

Terms and Conditions of Contracts for Services

Dated [20]

SOLIHULL METROPOLITAN BOROUGH COUNCIL (MBC)

-and-

(2) [THE CONTRACTOR]

AGREEMENT

relating to

[.....]

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BETWEEN

- (1) **SOLIHULL METROPOLITAN BOROUGH COUNCIL** of **P O BOX 18 COUNCIL HOUSE SOLIHULL B91 3QS** (“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) The Authority and the Contractor have agreed that the Contractor shall provide and the Authority 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 these 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 (#####).

“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, Services, 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 the 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 the Parties.

“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 part of 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(2) 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 services of the same or a similar nature to the supply of the Services.

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

“Invitation to Tender” means an invitation for Contractors to bid for the Services 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 Services are to be performed, as specified in the Specification.

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

“Replacement Contractor” means any third party service provider appointed by Solihull MBC from time to time, to provide any services which are substantially similar to any of the Services, and which Solihull MBC receives in substitution for any of the Services following the termination or partial termination of this Contract,

whether those services 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.

“Services” means the services to be provided as specified in the Specification.

“Specification” means the description of the Services 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 services of the same or a similar nature to the supply of the Services.

“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 Initial Term

A2.1 The Contract shall take effect on (the Commencement date) and shall expire automatically on the specified date unless it is otherwise terminated in accordance with this Contract, or otherwise lawfully terminated, or extended under F8.

A3 Contractor’s Status (Principal)

A3.1 In carrying out the Services the Contractor shall be acting as principal and not as the agent of Solihull MBC.

A3.2 Accordingly:

- (a) the Contractor shall not (and shall procure that the Staff do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of Solihull MBC; and
- (b) nothing in this Contract shall impose any liability on Solihull MBC in respect of any liability incurred by the Contractor to any other person but this shall not be taken to exclude or limit any liability of Solihull MBC to the Contractor that may arise by virtue of either a breach of the Contract or by negligence on the part of Solihull MBC, its employees, servants or agents.

A4 Solihull MBC's Obligations

Solihull MBC shall perform its obligations under the contract in accordance with these conditions.

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 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:

- (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 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 the Client and the Contractor.

A7 Notices

A7.1 Any notice or other communication which is to be given by either Party to the other shall be sent to:

(a) For Solihull Corporate Procurement Service, P O 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:

A8 Mistakes in Information

A8.1 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 Services and shall pay Solihull MBC any extra costs occasioned by any discrepancies, errors or omissions therein.

A9 Fraud

A9.1 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. PROVISION OF THE SERVICES

B1 The Services

B1.1 The Contractor shall provide the Services during the Contract Period in accordance with Solihull MBC's requirements as set out in the Specification and the terms of this Contract. Solihull MBC shall have the power to inspect and examine the performance of the Services at Solihull MBC's Premises at any reasonable time or, provided that Solihull MBC gives reasonable notice to the Contractor, at any other premises where any part of the Services is being performed.

B1.2 In providing the Services, the Contractor shall comply with and take into account all applicable laws, enactments, orders, regulations and other similar instruments, the requirements of any court with relevant jurisdiction and any local, national or supranational agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union.

B1.3 If Solihull MBC informs the Contractor that Solihull MBC considers that any part of the Services do not meet the requirements of the Contract or differ in any way from those requirements, and this is other than as a result of default or negligence on the part of Solihull MBC, the Contractor shall at its own expense re-schedule and perform the work correctly within such reasonable time as may be specified by Solihull MBC.

B1.4 Timely provision of the Services shall be of the essence of the Contract, including in relation to commencing the provision of the Services within the time agreed or on a specified date.

B1.5 Without prejudice to any other rights and remedies Solihull MBC may have pursuant to the Contract, the Contractor shall reimburse Solihull MBC for all reasonable costs incurred by Solihull MBC which have arisen as a direct consequence of the Contractor's delay in the performance of the Contract which the Contractor has failed to remedy after being given reasonable notice by Solihull MBC.

B2 Manner of Carrying Out the Services

B2.1 The Contractor shall provide all the Equipment necessary for the provision of the Services.

B2.2 The Contractor shall make no delivery of Equipment nor commence any work on Solihull MBC's Premises without obtaining Solihull MBC's prior Approval.

- B2.3 The Contractor shall maintain all items of Equipment within Solihull MBC's Premises in a safe, serviceable and clean condition.
- B2.4 All Equipment shall be at the risk of the Contractor and Solihull MBC shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the negligence or default of Solihull MBC.
- B2.5 Solihull MBC shall have the power at any time during the progress of the Services to order in writing that the Contractor:
- (a) remove from Solihull MBC's Premises any Equipment which in the opinion of Solihull MBC is either hazardous, noxious or not in accordance with the Contract; and/or
 - (b) substitute proper and suitable materials, plant, equipment.
- B2.6 On completion of the Services the Contractor shall remove the Equipment and unused materials and shall clear away from Solihull MBC's Premises all rubbish arising out of the Services, make good any damage caused to Solihull MBC's Premises by the removal of the Equipment and leave Solihull MBC's Premises in a neat and tidy condition.

