, Solihull MBC has the right to:

- (a) terminate the Contract and recover from the Contractor the amount of any loss suffered by Solihull MBC resulting from the termination;
- (b) recover in full from the Contractor any other loss sustained by Solihull MBC in consequence of any such breach, whether or not the Contract has been terminated.

D1.4 In exercising its rights or remedies under this clause, Solihull MBC shall:

- (a) act in a reasonable and proportionate manner having regard to such matters as the gravity of the prohibited act and the identity of the person performing the prohibited act;
- (b) give all due consideration, where appropriate, to action other than termination of the Contract.

D2 Discrimination

D2.1 The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise).

D2.2 The Contractor shall take all reasonable steps to secure the observance of D2.1 by all servants, employees or agents of the Contractor and all suppliers and sub-contractors employed in the execution of the Contract.

D3 The Contracts (Rights of Third Parties) Act 1999

D3.1 No person who is not a Party to the Contract (including without limitation any employee, officer, agent, representative, or sub-contractor of either Solihull MBC or the Contractor) shall have any right to enforce any term of the Contract, which expressly or by implication, confers a benefit on him without the prior agreement in writing of both Parties, which agreement should specifically refer to D3. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act and does not apply to the Crown.

E PROTECTION OF INFORMATION

E1 Data Protection Act

E1.1 The Contractor shall (and shall procure that any of its Staff involved in the provision of this Contract) be registered under the Data Protection Act 1998 (“DPA”) and both Parties will duly observe all their obligations under the Act which arise in connection with the Contract.

E1.2 Notwithstanding the general obligation in E1.1, where the Contractor is processing personal data (as defined by the DPA) as a data processor for Solihull MBC (as defined by the DPA) the Contractor shall ensure that it has in place appropriate technical and organisational measures to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and

- i) provide Solihull MBC with such information as Solihull MBC may reasonably require to satisfy itself that the Contractor is complying with its obligations under the DPA;
- ii) promptly notify Solihull MBC of any breach of the security measures required to be put in place pursuant to E1.2; and
- iii) ensure that it does nothing knowingly or negligently which places Solihull MBC in breach of Solihull MBC's obligations under the DPA.

E1.3 The provisions of this clause shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

E2 Confidentiality

E2.1 Each Party:-

- (a) shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
- (b) shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Contract or except where disclosure is otherwise expressly permitted by the provisions of this Contract.

E2.2 The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from Solihull MBC under or in connection with the Contract:-

- (a) is given only to such of the Staff and professional advisors or consultants engaged to advise it in connection with the Contract as is strictly necessary for the performance of the Contract and only to the extent necessary for the performance of the Contract;
- (b) is treated as confidential and not disclosed (without prior Approval) or used by any Staff or such professional advisors or consultants otherwise than for the purposes of the Contract.

E2.3 Where it is considered necessary in the opinion of Solihull MBC, the Contractor shall and shall ensure that Staff or such professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with the Contract. The Contractor shall ensure that Staff or its professional advisors or consultants are aware of the Contractor's confidentiality obligations under this Contract.

E2.4 The Contractor shall not use any Confidential Information it receives from Client otherwise than for the purposes of the Contract.

E2.5 The provisions of E2.1 to E2.4 shall not apply to any Confidential Information received by one Party from the other:-

- (a) which is or becomes public knowledge (otherwise than by breach of this clause);
- (b) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;

- (c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- (d) is independently developed without access to the Confidential Information; or
- (e) which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to E3.

E2.6 Nothing in this clause shall prevent Solihull MBC:-

- (a) disclosing any Confidential Information for the purpose of:-
 - (i) the examination and certification of Solihull MBC's accounts; or
 - (ii) any examination by the Audit Commission or any other audit examination; or
- (b) disclosing any Confidential Information obtained from the Contractor:-
 - i) to any government department or any other Contracting Authority. All government departments or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which

is not part of any government department or any Contracting Authority; or

ii) to any person engaged in providing any services to Solihull MBC for any purpose relating to or ancillary to the Contract;

provided that in disclosing information under sub-paragraph (b) Solihull MBC discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

E2.7 Nothing in this clause shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

E3 Freedom of Information

E3.1 The Contractor acknowledges that Solihull MBC is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with Solihull MBC (at the Contractor's expense) to enable Solihull MBC to comply with these Information disclosure requirements.

