

## CONDITIONS OF CONTRACT FOR THE PROVISION OF SERVICES

### 1. Definitions

"Council"	shall mean	the Council of the City of Plymouth of Civic Centre, Plymouth, PL1 2EW
"Supplier"	shall mean	the person, firm or company to whom the Order is addressed
"Services"	shall mean	the Services described in the Order
"Order"	shall mean	the Order placed by the Council for the provision of the Services and for the purposes of these conditions the Council's requirements, as detailed in the Order, shall be deemed to be the Council's requirements under the Order unless the contrary is expressly stated to be the case

### 2. Acknowledgement

The Council shall be bound to the Supplier only upon the issue and receipt by the Supplier of the Order or a copy thereof signed by an Officer of the Council duly authorised for that purpose

### 3. Provision of the Services

- 3.1 The Supplier shall provide the Services in accordance with and as specified in the Order to the satisfaction of the Council whose decision will be final and conclusive. The Council shall have the power to inspect and examine the performance of the Services at the Council's premises at any reasonable time or, provided that the Council gives reasonable notice to the Supplier, at any other premises where any part of the Services is being performed
- 3.2 If the Council informs the Supplier that the Council considers any part of the Services to be inadequate or in any way differing from the Order, and this is other than as a result of default or negligence on the part of the Council, the Supplier shall at its own expense re-schedule and perform the work correctly within such reasonable time as may be specified by the Council
- 3.3 Timely provision of the Services shall be of the essence of the Order, including in relation to commencing the provision of the Services within the time agreed or on a specified date
- 3.4 The Supplier warrants that it shall provide the Services with all due skill, care and diligence, and in accordance with good industry practice and legal requirements
- 3.5 The Supplier shall reimburse the Council for all reasonable costs incurred by the Council which have arisen as a direct consequence of the Suppliers delay in the performance of the Order

### 4. Suppliers Personnel

- 4.1 The Council reserves the right to refuse to admit to the Council's premises any person employed by the Supplier or its sub-contractors, whose admission would be undesirable in the opinion of the Council
- 4.2 If and when requested by the Council, the Supplier shall provide a list of the names and addresses of all persons who may at any time require admission in connection with the performance of the Services to the Council's premises, specifying the role in which each such person is concerned with the Supplier and giving such other particulars as the Council may require

### 5. Quality and Description

- 5.1 The Services shall: -
- 5.1.1 conform as to quality and description with the particulars stated in the Order;
- 5.1.2 be equal in all respect to the specifications provided or given by either party
- 5.1.3 be capable of any standard or performance as specified in the Order

### 6. Variations

Neither the Council nor the Supplier shall be bound by any variation, waiver of or, addition to these conditions herein except as agreed by both parties in writing and signed on their behalf

### 7. Time

- 7.1 The Supplier shall provide the Services to the Council at the time(s) specified in the Order (if so specified) or as agreed by the parties hereto by any variation in accordance with clause 6 herein and under these conditions time shall be considered to be of the essence. If no time is specified for provision of the Services and completion of the Services then the Supplier shall provide the Services within a reasonable time of the receipt by the Supplier of the Order, the determination of what is to be considered reasonable to be at the absolute discretion of the Council
- 7.2 If the Services or any portion thereof are not provided within the time or times specified or any extension of such time or times to the complete satisfaction of the Council, the Council shall be entitled to either: -
- 7.2.1 determine the Order in respect of the Services not provided and of any other Services that have already been provided under the Order which cannot be effectively and commercially used by reason of the non-provision of the Services as aforesaid. On such determination the Council shall be entitled: -
- 7.2.1.1 to recover from the Supplier any additional expenditure reasonably incurred by the Council in obtaining other Services in respect of those in respect of which the Order has been determined

### 8. Guarantee

- 8.1 The Supplier shall guarantee the workmanship in the Services for a period of 1 year, commencing from the date that the Services are completed
- 8.2 If within the period after completion of the Services the Council gives notice in writing to the Supplier of any defect in the Services which shall arise under proper use from faulty design (other than a design made, furnished or specified by the Council for which the Supplier has in writing disclaimed responsibility), or workmanship, then the Supplier shall with all possible speed rectify the defects without cost to the Council

