

**LEEDS CITY COUNCIL**

**GENERAL CONDITIONS OF CONTRACT**

**PROVISION OF CONSULTANCY SERVICES**

**SCHEME TITLE: REDEVELOPMENT OF LEEDS KIRKGATE MARKETS  
PROJECT**

**SCHEME ID:LCC23600**

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## 1. Definitions and Interpretations

1.1. In these Conditions and the other documents incorporated with and forming part of the Contract the following words have the meanings hereinafter respectively assigned to them:

- (i) "Agreement" means this agreement, comprising the clauses hereto, the Council's Invitation to Tender incorporating the Council's Specification, and the Consultant's Proposal which have been incorporated into and form part of this Agreement;
- (ii) "Authority Data" means:
  - (a). The data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
    - (i) Supplied to the Consultant by or on behalf of the Council; or
    - (ii) Which the Consultant is required to generate, process, store or transmit pursuant to this Agreement; or
  - (b). Any Personal Data for which the Council is the Data Controller;
- (iii) "BCDR Plan" means any Business Continuity and Disaster Recovery plan as may be amended from time to time;
- (iv) "Charges" means the charges due to the Consultant for the supply of the Services;
- (v) "Confidential Information" means information, the disclosure of which would constitute an actionable breach of confidence, which has either 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 commercially sensitive information, 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 and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998;
- (vi) "Consultant" shall mean the other Party(s) to this Agreement;
- (vii) "Contract Period" shall mean the period referred to in Clause 2.2;

- (viii) "Council" shall mean Leeds City Council;
- (ix) "Council's Nominated Bank" means the bank used by the Council for the issuing of its Purchasing Cards;
- (x) "Council's Specification" means the statement of requirements issued by the Council in respect of the Services;
- (xi) "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 this Agreement and in respect of which such Party is liable to the other;
- (xii) "Environmental Information Regulations" means the Environmental Information Regulations 2004;
- (xiii) "FOIA" means the Freedom of Information Act 2000 and any subordinate legislation guidance and/or codes of practice made or issued under this Act from time to time;
- (xiv) "Information" has the meaning given under section 84 of the Freedom of Information Act 2000;
- (xv) "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;
- (xvi) "Key Personnel" means the members of the Consultant's Staff who are to be utilised in the performance of the Services;
- (xvii) "Level 3 Line Item Detail" provides details of the Order item by item, splitting out the VAT element which eliminates the need for obtaining receipts or invoices;
- (xviii) "Parent Company" means any company which is the ultimate Holding Company of the Consultant or any other company of which the ultimate Holding Company of the Consultant is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the Consultant or which is engaged in the same or similar business to the Consultant. The term "Holding Company" shall have the meaning ascribed by Section 736 of the Companies Act 1985 or any statutory re-enactment or amendment thereto;

- (xix) "Party" means a Party to this Agreement and "Parties" shall be construed accordingly;
- (xx) "Premises" means any premises/site where the Services are to be delivered;
- (xxi) "Proposal" means the Consultant's Proposal, in response to the Invitation to Tender;
- (xxii) "Purchasing Card" means a Visa card which works in a similar way to a company charge card;
- (xxiii) "Replacement Consultant" means any third party service provider of Replacement Services appointed by the Council from time to time;
- (xxiv) "Representative" means a representative of the Council or the Consultant as appropriate appointed for the purpose of co-ordinating the preparation and performance of this Agreement;
- (xxv) "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;
- (xxvi) "Security Policy" means the Council's security policy [annexed to schedule X (Security Requirements and Plan)] as updated from time to time;
- (xxvii) "Services" means the Services to be supplied by the Consultant under this Agreement in accordance with the Invitation to Tender;
- (xxviii) "Staff" means all persons employed by the Consultant to perform the Services under this Agreement together with the Consultant's servants, agents and Sub-Contractors used in the performance of this Agreement;
- (xxix) "Sub-Contract" means any contract or proposed contract between the Consultant and any third party:-

in respect of the Services;

and/or the terms "Sub-Contractor" and "Sub-Contracting" shall be similarly construed

- 1.2. As used in this Agreement the masculine includes the feminine and neuter and the singular includes the plural and vice versa.
- 1.3. A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment,

order, regulation or instrument or as contained in any subsequent re-enactment thereof.

- 1.4. A reference to any document other than as specified in Clause 1.3 shall be construed as a reference to the document as at the date of execution of this Agreement.
- 1.5. Each Party shall comply with any express obligation in this Agreement to comply with any document statute, enactment, order, regulation or other similar instrument that is referenced in this Agreement.
- 1.6. Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.
- 1.7. Except as otherwise expressly provided in this Agreement, all remedies available to the Consultant or to the Council for Default under this Agreement are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not exclude the exercise of any other remedy.
- 1.8. Neither Party shall be liable for any Default of its obligations under the Agreement to the extent that such Default is caused by a failure or delay by the other Party in performing its obligations under this Agreement provided and to the extent that the affected Party notifies the other Party of such failure or delay within thirty (30) days of the affected Party becoming aware of its occurrence and of its likely impact.

## **2. Scope of this Agreement**

- 2.1. This Agreement governs the overall relationship of the Parties with respect to the provision of the Services.
- 2.2. This Agreement shall take effect on the date specified in the Invitation to Tender hereof and, subject to the rights of termination contained herein, shall expire on the date specified in the Invitation to Tender.

## **3. Key Personnel**

- 3.1. If so requested the Consultant shall provide to the Council the details of Key Personnel that are to be utilised in the performance of the Services to be provided such details shall include but are not limited to specific fields of expertise, qualifications and experience.
- 3.2. In the event that the Consultant replaces Key Personnel the Consultant shall notify the Council immediately of such replacement such notice shall include details of the replacement's specific fields of expertise, qualifications and experience.
- 3.3. Upon receipt of such notification as referred to in Clause 3.2 the Council shall notify the Consultant of either its consent to such replacement of Key

Personnel or of its right to terminate this Agreement in accordance with Clause 11.3.

#### **4. Intellectual Property Rights**

- 4.1. 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 Consultant by the Council shall remain the property of the Council;
  - (b). prepared by or for the Consultant for use, or intended use, in relation to the performance of the Agreement shall belong to the Council and the Consultant shall not, and shall procure that the Consultant's employees, servants, agents, suppliers and Sub-Contractors shall not, (except when necessary for the implementation of the Agreement) without prior approval from the Council, use or disclose any such Intellectual Property Rights, or any other information (whether or not relevant to the Agreement) which the Consultant may obtain in performing this Agreement except information which is in the public domain.
- 4.2. The Consultant shall obtain approval from the Council before using any material, in relation to the performance of this Agreement which is or may be subject to any third party Intellectual Property Rights. The Consultant shall procure that the owner of the rights grants to the Council a non-exclusive licence, or if itself a licensee of those rights, shall grant to the Council 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 Consultant or to any other third party providing services to the Council, and shall be granted at no cost to the Council.
- 4.3. It is a condition of this Agreement that the Services will not infringe any Intellectual Property Rights of any third part and the Consultant shall during and after the Contract Period on written demand indemnify and keep indemnified the Council against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Council may suffer or incur as a result of or in connection with any breach of this Clause 5, except where any such claim relates to:
- (a). designs furnished by the Council;
  - (b). the use of data supplied by the Council which is not required to be verified by the Consultant under any provision of this Agreement.

- 4.4. The Council shall notify the Consultant in writing of any claim or demand brought against the Council for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Consultant. The Consultant shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Consultant, provided always that the Consultant:
- (a). shall consult with the Council on all substantive issues which arise during the conduct of such litigation and negligence;
  - (b). shall take due and proper account of the interests of the Council; and
  - (c). shall not settle or compromise any claim without the Council's prior written consent (not to be unreasonably withheld or delayed).
- 4.5. The Council shall at the request of the Consultant afford to the Consultant all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Council or the Consultant for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of this Agreement and shall be repaid all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. Such costs and expenses shall not be repaid where they are incurred in relation to a claims, demand or action which relates to the matters in Clause 5.3(a) and (b).
- 4.6. The Council shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Council or the Consultant in connection with the performance of this Agreement.
- 4.7. If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Agreement or in the reasonable opinion of the Consultant is likely to be made, the Consultant may at its own expense and subject to the consent of the Council (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 alleged infringement, provided that the terms herein shall apply with any necessary changes to such modified Services or to the substitute Services;
  - (b). procure a licence to use and provide the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Council.



- 4.8. At the termination of this Agreement the Consultant shall immediately return to the Council all materials, work or records held, including any back-up media.
- 4.9. The provisions of this Clause 4 shall apply during the continuance of this Agreement and indefinitely after its expiry or termination.

## **5. Care and Diligence**

- 5.1. To the extent that the standard of work has not been specified in this Agreement the Consultant shall use the best applicable techniques and standards and perform the Services with all reasonable care, skill and diligence, and in accordance with good industry practice.
- 5.2. The Consultant warrants and represents that all Staff assigned to the performance of the Services shall possess and exercise such qualifications, skill and experience as are necessary for the proper performance of the Services.

## **6. Charges and Purchasing Cards**

- 6.1. In consideration of the supply of Services in accordance with the terms of this Agreement, the Council shall pay the Charges in accordance with the following provisions of this Clause 6.
- 6.2. During the period referred to in Clause 2.2 of this Agreement the Council will seek to negotiate price changes annually on the anniversary of entering into the Agreement but will, through best endeavours, be looking for a 4% price reduction year on year. The Council will work with the supplier to identify areas where efficiencies and improvements can be made in all aspects of delivery of this contract. Ultimately, any price changes must be agreed by both parties.
- 6.3. The Charges are exclusive of Value Added Tax. The Council shall pay the Value Added Tax on the Charges at the rate and in the manner prescribed by law, from time to time.
- 6.4. Purchasing Cards are the Council's preferred method of payment. It is the Council's policy that all suppliers with a turnover of over £100k are Purchasing Card enabled to Level 3 Line Item Detail. Where Purchasing Cards are used payments shall be made within four (4) working days of completion of the Order directly from the Council's Nominated Bank. Only under exceptional circumstances will payment to suppliers be made by other methods of payment.
- 6.5. We expect Consultants to become Purchasing Card enabled within 6 weeks of entering into this Agreement. This will be extended to a maximum of 3 months where Consultants have complex IT systems and can demonstrate that progress is being made. If the Consultant fails to become Purchasing Card enabled within this time the Council reserves the right to suspend the supplier until such time that they have become Purchasing Card enabled.

- 6.6. For the avoidance of doubt, if after six (6) months from the commencement date of this Agreement the Consultant has failed to become Purchasing Card enabled to Level 3 Line Item Detail, the Council reserves the right to terminate this Agreement and the Consultant will be liable for any additional costs incurred by the Council in setting up alternative arrangements. Alternatively the Council reserves the right to charge £12 for each transaction taking place after this time with the Consultant that is not via Purchasing Cards. This figure is the additional cost incurred by the Council by having to process payments through methods other than Purchasing Cards.
- 6.7. Where the Consultant has indicated that it will accept Purchasing Cards either through the submission of a pre-qualification questionnaire or tender the amount charged to the card shall be no more than the rates tendered by the Consultant. For the avoidance of doubt the Consultant shall not be allowed to include any administration fee in the amount charged to the Council that the Purchasing Card company charge the Consultant for accepting payment by Purchasing Card.
- 6.8. Where the Consultant has indicated that it will accept Purchasing Cards refusal to do so will constitute a material breach of this Agreement and the Council may seek to terminate this Agreement in accordance with Clause 11.2 below.
- 6.9. Where Purchasing Cards are not to be used, payment shall be made within thirty (30) days of receipt by the Council (at its nominated address for invoices) of a valid invoice, from the Consultant.
- 6.10. If the Consultant, in accordance with terms of this Agreement, enters into any supply contract or Sub-Contract in connection with this Agreement, the Consultant shall ensure that such contract shall contain a term requiring all sums due to the Sub-Contractor to be paid by the Consultant within a specified period. Such period shall not exceed thirty (30) days and shall commence from the receipt by the Consultant of a valid invoice as defined by the terms of the supply contract or Sub-Contract (as appropriate)

## **7. Legislative Change**

- 7.1. The Consultant shall bear the cost of complying with all such statutes, enactments, orders, regulations or other similar instruments as are relevant to this Agreement and any amendments thereto except that where any such amendment necessitates a change to a Service and provided that such amendment could not have reasonably been foreseen by the Consultant at the date hereof the Parties shall enter good faith negotiations to make such adjustments to the Charges as may be necessary to compensate the Consultant for such additional costs as are both reasonably and necessarily incurred by the Consultant in accommodating such amendments.

## **8. Audit and the Audit Commission**

- 8.1. The Consultant shall keep and maintain until 12 years after this Agreement has been completed, or as long a period as may be agreed between the Council and the Consultant, full and accurate records of this Agreement including the Services provided under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Consultant shall on request afford the Council's auditor (whether internal or external) such access to those records as may be required by the Council's auditor in connection with this Agreement.
- 8.2. The Council may, not more than [twice in any Contract Year] conduct audits for the purpose of reviewing the integrity, confidentiality and security of the Authority Data.

## **9. Limitation of Liability**

### **9.1. Limitation of Liability:**

9.1.1. Neither Party excludes or limits liability to the other Party for death or personal injury or any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

9.1.2. Subject always to Clause 9.1.1, and notwithstanding any other provision contained herein, the total liability of the Consultant (whether under contract, tort or statutory provision) arising out of or in connection with this Agreement shall in no circumstances exceed five million (£5,000,000) pounds in respect of any one incident or series of related incidents and ten million (£10,000,000) pounds in the aggregate for any or all incidents (whether related or not) arising during the period of the Agreement.

9.2. Subject always to Clause 9.1.1, in no event shall either Party be liable to the other for:

9.2.1. indirect or consequential loss or damage; and/or

9.2.2. loss of profits, business, revenue, goodwill or anticipated savings.

9.3. The provisions of Clause 9.2 shall not be taken as limiting the right of either Party to claim from the other Party for:

9.3.1. additional operational and administrative costs and expenses; and/or

9.3.2. any costs or expenses rendered worthless;

resulting directly from the Default of the other Party.

- 9.4. The Parties expressly agree that neither Party shall be entitled to an order for specific performance to enforce any provision hereunder.
- 9.5. The Parties expressly agree that should any limitation or provision contained in this Clause 9 be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if any Party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.

## **10. Confidentiality and Security of Confidential Information**

### 10.1. 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 this Agreement or except where disclosure is otherwise expressly permitted by the provisions of this Agreement.

### 10.2. The Consultant shall take all necessary precautions to ensure that all Confidential Information obtained from the Council under or in connection with this Agreement:-

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

### 10.3. Where it is considered necessary in the opinion of the Council, the Consultant shall ensure that the Consultant's Staff or such professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with this Agreement.

### 10.4. The Consultant shall not use any Confidential Information received otherwise than for the purposes of this Agreement.

### 10.5. The provisions of Clauses 10.1 to 10.4 shall not apply to any Confidential Information received by one Party from the other:-

- (a). which is or becomes public knowledge (otherwise than by breach of this Clause 10); or
- (b). which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party; or
- (c). which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
- (d). is independently developed without access to the Confidential Information; or
- (e). which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, or the Environmental Information Regulations pursuant to Condition 46 (Freedom of Information); or
- (f). where the receiving Party is the Council and the Confidential Information is or is related to an item of business at a meeting of the Council or of any committee, sub-committee or joint committee of the Council or is or is related to an executive decision and it is not reasonably practicable for that item of business to be transacted or for that executive decision to be made without reference to the Confidential Information PROVIDED THAT where the Confidential Information is exempt information within the meaning of section 101 of the Local Government Act 1972 (as amended) the Council shall consider properly whether or not to exercise its powers under Part V of that Act or (in the case of executive decisions) under the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 as amended to prevent the disclosure of that Confidential Information and in so doing shall give due weight to the interests of the Consultant and where reasonably practicable shall consider any representations made by the Consultant.

10.6. Nothing in this Clause 10 shall prevent the Council:-

disclosing any Confidential Information for the purpose of:-

- (a). the auditing examination and certification of the Council's accounts; or
- (b). disclosing any Confidential Information obtained from the Consultant:-

- (i) to any department, office or agency of the Crown or to any regulatory authority or body; or
    - (ii) to any person engaged in providing any services to the Council for any purpose relating to or ancillary to the Agreement;
  - (c). provided that in disclosing information under sub-paragraph (b)(i) or (ii) the Council discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence.
- 10.7. Nothing in this Clause 10 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.
- 10.8. In the event that the Consultant fails to comply with this Clause 10, the Council reserves the right to terminate the Agreement by notice in writing with immediate effect.
- 10.9. The Consultant shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Council or its licensors, including:

10.9.1. Software;

10.9.2. the Authority Data;

## **11. Termination**

- 11.1. The Council may at any time by notice in writing terminate this Agreement as from the date of service of such notice if:
- 11.1.1. any of the circumstances detailed in Clause 20.1 or Clause 21.5 arise; or
  - 11.1.2. there is a change of control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, in the Consultant or its Parent Company provided that the Council shall only be permitted to exercise its rights pursuant to this Clause 11.1.2 for six (6) months after each such change of control and shall not be permitted to exercise such rights where the Council has agreed in advance in writing to the particular change of control and such change of control takes place as proposed; or
  - 11.1.3. the Consultant, being a company, passes a resolution, or the Court makes an order that the Consultant or its Parent Company be wound up otherwise than for the purpose of a bona fide reconstruction or amalgamation, or a receiver, manager or

administrator on behalf of a creditor is appointed in respect of the business or any part thereof of the Consultant or the Parent Company, or circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court otherwise than for the purpose of a bona fide reconstruction or amalgamation to make a winding-up order, or the Consultant or its Parent Company is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 (except where the claim is made under Section 123, 1(a) and is for an amount of not less than ten thousand pounds (£10,000)) or any similar event occurs under the law of any other jurisdiction; or

11.1.4. the Consultant, being an individual, or where the Consultant is a firm, any partner or partners in that firm who together are able to exercise direct or indirect control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, shall at any time become bankrupt or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or appears unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of Section 268 of the Insolvency Act 1986 or he shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985 as amended by the Bankruptcy (Scotland) Act 1993 or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors, or any similar event occurs under the law of any other jurisdiction.

11.1.5. the Consultant, being an individual, or where the Consultant is a firm, any partner or partners in that firm who together are able to exercise direct or indirect control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, shall at any time be convicted of any of the following offences:

(a). fraud, where the offence relates to fraud affecting the financial interests of the Council, within the meaning of –

(i) the offence of cheating the Revenue;

(ii) the offence of conspiracy to defraud;

(iii) fraud or theft within the meaning of the Theft Act 1968, the Theft Act 1978 and the Social Security Administration Act 1992;

(iv) fraudulent trading within the meaning of section 458 of the Companies Act 1985;

- (v) defrauding the Customs within the meaning of the Customs and Excise Management Act 1979 and the Value Added Tax Act 1994;
  - (vi) an offence in connection with taxation in the European Community within the meaning of section 71 of the Criminal Justice Act 1993; or
  - (vii) destroying, defacing or concealing of documents or procuring the extension of a valuable security within the meaning of section 20 of the Theft Act 1968;
- (b). money laundering within the meaning of the Money Laundering Regulations 2003; or
  - (c). any other offence within the meaning of Article 45(1) of the Public Sector Directive as defined by the national law of any relevant State.

11.2. Without prejudice to Clause 11.1, the Council may at any time by notice in writing terminate this Agreement forthwith, if the Consultant is in material Default of any obligation under this Agreement and:

11.2.1. the material Default is capable of remedy and the Consultant shall have failed to remedy the material Default within 14 days of written notice to the Consultant specifying the material Default and requiring its remedy; or

11.2.2. the material Default is not capable of remedy.

11.3. The Council shall have the right to terminate this Agreement by serving one month's written notice if the Consultant changes the Key Personnel with Key Personnel who in the Council's opinion do not have the qualifications, expertise and experience to be utilised in the performance of this Agreement.

## **12. Consequences of Termination**

12.1. The termination or expiry of this Agreement shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party.

12.2. In the event of any termination of this Agreement pursuant to Clause 11.1 or Clause 11.2 the Council shall, in respect of any Non-Discharged Orders, be entitled without prejudice to the Council's other rights and remedies, to:

12.2.1. obtain a refund of any Charges paid by the Council in respect of any Services which have not been performed by the Consultant in accordance with the terms of the Non-Discharged Order.



12.3. In the event of the termination of this Agreement by the Council, the provisions of this Clause and Clauses 9, 10, 12, 13, 20 and 32 and the provisions of any Schedules attached hereto shall survive the termination of this Agreement by the Council.

12.4. In the event of termination or expiry, the Consultant shall cease to use the Authority Data and, at the direction of the Council:

12.4.1. Provide the Council and/or the Replacement Consultant with a complete and uncorrupted version of the Authority Data in electronic form in a format and on media agreed with the Council and/or the Replacement Consultant; and

12.4.2. On the earlier of the receipt of the Council's written instructions or twelve (12) months after the date of expiry or termination, destroy all copies of the Authority Data;

### **13. Recovery of Sums Due**

13.1. If any sum of money shall be due from the Consultant, the same may be deducted from any sum then due or which at any time thereafter may become due to the Consultant under this Agreement or any agreement with the Council.

### **14. Progress Reports**

14.1. Where a progress report, or other information pertaining to the progress of the performance of either Party of its obligations under this Agreement, is submitted in connection with this Agreement, the submission, receipt and acceptance of such a report, or other information, shall not prejudice the rights of either Party under this Agreement.

### **15. Health and Safety**

15.1. The Consultant shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of this Agreement. The Council shall promptly notify the Consultant of any health and safety hazards which it becomes aware of at the Council's Premises created by the Consultant in the performance of this Agreement. Where the Council notifies the Consultant of such a health and safety hazard the Consultant shall remove the hazard and make safe the Premises at the Consultant's expense.

15.2. While on the Council's Premises, the Consultant shall comply with any health and safety measures implemented by the Council in respect of Staff and other persons working on those Premises.

15.3. The Consultant shall notify the Council immediately in the event of any incident occurring in the performance of the Agreement on the Council's

Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

- 15.4. The Consultant shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to the Consultant's Staff and other persons working on the Premises in the performance of this Agreement.
- 15.5. The Consultant shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Council on request.

## **16. Data Protection Act**

- 16.1. The Consultant shall (and shall procure that any of its Staff involved in the provision of this Agreement) comply with any notification requirements under the Data Protection Act 1998 ("DPA") and both Parties to this Agreement will observe all their obligations under the DPA which arise in connection with this Agreement.
- 16.2. Notwithstanding the general obligation as referred to in Clause 16.1, where the Consultant is processing personal data (as defined by the DPA) as a data processor for the Council (as defined by the DPA) the Consultant shall ensure that it has in place appropriate technical and organisational measures to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and
  - (a). process personal data only in accordance with the Council's instructions;
  - (b). act only in accordance with the Council's instructions;
  - (c). provide the Council with such information as the Council may reasonably require to satisfy itself that the Consultant is complying with its obligations under the DPA;
  - (d). promptly notify the Council of any requests for disclosure of or access to the personal data;
  - (e). promptly notify the Council of any breach of the security measures required to be put in place pursuant to Clause 16.2; and
  - (f). ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the DPA.

16.3. The Consultant is only authorised to disclose such personal data as is necessary to provide the Services or as may be required by law.

## **17. Authority Data**

17.1. The Consultant shall not delete or remove any proprietary notices contained within or relating to the Authority Data.

17.2. The Consultant shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Consultant of its obligations under this Agreement or as otherwise expressly authorised in writing by the Council.

17.3. To the extent that Authority Data is held and/or processed by the Consultant, the Consultant shall supply that Authority Data to the Council as requested by the Council in the format specified in this Agreement.

17.4. Upon receipt or creation by the Consultant of any Authority Data and during any collection, processing, storage and transmission by the Consultant of any Authority Data, the Consultant shall take all precautions necessary to preserve the integrity of the Authority Data and to prevent any corruption or loss of the Authority Data.

17.5. The Consultant shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the BCDR Plan. The Consultant shall ensure that such back-ups are available to the Council at all times upon request and are delivered to the Council at no less than [insert period] monthly intervals.

17.6. The Consultant shall ensure that any system on which the Consultant holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy.

17.7. If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Consultant's Default so as to be unusable, the Council may:

17.7.1. Require the Consultant (at the Consultant's expense) to restore or procure the restoration of the Authority Data and the Consultant shall do so as soon as practicable but not later than [insert period]; and/or

17.7.2. itself restore or procure the restoration of the Authority Data, and shall be repaid by the Consultant any reasonable expenses incurred in doing so.

17.8. If at any time the Consultant suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Consultant shall notify the Council immediately and inform the Council of the remedial action the Consultant proposes to take.

## **18. Publicity**

- 18.1. Except with the written consent of the other Party, such consent not to be unreasonably withheld or delayed, neither Party shall make any press announcements or publicise this Agreement in any way.
- 18.2. Both Parties shall take all reasonable steps to ensure the observance of the provisions of Clause 18.1 by all their servants, employees, agents and consultants. The Consultant shall take all reasonable steps to ensure the observance of the provisions of Clause 18.1 by its Sub-Contractors.
- 18.3. Notwithstanding the provisions of Clause 18.1, the Council shall be entitled to publicise this Agreement in accordance with any legal obligation upon the Council, including any examination of this Agreement by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

## **19. Fraud**

- 19.1. The Consultant must take all reasonable steps including all preliminary enquiries and investigations to prevent the risk of fraud to the Council. Where such preliminary actions suggest the possibility of fraud or other irregularity affecting the resources of the Council the Consultant shall immediately inform the Council.

## **20. Corrupt Gifts and Payments of Commission**

- 20.1. If the Consultant or any person employed by or acting for the Consultant (whether with the Consultant's knowledge or not) has either:
  - 20.1.1. offered given or agreed to give any gift or consideration to any person in order to encourage or reward them for:
    - (a). doing or avoiding to do anything; or
    - (b). having previously done or avoided doing anything; or
    - (c). showing or avoiding to show favour or disfavour to any person;relating to securing or executing this Agreement or any other agreement with the Council; or
  - 20.1.2. paid or agreed to pay any commission to any person employed by the Council or acting on its behalf and has not disclosed the particulars of that commission or agreement to the Council before entering this Agreement; or
  - 20.1.3. committed any offence under the Bribery Act 2010 in relation to any agreement with the Council; or

20.1.4. given any fee or reward to any person which it is an offence under Section 117(2) of the Local Government Act 1972 to receive;

then the Council may immediately terminate this Agreement or any relevant Order by notice in writing to the Consultant in accordance with Clause 26.

20.2. If any of the circumstances in Clause 20.1 apply, the Council can recover from the Consultant the value of any gift, consideration or commission.

20.3. Cancellation of this Agreement under Clause 20.1 will not prejudice or affect any right of action or remedy which has or may accrue to the Council.

20.4. The Council's decision will be final and conclusive if there is any dispute or question about:

20.4.1. the interpretation of this Clause 20 (except where this relates to the amount the Council may recover from the Consultant for loss as a result of cancelling the Contract); or

20.4.2. the Council's right to terminate under Clause 20.1; or

20.4.3. the amount or value of any gift, consideration or commission.

## **21. Consultant's Staff**

21.1. The Council reserves the right under this Agreement to refuse to admit to any Premises occupied by or on behalf of the Council any Staff employed or engaged by the Consultant, or by a Sub-Contractor, whose admission would be, in the opinion of the Council, undesirable.

