

TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

1. INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply:

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Commencement Date: has the meaning set out in clause 3.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 16.7.

Contract: the contract between the Customer and the Supplier for the supply of Services in accordance with these Conditions.

Customer: LIVERPOOL CITY REGION COMBINED AUTHORITY of No.1 Mann Island Liverpool L3 1BP.

Customer Materials: has the meaning set out in clause 4.4(k).

Deliverables: all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

Force Majeure Event: any of the following events if that event was neither preventable nor foreseeable:

- (a) a flood storm or other natural event;
- (b) any war hostilities revolution riot or civil disorder;
- (c) the introduction of or any amendment to a law or regulation or any change in its interpretation or application by any authority;
- (d) any action taken by a governmental or public authority or an agency of the European Union including any failure or delay to grant a consent exemption or clearance; or
- (e) any strike lockout or other industrial action.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including

know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Liquidated Damages: liquidated damages calculated as the sum per week for each week's delay in delivery up to a maximum of 15% per cent of the total price of the Services, or calculated in accordance with such other calculation as may be specified as Special Condition 2.

Minimum Insurance Cover: £1,000,000 (or such other sum as may be specified as Special Condition 1).

Order: the Customer's order for the supply of Services, as set out in the Customer's purchase order form, or in the Customer's written acceptance of the Supplier's quotation, as the case may be.

Services: the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Specification.

Special Conditions: any Special Conditions specified in clause 2 and Special Condition 1, 2, 3 etc. shall be construed accordingly.

Specification: the description or specification for Services specified in writing by the Supplier.

Supplier: the person or firm from whom the Customer purchases the Services.

Variation: has the meaning set out in clause 7.3.

1.2 **Construction.** In these Conditions, the following rules apply:

- (a) **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) references to a party includes its successors or permitted assigns;
- (c) reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted and includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall

TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

be construed as illustrative and shall not limit the sense of the words preceding those terms;

- (e) reference to **writing** or **written** includes faxes and e-mails; and
- (f) reference to **any part of the Services** includes the whole.

2. SPECIAL CONDITIONS

- 2.1 Any Special Conditions listed in this clause 2 shall apply notwithstanding any other provisions of this Contract.

Special Condition Number	Subject	Special Condition
1.	Minimum Insurance Cover (£)	
2.	Liquidated Damages	
3.	Payment Terms	

3. BASIS OF CONTRACT

- 3.1 The Order constitutes an offer by the Customer to purchase Services from the Supplier in accordance with these Conditions.
- 3.2 The Order shall be deemed to be accepted on the earlier of:
 - (a) the Supplier issuing written acceptance of the Order; or
 - (b) any act by the Supplier consistent with fulfilling the Order,
 at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 3.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or

incorporate, or which are implied by trade, custom, practice or course of dealing.

4. SUPPLY OF SERVICES

- 4.1 The Supplier shall from the Commencement Date and for the duration of this Contract provide the Services to the Customer in accordance with the terms of the Contract.
- 4.2 The Services shall be commenced on and shall be completed by the respective dates stated in the Order or Specification.
- 4.3 The Supplier shall meet any performance dates for the Services specified in the Order or notified to the Supplier by the Customer.
- 4.4 In providing the Services, the Supplier shall:
 - (a) co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;
 - (b) perform the Services with due care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
 - (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
 - (d) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Customer;
 - (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
 - (f) use the appropriate quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Customer, will be free from defects in workmanship, installation and design;
 - (g) obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
 - (h) comply with and make all of its employees and sub-contractors aware of the details of all health and safety rules and regulations and any other security requirements that apply;

TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

- (i) act promptly on any reasonable request by the Customer to make improvements in its health or safety performance;
- (j) report to the Customer any hazardous conditions which are outside its control but which might expose its employees and/or other persons to risk;
- (k) hold all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier (**Customer Materials**) in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose of or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation; and
- (l) not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services.

5. CUSTOMER REMEDIES

- 5.1 If the Supplier fails to perform the Services by the applicable date(s), the Customer shall, without limiting its other rights or remedies, have one or more of the following rights:
- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - (b) to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
 - (c) to recover from the Supplier any costs incurred by the Customer in obtaining services from a third party;
 - (d) where the Customer has paid in advance for Services that have not been provided by the Supplier, to have such sums refunded by the Supplier; and
 - (e) to claim damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to meet such date(s).
- 5.2 If any part of the Services is not completed by the date for completion specified in the Order, Specification or as otherwise agreed in writing between the parties, the Customer may (without limiting its other rights or remedies), at its option, claim or deduct Liquidated Damages.

- 5.3 If any defects or other faults in the Services appear within a reasonable period after the Commencement Date due to materials, goods or workmanship not in accordance with this Contract, the Supplier shall make good such defects or other faults entirely at its own cost unless the Customer shall instruct otherwise.

- 5.4 These Conditions shall extend to any substituted or remedial services supplied by the Supplier.

- 5.5 The Customer's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

6. CUSTOMER'S OBLIGATIONS

The Customer shall:

- (a) provide the Supplier with reasonable access at reasonable times to the Customer's premises for the purpose of providing the Services;
- (b) provide such information as the Supplier may reasonably request for the provision of the Services and the Customer considers reasonably necessary for the purpose of providing the Services.

7. CHARGES AND PAYMENT

- 7.1 The charges for the Services shall be set out in the Order, and, subject to clause 7.4, shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Customer, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

- 7.2 Subject to clause 7.3 and any provisions of Special Condition 3, the Supplier shall invoice the Customer on completion of the Services.

Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including but not limited to the relevant purchase order number. The Supplier acknowledges that the Customer may be funding the Order by way of a time-limited third party grant and may suffer loss due to delayed invoicing in breach of this clause 7.2 by the Supplier.

- 7.3 The Customer may, without invalidating this Contract, issue written instructions to the Supplier requiring an addition to, omission from, or other change in the Services, Specification or the Order or period in which they are to be carried out (**Variation**). Prior to the

TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

Supplier carrying out the Variation, the Supplier shall state in writing to the Customer what adjustment if any will be made to the price of the Services and satisfy the Customer as to the reasonableness of such adjustment.

7.4 In consideration of the supply of Services by the Supplier, the Customer shall pay all undisputed invoiced amounts within 30 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.

7.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

7.6 If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank PLC base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments that the defaulting party disputes in good faith.

7.7 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the Customer to inspect such records at all reasonable times on request.

7.8 The Customer may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.

8. INTELLECTUAL PROPERTY RIGHTS

8.1 In respect of any goods that are transferred to the Customer as part of the Services under this Contract, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Customer, it will

have full and unrestricted rights to sell and transfer all such items to the Customer.

8.2 The Supplier assigns to the Customer, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the product of the Services, including for the avoidance of doubt the Deliverables.

8.3 The Supplier shall obtain waivers of all moral rights in the product of the Services, including for the avoidance of doubt the Deliverables, to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.

8.4 The Supplier shall, promptly at the Customer's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Customer may from time to time require for the purpose of securing for the Customer the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Customer in accordance with clause 8.2.

8.5 All Customer Materials are the exclusive property of the Customer.

9. INDEMNITY

9.1 The Supplier shall keep the Customer indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Customer as a result of or in connection with:

(a) any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the receipt, use or supply of the Services, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and

(b) any claim made against the Customer 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 Contract by the Supplier, its employees, agents or subcontractors.

9.2 This clause 9 shall survive termination of the Contract.

TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

10. INSURANCE

During the term of the Contract and for a period of six years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract and each such insurance shall provide at least the Minimum Insurance Cover in respect of any event or series of connected events. The Supplier shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

11. CONFIDENTIALITY AND FREEDOM OF INFORMATION

11.1 A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

11.2 The Supplier acknowledges that the Customer is subject to the provisions of the Freedom of Information Act 2000 and that any information provided by the Supplier to the Customer under this Contract may need to be disclosed to third parties under the provisions of such legislation and/or any accompanying codes of practice issued under the Freedom of Information Act 2000.

