

## CONTRACT CONDITIONS

If there are any inconsistencies between the documents forming the Agreement then these Contract Conditions shall prevail.

### 1 DEFINITIONS

- 1.1 "The Council" means Warrington Borough Council.
- 1.2 "The Provider" means the person, firm or company to whom the Purchase Order is issued.
- 1.3 "The Service" means all services covered by the Contract.
- 1.4 "The Purchase Order" means the form or document used by the Council to order the Service from the Provider and which specifies that these conditions apply to it.
- 1.5 "The Contract" means the contract between the Council and the Provider consisting of the Purchase Order, these conditions and any other documents (or parts thereof) specified in the Purchase Order. Should there be any inconsistency between these documents they shall have the following order of precedence:
- Any special conditions written or referred to on the face of the Purchase Order.
- These General Conditions of Purchase.
- Any technical specification referred to on the face of the Purchase Order.

Words imparting the singular also include the plural and vice versa where the context requires

A reference to any Act of Parliament or any Order, Regulation, Statutory Instrument, Code of Practice, Guidance or the like shall be deemed to include a reference to any amendment or re-enactment of the same.

### 2. AUTHORISED OFFICER

- 2.1 The Council's Authorised Officer shall be Strategic Director, Corporate Services, or such representative appointed by the Council to act in the name of the Council for the purposes of the Contract.

### 2.0 CONTRACT PERIOD

- 2.1 This Contract commences on the Commencement Date as specified in the Purchase Order and shall continue to be the governing Agreement (subject to variation and termination as provided for in this Agreement) for the Service provided by the Provider until the Expiry Date as Specified in the Purchase Order.

### 4.0 DESIGNATED MANAGER

- 4.1 The Provider shall appoint a Designated Manager who shall carry overall responsibility for day to day contract performance on behalf of the Provider and shall hold a position of sufficient seniority to be able to make policy level decisions on behalf of the Provider.
- 4.2 The Provider shall confirm in writing to the Council, the identity, address and telephone numbers of the person appointed as Designated Manager and of any subsequent appointment and of any authorised deputy.
- 4.3 Any notice, information, instruction or other communication given or made to the Designated Manager shall be deemed to have been made to the Provider.

### 5.0 CONTRACT STANDARD

- 5.1 The Provider shall at all times comply with all relevant statutory obligations.
- 5.2 The Provider shall operate the Service in a manner, which is consistent with the policies of the Council and shall consult the Council's Authorised Officer or his representative as to the application of these policies.
- 5.3 The "Contract Standard" means such standard as complies in each and every respect with all relevant provisions of the Contract and where and to the extent that no criteria are stated in the Contract the standard is to be to the entire satisfaction of the Authorised Officer.

### 6.0 MONITORING, ACCESS AND INFORMATION

- 6.1 The Provider shall allow the Authorised Officer reasonable access to any premises under the Provider's control on which the Service is provided for the purposes of monitoring the Contract Standard, including the carrying out of spot checks.
- 6.2 The Provider shall institute, maintain and demonstrate a properly documented system of quality assurance to ensure that the Contract Standard is maintained at all times. This system shall be open to inspection by the Authorised Officer.
- 6.3 The Provider shall co-operate with the Authorised Officer and shall comply with all reasonable requests from the Authorised Officer in monitoring and evaluating the quality value for money and the effectiveness of the Provider's provision of the Service.
- 6.4 The Authorised Officer may from time to time examine the Provider's financial position in order to assure himself of the ability of the Provider to continue to provide the Service. Such information shall only be used by the Council and its Officers for the purposes set out in this Clause 6 and shall not be used for any purpose relating to the

determination of prices for the Service under this or any other like Agreement.

6.5 This Contract shall be reviewed by both the Provider and the Council annually or at any other time as agreed between the parties.

6.6 In the event of the Provider being unable to provide the Service or any part of it the Provider shall immediately inform the Authorised Officer giving details of the circumstances, reasons and likely duration of such inability. Nothing in this Clause shall alter the Provider's obligation to provide the Service.

## 7.0 CONFIDENTIALITY AND COPYRIGHT

7.1 For the purposes of this Clause 7, Data, Personal Data and Processing shall mean Data, Personal Data and Process/Processing as defined in Section 1 of the Data Protection Act 1998 ("the Act")

7.2 The Provider hereby acknowledges that in the performance of its obligations under this Contract it shall Process Personal Data.

The Provider shall comply with its obligations under the Act and all statutory re-enactments or modifications thereof, any rules, regulations, orders and any codes of practice or any guidelines issued by the Information Commissioner. All information and Data including Personal Data obtained and used in connection with the Service shall remain the property of the Council and shall be processed for the sole purpose of undertaking the providers obligations under this Contract and for no other purpose. The Provider shall on expiration or early determination of this Contract return all information and Data including Personal Data to the Council within seven days of such expiry or determination

## 8.0 HEALTH AND SAFETY & EQUAL OPPORTUNITIES

8.1 The Provider shall at all times comply with the requirements of the Health and Safety at Work etc. Act 1974, The Management of Health & Safety at Work Regulations:1999 and of any other Acts, Regulations or Orders or rules of law pertaining to health and safety.

8.2 The Provider shall comply with its general statement of safety policy, which must include all services. The Provider shall forthwith nominate a person to be responsible for health and safety matters.

8.3 The Provider as employer shall comply with the requirements of the Race Relations Act 1976 and the Race Relations (Amendment) Act 2000, and accordingly, shall not treat one group of people less favourably than others because of their colour, race, culture, religion, gender, nationality,

age, marital status, sexual orientation, disability or ethnic origin in relation to decisions to recruit, train or promote employees or the provision of any services supplied by the Provider or in its obligations under this Contract.

8.4 If any Court or Tribunal, or the Commission for Racial Equality should make any finding that the Provider has unlawfully discriminated against any person then the Provider shall take all necessary steps to prevent the re occurrence of such unlawful discrimination and the Authorised Officer shall be entitled to require the Provider to provide it with full details of the steps taken.

8.5 The Provider's equal opportunities policy shall be set out in any instructions and documentation circulated to those members of Staff concerned with recruitment, training, promotion and the provision of the Service.

8.6 The Provider shall conform (in so far as is permitted by law and in so far as has been communicated) to the Equality of Opportunities Policy of the Council.

## 9.0 HUMAN RIGHTS

9.1 The Provider acknowledges that in performing its obligations under this Contract it may be a public authority for the purposes of the Human Rights Act 1998, and that it is unlawful to exercise functions deemed to be of a public nature in a way that is incompatible with those rights contained in the European Convention of Human Rights and incorporated into English Law by the Human Rights Act 1998.

9.2 In providing the Service the Provider shall throughout the Contract Period and at its own cost be subject to the same duty in respect of Human Rights in the same way as if it were the Council.

9.3 The Provider shall undertake or refrain from undertaking such actions as the Council may request so as to enable the Council to discharge its duty under the Human Rights Act 1998

## 10.0 STAFF RECRUITMENT, TRAINING & SUPERVISION

10.1 The Provider shall be responsible for ensuring an appropriate infrastructure to deliver the Service. It shall be responsible for the staffing, management and co-ordination of the Service provided by the Provider, including the recruitment, supervision and training of Staff and volunteers.

10.2 Information on convictions shall be required by way of an application form. The Provider shall not employ any person who discloses any convictions without first obtaining written approval from the Authorised Officer or his/her representative.

## 11.0 EMPLOYEES

11.1 The Provider shall employ sufficient persons to ensure that the Service is provided at all times and in all respects to the Contract Standard.

11.2 The Provider shall ensure that every person employed in the provision of the Service is at all times properly and sufficiently qualified, competent, careful, skilled, honest, experienced, instructed and supervised as the case may be with regard to the Service and in particular: the tasks such person has to perform; all relevant provisions of the Contract; all relevant policies, rules, procedures, standards and statutory requirements.

11.3 Should the Provider become aware of any incident, offence, alleged offence or conviction which calls into question a member of Staff's suitability to perform their duties, then the Provider shall not continue to employ the individual within the Service.

**12.0 SUB-CONTRACTING AND ASSIGNMENT OF THE SERVICE**

12.1 The Council shall be entitled to assign the benefit of this Contract to any of its statutory successors and shall give written notice of any assignment to the Provider.

12.2 The Provider shall not assign this Contract or any part of it except with the express written permission of the Council (such permission shall not be unreasonably withheld or delayed) and the reasons for any refusal shall be supplied to the Provider in writing at the time of notification of any refusal.

12.3 The Provider shall not sub-contract the Service or any part of it except with the express written permission of the Council (such permission not to be unreasonably withheld or delayed).

12.4 The parties agree that upon any assignment there shall occur a reciprocal release of each party's rights and obligations to the other under this Contract save for liability in respect of any antecedent breaches.