### 9. Payment

Payment of the price specified in the Order, or such other price as shall have been agreed in writing and to be stated in the Order or as varied in accordance with clause 6 herein, shall be made by the Council to the Supplier within thirty days of the delivery by the Supplier of an invoice requesting such payment, such invoice to be received no earlier than the date for completion of the Services and/or the completion date of the Order, whichever is the later, or in the event that the Council exercises the right to delay commencement of the Service under clause 7 herein not prior to the date of the Council's notice of postponement of commencement

**10. Statutory Requirements**

- 10.1 The Supplier warrants that: -
- 10.1.1 the Services to be provided comply in all respect with all relevant requirements of any statute, statutory rule or order, or other instrument having the force of law which may be in force at the time when the same are provided;

**11. Indemnity and Insurance**

- 11.1 The Supplier will indemnify the Council in respect of any damage to the Council's property or premises and physical or other personal injury to the Council's employees or to members of the public or other persons occasioned during provision of the Services and for these purposes shall take out and, if requested to do so, produce to the Council a policy of insurance in respect of such risks, the limit of indemnification of such policies may, at any time be determined by the Council;
- 11.2 The contents of this clause are expressly stated to be entirely without prejudice to any rights that might subsist between the Council, the Supplier and third parties at Common Law or otherwise;
- 11.3 The Supplier shall maintain throughout the term of this Order and at its own cost a public liability insurance policy with a minimum amount of third party insurance of two million pounds (£2,000,000) for any one accident/number of accidents unlimited
- 11.4 The Supplier shall maintain throughout the term of this Order and at its own cost a comprehensive policy of insurance to cover the liability of the Supplier in respect of any act or default for which it may become liable to indemnify the Council pursuant to the terms of the Order
- 11.5 The Supplier shall, subject to clauses 11.1, 11.2, 11.3 and 11.4 of this clause indemnify the Council in respect of all damage or injury occurring during the term of the Order herein to any person or to any property and against all actions, suits, claims, demands, costs, charges or expenses (including legal fees and costs incurred) arising in connection therewith to the extent that the same shall have been occasioned by the negligence of the Supplier, his servants or agents during such time as he or they were on, entering onto or departing from the Council's premises for any purpose connected with the Supplier.
- 11.6 The Supplier shall not be liable to the Council for: -
- 11.7 any damage or injury to the extent that the same is caused by or arises out of the act or omissions of the Council  
In the event of any claim being made against the Council by the reason of any matter referred to and in respect of which the Supplier is liable under this clause, the Supplier shall be promptly notified thereof and may at his own expense conduct all negotiations for the settlement of the same and any litigation that may arise there from. The Council shall not unless and until the Supplier shall have failed to take over the conduct of negotiations or litigation make any admission which may be prejudiced thereto. The conduct by the Council of such negotiations or litigation shall be conditional upon the Supplier having first given to the Council such reasonable security as shall from time to time be required by the Council to cover the amount ascertained or agreed or estimated as the case may be of any compensation, damages, expenses and costs for which the Council may become liable. The Council shall at the request of the Supplier afford all available assistance for any such purpose and shall be repaid any out of pocket expenses incurred in doing so

**12. Intellectual Property Rights**

- 12.1 Subject to any pre-existing rights of third parties and of the Supplier, the Intellectual Property Rights in all reports, documents and other materials which are generated or acquired by the Supplier (or any of its sub-contractors or agents) in the performance of the Services shall belong to and be vested automatically in the Council, and the Supplier warrants to the Council that all staff, agents and sub-contractors are and will be engaged in relation to the Order on terms which do not entitle any of them to Intellectual Property Rights in any such report, document or other material. The Supplier hereby assigns any copyright that it owns in every such report, document or other material to the Council
- 12.2 If the Supplier in providing the Services uses any materials in which there are pre-existing Intellectual Property Rights owned by itself, its agents, sub-contractors or third parties, it shall itself provide, or procure from such agent, subcontractor or third party a non-exclusive licence for, or, if the Supplier is itself a licensee of those Intellectual Property Rights, it shall grant a sub-licence to the Council to use, reproduce, modify, adapt and enhance the material as the Council sees fit. Such licence or sub-licence shall be perpetual and irrevocable and granted at no cost to the Council

**13. Assignment or Sub-Contracting**

- 13.1 The Supplier shall not without the consent in writing of the Council assign or transfer the Order herein or any part thereof to any other person except as part of a company amalgamation or reconstruction
- 13.2 The Supplier shall not without the consent in writing of the Council sub-let the provision of the Services or any part or parts thereof but this shall not prevent the Supplier sub-letting part of the Order to any company which is a member of the group to which the Supplier belongs or a company with whom the Supplier is associated (provided that the Supplier shall provide such evidence of proof as required by the Council). Any such consent shall not relieve the Supplier of any of his obligations under these conditions