11.3 This clause 11 shall survive termination of the Contract.

12. TERMINATION

12.1 Without limiting its other rights or remedies, the Customer may terminate the Contract by giving the Supplier 28 days' written notice unless specified otherwise in the Specification or Order.

12.2 Without limiting its other rights or remedies, a party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 28 days of receipt of notice in writing to do so;
- (b) the other party repeatedly breaches any of the terms of the Contract in such a manner so that, in that party's reasonable opinion, its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
- (c) the other party offers, gives or agrees to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or having done or forborne to do any action in relation to the obtaining or execution of this Contract or any other Contract with the Customer or the showing or forbearing to show favour or disfavour to any person in relation to this Contract or if the like acts are done by any person employed by it or acting on its behalf (whether with or without the knowledge of the Supplier) or if in relation to any agreement with the Customer the Supplier or any person employed by them or acting on its behalf has:
 - (i) committed an offence under the Prevention of Corruption Acts 1889-1916,
 - (ii) committed an offence under the Bribery Act 2010; or
 - (iii) given any fee or reward the receipt of which is an offence under Section 117 of the Local Government Act 1972;
- (d) the other party becomes insolvent or bankrupt or makes an arrangement with its creditors to go into liquidation whether compulsory or voluntary (except liquidation for the purpose of reconstruction);
- (e) the other party's financial position deteriorates to such an extent that in that party's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;
- (f) the other party suspends or ceases, or threatens to suspend, or cease, to carry on all or a substantial part of its business; or
- (g) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or

TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

becomes a patient under any mental health legislation.

12.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.

12.4 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

13. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason, the Supplier shall:

(a) immediately deliver to the Customer all Deliverables whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, then the Customer may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract; and

(b) the Supplier shall, if so requested by the Customer, provide all assistance reasonably required by the Customer to facilitate the smooth transition of the Services to the Customer or any replacement supplier appointed by it.

14. FORCE MAJEURE

14.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such a delay or failure result from a Force Majeure Event.

14.2 The Supplier shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations.

14.3 If a Force Majeure Event prevents, hinders or delays the Supplier's performance of its obligations for a continuous period of more than 28 Business Days, the Customer may terminate the Contract immediately by giving written notice to the Supplier.

15. COMPLIANCE

15.1 The Supplier shall not in respect of any persons employed by it (whether in execution of the Contract or otherwise) in every factory, workshop or place situated in the United Kingdom and occupied or used by them for the execution of the Contract discriminate within the meaning and scope of the provisions of the Equality Act

2010 or any statutory modifications or re-enactments thereof.

15.2 The Supplier shall comply with all health and safety legislation, EU directives and any guidance notes issued by the Health and Safety Executive, Environment Agency or other enforcing agencies and shall pay all costs in respect thereof.

15.3 The Supplier shall comply with the Construction (Design and Management) Regulations 2015. The Supplier must be prepared to accept the role of principal contractor under the Regulations if so appointed or to fully co-operate with any other contractor who may be so appointed and to carry out all duties of Contractor or principal contractor in accordance with the Regulations.

16. GENERAL

16.1 Assignment and other dealings.

(a) The Customer may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under, or any interest in, the Contract.

(b) The Supplier may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under, or any interest in, the Contract without the prior written consent of the Customer.

16.2 Notices.

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier or fax.

(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 16.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one Business Day after transmission.

TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

(d) "Writing" shall not include email for the purposes of this clause 16.2.

16.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

16.4 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

16.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

16.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

16.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Customer.

16.8 **Dispute resolution.** If any dispute arises under the Contract then both parties shall endeavour to resolve the issue amicably. However in the event of failure to do so within a reasonable time then either party may refer the matter to mediation as a means of resolving the dispute. The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the dispute.

16.9 **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject

matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

16.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

Signed by

duly authorised for and on behalf of
the Supplier

.....
Signature

.....
(Print Name)

.....
Date