**13.0 INDUCEMENTS**

13.1 If the Provider or any employee or person acting on the Provider's behalf offers or gives to any person any gift or consideration as an inducement or reward for doing or forbearing to do any action in relation to obtaining this or any other contract with the Council or any other Council, or favours or disfavors any person in relation to this or such another contract, or shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or the Local Government Act 1972, or offers or gives any reward to any Officer of the Council accepted or exacted by or from such Officer under colour of his office or employment (and is otherwise than the Officer's proper

remuneration) the Council shall be entitled to terminate this Agreement and to recover from the Provider the amount of any loss resulting from such termination.

**14.0 INSURANCE AND INDEMNITY**

14.1 The Provider shall indemnify and keep indemnified the Council against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of, or in any way arising out of the provision of the Service in relation to the injury to, or death of, any person and loss of, or damage to, any property including property belonging to the Council except and to the extent that it may arise out of the act default or negligence of the Council its employees or agents not being the Provider or employed by the Provider.

14.2 Without thereby limiting its responsibilities under this Clause 14, the Provider shall insure with a reputable insurance company its liabilities under Clause 14.1. The Council and the Provider will work together to resolve any questions of suitability of the Provider's chosen insurer raised by the Council.

14.3 The insurance in respect of any personal injury to, or death of, any person arising under a contract of service with the Provider and arising out of an incident occurring during the course of such person's employment shall comply with the Employer's Liability (Compulsory Insurance) Act 1969 and the Road Traffic Act 1988 and any statutory orders made thereunder.

14.4 The levels of insurance required to meet the requirements of Clause 14.3 Employers Liability will be £10,000,000.

14.5 For all claims other than under Clause 14.3 & 14.4 against which this Clause 14 requires the Provider to insure, typically Public Liability Insurance, the minimum insurance cover shall be the sum of £5,000,000 or such greater sum as the Provider may choose in respect of any one incident and the Provider's insurance policy effecting such cover shall have the interest of the Council endorsed thereon, or shall otherwise expressly by its terms confer its benefits upon the Council.

14.6 The Provider shall ensure all certificates from its insurers or brokers confirm that the Provider's insurance policies comply with this Clause 14 and the Provider shall supply to the Council on request copies of all insurance policies, cover notes, premium receipts and other necessary documents.

14.7 The Council shall indemnify and keep indemnified the Provider against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of or in any way arising out of the provision of the Service in relation to the injury to, or death of, any person, or

loss of, damage to, any property including property belonging to the Provider to the extent that it may arise out of the act, default, or negligence of the Council, its employees or agents other than the Provider its employees and agents

14.8 Professional Indemnity Insurance and other insurances required

## 15.0 PRICING

15.1 The Contract Price shall be the Contract Price stated in the Purchase Order and shall cover all aspects of the Service.

15.2 The Contract Price shall be reviewed on the 1<sup>st</sup> April each year, and in any event a minimum of 12 months after the commencement of this Agreement. The Provider may be offered an increase or decrease the maximum of which shall be determined by the Authorised Officer. Due consideration shall be taken of any changes in the index of retail prices including changes in the earnings index

## 16.0 PAYMENT

16.1 Payment of one XXXXX of the Contract Price shall be made by the Council to the Provider XXXXXX in arrears upon receipt of an invoice from the Provider.

## 17.0 VARIATION

17.1 This Contract may not be varied unless a variation, expressed to be such in accordance with this Clause 17, is agreed in writing and signed by both the parties.

## 18.0 CORRECTIVE ACTION

18.1 If the Provider fails to provide the Service in a manner that complies with the provisions of this Contract (but not so as to entitle the Council to proceed for termination pursuant to Clause 19) or where the Council fails to comply with the provisions of this Contract the party not in default will serve upon the party alleged to be in default a notice in writing stating: -

- (i) The precise manner in which the party is in default.
- (ii) The action which (in the opinion of the party not in default) the party in default must take to remedy the default.
- (iii) A reasonable period (bearing in mind the nature of the default) in which the party in default should take the action referred to in Sub-Clause 18.1 (ii)

18.2 If the Provider fails to provide the Service to the Contract Standard, then without prejudice to any other right or remedy the Council may have and, at the Authorised Officer's election, with or without terminating this Contract the Council may:

- (i) Itself provide or procure the provision of the relevant part of the Service from a third party until in the Council's reasonable view the Provider has remedied the breach; and/or
- (ii) Deduct from any sums due or otherwise charge to the Provider the reasonable cost of any Service so provided together with relevant administrative costs.
- (iii) Suspend the allocation of new work to the Provider

18.3 Where the Council remains in default under the terms of this Contract the Provider shall be entitled to payment from The Council

## 19.0 TERMINATION

19.1 Either party may terminate this Contract by giving not less than one months notice in writing to the other.

19.2 The Council may terminate this Contract forthwith by notice in writing to the Provider if the Provider fails to correct any item on a notice issued in accordance with Clause 18 or fails to correct all items on such list on two or more occasions.