B3 Standard of Work

- B3.1 If the standard of work has not been specified in the Contract the Contractor shall use the best applicable techniques and standards and execute the Contract with all reasonable care, skill and diligence, and in accordance with good industry practice.
- B3.2 The Contractor warrants and represents that all Staff assigned to the performance of the Service shall possess and exercise such qualifications, skill and experience as are necessary for the proper performance of the Services.
- B3.3 The introduction of new methods or systems which impinge on the provision of the Services shall be subject to prior Approval.

B4 Key Personnel

- B4.1 Key Personnel shall not be released from providing the Services without the agreement of Solihull MBC, except by reason of long-term sickness, termination of employment and other extenuating circumstances.

B4.2 Any replacements to the Key Personnel shall be subject to the agreement of Solihull MBC. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

B5 Contractor's Staff

B5.1 Solihull MBC reserves the right under this Contract to refuse to admit to, or to withdraw permission to remain on, any 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, undesirable.

B5.2 The decision of Solihull MBC as to whether any person is to be refused access to any premises occupied by or on behalf of Solihull MBC and as to whether the Contractor has failed to comply with B5.1 shall be final and conclusive.

B5.3 The Contractor shall bear the cost of any notice, instruction or decision of Solihull MBC under this clause.

B6 Inspection of Premises

B6.1 The Contractor is deemed to have inspected the Premises before tendering 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.

B7 Licence to occupy Solihull MBC's Premises

B7.1 Any land or Premises (including temporary buildings) made available to the Contractor by Solihull MBC in connection with the Contract, shall be made available to the Contractor free of charge and shall be used by the Contractor solely for the purpose of performing the Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.

B7.2 The Contractor shall not use Solihull MBC's Premises for any purpose or activity other than the provision of the Services unless given prior Approval.

- B7.3 The Contractor and Contractor's employees, servants, agents, suppliers or sub-contractors shall observe and comply with such rules and regulations and requirements including security arrangements, as may be in force at any time for the use of such Premises as determined by Solihull MBC, and pay for the cost of making good any damage caused by the Contractor, his employees, servants, agents, suppliers or sub-contractors other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- B7.4 The Parties agree that there is no intention on the part of Solihull MBC to create a tenancy of whatsoever nature in favour of the Contractor or its employees, servants, agents, suppliers or sub-contractors and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Contract, Solihull MBC retains the right at any time to use in any manner Solihull MBC sees fit any premises owned or occupied by it.

B8 Solihull MBC Property

- B8.1 Where Solihull MBC for the purpose of the Contract issues Client Property free of charge to the Contractor such Property shall be and remain the property of Solihull MBC. The Contractor shall not in any circumstances have a lien on Solihull MBC Property and the Contractor shall take all reasonable steps to ensure that the title of Solihull MBC to such Client Property and the exclusion of any such lien are brought to the notice of all sub-contractors and other persons dealing with the Contract.
- B8.2 Any Client Property made available or otherwise received by the Contractor shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies Solihull MBC otherwise within seven days of receipt.
- B8.3 The Contractor shall maintain all Client Property in good order and condition and shall use Client Property solely in connection with the Contract and for no other purpose without prior Approval.
- B8.4 The Contractor shall notify the Contract Manager of any surplus Client Property remaining after completion of the Contract and shall dispose of it as Solihull MBC may direct. Waste of such Client Property arising from bad workmanship or negligence of the Contractor or any of the Contractor's employees, servants, agents, suppliers or sub-contractors shall be made good at the Contractor's expense. Without prejudice to any other rights of Solihull MBC, the Contractor shall deliver up Client Property whether processed or not to Solihull MBC on demand.

B8.5 The Contractor shall ensure the security of all Client Property, whilst in the Contractor's possession, either on its premises or elsewhere during the performance of the Contract, in accordance with Solihull MBC's reasonable security requirements as required from time to time.

B8.6 The Contractor shall be liable for any and all loss of or damage to any Client Property, unless the Contractor is able to demonstrate that such loss or damage was caused by the negligence or default of Solihull MBC. The Contractor's liability set out in this Clause shall be reduced to the extent that such loss or damage was contributed to by the negligence or default of Solihull MBC. The Contractor shall inform the Contract Manager within [7] days of becoming aware of any defects appearing in or losses or damage occurring to Client Property made available for the purposes of the Contract.

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 Services.

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 services supplied to the satisfaction of Solihull MBC.

C2.2 Each invoice shall contain all appropriate references and a detailed breakdown of the Services 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 valid tax invoices as a strictly net extra charge.

C2.4 Solihull MBC may reduce or withhold payment in respect of any Services 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 Services unless the Contractor is entitled to terminate the Contract under H2.3 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 of the Initial Term being considered Solihull MBC will review the Contract Price charges with the Contractor prior to the expiry of the Contract.
- C4.2 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 services 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 Services in accordance with the terms of this Contract nor be entitled to an increase in the charges 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 Services is known at the Commencement Date.

C6.2 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 Clauses 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; or
- (b) recover in full from the Contractor any other loss sustained by Solihull MBC in consequence of any breach of this Condition, whether or not the Contract has been terminated.

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

- (a) act in a reasonable and proportionate manner having regard to such matters as the gravity of, 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 Condition 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.
- E1.2 The provisions of this Condition 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 Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), 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 Security of Confidential Information

E4.1 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the performance of the Contract, the Contractor undertakes to maintain security systems approved by Solihull MBC.

E4.2 The Contractor will immediately notify Solihull MBC of any breach of security in relation to Confidential Information and all data obtained in the performance of the Contract and will keep a record of such breaches. The Contractor will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Contractor's obligations under Condition E3. The Contractor will co-operate with Solihull MBC in any investigation that Solihull MBC considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.

E5 Publicity, Media and Official Enquiries

E5.1 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.

E5.2 The provisions of this clause shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

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 Services 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 keep indemnified Solihull MBC and the Crown against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which Solihull MBC or the Crown may suffer or incur as a result of or in connection with any breach of this Condition, except where any such claim relates 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 Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply with any necessary changes to such modified Services or to the substitute Services; or

- (b) procure a licence to use and provide the Services, 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 clause shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

E7 Audit and the Audit Commission

E7.1 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 Services 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 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 of the Services

F3.1 The Contractor shall not alter any of the Services except with the Approval of Solihull MBC, but Solihull MBC shall have the right on giving reasonable written notice from time to time to require changes to the Services (whether by way of the removal of Services, the addition of new Services, or increasing or decreasing the Services or specifying the order in which the Services are to be performed or the locations where the Services are to be provided) for any reasons whatsoever. Such a change is hereinafter called "a Variation".

F3.2 Any such Variation shall be communicated in writing by the Contract Manager to the Contractor's Representative in accordance with the notice provisions of A7. All Variations shall be in the form of an addendum to the Contract.

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.

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 standard of Services 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 the provisions of F5.2 to F5.6 of this Contract.

F5.2 In the event that Solihull MBC 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 Condition 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 Services as the Contractor shall have failed to provide;
- (b) without terminating the Contract, itself provide or procure the provision of part of the Services 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 perform such part of the Services in accordance with the Contract;
- (c) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services 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 Services; 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 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 Clause F5.4. above; or
 - (b) the Contractor persistently fails to comply with Clause F5.4 above, 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 Monitoring of Contract Performance

- F6.1 The Contractor shall comply with the monitoring arrangements set out in the specification including provision of such data and information as the Contractor may be required to produce under this Contract.

F7 Possible Extension of Initial Term

- F7.1 Subject to satisfactory performance by the Contractor during the Contract Period, 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 provisions in this Contract will apply throughout any such extended period.

F8 Novation

- F8.1 Subject to Clause 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 F9.3, 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 F9.1(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 clause 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 previous 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) E7 ceases to be applicable in the event that the contract is novated to a private sector body;

F8.4 Solihull MBC shall be entitled to disclose to any Transferee 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 Supply of Goods and Services Act 1982.
- 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. Where appropriate 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.
- 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 Condition 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 clause G1.2.

G2 Professional Indemnity

G2.1 The Contractor shall hold and maintain professional indemnity insurance cover and shall ensure that all professional consultants involved in the provision of the Services hold and maintain appropriate cover. Such insurance to be held by the Contractor or by any agent, sub-contractor or consultant involved in the provision of Services with a limit of indemnity of not less than £2m for any occurrences arising out of each and every event. Such insurance shall be maintained for a minimum of 12 twelve years following the expiration or earlier termination of this Contract.

G3 Warranties and Representations

G3.1 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 Condition) in accordance with its own established internal procedures;
- (c) 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;
- (d) 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 clause 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.

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 this Clause H2.3 shall not apply to non payment of the charges where such non payment is due to Solihull MBC exercising its rights under Clause C3.1.

H3 Break

H3.1 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 H5.4, or terminates the provision of any part of the Contract under that Condition, and then makes other arrangements for the provision of Services, 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 Initial Term. Where the Contract is terminated under H2 or H5.4, 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 Contract Period.

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 with this Clause Solihull MBC may recover possession thereof and the Contractor grants 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 condition 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 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 (or equivalent) of each Party.

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

- 12.3 If the dispute cannot be resolved by the Parties pursuant to Clause 12.1 the dispute shall be referred to mediation pursuant to the procedure set out in 12.5 unless (a) Solihull MBC considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.
- 12.4 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 Clause 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 12.7 (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

[**Authority**]

[**Contractor**]

Signature.....

Signature.....

Name:

Name.....

Position:

Position.....

Date.....

Date.....

SPECIFICATION SCHEDULE
[insert specifications as appropriate]

PRICING SCHEDULE

[insert pricing provisions as appropriate]

MONITORING SCHEDULE
[insert monitoring provisions as appropriate]

COMMERCIALLY SENSITIVE INFORMATION SCHEDULE
[insert commercially sensitive information schedule as appropriate]