E3.2 The Contractor shall and shall procure that its sub-contractors shall:

(a) transfer the Request for Information to Solihull MBC as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;

- (b) provide Solihull MBC with a copy of all Information in its possession or power in the form that Solihull MBC requires within five Working Days (or such other period as Solihull MBC may specify) of Solihull MBC requesting that Information; and
- (c) provide all necessary assistance as reasonably requested by Solihull MBC to enable Solihull MBC 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].

E3.3 Solihull MBC shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:

- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations;
- (b) is to be disclosed in response to a Request for Information, and in no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by Solihull MBC.

E3.4 The Contractor acknowledges that Solihull MBC may, acting in accordance with the Department for Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000, be obliged under the FOIA or the Environmental Information Regulations to disclose Information:-

- (a) without consulting with the Contractor, or

(b) following consultation with the Contractor and having taken its views into account.

E3.5 The Contractor shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit Solihull MBC to inspect such records as requested from time to time.

E3.6 The Contractor acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that Solihull MBC may nevertheless be obliged to disclose Confidential Information in accordance with E3.4.

E4 Publicity, Media and Official Enquiries

E4.1 Without prejudice to Solihull MBC's obligations under the FOIA, the Contractor shall not make any press announcements or publicise the Contract or any part thereof in any way, except with the written consent of the Client

E4.2 The Contractor shall take all reasonable steps to ensure the observance of the provisions of E4.1 by its servants, employees, sub-contractors, agents, professional advisors and consultants.

E4.3 The provisions of this clause shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

E5 Security

E5.1 Solihull MBC shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The Contractor shall comply with all reasonable security requirements of Solihull MBC while on the Premises, and shall

procure that all of its employees, agents, servants and sub-contractors shall likewise comply with such requirements.

E6 Contractor's Staff

E6.1 Solihull MBC reserves the right under this Contract to refuse to admit to, or to withdraw permission to remain on the Premises or other premises occupied by or on behalf of Solihull MBC:

- (a) any member of the Staff; or
- (b) any person employed or engaged by a sub-contractor, agent or servant of the Contractor

whose admission or continued presence would be, in the opinion of Solihull MBC, inappropriate.

E6.2 If and when directed by Solihull MBC, the Contractor shall provide a list of the names and addresses of all persons who it is expected may require admission in connection with the Contract to the Premises or any other premises occupied by or on behalf of Solihull MBC, specifying the capacities in which they are concerned with the Contract and giving such other particulars as Solihull MBC may reasonably require.

E6.3 The Contractor's Staff, engaged on the Premises or any other premises occupied by or behalf of Solihull MBC shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel.

E6.4 The decision of Solihull MBC as to whether any person is to be refused access to the Premises or any other premises occupied by

or on behalf of Solihull MBC and as to whether the Contractor has failed to comply with E6.2 shall be final and conclusive.

E7 Intellectual Property Rights

E7.1 All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:

- (a) furnished to or made available to the Contractor by Solihull MBC shall remain the property of Solihull MBC;
- (b) prepared by or for the Contractor for use, or intended use, in relation to the performance of this Contract shall belong to Solihull MBC,

and the Contractor shall not, and shall procure that the Contractor's employees, servants, agents, suppliers and sub-contractors shall not, (except when necessary for the implementation of the Contract) without prior Approval, use or disclose any such Intellectual Property Rights, or any other information (whether or not relevant to this Contract) which the Contractor may obtain in performing the Contract except information which is in the public domain.

E7.2 The Contractor shall obtain Approval before using any material, in relation to the performance of the Contract which is or may be subject to any third party Intellectual Property Rights. The Contractor shall procure that the owner of the rights grants to Solihull MBC a non-exclusive licence or, if itself a licensee of those rights, shall grant to Solihull MBC an authorised sub-licence, to use, reproduce, and maintain the material. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party providing services to Solihull MBC, and shall be granted at no cost to Solihull MBC.

