CORPORATE PROCUREMENT UNIT

TERMS AND CONDITIONS FOR THE PROVISION OF SERVICES

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1 PRELIMINARIES

1.1 In this document:

1.1.1 the “Supplier” shall mean the body, person or persons tendering for or supplying the Services;

1.1.2 the “Council” shall mean Blaenau Gwent County Borough Council and any successor authority or any person or body to which the Council has assigned the benefit of this Agreement or any part thereof; and

1.1.3 the Council and the Supplier are each referred to as a “Party” and together, the “Parties”.

1.2 The terms of this Agreement shall apply to all Orders made by the Council.

1.3 The Supplier shall, if required to do so by the Council, enter into a form of supplementary agreement determined by the Council to reflect the relevant requirements of any Invitation to Tender and (as appropriate) the offers or proposals set out in any Tender submitted in response to it.

1.4 If required to do so by the Council, the Supplier shall provide the names and addresses of two substantial sureties who are prepared to guarantee the due performance of the Agreement.

2 DEFINITIONS AND INTERPRETATION

2.1 For the purposes of this Agreement except where expressly stated to the contrary, the following words shall have the following meaning:

Acceptance Criteria	means any acceptance criteria set out in the Agreement;
Affected Party	means the party seeking to claim relief in respect of a Force Majeure Event;
Agreement	has the meaning given at Clause 4.1 ;
Award Letter	means the letter sent by the Council to the Supplier notifying them that their tender has been successful and they have been awarded a contract for the supply of

	services;
BACS System	means the Bankers' Automated Clearing Services System which is a UK scheme for the processing of financial transactions;
Best Value	shall have the meaning given in Part I of the Local Government Act 1999 (as amended);
Change Control Request	means a written notice served on the Supplier by the Council which requests a variation to the Services;
Commercially Sensitive Information	means any information listed in the FOI Schedule which is considered by the Supplier to be commercially sensitive under Section 43 of the FOIA (without prejudice to the Council's obligations under the FOIA);
Confidential Information	means information listed in the FOI Schedule, or designated as such by the Council, which is considered by the Supplier or the Council to be confidential under Section 41 of the FOIA and the disclosure of which would be considered by the Supplier or the Council to constitute an actionable breach of confidence (without prejudice to the Council's obligations under the FOIA);
Confidentiality Undertaking	means an undertaking not to use or disclose any Confidential Information received save as strictly required to fulfil the purposes of this Agreement (including, without limitation, its re-tender);
Contract Period	means the period calculated in accordance

	with Clause 3;
Contracting Authority	means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2015;
Council Representative	means a person appointed by the Council to act on its behalf for the purposes of this Agreement;
Environmental Information Regulations	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such Regulations;
FOIA	means the Freedom of Information Act 2000 and any subordinate legislation made under the Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such Act;
FOI Schedule	means the schedule of information submitted by the Supplier with the Supplier's tender setting out the information which the Supplier considers to be Commercially sensitive Information or Confidential Information;
Force Majeure Event	means an event occurring after the date of this Agreement of war, armed conflict, acts of terrorism, riots, fire, flood, storm, earthquake, disaster or such other similar events which directly causes the Affected Party to be unable to comply with all or a

	material part of its obligations under this Agreement but excluding any industrial dispute relating to the Supplier, the Supplier Personnel or any other failure in the Supplier or any Sub-contractor's supply chain;
Gateway Review	means a series of short, focused, independent peer reviews at key stages of a programme or project;
Good Industry Practice	means the exercise of the degree of skill, diligence, prudence, efficiency, foresight and timeliness which would be expected from a leading provider within the relevant industry or business sector of services of a similar type to the Services to be supplied under the Agreement;
Health and Safety Regime	means the Factories Act 1961, the Offices, Shops and Railway Premises Act 1963, the Health & Safety at Work etc Act 1974, the Fire Precautions Act 1971, the Environmental Protection Act 1990, the Food Safety Act 1990 the Environment Act 1995, the Water Industry Act 1991, and the Water Resources Act 1991 (including in each case any associated regulations, guidance or approved codes of practice), and any similar or analogous health, safety or environmental Legislation which has as its aim the protection of persons or the environment or the prevention or reduction of risk of harm or injury to persons or the environment, or relating to the health and safety of the Services or their provision, as is in force

	from time to time;
Holding Company	shall have the meaning given in section 1159 of the Companies Act 2006;
Implementation Date	means the date by which the Services must be implemented;
Information	shall have the meaning given under section 84 of the Freedom of Information Act 2000 and/or Regulation 2 of the Environment Information Regulations;
Invitation to Tender	means: (a) In respect of any procurement conducted under the open or restricted procedure, the invitation to tender; (b) in the case of any procurement conducted under the negotiated or competitive dialogue procedures, respectively the invitation to submit final bids and the invitation to submit final tenders, in each case issued by the Council for the provision of the Services;
Intellectual Property Rights	means: (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, trade secrets and rights in confidential information (b) applications for registration, and the right to apply for registration, for any of the

	rights listed at (a) that are capable of being registered in any country or jurisdiction; and (c) all other rights having equivalent or similar effect in any country or jurisdiction;
Legislation	means: (a) any applicable statute or proclamation or any delegated or subordinate legislation; (b) any enforceable community right within the meaning of section 2(1) European Communities Act 1972; (c) any applicable guidance, direction or determination with which the Council and/or the Supplier is bound to comply to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Supplier by the Council; and (d) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales, In each case in force or applicable in England and Wales, or in Wales;
Order	means an order for the Services placed by the Council in accordance with Clause 5 of this Agreement;
Order Number	means the official number allocated by the Council to an Order;
Parent Company	shall have the meaning given to it in section 1162 and Schedule 7 of the Companies Act 2006;
Price	means the price or prices specified in the

	Order;
Programme of Work	means any programme, timetable or key milestones which regulates or specifies the period or periods for the completion of the Services or any part thereon;
Relevant Authority	means any court with relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the Welsh Ministers, the government of the United Kingdom or of the European Union;
Requests for Information	shall have the meaning set out in section 8 of the FOIA and/or Regulation 5 of the Environmental Regulations 2004 and includes any apparent request for such Information;
Schedule	means the schedule attached hereto;
Services	means any and all of the services supplied or to be supplied by the Supplier in accordance with this Agreement, including any goods supplied or works carried out as part of such services;
Special Conditions	means any special conditions either referred to in the Invitation to Tender or set out in the Schedule hereto;
Specification	means the specification attached to the Invitation to Tender;
Sub-contractor	means any third party with whom the Supplier enters into a sub-contract or its

	servants or agents and any third party with whom that third party enters into a sub-contract or its servants or agents for the performance of any part of the Supplier's obligations under this Agreement;
Supplier Personnel	means all officers, partners, employees, servants, agents, consultants and contractors of whatever nature of the Supplier and/or of any Sub-contractor;
Tender	means the documentation submitted by the Supplier and any other Tenderers in response to the Invitation to Tender; and
Tenderers	means all individuals or organisations who submitted a Tender in response to the Invitation to Tender.

2.2 In this Agreement the masculine includes the feminine and the neuter and the singular includes the plural and vice versa.

2.3 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 subsequently amended and as in force at the relevant time.

2.4 A reference to any document shall be construed as a reference to the document as at the date of execution of this Agreement.

2.5 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 referred to in this Agreement.

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

2.7 Neither Party shall be liable for any default of its obligations under this 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.

3 COMMENCEMENT AND DURATION

3.1 This Agreement shall take effect on the date specified in the Order.

3.2 This Agreement shall expire on the date specified in the Order subject to;

3.2.1 the rights of termination contained herein;

3.2.2 Clause 1.3 and;

3.2.3 Clause 5.3;

3.3 The Council may extend the Contract Period beyond that stated in Clause 3.2 above, for a further period as specified in the Invitation to Tender on the same terms and conditions, by giving such written notice to the Supplier as is allowed for in the Invitation to Tender or if none is specified, a reasonable period of notice.

4 SCOPE

4.1 This Agreement shall comprise the following;

4.1.1 the Terms and Conditions;

4.1.2 the Special Conditions and supplementary agreement pursuant to Clause 1.3, if any;

4.1.3 the Specification;

4.1.4 the Tender; and

4.1.5 the Order.