**14. Bankruptcy/Liquidation etc.**

- 14.1 In the event of the Supplier becoming bankrupt or making a composition or arrangement with its creditors or having a proposal in respect of its company for a voluntary arrangement for a composition of debts or scheme or arrangement approved in accordance with the Insolvency Act, 1986 or any statutory re-enactment or amendment thereof, or having an application made under the Insolvency Act, 1986 or any statutory re-enactment or amendment thereof in respect of its company to the Court for the appointment of an administrator, or having a winding up order made or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding up passed or having a provisional liquidator, receiver or manager of his business or undertaking duly appointed or having an administrative receiver as defined in the Insolvency Act, 1986 or any statutory re-enactment or amendment thereof, appointed or having possession taken by or on behalf of the holders of any debentures secured by a floating charge, or any property comprised in or subject to the floating charge then in any and all of such eventualities the Council shall be at liberty:-
  - 14.1.1 to cancel the Order summarily by notice in writing without compensation to the Supplier, or
  - 14.1.2 to give any receiver, liquidator, trustee or insolvency practitioner the option of carrying out the Order PROVIDED THAT the exercise of the right under this clause shall be at the sole discretion of the Council and shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Council

**15. Law of Contract**

This Order shall be construed and be subject to English Law and jurisdiction of the English Courts

**16. Corruption**

The Council shall be entitled to cancel the Order herein and to recover from the Supplier the amount of any loss resulting from such cancellation if the Supplier shall have offered or given or agreed to give any person a gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to any action in relation to the obtaining or execution of the Order or any other Order with the Council or for showing or forbearing to show favour or disfavour to any person in relation to the Order or any other contract with the Council or if the like acts shall have been done by any person employed by him or acting on his behalf (whether with or without the knowledge of the Supplier) or if in relation to any contract with the Council, the Supplier or any person employed by him or acting on his behalf shall have committed any offence under the Prevention of Corruption Acts, 1889 and 1916 or shall have given any fee or reward the receipt of which is an offence under Section 117(2) Local Government Act, 1972

**17. Force Majeure**

- 17.1 Neither the Council or the Supplier shall be liable to the other for any delay or failure by either party to perform its obligations under the Order if any such delay or failure arises from any cause or causes beyond the reasonable control of either party, including, but not limited to, labour disputes, lightning, earthquakes, riots, acts of terrorism, regulations or orders of any Government, agency or subdivision thereof
- 17.2 In the event of force majeure occurring the Supplier shall notify the Council of the event as soon as reasonably possible but no later than 7 days from the date the force majeure took place

**18. Notice**

- 18.1 The parties shall comply with the terms of any notice specifying a breach of these conditions of the Order and requiring the breach to be remedied so far as it may be SAVE THAT nothing in this clause is intended to require the Council to serve notice of any breach before taking action in respect of it
- 18.2 Any notice to be served on either of the parties hereto by the other shall be sent by pre-paid recorded delivery or first class post or by e-mail to the address of the relevant party as detailed in the Order or, in the event of the change of address as detailed in clause 21 herein to that address

**19. Value Added Tax (V.A.T.)**

- 19.1 All sums payable under this Order, unless otherwise stated, are exclusive of V.A.T. and other duties or taxes
- 19.2 Any V.A.T. or other duties payable in respect of such sums shall be payable in addition to such sums

**20. Severance**

If any provision of this Order is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, or indications to that effect are received by either of the parties from any competent authority the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality or at the discretion of the Council it may be severed from this Order and the remaining provisions of this Order shall remain in full force and effective unless the Council in the Council's discretion decides that the effect of such a declaration is to defeat the original intention of the parties in which event the Council shall be entitled to terminate this Order by 14 days written notice to the Supplier

**21. Change of Address**

Each of the parties hereto shall give notice to the other of the change or acquisition of any address at the earliest opportunity but in any event within 48 hours of such change or acquisition