E7.3 It is a condition of the Contract that the materials supplied or licensed by the Contractor will not infringe any Intellectual Property Rights of any third party and the Contractor shall during and after the Contract Period on written demand indemnify and shall keep indemnified Solihull MBC against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which Solihull MBC may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim refers to:

- (a) designs furnished by Solihull MBC;
- (b) the use of data supplied by Solihull MBC which is not required to be verified by the Contractor under any provision of the Contract.

E7.4 Solihull MBC shall notify the Contractor in writing of any claim or demand brought against Solihull MBC for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor.

E7.5 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Right in materials supplied or licensed by the Contractor, provided always that the Contractor:

- (a) shall consult Solihull MBC on all substantive issues which arise during the conduct of such litigation and negotiations;
- (b) shall take due and proper account of the interests of Solihull MBC; and
- (c) shall not settle or compromise any claim without Solihull MBC's prior written consent (not to be unreasonably withheld or delayed).

E7.6 Solihull MBC shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against Solihull MBC or the Contractor for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of the Contract and shall be repaid all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so.

E7.6 Solihull MBC shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by Solihull MBC or the Contractor in connection with the performance of the Contract.

E7.7 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be

made, the Contractor may at its own expense and subject to the consent of Solihull MBC (not to be unreasonably withheld or delayed) either:

- (a) modify any or all of the Goods without reducing the performance or functionality of the same, or substitute alternative Goods of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutates mutandis to such modified Goods or to the substitute Goods; or
- (b) procure a licence to use and provide the Goods, which are the subject of the alleged infringement, on terms which are acceptable to Solihull MBC.

E7.8 At the termination of the Contract the Contractor shall immediately return to Solihull MBC all materials, work or records held, including any back-up media.

E7.9 The provisions of this clause shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

E8 Audit and the Audit Commission

E8.1 The Contractor shall keep and maintain until twelve years after the Contract has been completed, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Goods provided under it, all expenditure reimbursed by Solihull MBC, and all payments made by Solihull MBC. The Contractor shall on request afford Solihull MBC or Solihull MBC's representatives such access to those records as may be required by Solihull MBC in connection with the Contract.

F. CONTROL OF THE CONTRACT

F1 Assignment and Sub-Contracting

F1.1 The Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Contractor of any obligation or duty attributable to the Contractor under the Contract.

F1.2 The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.

F1.3 Where Solihull MBC has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Contractor to Solihull MBC within 2 working days of issue.

F2 Waiver

F2.1 The failure of either Party to insist upon strict performance of any provision of the Contract or the failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Contract.

F2.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of A7.

F2.3 A waiver of any right or remedy arising from a breach of Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

F3 Variation

- F3.1 The Contractor shall not alter any of the Goods except with the Approval of Solihull MBC, but Solihull MBC shall have the right from time to time during the execution of the Contract, by written notice to the Contractor to change the Specification and add to or omit, or otherwise vary, the Goods including the order in which the Goods are to be delivered. Such a change is hereinafter called “a Variation”. The Contractor shall carry out such Variations and be bound by the same Conditions so far as is applicable, as though the said Variations were stated in the Contract.
- F3.2 In the event that the Contractor is unable within the timescale reasonably directed by Solihull MBC to carry out the Variation in accordance with F3.1 above, Solihull MBC may terminate the Contract and recover from the Contractor the amount of any loss suffered by Solihull MBC resulting from the termination.
- F3.3 In the event of any Variation of the Specification in accordance with F3.1 which would occasion an amendment to the Contract Price, such amendment to the Contract Price shall be calculated by the Contractor and submitted in writing to Solihull MBC for consideration and shall be such amount as properly and fairly reflects the nature and extent of the Variation in all the circumstances. Failing agreement the matter shall be determined by negotiation or mediation with I2.
- F3.4 If, in the opinion of the Contractor, any such Variation in accordance with F3.1 is likely to prevent the Contractor from fulfilling any of their obligations under the Contract, the Contractor shall notify Solihull MBC immediately, whereupon Solihull MBC shall inform the Contractor within 14 days whether or not the said Variations shall be

carried out. Until Solihull MBC confirms such instructions in writing they shall be deemed not to have been given.

F4 Severability

F4.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

F4.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

F5 Remedies in the event of inadequate performance

F5.1 Where a complaint is received about the quality of the Goods or about the way they have been delivered or about any other matter connected with the performance of this Contract, then the Contract Manager shall take all reasonable steps to ascertain whether the complaint is valid. If the Contract Manager so decides, he may uphold the complaint, or take further action in accordance with H2.

F5.2 In the event that the Contract Manger is of the opinion that there has been a material breach of this Contract by the Contractor, or the Contractor's performance of its duties under the Contract has failed to meet the requirements, then Solihull MBC Client may, without prejudice to its rights under H2 of the Contract, do any of the following:

- (a) make such deduction from the payment to be made to the Contractor as Solihull MBC shall reasonably determine to reflect sums paid or sums which would otherwise be payable in respect of such of the Goods as the Contractor shall have failed to provide;
- (b) without terminating the Contract, itself provide or procure the provision of part of the Goods until such time as the Contractor shall have demonstrated to the reasonable satisfaction of Solihull MBC that the Contractor will once more be able to provide such part of the Goods in accordance with the Contract;
- (c) without terminating the whole of the Contract, terminate the Contract in respect of part of the Goods only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself provide or procure a third party to provide such part of the Goods; and/or
- (d) Terminate, in accordance with H2, the whole of the Contract.

F5.3 Solihull MBC may charge to the Contractor any cost reasonably incurred by Solihull MBC and any reasonable administration costs in respect of the provision of any part of the Services by Solihull MBC or by a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services.

F5.4 If the Contractor fails to perform any of the Services to the reasonable satisfaction of Solihull MBC and such failure is capable of remedy, then Solihull MBC shall instruct the Contractor to perform the work and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure)

within 14 days or such other period of time as Solihull MBC may direct.

F5.5. In the event that:

- (a) the Contractor fails to comply with F5.4; or
- (b) the Contractor persistently fails to comply with F5.4, and such failures, taken as a whole, are materially adverse to the commercial interests of Solihull MBC;

Solihull MBC reserves the right to terminate the Contract by notice in writing with immediate effect.

F5.6 The remedies of Solihull MBC under this clause may be exercised successively in respect of any one or more failures by the Contractor.

F6 Remedies Cumulative

F6.1 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of this Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

F7 Possible Extension of Initial Term

F7.1 Subject to satisfactory performance by the Contractor during the Initial Term, Solihull MBC shall be entitled by written notice to the Contractor given not less than 6 months prior to the last day of the Initial Term to extend the Contract for a further period of up to (

). The provisions in this Contract will apply throughout any such extended period.

F8 Novation

F8.1 Subject to Condition F8.3, Solihull MBC shall be entitled to:

- (a) assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof to any Contracting Authority provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under this Contract; or
- (b) novate this Contract to any other body established by the Crown or under statute in order substantially to perform any of the functions that previously had been performed by Solihull MBC provided that any such novation shall not increase the burden of the Contractor's obligations pursuant to this Contract; or
- (c) novate this Contract to any private sector body which substantially performs the function of Solihull MBC provided that any such novation shall not increase the burden of the Contractor's obligations pursuant to this Contract.

F8.2 Any change in the legal status of Solihull MBC such that it ceases to be a Contracting Authority shall not, subject to F8.3, affect the validity of this Contract. In such circumstances, this Contract shall bind and inure to the benefit of any successor body to Solihull MBC.