4.2 The documents listed in Clause 4.1 above shall be read together and construed so as to be consistent with one another so far as possible. In the event of any unavoidable conflict or inconsistency between any of the various documents forming part of this Agreement the following order of precedence shall apply

(with the first listed below taking precedence over those items listed subsequently):

4.2.1 the Terms and Conditions;

4.2.2 the Special Conditions and/or supplementary agreement pursuant to Clause 1.3;

4.2.3 the Specification;

4.2.4 the Tender; and

4.2.5 the Order.

4.3 This Agreement constitutes the entire understanding between the Parties relating to the subject matter of the 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.

5 SUPPLY AND DELIVERY

5.1 The Council may at any time during the Contract Period order Services from the Supplier by serving an Order on the Supplier.

5.2 The Supplier shall perform the Services at its own expense in accordance with the Order.

5.3 If the Contract Period expires before the supply or delivery of any Services comprised in an Order, the Supplier shall remain liable for the completion of the Order. The terms and conditions of this Agreement shall continue in full force and effect in respect of such completion.

5.4 Clause 5.3 shall survive the termination or expiry of this Agreement.

5.5 The Supplier's premises shall be available at all reasonable times for inspection by the Council's Representative with or without a prior appointment and during such inspections the Supplier shall allow the Council's Representative to examine any goods to be supplied under the provisions of this Agreement or to take samples of all or any goods for the purpose of testing or analysis to determine compliance with the Specification.

6 THE SERVICES

6.1 Without prejudice to any higher standard required by this Agreement, the Supplier shall at its own cost ensure that all Services supplied to the Council pursuant to this Agreement shall be compliant with:

6.1.1 the Specification;

6.1.2 any relevant Legislation;

6.1.3 any relevant British or European Standard; and

6.1.4 any policies, rules, codes of practice, procedures and standards with which the Supplier is required to comply.

6.2 The Services shall be carried out to the reasonable satisfaction of the Council and in accordance with Good Industry Practice.

6.3 Where Services include the provision of goods, materials or plant these shall be of satisfactory quality and fit for any purpose for which such goods, material or plant are commonly used or which is made known to the Supplier in writing by the Council.

6.4 The Services shall be delivered at the expense of the Supplier at the place or places specified in the Order or otherwise specified by the Council.

6.5 The Supplier shall;

6.5.1 provide to the satisfaction of the Council such appropriately qualified and experienced Supplier Personnel as shall be necessary for the proper execution of the Services and shall not remove or replace such persons without the prior written approval of the Council;

6.5.2 ensure that all Supplier Personnel involved in delivering the Services are sufficiently instructed with regard to the Services and on all relevant provisions of the Agreement;

6.5.3 obtain and at all times maintain all necessary licences and consents, and comply with all applicable Legislation;

6.5.4 provide all equipment, tools and vehicles and such other items as are required to provide the Services;

6.5.5 co-operate with such others as the Council may reasonably require;

6.5.6 satisfy itself that the information, including documentation, provided by the Council is adequate and will not prejudice the performance of any of the Supplier's obligations under the Agreement. The Supplier shall inform the Council immediately of any inadequacy of which it becomes aware and the Parties shall discuss in good faith how to resolve the matter;

6.5.7 work diligently to protect and promote the Council's interests;

6.5.8 comply with all of the Council's policies or other matters which the Council has disclosed to the Supplier pursuant to Clause 10; and

6.5.9 in all matters act in good faith towards the Council.

7 REJECTION OF SERVICES

7.1 The Council shall have the power by notice to reject any Services which it does not consider to have been carried out in accordance with this Agreement and the Supplier shall, without prejudice to the Council's other rights, promptly and at its own expense, re-perform the Services or remedy the deficiency in the Services to the satisfaction of the Council.

7.2 If the Supplier fails to remedy the deficiency promptly in accordance with the Council's instructions, the Council may remedy or cause to be remedied any deficiency, the costs of which will be payable by the Supplier.

7.3 Notwithstanding that the Services or any part thereof have been the subject of any instruction, review, approval, acknowledgement or inspection, the Supplier shall not be relieved from any liability or obligation under the Agreement.

7.4 Any additional costs (including costs of any audit) incurred by the Council as a result of the Supplier failing to carry out the Services in accordance with the Agreement shall be reimbursed to the Council by the Supplier.

8 TIME OF DELIVERY

8.1 The Supplier shall perform the Services;

8.1.1 in accordance with the Programme of Work (if any); or

8.1.2 in accordance with the dates and times specified in the Order.

8.2 Time shall be of the essence and if the Supplier fails to perform the Services within the time specified in the Order, the Council may release itself from any obligation to accept and pay for the Services and/or may terminate the Agreement, in either case without prejudice to any other rights and remedies of the Council.

9 PROGRAMME OF WORK

9.1 If the Programme of Work has not been previously agreed the Supplier shall within seven (7) days of entering into the Agreement submit a detailed programme to the Council's Representative for approval showing the number of days or weeks required for each separate stage to ensure that the Implementation Date is achieved.

9.2 On receipt of the detailed programme the Council's Representative shall;

9.2.1 signify his/her approval in which event it shall form the Programme of Work; or

9.2.2 reject the programme stating his/her reasons for so doing and require that the programme be amended and resubmitted by the Supplier.

9.3 Approval, rejection and resubmission of the detailed programme (or amended programme) shall be effected without undue delay. Any rejection of the programme should be confirmed no later than seven (7) days from the date of receipt of the programme by the Council's Representative and the Supplier shall within a period of fourteen (14) days from the date of such rejection resubmit a further amended programme to the Council's Representative.

10 POLICIES ETC.

10.1 The Supplier shall comply with all the Council's published policies and with any further rules, codes of practice, procedures and standards which the Council notifies to the Supplier. The Council shall throughout the Contract Period ensure that any changes to any policies, rules, codes of practice, procedures and standards are brought promptly to the attention of the Supplier.

11 LEGISLATIVE CHANGE

11.1 The Supplier shall bear the cost of complying with all Legislation and any amendments thereto. In the event that a change in Legislation necessitates a material change to the performance of this Agreement and provided that such

change could not have reasonably been foreseen by the Supplier at the date of the Agreement the Parties shall enter into negotiations in good faith to make such adjustments to the Price as may be necessary to compensate the Supplier for any additional costs as are both reasonably and necessarily incurred by the Supplier in accommodating such changes. If the Parties cannot reach agreement on such costs within a reasonable time, then the Council may at its discretion terminate this Agreement in whole or in part.

12 DISRUPTION

12.1 The Supplier shall (and shall ensure that its Supplier Personnel shall) take all reasonable care at all times to ensure that in its execution of the Services it does not disrupt the operations of the Council, its employees or any other contractor employed by the Council.

12.2 The Supplier shall co-ordinate its activities in the provision of the Services with the Supplier Personnel and other contractors engaged by the Council.

13 PROGRESS REPORTS AND INSPECTION

13.1 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.

13.2 The Council may inspect and examine the work or Services being carried out on the Council's premises without notice at any time.

13.3 Where any part of the work or Services is being carried out on premises other than the Council's premises, seven (7) days notice of an intention to inspect shall be given to the Supplier.

13.4 The Supplier shall give all such assistance as the Council may require for such inspection and examination.

14 REVIEW MEETINGS AND MANAGEMENT INFORMATION

14.1 The Supplier shall submit management information reports to the Council on a monthly basis unless otherwise agreed, covering the period since the date of the previous management information report.

14.2 The content of such reports shall be agreed between the Council and the Supplier following the date of this Agreement.

14.3 The Supplier and the Council shall meet on a quarterly basis, unless otherwise agreed, to review and discuss any issues relating to the performance of the Agreement.

15 MATERIALS, PLANT, EQUIPMENT ETC

15.1 The Supplier shall make no delivery of nor commence any work or Services on the Council's premises without obtaining the Council's prior written consent.

15.2 All equipment, tools, plant or materials ("Equipment") brought onto the Council's premises shall be at the Supplier's own risk. The Supplier shall arrange the transport and removal of such Equipment at its own expense.