21.2. If and when directed by the Council, the Consultant shall provide a list of the names of all Staff who it is expected may require admission in connection with the performance of this Agreement to any Premises occupied by or on behalf of the Council, specifying the capacities in which they are concerned with this Agreement and giving such other particulars as the Council may reasonably require.

21.3. The Consultant's Staff, engaged within the boundaries of any of the Council Premises, 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 Staff when at such Premises and when outside such Premises.

21.4. The decision of the Council as to whether any Staff is to be refused admission to any Premises occupied by or on behalf of the Council and as to whether the Consultant has failed to comply with Clause 21.1 shall be final and conclusive.

21.5. If the Consultant shall fail to comply with Clause 21.2 or if the Consultant does not comply with the provisions of Clause 21.2 within a reasonable time of

written notice so to do then the Council may terminate this Agreement in accordance with Clause 11.1.1 provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

- 21.6. The Parties agree that during the term of the Agreement and for a period of six (6) months thereafter, they will not, whether directly or indirectly, procure the services of any of the other Party's employees or contractors directly engaged in the performance of this Agreement without the prior written agreement of the other. This Clause 21.6 shall not restrict either Party from appointing any person, whether employee or contractor of the other or not, who has applied in response to an advertisement properly and publicly placed in the normal course of business.

## **22. Discrimination**

- 22.1. The Consultant shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Consultant shall not unlawfully discriminate within the meaning and scope of the Sex Discrimination Act 1975, the Equal Pay Acts 1970 and 1983, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Human Rights Act 1998 or other relevant legislation, or any statutory modification or re-enactment thereof.
- 22.2. The Consultant shall take all reasonable steps to ensure the observance of the provisions of Clause 22.1 by all servants, employees, agents and consultants of the Consultant and all Sub-Contractors.
- 22.3. The Consultant and any Sub-Contractor shall adopt a policy to comply with its statutory obligations under the Race Relations Act 1976 and, accordingly, will not discriminate directly or indirectly against any person because of their colour, race, nationality or ethnic origin in relation to decisions to recruit, train, promote, discipline or dismiss employees.

## **23. Force Majeure**

- 23.1. For the purposes of this Agreement the expression "Force Majeure" shall mean any cause affecting the performance by a Party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof) governmental regulations, fire, flood, or any disaster or an industrial dispute affecting a third party for which a substitute third party is not reasonably available. Any act, event, omission, happening or non-happening will only be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions by the affected Party, its agents or employees.

- 23.2. For the avoidance of doubt, both Parties agree that any acts, events, omissions, happenings or non-happenings resulting from the adoption of the Euro by the United Kingdom government shall not be considered to constitute Force Majeure under this Agreement.
- 23.3. Neither Party shall in any circumstances be liable to the other for any loss of any kind whatsoever including but not limited to any damages or abatement of Charges whether directly or indirectly caused to or incurred by the other Party by reason of any failure or delay in the performance of its obligations hereunder which is due to Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform, or resume performance of, such obligations hereunder for the duration of such Force Majeure event.
- 23.4. If either of the Parties shall become 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 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.
- 23.5. It is expressly agreed that any failure by the Consultant to perform or any delay by the Consultant in performing its obligations under this Agreement which results from any failure or delay in the performance of its obligations by any person, firm or company with which the Consultant shall have entered into any contract, supply arrangement or Sub-Contract or otherwise shall be regarded as a failure or delay due to Force Majeure only in the event that such person firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or Sub-Contract or otherwise as a result of circumstances of Force Majeure.
- 23.6. For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay shall be any event qualifying for Force Majeure hereunder.

#### **24. Transfer and Sub-Contracting**

- 24.1. This Agreement is personal to the Consultant. The Consultant shall not assign, novate, Sub-Contract or otherwise dispose of this Agreement or any part thereof without the previous consent in writing of the Council such consent not to be unreasonably withheld.
- 24.2. Notwithstanding any Sub-Contracting permitted hereunder, the Consultant shall remain primarily responsible for the acts and omissions of its Sub-Contractors as though they were its own.
- 24.3. Subject to Clause 24.5, the Council shall be entitled to:
- 24.3.1. assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof to any contracting authority (as defined in Regulation 4(2) of the Public Contracts

(Work, Services and Supply) (Amendment) Regulations 2000) (a "Contracting Authority"); or

24.3.2. novate this Agreement to any other body (including but not limited to any private sector body) which substantially performs any of the functions that previously had been performed by the Council;

provided that where such assignment, novation or other disposal increases the burden of the Consultant's obligations pursuant to this Agreement, the Consultant shall be entitled to such additional Charges as may be agreed between the Parties to compensate for such additional burdens.

24.4. Any change in the legal status of the Council such that it ceases to be a Contracting Authority shall not, subject to Clause 24.5, affect the validity of this Agreement. In such circumstances, this Agreement shall be binding on any successor body to the Council.

24.5. If this Agreement is novated to a body which is not a Contracting Authority pursuant to Clause 25.3.2 or if a successor body which is not a Contracting Authority becomes the Council pursuant to Clause 24.4 (in the remainder of this Clause 25 both such bodies are referred to as the "Transferee"):

24.5.1. the rights of termination of the Council in Clauses 11.1.2, 11.1.3 and 11.2 shall be available, mutatis mutandis, to the Consultant in the event of the bankruptcy, insolvency or Default of the Transferee;

24.5.2. the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof with the previous consent in writing of the Consultant;

24.5.3. the rights acquired by the Transferee relating to the use of the specially written software shall not extend beyond the activities previously performed by the Council and, in particular, the Transferee shall not be entitled to perform any service bureau or facilities management services utilising the specially written software for any third party;

24.5.4. the rights of the Council under Clause 23 shall cease; and

24.6. The Council shall be entitled to disclose to any Transferee any Confidential Information of the Consultant which relates to the performance of the Services by the Consultant. In such circumstances the Council shall authorise the transferee to use such Confidential Information only for purposes relating to the performance of the Services and for no other purposes and, for the avoidance of doubt, the Transferee shall be bound by the confidentiality undertaking contained herein in relation to such Confidential Information.