F8.3 If the Contract is novated pursuant to F8.1(b) to a body which is not a Contracting Authority or if there is a change in the legal status of Solihull MBC such that it ceases to be a Contracting Authority (in the

remainder of this Condition both such bodies being referred to as “the Transferee”):

- (a) the rights of termination of Solihull MBC in H1 and H2 shall be available to the Contractor in the event of the bankruptcy, insolvency or Default of the Transferee;
- (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof with the prior consent in writing of the Contractor;
- (c) the following Clauses shall be varied from the date of the novation or the date of the change of status (as appropriate) as set out below as if the Contract had been amended by the Parties:
 - i) E8 ceases to be applicable in the event that the contract is novated to a private sector body

F8.4 Solihull MBC shall be entitled under any such novation to disclose any Confidential Information of the Contractor which relates to the performance of the Contract by the Contractor. In such circumstances Solihull MBC shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee accepts an obligation of confidence.

G LIABILITIES

G1 Indemnity and Insurance

G1.1 Neither Party excludes or limits liability to the other Party for death or personal injury caused by its negligence or for any breach of any obligations implied by Section 2 of the Sale of Goods Act 1979.

G1.2 The Contractor shall indemnify and keep indemnified Solihull MBC fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with the Contract including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor. This clause shall not apply to the extent that the Contractor is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or default, or the negligence or default of its staff or sub-contractors, or by any circumstances within its or their control.

G1.3 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of the Contract, including death or personal injury, loss of or damage to property or any other loss. Such in insurance policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor.

- G1.4 The Contractor shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement for the time being in force.
- G1.5 The Contractor shall produce to the Contract Manager, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- G1.6 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by this Contract Solihull MBC may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- G1.7 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in G1.2.

G2 Warranties and Representations

- G2.1 The Contractor warrants and represents that:-
- (a) the Contractor has the full capacity and authority and all necessary consents (including, but not limited to, where its procedures so require, the consent of its parent company) to enter into and perform this Contract and that this Contract is executed by a duly authorised representative of the Contractor;
 - (b) the Contractor shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to

good industry practice and (without limiting the generality of this Clause) in accordance with its own established internal procedures;

- (c) the Goods shall be to the reasonable satisfaction of Solihull MBC;
- (d) the Goods shall conform in all respects with any sample approved by Solihull MBC and in the absence of a sample, all Goods supplied shall be within the normal limits of industrial quality;
- (e) the Goods shall operate in accordance with the relevant technical specifications and shall correspond with the requirements of the Specification and with any particulars specified in this Contract;
- (f) the Goods shall conform in all respects with the requirements of any statutes, orders, regulations or bye-laws from time to time in force;
- (g) the Goods shall be free from defects in design, materials and workmanship and be fit and sufficient for all the purposes for which such Goods are ordinarily used and for any particular purpose made known to the Contractor by Solihull MBC;
- (h) all obligations of the Contractor pursuant to the Contract shall be performed and rendered by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
- (i) the Contractor is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or

requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Contract.

H DEFAULT, DISRUPTION AND TERMINATION

H1 Termination on change of control and insolvency

H1.1 Solihull MBC may terminate the Contract by notice in writing with immediate effect where:-

- (a) the Contractor undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, which impacts adversely and materially on the performance of the Contract; or

- (b) the Contractor is an individual or a firm and a petition is presented for the Contractor's bankruptcy, or a criminal bankruptcy order is made against the Contractor or any partner in the firm, or the Contractor or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Contractor's or firm's affairs; or

- (c) the Contractor is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or

by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or

- (d) where the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (e) or any similar event occurs under the law of any other jurisdiction within the United Kingdom.

H1.2 Solihull MBC may only exercise its right under H1.1(a) within six months after a change of control occurs and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs. The Contractor shall notify the Contract Manager immediately when any change of control occurs.

H1.3 If the Contractor, being an individual, shall die or be adjudged incapable of managing his or her affairs within the meaning of Part VII of the Mental Health Act 1983, Solihull MBC shall be entitled to terminate this Contract by notice to the Contractor or the Contractor's Representative with immediate effect.

H2 Termination on Default

H2.1 Solihull MBC may terminate the Contract, or terminate the provision of any part of the Contract by written notice to the Contractor or the Contractor's Representative with immediate effect if the Contractor commits a Default and if:

- (a) the Contractor has not remedied the Default to the satisfaction of Solihull MBC within 30 days, or such other period as may be specified by Solihull MBC, after issue of a written notice specifying the Default and requesting it to be remedied; or

(b) the Default is not capable of remedy; or

(c) the Default is a fundamental breach of the Contract.

H2.2 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall provide a full credit in respect of any charge levied for its transmission and shall reimburse Solihull MBC for any costs charged in connection with such Default of the Contractor.

H2.3 The Contractor may terminate this Contract if Solihull MBC is in material breach of its obligations to pay undisputed charges by giving Solihull MBC 90 days notice specifying the breach and requiring its remedy. The Contractor's right of termination under H2.3 shall not apply to non payment of the Contract Price where such non payment is due to Solihull MBC exercising its rights under C3.1.

H3 Break

Solihull MBC shall have the right to terminate the Contract, or to terminate the provision of any part of the Contract at any time by giving three Months' written notice to the Contractor. Solihull MBC may extend the period of notice at any time before it expires.

H4 Consequences of Termination

H4.1 Where Solihull MBC terminates the Contract under H2 or H.5.4, or terminates the provision of any part of the Contract, and then makes other arrangements for the provision of Goods Solihull MBC shall be entitled to recover from the Contractor the cost reasonably incurred

of making those other arrangements and any additional expenditure incurred by Solihull MBC throughout the remainder of the Initial Term. Where the Contract is terminated under H2 or H.5.4, no further payments shall be payable by Solihull MBC to the Contractor until Solihull MBC has established the final cost of making those other arrangements.

H4.2 Where Solihull MBC terminates the Contract under H3, Solihull MBC shall indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Contractor shall reduce its unavoidable costs by any insurance sums available. The Contractor shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under H3.

H4.3 Solihull MBC shall not be liable under H4.2 to pay any sum which:

- (a) was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
- (b) when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the Contract had not been terminated prior to the expiry of the Initial Term.

H5 Disruption

H5.1 The Contractor shall take reasonable care to ensure that in the execution of the Contract it does not disrupt the operations of Solihull MBC, its employees or any other contractor employed by Solihull MBC.

H5.2 The Contractor shall immediately inform Solihull MBC of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.

H5.3 In the event of industrial action by the Staff or the Contractor's suppliers the Contractor shall seek Solihull MBC's Approval to its proposals to perform its obligations under the Contract.

H5.4 If the Contractor's proposals referred to in H5.3 are considered insufficient or unacceptable by Solihull MBC, then the Contract may be terminated by Solihull MBC by notice in writing with immediate effect.

H5.5 If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of Solihull MBC, an appropriate allowance by way of extension of time will be approved by Solihull MBC. In addition, Solihull MBC will reimburse any additional expense incurred by the Contractor in fulfilling the provisions of the Contract as a result of such disruption.

H6 Recovery upon Termination

H6.1 Termination or expiry of the Contract shall be without prejudice to any rights and remedies of the Contractor and Solihull MBC accrued

before such termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry.

H6.2 At the end of the Initial Term (and howsoever arising) the Contractor shall forthwith deliver to Solihull MBC upon request all Solihull MBC's Property (including but not limited to materials, documents, information, access keys) relating to the Contract in its possession or under its control or in the possession or under the control of any permitted suppliers or sub-contractors and in default of compliance Solihull MBC may recover possession thereof and the Contractor grants a licence to Solihull MBC or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or sub-contractors where any such items may be held.

H6.3 At the end of the Initial Term (howsoever arising) and/ or after the Initial Term the Contractor shall co-operate free of charge with Solihull MBC and any new contractor appointed by Solihull MBC to continue or take over the performance of the Contract in order to ensure an effective handover of all work then in progress.

H6.4 The provisions of this clause shall survive the continuance of this Contract and indefinitely after its termination.

H7 Force Majeure

H7.1 For the purpose of this Condition, "Force Majeure" means any event or occurrence which is outside the reasonable control of the Party concerned, and which is not attributable to any act or failure to take preventative action by the Party concerned, including (but not limited to) governmental regulations, fire, flood, or any disaster. It does not

include any industrial action occurring within the Contractor's organisation or within any sub-contractor's organisation.

H7.2 Neither Party shall be liable to the other Party for any delay in or failure to perform its obligations under the Contract (other than a payment of money) if such delay or failure results from a Force Majeure event. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such Force Majeure event. However, if any such event prevents either Party from performing all of its obligations under the Contract for a period in excess of 6 months, either Party may terminate the Contract by notice in writing with immediate effect.

H7.3 Any failure or delay by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Contractor.

H7.4 H7 does not affect Solihull MBC's rights under H6.4.

H7.5 If either of the Parties becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part as described in H7.3 it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.

H7.6 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay

of performance of the Contract shall be any event qualifying for Force Majeure hereunder.

I DISPUTE RESOLUTION AND LAW

I1 Governing Law

I1.1 This Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the jurisdiction of the courts of England and Wales.

I2 Dispute Resolution

I2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 30 days of either Party notifying the other of the dispute such efforts shall involve the escalation of the dispute to the appropriate director of each Party.

I2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other party to do any act.

I2.3 If the dispute cannot be resolved by the Parties pursuant to I2.1 the dispute shall be referred to mediation pursuant to the procedure set out in I2.5 unless (a) Solihull MBC considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.

I2.4 The performance of the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the

Contractor (or employee, agent, supplier or sub-contractor) shall comply fully with the requirements of the Contract at all times.

12.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

- (a) A neutral adviser or mediator (“the Mediator”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 14 days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 14 days from the date of the proposal to appoint a Mediator or within 14 days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (“CEDR”) to appoint a Mediator.
- (b) The Parties shall within 14 days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.
- (c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- (d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives.

- (e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.
- (f) If the Parties fail to reach agreement in the structured negotiations within 60 days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in I2.6

I2.6 Subject to I2.2, the Parties shall not institute court proceedings until the procedures set out in I2.3 and I2.5 have been completed save that:

- (a) Solihull MBC may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with the provisions of I2.7.
- (b) if the Contractor intends to commence court proceedings, it shall serve written notice on Solihull MBC of its intentions and Solihull MBC shall have 21 days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with the provisions of I2.7.
- (c) the Contractor may request by notice in writing to Solihull MBC that any dispute be referred and resolved by arbitration

in accordance with the provisions of I2.7, to which Solihull MBC may in its discretion consent as it sees fit.

I2.7 In the event that any arbitration proceedings are commenced pursuant to I2.6, the following provisions shall apply:

- (a) the arbitration shall be governed by the provisions of the Arbitration Act 1996;
- (b) Solihull MBC shall give a written notice of arbitration to the Contractor (“the Arbitration Notice”) stating:
 - (i) that the dispute is referred to arbitration; and
 - (ii) providing details of the issues to be resolved;
- (c) the London Court of International Arbitration (“LCIA”) procedural rules in force at the date that the dispute was referred to arbitration in accordance with I2.7 (b) shall be applied and are deemed to be incorporated by reference to this Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- (d) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- (e) if the Parties fail to agree the appointment of the arbitrator within 10 (ten) days of the Arbitration Notice being issued by Solihull MBC under I2.7 (b) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;

- (f) the arbitration proceedings shall take place in London and in the English language; and
- (g) the arbitration proceedings shall be governed by, and interpretations made in accordance with, English law.

IN WITNESS of which this Agreement has been duly executed by the parties.

SIGNED for and on behalf of

SIGNED for and on behalf of

Solihull MBC

[Contractor]

Signature.....

Signature.....

Name:

Name.....

Position:

Position.....

Date.....

Date.....

SPECIFICATION SCHEDULE

[insert specifications as appropriate]

PRICING SCHEDULE

[insert pricing provisions as appropriate]

COMMERCIALLY SENSITIVE INFORMATION SCHEDULE

[insert commercially sensitive information as appropriate]