15.3 The Council shall have the power at any time during the progress of the Services to order in writing:

15.3.1 the removal from the Council's premises of any Equipment which in the opinion of the Council is either hazardous, noxious or not in accordance with the Agreement; and/or

15.3.2 the substitution of proper and suitable Equipment.

15.4 On completion of the Services the Supplier shall remove the Supplier's Equipment and shall clear away from the Council's premises all rubbish arising out of the Services and leave the Council's premises in a neat and tidy condition.

16 INTELLECTUAL PROPERTY

16.1 It shall be a condition of the Agreement that, except to the extent that the Services incorporate designs furnished by the Council, the Services will not infringe any Intellectual Property Right of any third party and the Supplier shall indemnify the Council against all actions, suits, claims, demands, losses, charges, costs and expenses which the Council may suffer or incur as a result of or in connection with any breach of this Clause.

16.2 All Intellectual Property Rights in all documents (in whatever format) including but not limited to specifications, instructions, plans, drawings, patents, patterns, models, designs or other material:

16.2.1 furnished to or made available to the Supplier by the Council shall remain the property of the Council;

16.2.2 prepared by or for the Supplier for use, or intended use, in relation to the performance of this Agreement shall be the subject of a perpetual, irrevocable, royalty free licence for the Council to copy, adapt, distribute, communicate and make available those documents (and shall carry the right for the Council to grant sub-licences in respect of the same) for all purposes reasonably contemplated by, connected with or ancillary to this Agreement.

16.3 The Supplier shall not have the right to use any data, reports, drawings, specifications, designs, inventions, plans, programs or other material referred to in Clause 16.2.1 for its own commercial purposes except upon obtaining the prior written consent of the Council and then only upon such terms as may be imposed in connection therewith.

16.4 At the termination of the Agreement the Supplier shall immediately return to the Council all materials, work or records held in connection with this Agreement, including any back up media.

16.5 The provisions of this Clause shall apply during the continuance of this Agreement and indefinitely after its expiry or termination.

17 PURCHASING ON BEHALF OF THE COUNCIL

17.1 In the event that the Supplier procures goods or services including equipment from third parties on behalf of the Council, then it shall at all times do so in accordance with the provisions of the Public Contracts Regulations 2015 (if and to the extent applicable) as though the Supplier were a Contracting Authority.

18 FRAUD

18.1 The Supplier must take all reasonable steps including all preliminary enquiries and investigations to prevent the risk of fraud to the Council.

18.2 Where such preliminary actions suggest the possibility of fraud or other irregularity affecting the resources of the Council the Supplier shall immediately inform the Council.

19 SUPPLIER'S PERSONNEL

19.1 The Council reserves the right under this Agreement to refuse any Supplier Personnel admission to any premises occupied by or on behalf of the Council if in the opinion of the Council, such admission is undesirable.

19.2 If and when directed by the Council, the Supplier shall provide a list of the names and addresses of all persons who 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 such other particulars as the Council may reasonably require.

19.3 The Supplier and the Supplier's Personnel shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at any Council establishment and when in the vicinity thereof.

19.4 The decision of the Council as to whether any person is to be refused admission to any premises occupied by or on behalf of the Council and as to whether the Supplier has failed to comply with Clause 19.3 shall be final and conclusive.

19.5 If the Supplier shall fail to comply with Clause 19.3 or fails to do so within a reasonable time of written notice so to do, then the Council may terminate this Agreement in accordance with Clause 44 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.

19.6 The Supplier acknowledges that each member of his Supplier Personnel engaged in the performance of the Services shall have full authority to act on behalf of the Supplier for all purposes in connection with this Agreement provided always that if the Council shall at any time be dissatisfied for any reason with the performance of any person engaged in carrying out the Services, the Supplier shall, if the Council so requires, cease to engage such person in the execution of the Services and provide a competent substitute at no additional cost to the Council.

20 INDUSTRIAL ACTION

20.1 The Supplier shall immediately inform the Council of any actual or potential industrial action, whether such action be by its own Supplier Personnel or others, which affects or might affect their ability at any time to deliver the Services in accordance with the requirements of this Agreement.

20.2 In the event of industrial action by the Supplier's Personnel, the Supplier shall seek the Council's prior written approval to any revised proposals to deliver the Services.

20.3 If the Supplier's proposals referred to in Clause 20.2 are considered insufficient or unacceptable by the Council, then the Council may terminate this Agreement in whole or in part.

21 NATIONAL MINIMUM WAGE

21.1 The Supplier shall ensure that, where appropriate, its Supplier Personnel are paid at least the national minimum wage in accordance with the National Minimum Wage Act 1998 or any other Legislation making similar provision.

22 ACCESS TO PREMISES

22.1 Unless otherwise agreed use of any land or premises (including temporary buildings) made available to the Supplier by the Council in connection with this Agreement shall be made available to the Supplier free of charge (but without prejudice to the right of the Council to require reimbursement for any out goings arising from that occupation or expenditure incurred, including in respect of any fuel or telecommunications charges attributable to the Supplier) and shall be used by the Supplier solely for the purpose of performing this Agreement. The Supplier shall have the use of such land or premises as licensed and shall vacate the same upon the termination or expiry of this Agreement or at such earlier date as the Council may determine. Access to the Council's premises shall not be exclusive to the Supplier but only such as shall enable the performance of the Services concurrently with the execution of work by others.

22.2 The Parties agree that there is no intention on the part of the Council to create a tenancy of whatsoever nature in favour of the Supplier or the Supplier's Personnel and that no such tenancy has or shall come into being and the Council retains the right at any time to use any premises owned or occupied by the Council.

22.3 The Supplier and Supplier's Personnel shall observe and comply with all rules and regulations in relation to the use of such premises as determined by the Council, and pay for the cost of making good any damage caused by the Supplier or the Supplier Personnel 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.

22.4 The Council shall be responsible for maintaining the security of such land or premises in accordance with its standard security requirements.

22.5 The Supplier shall comply with all reasonable security requirements of the Council while on the premises, and shall procure that all of its Supplier Personnel shall likewise comply with such requirements. Where relevant the Council shall provide the Supplier upon request with copies of its written security procedures and shall afford the Supplier upon request with an opportunity to inspect its physical security arrangements.

22.6 The Supplier shall at its own cost, provide its Supplier Personnel with a form of identification that is acceptable to the Council. The Supplier Personnel shall display such identification on their clothing at all times when they are on the Council's premises.

22.7 The Supplier shall ensure that all requests and instructions of the Council whilst on Council owned premises are adhered to.

22.8 The Supplier shall ensure that all its Supplier Personnel have been instructed about fire risks and that they are expressly forbidden to smoke while on any premises owned or controlled by the Council.

23 HEALTH AND SAFETY

23.1 The Supplier and its Supplier Personnel shall:

23.1.1 comply with all relevant parts of the Health and Safety Regime;

23.1.2 in relation to all persons likely to be affected by the Services take all such steps as may be reasonably practicable to ensure their health and safety;

23.1.3 notify the Council of any health and safety hazards, which may arise in connection with the performance of this Agreement;

23.1.4 not treat, keep or dispose of any waste produced and/or carried by the Supplier as a result of executing this Agreement in a manner likely to cause harm to the health and safety of any person or to the environment and shall comply with every statutory duty which is relevant;

23.1.5 notify the Council of any health and safety hazards of which it is aware (having made all reasonable enquiries) and which may arise in connection with the performance of this Agreement;

23.1.6 during the execution of the Agreement, take such steps as are reasonably practicable to avoid (or, where avoidance is not possible, to minimise) harm to the environment;

23.1.7 ensure that its staff, whilst on the Council's premises comply with all relevant provisions of the Health and Safety Regime and with the Council's own policies and procedures;

23.1.8 ensure that in performing the Services it adopts safe methods of work in order to protect the health and safety of:

23.1.8.1 the employees of the Supplier;

23.1.8.2 the employees of the Council;

23.1.8.3 the employees of the Supplier Personnel; and

23.1.8.4 any other persons including but without limitation, members of the public.

23.1.9 produce to the Council if requested its detailed safe working system for carrying out duties under this Agreement.

23.2 The Council shall notify the Supplier of any health and safety hazards which may exist or arise at any Council premises and which may affect the Supplier. The Supplier shall draw these hazards to the attention of its Supplier Personnel.