**22. Arbitration**

All disputes or differences which shall at any time arise between the parties hereto which are not reconcilable between themselves whether during the term or afterwards which touch or concern this Order or its construction or effect or the rights, duties or liabilities of the parties under or by virtue of it or otherwise or any other matter in any way connected or arising out of the subject matter of this Order shall be referred to a single arbitrator to be agreed upon by the parties hereto or in default of any agreement to be nominated by the president for the time being of the Chartered Institute of Arbitrators in accordance with the Arbitration Acts, 1950 and 1979 or any statutory modification or re-enactment of it for the time being in force

**23. Race Relations**

- 23.1 The Council as a public body is bound by Section 2 of the Race Relations (Amendment) Act 2000 by which it has a duty to actively promote race equality and as a Supplier working for and on behalf of the Council the Supplier has a similar duty under the said Act
- 23.2 The Supplier will provide the Services fairly and without unlawful discrimination
- 23.3 The Supplier will have appropriately trained staff available to deal with racial issues or complaints and monitor the same and the manner of dealing therewith. Such information shall be passed to the Council on a regular basis as agreed with the Council
- 23.4 The Supplier will actively endeavour to achieve a workforce representative of the ethnic diversity of the area
- 23.5 The Supplier shall indemnify the Council in respect of all costs claims and demands arising from a third party claim resulting from the Suppliers obligations under this clause

**24. Human Rights**

- 24.1 The Council as a public authority has a positive obligation to ensure compliance with the Human Rights Act 1998 and as a Supplier working for and on behalf of the Council the Supplier has a similar duty under the said Act
- 24.2 The Supplier will provide the Services having due regard to the requirements of the said Act
- 24.3 The Supplier shall indemnify the Council in respect of all costs claims and demands arising from a third party claim resulting from the Suppliers obligations under this clause

**25. Data Protection Act**

- 25.1 The Supplier will provide the Services having due regard to the data protection principles and in compliance with its duties under the Data Protection Act 1998 or any statutory re-enactment thereof and all regulations deriving therefrom
- 25.1.1 In the event that the data is held by the Supplier on behalf of the Council and as a direct consequence of the Order between the parties then it will co-operate fully with the Council in the event of any data subject application and the response thereto at nil cost to the Council
- 25.1.2 The Supplier will inform the Council of the name of its Data Controller on entering into this Order
- 25.1.3 The Supplier shall indemnify the Council in respect of all third party claims resulting from the Suppliers obligations under this clause

**26. Local Government Acts 1999 and 2000**

The Local Government Acts of 1999 and 2000 set out the responsibilities of local authorities to provide all services efficiently effectively and economically and to strive for constant improvement of all service provisions. The Supplier must act at all times in a manner which is compatible and corresponds with the above criteria and allow the Council the facilities or access as required to all monitoring of the Works to this end

**27. Freedom of Information**

27.1 This Order is subject to the provisions of the Freedom of Information Act 2000 and the parties acknowledge that the Council shall comply in all respects with the provisions of this Act and in particular shall communicate to any persons making a request under the Act all and any information contained in or relating to this Council where required by and in accordance with the provisions of this Act

27.2 In the event of conflict between the provisions of this clause and any other clause or provision of this Order the provisions of this clause shall prevail

**28. Termination**

28.1 The Order may be subject of early termination by notice in writing by the Council: -

28.1.1 Where the Supplier does not carry out the provision of the Services in accordance with the Order

28.1.2 Where the Supplier is in breach of the provisions of the Order

28.1.3 In the event of the bankruptcy or insolvency of the Supplier in accordance with clause 18

**29. Cancellation**

The Council shall be entitled to terminate the Order, or to terminate the provision of any part of the Services, by giving the Supplier not less than 28 days notice in writing to that effect without prejudice to any rights or remedies of the Supplier for breach of contract. Once it has given such notice, the Council may extend the period of notice at any time before it expires, subject to agreement on the level of Services to be provided by the Supplier during the period of extension

**30. Transfer of Services**

30.1 Where the Council intends to continue with services equivalent to any or all of the Services after termination or expiry of the Order, either by performing them itself or by the appointment of a replacement supplier, the Supplier shall use all reasonable endeavours to ensure that the transition is undertaken with the minimum of disruption to the Council

30.2 The Supplier shall co-operate fully during the transition period and provide full access to all data, documents, manuals, working instructions, report and any information, whether held in electronic or written form, which the Council considers necessary

**31. Rights of Third Parties**

It is not intended that the Order, either expressly or by implication, shall confer any benefit on any person who is not a party to the Order and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply