

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:

“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 ##### 20 .

“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 the 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 being 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 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 an invitation for contractors to submit tenders for the supply of the Goods required by Solihull MBC.

“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 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.

“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 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.

A2 Contractor’s obligations

A2.1 The Contractor shall perform its obligations under the Contract.

A3 Notices

A3.1 Any notice or other communication which is to be given by either Party to the other shall be sent to:

- (a) For Solihull MBC: Corporate Procurement Service, PO Box 18, Council House, Solihull, West Midlands. B91 9QS
For the attention of:

Tel: to be confirmed
Fax: 0121 704 6081
Email: to be confirmed

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

A4 Mistakes in Information

- A4.1 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.

A5 Fraud

- A5.1 The Contractor shall safeguard Solihull MBC's funding of the Contract against fraud generally and, in particular, fraud on the part of the Staff, or the Contractor's directors and suppliers. 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 execution of the 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 deemed to have taken place following fulfilment 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 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.

B3.5 Solihull MBC shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered.

B3.6 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.

B3.7 Unless expressly agreed to the contrary, Solihull MBC shall not be obliged to accept delivery by instalments.

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 B6 hereof) pass to Solihull MBC at the time of acceptance of delivery.

B5 Damage in Transit

B5.1 Where the Goods are either damaged in transit or fail to be delivered, Solihull MBC shall elect to reject the consignment or require the Contractor free of charge to Solihull MBC, to repair or replace the damaged Goods within agreed timescales.

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, Solihull MBC retains the right to reject the Goods.

B6.2 Solihull MBC may by written notice within a reasonable time reject any of the Goods which fail to conform to the approved sample or fail to meet the Specification. If Solihull MBC shall reject any of the Goods Solihull MBC shall be entitled either:

- (a) to have the Goods concerned either repaired or replaced as quickly as possible and in any event within 7 days; 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.

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 all statutory requirements and any requirements of the carriers.

B7.2 All packaging materials will be considered non-returnable unless specifically agreed otherwise.

B8 Manner of Carrying out the Installation Work

B8.1 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.

B8.2 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 of any work or Goods which is not in the opinion of Solihull MBC in accordance with the Contract.

B8.3 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 Solihull MBC shall pay the Contract Price in addition to any sum equal to the Tax chargeable on the value of the Goods.

C2 Payment and Tax

C2.1 Solihull MBC shall pay the undisputed sums due to the Contractor within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for 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 Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

C2.4 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.

C2.5 The Contractor shall not suspend the supply of the Goods or related services unless the Contractor is entitled to terminate the Contract for failure to pay undisputed charges.

C3 Recovery of Sums Due

C3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Contractor, 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.

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.

C4 Price adjustment on extension of the Contract Period

C4.1 In the event of an extension being considered beyond the Contract Period Solihull MBC will review the Contract Price with the Contractor prior to the expiry of the Contract.

C4.3 Any claim for an 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).

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 who 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.

C6.4 Any increase in the Contract Price or relief from the Contractor's obligations agreed by the parties pursuant to a General Change in Law or a Specific Change in Law 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 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 this D3.

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.

E1.3 These provisions 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.

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.

E4 Publicity, Media and Official Enquiries

E4.1 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 Solihull MBC.

E4.2 These provisions shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

E5 Contractor's Staff

E5.1 Solihull MBC reserves the right under this Contract to refuse admission to or to withdraw permission to remain on the Premises or other premises occupied by or on behalf of the Client:

- (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.

E5.2 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 Intellectual Property Rights

E6.1 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.

E6.2 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.

E6.3 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.

E6.4 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.

E6.5 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.

E6.6 The provisions of this Condition shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

E9 Audit and the Audit Commission

E9.1 The Contractor shall keep and maintain until six 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.

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 A3.

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 of the Requirement

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. 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, 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 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 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 may, without prejudice to its rights under H2, 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 Condition 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 Goods 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 Goods.

F5.4 If the Contractor fails to provide any of the Goods 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 Condition may be exercised successively in respect of any one or more failures by the Contractor.

F6 Possible Extension of Contract Period

F6.1 Subject to satisfactory performance by the Contractor, Solihull MBC may wish to extend the Contract for a further period as detailed. Solihull MBC may approach the Contractor if it wishes to do so before the end of the Contract Period. The terms of this Contract will apply throughout any such extended period.

F7 Novation

F7.1 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.

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 insurance policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor.

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 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.

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.

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 H5, 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 of making those other arrangements and any additional expenditure incurred by Solihull MBC throughout the remainder of the Contract. Where the Contract is terminated under H2 or H5 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.

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. In such an event the Contractor shall seek Solihull MBC's Approval to its proposals to perform its obligations under the Contract.

H5.3 If the Contractor's proposals referred to in H5.2 are considered insufficient or unacceptable by Solihull MBC, then the Contract may be terminated by Solihull MBC by notice in writing with immediate effect.

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 Contract (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 with this Clause 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 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.
- 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 3 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 If either of the Parties becomes aware of circumstances of Force Majeure 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.

I DISPUTES 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 (or equivalent) of each Party.

I2.2 If the dispute cannot be resolved by the Parties pursuant to I2.1 the dispute shall be referred to mediation unless (a) Solihull MBC considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.

I2.3 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.

I2.4 The Parties shall not institute court proceedings until the procedure set out in I2.3 has been completed.

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

SIGNED for and on behalf of
[Authority]

SIGNED for and on behalf of
[Contractor]

Signature.....

Signature.....

Name:

Name.....

Position:

Position.....

Date.....

Date.....

SPECIFICATION SCHEDULE
[insert specifications as appropriate]

PRICING SCHEDULE

[insert pricing provisions as appropriate]