## **25. Amendments to this Agreement**

- 25.1. This Agreement shall not be varied or amended unless such variation or amendment is agreed in writing by a duly authorised Representative of the Council on behalf of the Council and by a duly authorised Representative of the Consultant on behalf of the Consultant.
- 25.2. The control of change under this Agreement shall be in accordance with any agreed change control procedures that may be agreed between the Parties.

## **26. Communications**

- 26.1. Except as otherwise expressly provided no communication from one Party to the other shall have any validity under this Agreement unless made in writing by or on behalf of the Council or as the case may be by or on behalf of the Consultant. The Parties agree that e-mail will be considered a satisfactory form of communication for the purposes of this Clause 26.1.
- 26.2. Any notice whatsoever which either Party hereto is required or authorised by this Agreement to give or make to the other shall be given or made either by letter, delivered by hand or by post, or by facsimile transmission confirmed by post, or e-mail addressed to the other Party in the manner referred to in Clause 26.3 below and if that letter is not returned as being undelivered that notice shall be deemed for the purposes of this Agreement to have been given or made upon delivery to the addressee, for a letter delivered by hand, after two days for a letter delivered by post or four hours for a facsimile transmission or e-mail.
- 26.3. For the purposes of Clause 26.2 above the address of each Party shall be:

For the Council:

City Centre and Markets Management, 2 Rossington Street, Leeds, LS2 8HD

For the attention of:

Cath Follin

Telephone: 0113 2474474

Facsimile:

E-mail: [cath.follin@leeds.gov.uk](mailto:cath.follin@leeds.gov.uk)

For the Consultant:

insert address

For the attention of:

insert name

Either Party may change its address for service by notice as provided in this Clause 26.

## **27. Severability**

27.1. If any provision of this Agreement 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 hereof shall continue in full force and effect as if this Agreement had been executed with the invalid illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Agreement, the Council and the Consultant shall immediately commence good faith negotiations to remedy such invalidity.

## **28. Waiver**

28.1. The failure of either Party to insist upon strict performance of any provision of this Agreement, or the failure of either Party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Agreement.

28.2. A waiver of any Default shall not constitute a waiver of any subsequent Default.

28.3. No waiver of any of the provisions of this Agreement 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 Clause 26.

## **29. Access to Premises**

29.1. Unless otherwise agreed any land or Premises (including temporary buildings) made available to the Consultant by the Council in connection with this Agreement shall be made available to the Consultant free of charge and shall be used by the Consultant solely for the purpose of performing this Agreement. The Consultant shall have the use of such land or Premises as licensee and shall vacate the same upon the termination or expiry of this Agreement or at such earlier date as the Council may determine.

29.2. The Council shall be responsible for maintaining the security of such land or Premises in accordance with its standard security requirements. The Consultant shall comply with all reasonable security requirements of the Council while on the Premises, and shall procure that all of its Staff, agents and Sub-Contractors shall likewise comply with such requirements. Where relevant the Council shall provide the Consultant upon request copies of its written security procedures and shall afford the Consultant upon request with an opportunity to inspect its physical security arrangements.

## **30. The Contracts (Rights of Third Parties) Act 1999**

30.1. This Agreement shall not create any rights that shall be enforceable by anyone other than the Parties to this Agreement.

## **31. Dispute Resolution Procedure**

- 31.1. The Parties shall refer all matters in dispute arising out of or in connection with this Agreement for consideration and decision by directors or designated senior managers of each Party, who shall use their reasonable endeavours to reach a solution to any such dispute within a period of twenty one (21) days, and failing which, unless the Parties agree another period of time, any such dispute may, upon agreement of the Parties be dealt with as set out in Clause 31.2.
- 31.2. If the dispute cannot be resolved by the Parties' Representatives nominated under Clause 31.1 the dispute may be referred to effective dispute resolution ("EDR") under the supervision of such organisation to be agreed between the Parties (hereinafter referred to as "the Organisation"). EDR shall commence by either Party serving on the other written notice ("EDR Notice") setting out in summary the issues in dispute and calling upon that other Party to join in an approach to EDR for the appointment of the Neutral.
- 31.3. EDR shall be conducted using a sole mediator ("Neutral") in or substantially in accordance with the Organisation's recommended agreement for the time being in use. The Neutral should be an accredited mediator agreed between the Parties, or in default of agreement within 14 days of notice of either Party calling upon the other to engage in EDR, appointed by the Organisation.
- 31.4. The Parties agree to co-operate fully and promptly and in good faith with the Organisation or the Neutral in the performance of their obligations under this Clause 31. Both Parties will afford the Neutral all necessary assistance which the Neutral requires to consider the dispute including but not limited to full access to any documentation or correspondence relating to the Services.
- 31.5. Unless agreed otherwise in the course of the procedure each Party shall bear its own costs of EDR.
- 31.6. If and to the extent that after engaging in good faith in EDR the Parties do not resolve the matters in dispute, all matters remaining in dispute shall be referred to the Courts.
- 31.7. In the event that the process of EDR does not succeed in finding a resolution to the dispute within a period of 56 days, or such other time as the Parties may agree, either Party may take such action as is available to it under this Agreement or generally at law.
- 31.8. Work and activity to be carried out under this Agreement shall not cease or be delayed by this dispute resolution procedure.

## **32. Law and Jurisdiction**

- 32.1. This Agreement shall be considered as a contract made in England and according to English Law and, subject to Clause 31, shall be subject to the

exclusive jurisdiction of the English Courts to which both Parties hereby submit.

- 32.2. This Agreement is binding on the Council and its successors and assignees and the Consultant and the Consultant's successors and permitted assignees.

### **33. Entire Agreement**

- 33.1. This Agreement constitutes the entire understanding between the Parties relating to the subject matter of this Agreement and, save as may be expressly referred to or referenced herein, supersedes all prior representations, writings, negotiations or understandings with respect hereto, except in respect of any fraudulent misrepresentation made by either Party.

### **34. Agency**

- 34.1. The Consultant is not and shall not in any circumstances hold itself out as being the servant or agent of the Council. The Consultant shall not hold itself out as being authorised to enter into any contract on behalf of the Council or in any way bind the Council to the performance, variation, release or discharge of any obligation to a third party. The employees of the Consultant shall not hold themselves out to be and shall not be held out by the Consultant as being servants or agents of the Council.

### **35. Quality of Services**

- 35.1. All Services to be carried out by or on behalf of the Consultant for the purpose of executing this Agreement shall be carried out with reasonable skill care and attention. The Council shall have the power to reject any Services which it does not consider to have been carried out in accordance with this Agreement and the Council may request that the Services rejected be carried again forthwith. The Consultant shall not be entitled to receive any payment from the Council for any such Services.

### **36. Damage**

- 36.1. Where the Consultant causes damage to any thing in the performance of this Agreement the Council may direct the Consultant to make good the said damage forthwith at the Consultant's own risk and expense.

### **37. Power of the Council in Default**

- 37.1. Where the Council re-let the Agreement or any part thereof pursuant to Clause 12 the Consultant shall make good to the Council all loss damages and expenses they may incur or be liable to in consequence of such re-letting as aforesaid for the period for which this Agreement shall have been accepted by the Council.

## **38. Human Rights**

- 38.1. The Consultant shall not do or permit or allow anything to be done which is incompatible with the rights contained within the European Convention on Human Rights.
- 38.2. The Consultant shall not do or permit or allow anything to be done which may result in the Council acting incompatibly with the rights contained within the European Convention on Human Rights and the Human Rights Act 1998.
- 38.3. The Consultant shall indemnify the Council against any loss claims and expenditure resulting from the Consultant's breach of Clauses 38.1 and 38.2.

## **39. Council Policies and Code of Conduct for Contractors**

- 39.1. The Consultant shall at all times carry out the provisions of this Agreement in accordance with the Council's approved Equal Opportunities Policy, Health and Safety Policy, and Code of Conduct for contractors, service providers and suppliers.

## **40. Scrutiny Board/Executive Board Assistance**

- 40.1. It is a condition of this Agreement that if required by the Council to do so the Consultant shall throughout the Contract Period and for a period of six years after expiry of this Agreement give all reasonable assistance to the Council including attending the Council's Scrutiny and/or Executive Board in order to answer questions pertaining to this Agreement should the need arise.
- 40.2. In the event that the Council requires the Consultant's assistance after the expiry of this Agreement as referred to in Clause 40.1 the Council shall pay the reasonable expenses of the Consultant arising as a result of providing such assistance.

## **41. Conflict of Interest**

- 41.1. The Consultant shall notify the Council immediately upon becoming aware of any possible conflict of interest which may arise between the interests of the Council and any other client of the Consultant and the Consultant shall take all reasonable steps to remove or avoid the cause of any such conflict of interest to the satisfaction of the Council.

## **42. Warranties and Representations**

- 42.1. The Consultant warrants and represents that:
  - 42.1.1. the Consultant has 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 to perform this Agreement and that this Agreement is executed by a duly authorised Representative of the Consultant;

42.1.2. the Services shall be supplied and rendered by appropriately experienced, qualified and trained personnel with all due skill, care and diligence;

42.1.3. the Consultant shall discharge its obligations hereunder with all reasonable 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.

### **43. Freedom of Information Act 2000**

43.1. The Consultant acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council (at the Consultant's expense) to enable the Council to comply with these Information disclosure requirements.

43.2. The Consultant shall and shall procure that its Sub-Contractors shall:

- (i) transfer any Request for Information to the other Party as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
- (ii) provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council requesting that Information; and
- (iii) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA.

43.3. The Council shall be responsible for determining at its absolute discretion whether:-

- (a). the Information is exempt from disclosure under, the FOIA and the Environmental Information Regulations;
- (b). the Information is to be disclosed in response to a Request for Information,

and in no event shall the Consultant respond directly to a Request for Information unless expressly authorised to do so by the Council.

43.4. The Consultant acknowledges that the Council may, acting in accordance with the FOIA, the Local Government Act 1972 (as amended) the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations

2000 (as amended) or the Environmental Information Regulations be obliged to disclose Information:-

- (i) without consulting with the Consultant; or
- (ii) following consultation with the Consultant and having taken its views into account.

43.5. The Consultant shall ensure that all information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

43.6. The Consultant acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with this Clause 43.

#### **44. Environmental Requirements**

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

#### **45. Business Continuity and Disaster Recovery**

45.1. The Consultant should aim to adopt best practice of BS7799 & ISO/IEC 17799 as part of its system of internal control, to ensure business continuity, minimise business damage by preventing and minimising the impact of security incidents and to maximise business investments and opportunities.

45.2. The Consultant may be required, upon written request from the Council, to submit a BCDR plan to the Council for approval.