19.3 The Council may terminate this Contract by notice in writing to the Service Provider without following the procedure set out in Clause 18 if the Provider is in material breach of contract which in the reasonable opinion of the Council has seriously prejudiced the interests of the Council or the Service Users.

19.4 The Provider may terminate this Contract immediately by written notice to the Council if the Council commits a breach of any of its obligations under this Contract provided that where the breach is capable of remedy written notice has been served on the Council specifying the breach and requiring it to be remedied within a reasonable period and the breach remains unremedied at the end of such period.

19.5 The Council may terminate this Contract immediately by written notice to the Provider if the Provider shall become bankrupt or have a receiver or liquidator appointed or shall pass a resolution for winding up (otherwise than for the purpose of amalgamation or reconstruction) or a Court shall make an order to that effect or if the Provider shall enter into any composition or arrangement with its creditors or shall become insolvent.

19.6 Any termination of this Contract howsoever caused shall not affect or prejudice any accrued rights or liabilities of either party arising under this Contract.

## **20.0 RESOLUTION OF DISPUTES**

20.1 Any dispute or difference between the parties concerning this Contract shall be referred for resolution through progressively senior levels of management, the initial stage shall be consideration by the Council's named contract officer responsible for the Contract and the Provider's Nominated Manager and if no resolution is made the matter shall be referred for consideration by the Council's XXXXXXXXXXXX and an appropriate manager of the Provider if no resolution is then made the matter shall be passed for consideration by the Provider's Director (or equivalent) and the Council's Strategic Director of XXXXXXXX or his duly nominated deputy, if no resolution is made at that stage the matter shall be passed for consideration to the Council's Chief Executive and the Provider's Chief Executive (or equivalent). In following this procedure the parties shall act in good faith towards each other and shall use their best endeavours to resolve the dispute.

20.2 If the parties are unable to resolve the dispute it shall be referred by either party for arbitration in accordance with the provisions of the Arbitration Acts 1950 and 1979 by a sole arbitrator to be appointed by agreement between the parties or in default of agreement by the President of the Chartered Institute of Arbitrators. (The costs of such arbitration shall be borne equally by both parties).

## **21.0 COMPLAINTS**

21.1 The Provider shall have and implements a written policy and procedural guidance on representations and complaints in accordance with legal requirements.

## **22.0 WAIVER**

22.1 The failure by the Council to take any particular action against the Provider in relation to a breach of this Contract by the Provider does not mean that it accepts or condones the breach and shall not limit its future action in reliance on that or any other breach.

## **23.0 NOTICES**

23.1 Any demand, notice, or other communication required under the terms of this Contract shall be sufficiently served if: - i) Served personally on the addressee or ii) Sent by prepaid first class recorded delivery post, by telex, electronic mail or facsimile transmission to the registered office or

last known address of the intended recipient, and, if so sent will, subject to proof to the contrary, be deemed to have been received by the addressee on the second business day after the date of posting, or on successful transmission, as the case may be.

## **24.0 RIGHTS OF THIRD PARTIES**

24.1 Nothing in the Contracts (Rights of Third Parties) Act 1999 will operate to give any third party the right to enforce any term of this Agreement except where expressly provided for in this Agreement.

## **25.0 SEVERABILITY**

25.1 If any provision of this Contract is or becomes illegal, void or invalid, that shall not affect the legality and validity of the other provisions.

## **26.0 FORCE MAJEURE**

26.1 The Council and the Provider shall be released from future performance of their obligations under this Contract in the event of national emergency, war, prohibitive governmental regulations or of any other cause beyond the reasonable control of the Council or the Provider, or any of terms which renders the performance of this Contract impossible, whereupon all money due under this Contract shall be paid immediately.

## **27.0 THE GOVERNING LAW AND JURISDICTION**

27.1 This Contract is governed by, and shall be construed in accordance with English Law and both parties shall submit to the jurisdiction of the English Courts prohibitive governmental regulations or of any other cause beyond the reasonable control of the Council or the Provider, or any of terms which renders the performance of this Agreement impossible, whereupon all money due under this Agreement shall be paid immediately

## **28.0 HEADINGS**

28.1 The headings to any part of this Contract do not affect its interpretation.

**GENERAL CONDITIONS OF CONTRACT FOR THE PROVISION OF SERVICES**