23.3 The Supplier shall inform all persons engaged in the performance of this Agreement at the premises of all such hazards and shall instruct such persons in connection with any necessary associated safety measures.

23.4 Nothing in this Clause 23 shall relieve the obligations of the Supplier to comply with its statutory duties.

24 GOODS AND MATERIALS OF THE COUNCIL

24.1 All goods and materials issued by the Council in connection with the Agreement shall remain the property of the Council and shall be used in the execution of the Agreement and for no other purpose whatsoever without the prior approval in writing of the Council.

24.2 Such goods and materials shall be deemed to be in good condition when received by or on behalf of the Supplier unless it notifies the Council to the contrary within fourteen (14) days or such other time as specified in the Agreement.

24.3 The Supplier shall keep all such goods and materials used in the performance of the Services in good, clean and serviceable repair for the proper performance of the Services and the Council shall be under no liability in respect thereof.

24.4 The Supplier shall return such goods and materials on demand and shall be responsible for all loss thereof or damage and the costs of repair or replacement thereto howsoever caused prior to their re-delivery to the Council.

24.5 The Supplier shall, following completion of the Services or in response to an earlier request by the Council, return the goods, materials work or records held, including any back up media, in good condition, fair wear and tear excepted.

25 OFFERS OF EMPLOYMENT

25.1 For the duration of the Agreement and for a period of twelve (12) months thereafter the Supplier shall not employ or offer employment to any of the Council's staff who have been associated with the Services without the Council's prior agreement in writing save that this condition shall not relate to a bona fide advertisement for employment with either the Council or the Supplier.

26 TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006 (TUPE)

26.1 If required to do so by the Council, the Supplier shall provide the Council with any and all relevant information regarding its employees to comply with the requirements of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”), within fourteen (14) days of request by the Council.

26.2 The Council may disclose such TUPE information to any third party who may potentially become an employer of any employees of the Supplier who are potentially affected by TUPE.

26.3 Where TUPE information has been provided, the Supplier shall:

26.3.1 inform the Council of any change to the information provided or provide any new TUPE information not previously provided;

26.3.2 use its best endeavours to clarify any matter upon which clarification is requested by the Council; and

26.3.3 use its best endeavours to co-operate with any other reasonable request made by the Council regarding TUPE information or the Supplier's employees within fourteen (14) days of any such change, discovery of new information, or receipt of such request.

26.4 For the purposes of this clause "TUPE information" shall mean written details of:

26.4.1 the total number of employees employed by the Supplier whose work or any part thereof is undertaken for the purposes of this Agreement;

26.4.2 the employees' age and gender;

26.4.3 the employees' salary, length of service, contractual period of notice, any pay settlement covering future dates which has already been agreed by the Supplier and any redundancy entitlement;

26.4.4 those particulars of employment that an employer is obliged to give to an employee pursuant to Section 1 of the Employment Rights Act 1996;

26.4.5 entitlement to pensions, paid holidays and any other benefits;

26.4.6 terms incorporated from any collective agreement; and

26.4.7 any outstanding or potential liability for past breaches of such contracts;

26.4.8 information regarding any:

26.4.8.1 disciplinary procedure taken against an employee within the previous two (2) years;

26.4.8.2 grievance procedure taken by an employee, within the previous two (2) years;,

26.4.8.3 any Court or Tribunal case, claim or action brought by an employee against the Supplier, within the previous two (2) years; and

26.4.8.4 any potential claim the Supplier has reasonable grounds to believe that an employee may bring against the Supplier, arising out of the employee's employment with the Supplier.

26.5 The Supplier shall indemnify the Council fully and hold it harmless at all times from and against all actions proceedings claims expenses awards costs and all other liabilities howsoever in any way connected with or arising from claims by its employees (or former employees) affected by, or claiming to be affected by, TUPE.

26.6 The provisions of this condition shall apply during the continuance of this Agreement and indefinitely after its termination.

27 CONFLICTS OF INTEREST

27.1 The Supplier shall take appropriate steps to ensure that neither itself nor the Supplier Personnel is placed in a position where there is or may be an actual conflict, or a potential conflict between the pecuniary or personal interests of such persons and the duties owed to the Council under the provisions of this Agreement. The Supplier will disclose to the Council full particulars of any such conflict of interest which may arise.

27.2 The provisions of this Clause shall apply during the continuance of this Agreement and indefinitely after termination. Failure to disclose this information will be considered a material breach incapable of remedy and this Agreement may be terminated in accordance with Clause 44.

28 DISCRIMINATION AND EQUALITY

28.1 The Supplier shall ensure that it complies (and shall take all reasonable steps to ensure that all Supplier Personnel comply) with all relevant requirements of all current Equalities legislation, regulations and duties including but not limited to the Race Relations Act 1976, the Sex Discrimination Act 1975, the Equal Pay Act 1970, the Disability Discrimination Act 1995, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Age) Regulations 2006 and all other similar Legislation ("equality legislation") in force from time to time together with any guidance or Codes of Practice issued by the Equality and Human Rights Commission and shall in addition discharge its obligation under this agreement and provide the services in a manner consistent with the Councils equalities policies.

28.2 The Supplier shall provide any information reasonably requested by the Council in respect of such equality legislation in so far as it relates to the performance of this Agreement.

28.3 The Council is required by the Welsh Language Act 1993 to maintain a Welsh Language Scheme. The Supplier shall (and shall take all reasonable steps to ensure that all Supplier Personnel shall) comply with the Council's Welsh Language Scheme as updated from time to time and notified to the Council in writing.

29 SECURITY OF CONFIDENTIAL INFORMATION

29.1 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the performance of the Agreement, the Supplier undertakes to maintain appropriate security systems, which may be subject to review and approval by the Council.

29.2 The Supplier will immediately notify the Council of any breach of security in relation to Confidential Information and all data obtained in the performance of the Agreement and will keep a record of such breaches. The Supplier will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Supplier's obligations under Clauses 30 and 47.

29.3 The Supplier shall at its own expense co-operate with the Council in any investigation that the Council considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.

29.4 The Council may require the Supplier to alter or update any security systems at any time during the Contract Period.

30 PROTECTION OF PERSONAL DATA

30.1 In this Clause, the terms "Personal Data", "Data Subject", "Process", "Data Controller" and "Data Processor" have the meanings given in the Data Protection Act 1998 **("1998 Act")** and the term **"Data"** means Personal Data of the Council that is subject to Processing by the Supplier.

30.2 The Parties agree that with respect to their rights and obligations under this Agreement the Council is Data Controller and the Supplier is the Data Processor in respect of any Data processed by the Supplier.

30.3 The Supplier must:

30.3.1 Process Data only to the extent necessary to perform its obligations under this Agreement and strictly in accordance with the instructions of the Council (from time to time);

30.3.2 maintain appropriate technical and organisational measures against unauthorised or unlawful Processing of Data (including against accidental loss, damage or destruction of Data) which reflect the level of damage that might be suffered by a Data Subject as a result of unauthorised or unlawful Processing (including loss, damage or destruction) of the Data Subject's Data; and

30.3.3 not without the Council's prior written consent (which the Council may withhold at its absolute discretion), do anything which would cause Data to be transferred outside the European Economic Area.

31 HUMAN RIGHTS

31.1 The Supplier shall not (and shall ensure that the Supplier Personnel 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.

32 ENVIRONMENTAL REQUIREMENTS

32.1 The Supplier shall;

32.1.1 have a sustainable approach to waste management and not treat, keep or dispose of any waste produced and/or carried by the Supplier as a result of executing this Agreement in a manner likely to cause harm to the health and safety of any person or to the environment and shall comply with all relevant Legislation including The Producer Responsibility (Packaging Waste) Regulations 1997 – 2007 together with any amendments, additions or re-enactments that may take place from time to time;

32.1.2 Perform the Agreement in such a way as 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;

32.1.3 During the execution of this Agreement, take such steps as are reasonably practicable to avoid (or, where avoidance is not possible, to minimise) harm to the environment.

32.2 In the event the Supplier believes that a change to this Agreement or a change to the Specification would reduce the overall environmental impact of this Agreement or the Services (for example by the increased use of re-cycled or re-furbished or otherwise environmentally friendly materials, or by the production of goods with a longer life span, or that a change would result in increased energy efficiency or reduce in other ways the impact on the environment) the Supplier must notify the Council (whether or not this change would effect the Price payable for the Services). The Council will consider the proposed change and may implement such change in accordance with Clauses 34 or 35.

32.3 Nothing in this Clause 32 shall relieve the obligations of the Supplier to comply with its statutory duties and Good Industry Practice.

33 CHARGES AND PAYMENT

33.1 The charges payable by the Council in respect of Services shall be determined by reference to the Price for Services comprised in the Order and shall be the

full and exclusive remuneration of the Supplier in respect of the performance of the Services.

33.2 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.

33.3 All invoices submitted by the Supplier to the Council shall be valid VAT invoices and shall contain the Order Number(s) to which the invoice relates and subject to the provisions of Clause 39, shall be denominated in sterling.

33.4 The Price of the Services shall include all royalties, licence fees or similar expenses in respect of making, use or exercise by the Supplier of any invention or design for the purposes of performing the Agreement.

33.5 In the event of the submitted invoice being incorrect, the invoice shall be returned to the Supplier as a query. The thirty (30) days payment timescale shall commence from the date of an accurate invoice being received by the appropriate section within the Council.

33.6 The Supplier shall ensure that all invoices clearly show the following information:

33.6.1 name and address of the Supplier;

33.6.2 the period to which the payment relates;

33.6.3 hourly rate clearly identified including premium rates for weekends, evenings etc.

33.7 Payment of invoices payable by the Council for Services supplied shall be made by way of the BACS system. The Council shall only consider an alternative method of payment where it can be determined that payment by way of BACS is not possible.

33.8 Payment shall be made within thirty (30) days of receipt by the Council (at its nominated address for invoices) of a valid and agreed invoice from the Supplier.

33.9 If during the period of the Agreement there shall be any material variation in the cost to the Supplier of supplying the Services, an application may be made by either party for a net increase to or deduction from the Prices as the case may

be, at twelve (12) month intervals or longer from the commencement of this Agreement provided that no addition to or deduction from the Price shall alter the amount of profit of the Supplier included in the Price. Orders placed before the effective date of any proposed price increase must be supplied at the pre-increased price(s).

33.10 Proposals for the revision of prices must be submitted in writing to Blaenau Gwent County Borough Council, Head of Procurement at least sixty (60) days prior to the effective date of the variation. The Supplier must furnish such evidence as may be reasonably required to satisfy the Council that the amount of any increase in cost is justified and/or any decrease in cost is adequate.

33.11 Revised Prices will only be paid after the Supplier has received written confirmation of the new prices from the Head of Procurement at Blaenau Gwent County Borough Council.

33.12 In the event of failure to reach an agreement on the revision of Prices, either Party shall be at liberty to give the other two months' notice in writing to terminate this Agreement, with the price or prices in dispute remaining unaltered.

34 CHANGE CONTROL

34.1 The Council has the right to propose any variation(s) to the Services (including a request for the Supplier to cease any one or more or any part of the Services) in accordance with this Clause 34. If the Council wishes to propose a variation to the Services, the Council shall serve a Change Control Request on the Supplier. No change shall be deemed to occur, and the Supplier shall not be entitled to any additional payment, unless the procedures in this Clause 34 are complied with.

34.2 The Supplier shall accommodate any variation(s) required by the Council provided that it shall only be entitled to payment for any agreed additional costs it incurs as a result on the basis set out in this Clause 34.

34.3 The Change Control Request shall set out the variation to the Services required by the Council in detail and request a cost estimate ("the Estimate") of the costs arising as a direct result of the variation.

34.4 The Supplier shall provide the Council with the Estimate within ten (10) working days of the receipt of the Change Control Request or such longer period as is reasonable in all the circumstances. The Estimate shall include a statement of:

34.4.1 the impact of the proposed variation on the provision of the Services;

34.4.2 any amendment required to this Agreement to accommodate the proposed variation;

34.4.3 the overall (having regard to the Supplier's general duty of cost efficiency under this Agreement) part year and/or full year cost of, or savings from, implementing the proposed variation; and

34.4.4 any other information reasonably requested by the Council or appearing to the Supplier to be relevant.

34.5 As soon as practicable after the Supplier provides the Council with the Estimate, the Council and the Supplier shall meet to discuss and agree any issues arising from the Change Control Request or the Estimate.

34.6 The Parties shall endeavour to agree the terms of the Estimate. In the event the Parties cannot agree any part of the content of the Estimate within a reasonable time of the meeting under Clause 34.5 then the Change Control Request shall be withdrawn by the Council.

34.7 As soon as practicable after any part of the contents of the Estimate have been agreed in accordance with Clause 34.6 the Council shall:

34.7.1 confirm in writing that it wishes to proceed with the Change Control Request (or that part of it which has been agreed or determined as above); or

34.7.2 withdraw the Change Control Request (or the relevant part).

34.8 If the Council confirms that it wishes to proceed with the Change Control Request, the Services shall be deemed to have been amended accordingly. The annual cost of, or savings from, implementing the variation (as agreed or determined) shall be added to or deducted from the payments, as appropriate.

34.9 If the Council has not confirmed or withdrawn the Change Control Request within twenty (20) calendar days of the date of agreement in accordance with

Clause 34.6 then the Change Control Request shall be deemed to be withdrawn by the Council.

34.10 The Council shall not be liable for any costs incurred by the Supplier in implementing the procedures pursuant to this Clause 34.

35 MINOR VARIATIONS

35.1 Variations of a minor or temporary nature may be required to the Services from time to time and such variations shall be agreed in writing between the Council and the Supplier. The Supplier shall comply with such minor or temporary variations, which shall normally be accommodated at no extra cost to the Council, provided they do not involve additional cost to the Supplier. If such extra cost is incurred, the Supplier shall provide written evidence to the Council and the Parties shall then agree such additional costs. If the Parties cannot reach agreement on such costs within a reasonable time, then the Council may at its discretion terminate the Agreement in whole or in part. The Council shall not as a result of such termination be in breach of this Agreement or be under any liability to the Supplier (whether in contract, tort, legitimate expectation, restitution, statutory duty or in any other way whatsoever).

36 INTEREST

36.1 If the Council fails to pay any amount properly due and payable by it under this Agreement, the Supplier shall have the right to charge interest on the overdue amount at the rate of two (2)% per cent per annum above the base rate for the time being of The Co-Operative Bank Plc base rate accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment. The Parties agree that the rate is a substantial remedy in accordance with section 9 of the Late Payments of Commercial Debts (Interest) Act 1998. This Clause shall not apply to payments that the Council disputes in good faith.

37 SET OFF

37.1 The Council may retain or set off any amount owed to it by the Supplier whether under this Agreement or otherwise which has fallen due and payable against any amount due to the Supplier under this Agreement.

38 COMPLIANCE WITH VALUE ADDED TAX AND OTHER TAX REQUIREMENTS

38.1 The Supplier shall at all times comply with the Value Added Tax Act 1994 and all other statutes relating to direct or indirect taxes.

38.2 Failure to comply will constitute a material breach of this Agreement and the Council may exercise the rights and provisions conferred by Clause 44.

38.3 The Supplier shall furnish to the Council the name, and if applicable, the VAT registration number of any Supplier Personnel prior to the commencement of any work under this Agreement by such Supplier Personnel.

38.4 Upon a request by the Council, the Supplier shall not employ or will cease to employ any Supplier Personnel which the Council believes is not complying with the Value Added Tax Act 1994 and all other statutes relating to direct or indirect taxes.

39 EURO

39.1 If, following the introduction of the Euro, Sterling is substituted by the Euro as the currency of the United Kingdom, then all references in this Agreement and any Order to "Sterling" or "£" shall be construed as references to "Euro" or "€" (as the case may be) and the agreed Sterling-Euro conversion rate on the date of that substitution shall apply provided that the provisions of this Clause 39 shall not apply during any transitional period when Sterling is a sub-unit of the Euro, unless the Parties otherwise agree.

40 WARRANTIES AND REPRESENTATIONS

40.1 The Supplier warrants and represents that:

40.1.1 it has full capacity and authority to enter into and to perform this Agreement and that this Agreement is executed by a duly authorised representative of the Supplier;

40.1.2 the Services shall be supplied and rendered by appropriately experienced, qualified and trained personnel in accordance with Good Industry Practice; and

40.1.3 the Supplier shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to Good Industry Practice and (without limiting the generality of this Clause) in accordance with its own established internal procedures.

41 LIMITATION OF LIABILITY

41.1 Neither Party excludes or limits liability to the other Party for death of or personal injury to any individual or any breach of any obligations implied by

Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.

41.2 Subject always to Clause 41.1, and notwithstanding any other provision contained herein, the total liability of the Supplier (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.

41.3 Without prejudice to the Council's obligation to pay the charges as they fall due, the Council's liability under this Agreement shall be limited to 50% of total Price payable for the Services pursuant to this Agreement.

41.4 Subject always to Clause 41.2, in no event shall either Party be liable to the other for:

41.4.1 indirect or consequential loss or damage; and/or

41.4.2 loss of profits; and/or

41.4.3 loss o f business; and/or

41.4.4 loss of revenue; and/ or

41.4.5 loss of goodwill,

save as expressly provided for under the terms of this Agreement.

41.5 The provisions of Clause 41.4 shall not be taken as limiting the right of the Council to claim from the Supplier for any:

41.5.1 additional operational and administrative costs and expenses; and/or

41.5.2 any costs or expenses rendered worthless; and/or

41.5.3 loss or damage resulting directly from the default of the Supplier.

41.6 The Parties expressly agree that neither Party shall be entitled to an order for specific performance to enforce any provision hereunder.

41.7 The Parties expressly agree that should any limitation or provision contained in this Clause 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.

42 INSURANCE

42.1 The Supplier shall hold and shall ensure that all Sub-contractors involved in the provision of the Services shall maintain the following insurance cover with a reputable insurance company:

42.1.1 Professional Indemnity (if required);

42.1.2 Public Liability including Products Liability; and

42.1.3 Employer's Liability;

in each case with the minimum level of indemnity set out in the Invitation to Tender or any part of this Agreement, and if no level is specified, then a minimum level of indemnity set at five million pounds (£5,000,000) or such higher level as is consistent with Good Industry Practice and any applicable Legislation.

42.2 Such insurance to be held by the Supplier or by any Sub-contractor may be limited in respect of any one claim (but shall not be limited in any other respect) PROVIDED THAT any such limit shall in any event be at least one million pounds (£1,000,000). This Clause shall not be construed as imposing any limit of liability on the Supplier.

42.3 Such insurance shall be maintained for a minimum of six (6) years following expiration or earlier termination of this Agreement.

43 FORCE MAJEURE

43.1 Subject to the remaining provisions of this Clause 43 either Party to this Agreement may claim relief from liability for non-performance of its obligations to the extent any non-performance is due to a Force Majeure Event.

43.2 A Party cannot claim relief if the Force Majeure Event is attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.

43.3 An Affected Party cannot claim relief as a result of a failure or delay by any other person in the performance of that other person's obligations under an agreement with the Affected Party (unless that other person is itself prevented from or delayed in complying with its obligations as a result of a Force Majeure Event).

43.4 The Affected Party shall immediately give the other Party written notice of the Force Majeure Event. The notification shall include details of the Force Majeure Event together with evidence of its effect on the obligations of the Affected Party, and any action the Affected Party proposes to take to mitigate its effect.

43.5 As soon as practicable following after the Affected Party's notification, the Parties shall discuss in good faith and endeavour to agree a means of performing the Agreement so far as reasonably possible for the duration of the Force Majeure Event. In the event that the Parties fail to agree a means of performing the Agreement within two (2) months from the date of the Affected Party's notification, the Council may in its absolute discretion elect to terminate the Agreement in whole or in part.

43.6 The Affected Party shall use all reasonable endeavours to continue to perform, or resume performance of this Agreement for the duration of such Force Majeure Event and if the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

43.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.

43.8 In the event that the Force Majeure Event continues for a period of two (2) months from the date of the Affected Party's notification, the Council may in its absolute discretion elect to terminate the Agreement in whole or in part.

44 TERMINATION

Supplier Default

44.1 The Council may at any time by notice in writing terminate this Agreement as from the date of service of such notice if:

44.1.1 any of the circumstances detailed in Clause 8.2 (Time of Delivery), Clause 19.5 (Supplier Personnel), Clause 20.3 (Industrial Action), Clause 38.2 (Compliance with Value Added Tax and Other Tax Requirements), Clause 46.2 (Corrupt Gifts and Payments of Commission) and/or Clause 47.11 (Confidentiality); or

44.1.2 there is a change of control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, in the Supplier or its Parent Company provided that the Council shall only be permitted to exercise its rights pursuant to this Clause 44.1.2 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

44.1.3 the Supplier, being a company, passes a resolution, or the Court makes an order that the Supplier 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 Supplier 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 Supplier 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

44.1.4 the Supplier, being an individual, or where the Supplier 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 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; or

44.1.5 the Supplier commits a breach of its obligations under this Agreement (other than as a consequence of a breach by the Council of its obligations under this Agreement) which breach results in the criminal investigation, prosecution and conviction of the Supplier or any Sub-contractor under the Health and Safety Regime (a "Health and Safety Conviction"); or

44.1.6 the Supplier;

44.1.6.1 commits a material breach of this Agreement and;

44.1.6.2 the material breach is capable of remedy and the Supplier shall have failed to remedy the material breach within thirty (30) days of written notice to the Supplier specifying the material breach and requiring its remedy; or

44.1.6.3 the supplier commits a series of breaches of this Agreement which when taken together amount to a material breach of this Agreement.

"No Default" termination

44.2 The Authority may terminate this Contract by giving to the Service Provider three months prior notice in writing.

44.3 Without prejudice to Clause 41.1:

44.4 the Council may by notice in writing terminate this Agreement as from the date of service of such notice if any of the circumstances detailed in Clause 11.1 (Legislative Change), Clauses 43.5 and 43.8 (Force Majeure) and/or Clause 57.1 (Severability) arise; and

44.5 the Supplier may by notice in writing served in accordance with Clause 56.3 terminate this Agreement as from the date of service of such notice if any of the circumstances in Clause 57.1 (Severability) arise.

Council Default

44.6 The Supplier may at any time by notice in writing terminate this Agreement from the date of service of such notice if:

44.6.1 the Council has failed to pay any sum which is properly due and owing to the Supplier (such sum not being in dispute) by the due date under Clause 33.8 (Charges and Payments); and

44.6.2 which sum amounts to at least fifteen percent (15%) of the total Price; and

44.6.3 the Supplier has given to the Council at least thirty (30) days' written notice that such sum is overdue for payment and clearly stated in that notice the Supplier's intention to terminate the Agreement if such sum is not paid; and

44.6.4 the Council has not paid within the time specified in the Supplier's notice under Clause 44.6.3 above.

45 CONSEQUENCES OF TERMINATION

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

45.2 In the event of any termination of this Agreement (and/or of any Order), any Orders which at the date of termination have yet to be discharged shall be terminated and the Council shall, in respect of any non-discharged Orders, be entitled without prejudice to the Council's other rights and remedies, to obtain a refund of any payments made by the Council in respect of any Services which have not been performed by the Supplier in accordance with the terms of the non-discharged Order.

45.3 In the event of the termination of this Agreement by either Party, the provisions of this Clause and Clauses 30 (Protection of Personal Data), 36 (Interest), 37 (Set-Off), 41 (Limitation of Liability), 42 (Insurance), 46 (Corrupt Gifts and Payment of Commission), 47 (Confidentiality), 50 (Indemnity), 52 (Information and Assistance), 63 (Law and Jurisdiction) and 65 (Freedom of Information) shall survive the termination of this Agreement

45.4 Where, following a termination by the Council pursuant to Clauses 44.1 the Council re-lets the Agreement or any part thereof to an alternative supplier pursuant to Clause 51 the Supplier shall make good to the Council all losses damages and expenses it may incur or be liable to in consequence of such re-letting.

46 CORRUPT GIFTS AND PAYMENTS OF COMMISSION

46.1 The Supplier shall neither:

46.1.1 offer or give or agree to give any person employed by the Council or acting on its behalf any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or performance of this Agreement or any other agreement with the Council or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement; nor

46.1.2 enter into this Agreement if in connection with it commission has been paid or agreed to be paid to any person employed by the Council or acting on its behalf by the Supplier or the Supplier's Personnel, unless before this Agreement 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 the Council.

46.2 In the event of any breach of this Clause 46 by the Supplier or by any Supplier Personnel (whether with or without the knowledge of the Supplier) or the commission of any offence by the Supplier or by anyone employed by the Supplier or acting on behalf of the Supplier under the Prevention of Corruption Acts, 1889 to 1916 or under Section 117(2) and (3) of the Local Government Act 1972 in relation to this or any other agreement with the Council, the Council may summarily terminate this Agreement or the relevant Order by notice in writing to the Supplier in accordance with Clause 44.1 provided always that

such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Council and provided always that the Council may recover from the Supplier the amount or value of any such gift, consideration or commission together with all costs to the Council of terminating and re-letting.

46.3 The decision of the Council shall be final and conclusive in any dispute, difference or question arising in respect of:

46.3.1 the interpretation of this Clause (except so far as the same may relate to the amount recoverable from the Supplier under Clause 46.2 in respect of any loss resulting from such termination of this Agreement); or

46.3.2 the right of the Council under this Clause 46 to terminate this Agreement; or

46.3.3 the amount or value of any such gift, consideration or commission.

47 CONFIDENTIALITY

47.1 The Supplier acknowledges that any Confidential Information obtained from or relating to the Council, its servants or agents is the property of the Council.

47.2 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in this Agreement, each Party shall;

47.2.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and

47.2.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

47.3 Clause 47.1 shall not apply to the extent that:

47.3.1 such disclosure is a requirement of law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause 65;

47.3.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

47.3.3 such information was obtained from a third party without obligation of confidentiality;

47.3.4 such information was already in the public domain at the time of the disclosure otherwise than by a breach of this Agreement; or

47.3.5 it is independently developed without access to other Party's Confidential Information.

47.4 The Supplier may only disclose the Council's Confidential Information to the Supplier Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Supplier Personnel are aware of and shall comply with these obligations as to confidentiality.

47.5 The Supplier shall not, and shall procure that the Supplier Personnel do not, use any of the Council's Confidential Information received otherwise than for the purposes of this Agreement.

47.6 The Supplier undertakes (except as may be required by law or in order to instruct professional advisers in connection with this Agreement) not to:

47.6.1 disclose or permit disclosure of any details of this Agreement to the news media or any third party other than Supplier Personnel;

47.6.2 disclose that the Council is a customer or client of the Supplier; or

47.6.3 use the Council's name and or brand in any promotion of marketing or announcement of orders, without the prior written consent of the Council.

47.7 At the written request of the Council, the Supplier shall procure that those members of the Supplier Personnel identified in the Council's notice signs a Confidentiality Undertaking prior to commencement of any work in accordance with this Agreement.

47.8 Nothing in this Agreement shall prevent the Council from disclosing the Supplier's Confidential Information:

47.8.1 to any government department or any other Contracting Authority. All government departments or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the

Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority;

47.8.2 to any consultant, contractor or other person engaged by the Council or any person conducting a Gateway Review;

47.8.3 for the purpose of the examination and certification of the Council's accounts; or

47.8.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.

47.9 The Council shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-contractor to whom the Supplier's Confidential Information is disclosed pursuant to this Clause 47 is made aware of the Council's obligations of confidentiality.

47.10 Nothing in this Clause 47 shall prevent either Party from using 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 the other Party's Confidential Information or an infringement of Intellectual Property Rights.

47.11 In the event that the Supplier fails to comply with this Clause 47 the Council reserves the right to terminate the Agreement by notice in writing with immediate effect.

48 PUBLICITY

48.1 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.

48.2 Both Parties shall take all reasonable steps to ensure the observance of the provisions of Clause 48.1 by all their servants, employees, agents and consultants and the Supplier shall take all reasonable steps to ensure the observance of the provisions of Clause 48.1by its Supplier Personnel.

48.3 Neither Party shall use business logos or publicise the logos of the other Party either in print or electronically without the express written consent of the other Party such consent shall not be unreasonable withheld or delayed.

48.4 Notwithstanding the provisions of Clause 48.1, 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 Audit Commission and the Council's external Auditors and the provisions of the FOIA.

48.5 The Parties acknowledge that the Audit Commission has the right to publish details of this Agreement (including Confidential Information) in its relevant reports to Parliament to the extent permitted by law.

49 ASSIGNMENT AND SUB-CONTRACTING

49.1 This Agreement is personal to the Supplier.

49.2 The Supplier shall not assign, novate, or otherwise dispose of this Agreement or any part thereof without the previous consent in writing of the Council acting in its absolute discretion.

49.3 The Supplier shall not sub-contract the performance of its obligations under this Agreement without the prior written consent of the Council, such consent not to be unreasonably withheld or delayed.

49.4 Notwithstanding any sub-contracting permitted hereunder, the Supplier shall remain primarily responsible for the acts and omissions of its Sub-contractors as though they were its own.

49.5 Subject to Clause 49.6, the Council shall be entitled to:

49.5.1 assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof to any Contracting Authority; or

49.5.2 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.

49.6 This Agreement is binding on the Council and its successors and assignees and the Supplier and the Supplier’s successors and permitted assignees.

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

49.8 In the event that the Supplier, in accordance with the terms of this Agreement, enters into a sub-contract in connection with this Agreement, the Supplier shall ensure that a term is included in the sub-contract which requires the Supplier to pay all sums due thereunder to the Sub-contractor within a specified period, not to exceed thirty (30) days, from the date of receipt of a valid and agreed invoice as defined by the terms of the sub-contract (as appropriate).

50 INDEMNITY

50.1 The Supplier shall keep the Council indemnified in full against all costs, liabilities, expenses, damages and losses including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Council as a result of or in connection with:

50.1.1 any claim made against the Council by a third party arising out of, or in connection with, the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Agreement by the Supplier, its Supplier Personnel or its Sub-contractors.

51 POWER OF THE COUNCIL IN DEFAULT

51.1 Where the Council re-lets the Agreement or any part thereof following termination in accordance with Clause 45.4 (Consequences of Termination), the Supplier shall make good to the Council all loss damages and expenses that the Council may incur or be liable for in consequence of such re-letting.

52 INFORMATION AND ASSISTANCE

52.1 Throughout the Period of the Agreement and for a period of six (6) years after its expiry, the Supplier shall:

52.1.1 maintain full and accurate records of the Agreement, all expenditure reimbursed by the Council and all payments made by the Council; and shall on request afford the Council or the Council's Representatives including the Audit Commission and the Council's external auditors

such access to and copies of those records as may be required in connection with the Agreement; and

52.1.2 give all reasonable assistance to the Council including attending all meetings of any body of the Council and/or of the Council's Executive in order to answer questions pertaining to this Agreement should the need arise.

53 BEST VALUE

53.1 The Supplier shall co-operate with the Council with the introduction and implementation of any requirements imposed on the Council in connection with Best Value and shall comply with the reasonable instructions and requests for information of the Council's responsible officer in respect thereof.

53.2 The Supplier shall assist the Council to ensure continuous improvements in the efficiency of the Services in order to achieve value for money for the Council. The Supplier shall report to the Council on the ways in which they intend to improve the Services on a quarterly basis.

54 MISTAKES IN INFORMATION

54.1 The Supplier shall be responsible for the accuracy of all drawings, documentation and information in any form whatsoever supplied to the Council and shall pay the Council any extra costs occasioned by any discrepancies, errors or omissions therein.

54.2 Whilst the Council shall endeavour to ensure the accuracy of all drawings, documentation and information in any form whatsoever ("material") provided to it by the Supplier, the Council shall be under no liability whatsoever for the content of such material, and the Supplier acknowledges that it is solely responsible for making its own enquiries and conducting all due diligence to verify the accuracy of such material, and further that the Supplier shall have no remedy against the Council for any mistake, error or omission in such material, whether in breach of contract, negligence or in any other way whatsoever.

55 DESIGNATED REPRESENTATIVES

55.1 The Council's Representative have the authority to act on behalf of the Council for all purposes connected with the Agreement.

55.2 The Council shall also appoint an authorised representative ("the Authorised Representative") to act should the Council Representative not be available.

55.3 The Supplier shall nominate a supplier's representative ("the Supplier's Representative") at the commencement of this Agreement who shall be empowered to act on behalf of the Supplier for all purposes connected with the Agreement which will include but not be limited to:

55.3.1 managing the provision of the Services;

55.3.2 attending meetings with the Council Representative to review the provision of the Services;

55.3.3 providing all information and documentation reasonably required by the Council in respect of the Services for the performance of its duties.

55.4 The Council reserves the right to reject the appointment of any person as the Supplier's Representative who does not in the opinion of the Council have appropriate experience in the management of services similar to the Services or who is otherwise unsuitable for such appointment.

56 COMMUNICATIONS

56.1 Except as otherwise expressly provided no communication from one Party to the other shall have any validity under this Agreement unless made in writing.

56.2 The Parties agree that e-mail will be considered a satisfactory form of communication for the purposes of Clause 56.1.

56.3 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 the Order 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.

56.4 For the purposes of Clause 56.3 above the address and contact details of the Supplier shall be set out in the contact form in the Invitation to Tender and the councils details shall be referred to in the Award Letter.

56.5 Either Party may change its address for service by notice as provided in this Clause 56.

57 SEVERABILITY

57.1 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 Supplier shall immediately commence good faith negotiations to remedy such invalidity and if no agreement has been reached within twenty (20) working days of commencement, either Party may by notice to the other terminate the Agreement and neither Party shall bear any liability to the other in respect of such termination (but without prejudice to any other provisions of this Agreement).

58 WAIVER

58.1 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.

58.2 Waiver of any default shall not constitute a waiver of any subsequent default.

58.3 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 56.

59 REMEDIES CUMULATIVE

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

60 AMENDMENTS TO THIS AGREEMENT

60.1 This Agreement shall not be varied or amended unless such variation or amendment is agreed in writing by the Council's Representative on behalf of the Council and the Supplier's Representative on behalf of the Supplier.

60.2 Orders placed under this Agreement shall not be varied or amended unless such variation or amendment is agreed in writing by the Council's Representative on behalf of the Council or by the Supplier's Representative on behalf of the Supplier.

61 THIRD PARTY RIGHTS

61.1 A person who is not a Party to this Agreement shall not have any rights under or in connection with it and shall not be entitled to enforce any part of it.

62 DISPUTE RESOLUTION PROCESS

62.1 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 sub-clause 62.2.

62.2 If the dispute cannot be resolved by the Parties' representatives nominated under Clause 62.1, the dispute may be referred to mediation under the supervision of the Centre for Effective Dispute Resolution, International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU ("CEDR"). Mediation shall commence by either Party serving on the other written notice ("Mediation Notice") setting out in summary the issues in dispute and calling upon that other Party to join in an approach to CEDR for the appointment of a mediator.

62.3 The mediation shall be conducted using a sole mediator in or substantially in accordance with CEDR's recommended agreement for the time being in use. The mediator must be a CEDR accredited mediator agreed between the Parties, or in default of agreement within fourteen (14) days of notice of either Party calling upon the other to engage in mediation, appointed by CEDR (provided both Parties have agreed to mediation).

62.4 The Parties agree to co-operate fully and promptly and in good faith with CEDR and/or the mediator in the performance of their obligations under this Clause.

Both Parties will afford the mediator all necessary assistance which the mediator requires to consider the dispute including but not limited to full access to any documentation or correspondence relating to the matters in dispute.

62.5 Unless agreed otherwise in the course of the procedure each Party shall bear its own costs of the mediation.

62.6 If and to the extent that after engaging in good faith in mediation the Parties do not resolve the matters in dispute, all matters remaining in dispute shall be referred to the Courts in accordance with Clause 63 below.

62.7 In the event that the process of mediation does not succeed in finding a resolution to the dispute within a period of fifty-six (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 at Law.

62.8 Nothing in this Agreement shall be taken to prevent or constrain either Party from seeking an injunction or other urgent remedy where justified in the circumstances.

62.9 Work and activity to be carried out under this Agreement shall not cease or be delayed by this dispute resolution procedure.

63 LAW AND JURISDICTION

63.1 This Agreement is a contract made in Wales and the applicable law shall be the law of England and Wales, as it applies in Wales. Subject to Clause 62 the Parties hereby irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales sitting in the locality of the Council, or at Cardiff.

64 NO AGENCY

64.1 The Supplier is not and shall not in any circumstances hold itself out as being the servant or agent of the Council. The Supplier shall not hold itself out as being authorised to enter in 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 Supplier Personnel shall not hold themselves out to be and shall not be held out by the Supplier as being servants or agents of the Council.

65 FREEDOM OF INFORMATION

65.1 The Supplier acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Council (at the Supplier's expense) to enable the Council to comply with these requirements.

65.2 The Supplier shall and shall procure that its Sub-contractors shall:

65.2.1 transfer all Requests for Information to the Council as soon as practicable after receipt and in any event within two (2) working days of receiving a Request for Information;

65.2.2 provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five (5) working days (or such other period as the Council may specify) of the Council requesting that Information; and

65.2.3 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 or Regulation 5(2) of the Environment Information Regulations.

65.3 The Council shall be responsible for determining in its absolute discretion whether the Commercially Sensitive Information and/or Confidential Information and/or any other Information:

65.3.1 is exempt from disclosure under the FOIA and the Environmental Information Regulations; and

65.3.2 is to be disclosed in response to a Request for information.

65.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Council.

65.5 The Supplier acknowledges that the Council may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of FOIA ("the Code") be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier or the Services:

65.5.1 in certain circumstances without consulting with or obtaining consent from the Supplier; or

65.5.2 following consultation with the Supplier and having taken its views into account.

65.6 Provided always that where 65.5.1 applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

65.7 The Supplier shall ensure all information submitted in connection with the tendering process or 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.

65.8 The Supplier acknowledges that any lists or schedules provided by it as part of the tendering process outlining the Supplier's Confidential Information and Supplier's Commercially Sensitive Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with this Clause.

65.9 Any failure to agree between the Council and the Supplier arising out of or in connection with the disclosure of information under the FOIA shall be referred to the Information Commissioner for determination and resolution prior to any disclosure.

66 EMERGENCY AND DISASTERS

66.1 If the Council notifies the Supplier of a situation, which in the opinion of the Council amounts to a possible, potential or actual emergency or disaster, the Supplier shall immediately undertake such tasks and for such purposes provide such assistance including labour, vehicles, equipment and materials as are reasonably available to it and used in connection with the Agreement as the Council may reasonably require. The Council shall reimburse the actual reasonable costs incurred by the Supplier in connection with the services provided to the Council in an emergency or disaster situation.

66.2 During the continuation of such emergency or disaster the Supplier shall keep such records in the form of a log of all key decisions, activities and services provided by the Supplier during the emergency or disaster. The Supplier shall

on request afford the Council such access to those records as may be required by the Council. The records shall be submitted to the Council with the Supplier's invoices for payment for the services provided during the emergency or disaster.

66.3 The Supplier shall if requested by the Council prior to the commencement of the Agreement provide the Council with the names, address and telephone numbers of up to three (3) of its employees who may be contacted at anytime (approved by the Council) and who will be able to initiate an immediate response to the tasks identified by the Council in the event of an emergency or disaster. The Supplier shall further notify the Council of any changes in the information provided as soon as reasonably practicable.

66.4 The Supplier shall have no liability for any failure to perform the Services and/or Works or provide Supplies as a result of the Council exercising its powers under this clause, subject to the Supplier using all reasonable endeavours to continue to perform its obligations under this Agreement during such emergency or disaster situations.

66.5 In the event that the Supplier's performance is affected by an emergency or disaster the Council shall not be liable to pay for any element of the Services which it does not receive or to the extent that any aspect of the Supplier's performance is adversely affected by the situation.

67 WHISTLEBLOWING

67.1 The Supplier shall comply with the Council's whistle blowing procedure which ensures that employees of the Supplier are able to bring to the attention of a Relevant Authority malpractice, fraud and breach of Legislation on the part of the Supplier or any Supplier Personnel without fear of disciplinary and other retribution or discriminatory action.