

DATED _____ 2010

**NB:THIS AGREEMENT IS A SPECIMEN ONLY AND
SUBJECT TO MODIFICATION**

- and -

WEST MIDLANDS FIRE AND RESCUE AUTHORITY

AGREEMENT

- for -

delivered to the Authority together with any Value Added Tax at the appropriate rate chargeable thereon

3. Where an appropriate British Standards Specification issued by the British Standards Institution or an equivalent E.U. Standard is current at the date of the Contractor's offer all materials goods and services supplied shall be in accordance with that standard
4. (a) (i) The materials goods and/or services supplied shall be in all respects in accordance with and conform to the attached papers and should any materials goods or services be supplied which in the opinion of the Officer are not in accordance with the attached papers or are otherwise unsatisfactory the Officer shall be entitled to reject the same whereupon the rejected materials or goods shall be removed by and at the expense of the Contractor forthwith and if not so removed the Officer may cause the same to be removed and recover from the Contractor all expenses occasioned by such removal
- (ii) The Contractor shall refund to the Authority any costs in respect of haulage and labour which may have been incurred by the Authority in handling such materials or goods prior to rejection
- (iii) Where materials or goods are rejected as the result of laboratory tests carried out by or on the instructions of the Officer the costs of carrying out such tests shall be recoverable by the Authority from the Contractor

(b) In the case of failure by the Contractor to deliver any quantity of materials goods or services in accordance with the provisions of this Agreement and within the period limited for delivery or supply or if no such period is specified within a reasonable time or in the case of any quantity of the materials goods or services being rejected in pursuance of the foregoing sub-clause and not replaced or rectified within the period limited for delivery or supply or if no such period is specified within a reasonable time the Authority without prejudice to any other remedy for breach of contract reserves the right at its sole discretion to determine this Agreement either wholly or in part and to purchase elsewhere other materials or goods or services of the same or similar specification and any excess of cost incurred by the Authority over the costs which would have been incurred for such materials goods or services in respect of supply by the Contractor together with all charges and expenses attending the purchase elsewhere shall be forthwith due and payable by the Contractor to the Authority

5. (a) The Contractor shall not:

- (i) offer or give or agree to give any person in the Authority's employment 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 execution of this or any other Contract for the Authority or for showing or forbearing to show favour or disfavour to any person in relation to this or any other Contract for the Authority;
- (ii) enter into this or any Contract with the Authority in connection with which commission has been paid or agreed

to be paid by it or on its behalf or to its knowledge unless before the Contract 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 Authority

- (b) In the event of any breach of this Clause by the Contractor or by anyone employed by it or acting on its behalf (whether with or without the knowledge of the Contractor) or the commission of any offence by the Contractor or by anyone employed by it or acting on its behalf under the Prevention of Corruption Acts 1889 to 1916 or Section 117 of the Local Government Act 1972 in relation to this or any contract for the Authority the Authority may summarily terminate the Agreement by notice in writing to the Contractor 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 Authority and may recover from the Contractor the amount or value of any such gift consideration or commission
- 6.
- (a) The Contractor shall not assign or underlet this Agreement or any part thereof or Sub-Contract except with the consent in writing of the Authority acting by the Officer first obtained and upon such conditions as the Authority may think fit
 - (b) The Contractor shall be responsible for all work (if any) done by any Sub-Contractor and shall be directly responsible to the Authority for the observance by the Sub-Contractor of all Terms and Conditions contained in this Agreement
 - (c) The Contractor shall supply to the Authority the name and address of any Sub-Contractor employed by it in respect of this Agreement
- 7.
- (a) The Contractor shall be liable for and shall indemnify the Authority against

any expense liability loss claim or proceedings whatsoever arising under any statute or at common law in respect of personal injury to or death of any person to the extent that this arises from the negligence of the Contractor or its employees or any person for whom the Contractor is responsible

- (b) The Contractor shall be liable for and shall indemnify the Authority against any expense liability loss claim or proceedings in respect of direct physical damage whatsoever to any property insofar as such damage arises out of any breach of the express or implied obligations under this Agreement or is due to any negligence omission act or default of the Contractor its employees or any person for whom the Contractor is responsible provided that the liability of the Contractor to the Authority shall not exceed £5,000,000 (Five Million Pounds) per claim
- (c) The Contractor shall indemnify the Authority against all claims and proceedings for or on account of infringement of any copyright patent rights design trademark or name or other protected rights in respect of any equipment goods or materials used for or supplied in connection with this Agreement and from any against all claims demands actions proceedings damages costs charges and expenses whatsoever in respect thereof or in relation thereto
- (d) In respect of its responsibilities under the above Sub-Clauses the Contractor shall insure with a reputable insurance company against all loss of or damage to property (including intellectual property) and injury to persons (including death) arising out or in consequence of its obligations hereunder and against all actions claims demands costs and expenses in relation thereto and shall supply to the Authority evidence of such insurance upon request

(e) The Authority shall under no circumstances be liable to compensate the Contractor for loss of business or profits or other consequential loss howsoever caused

8. In the event of the Contractor being an individual or partnership and becoming bankrupt or being deemed to be unable to pay its debts under Section 123 of the Insolvency Act 1986 or compounding with creditors or being a limited company and having

(a) a proposal in respect of the company for a voluntary arrangement for a composition of debts or scheme of arrangement approved in accordance with the Insolvency Act 1986

(b) an application made in respect of its company to the Court under the Insolvency Act 1986 for the appointment of an administrator

(c) a winding up order made

(d) a resolution for voluntary winding up passed except for the purposes of amalgamation or reconstruction

(e) a Provisional Liquidator duly appointed

(f) an Administrative Receiver as defined in the Insolvency Act 1986 appointed

(g) possession taken by or on behalf of the holders of any debentures secured by a floating charge on any property comprised in or subject to the floating charge

the employment of the Contractor under this Contract shall be forthwith automatically determined but the said employment may be reinstated and continued if the Authority and the Contractor its Administrative Receiver Liquidator Provisional Liquidator Receiver or Manager as the case may be shall so agree

9. Any dispute difference or question which shall at any time arise between the

parties hereto in respect of this Agreement or arising therefrom shall in the event of the parties being unable to resolve the dispute be referred to the arbitration of a person to be nominated by the President of The Law Society in accordance with and subject to the provisions of the Arbitration Act 1996 or of any statutory variation modification or re-enactment thereof for the time being in force

10. Without prejudice to the specific nature of Clause 11.1 the Contractor shall at all times observe a policy of equal opportunities in employment for all workers and in relation to the provision of goods services and facilities regardless of race sex marital status age or disability The Contractor shall in particular comply with the requirements of the Sex Discrimination Act 1975 the Equal Pay Act 1970 and the Disability Discrimination Act 1995 or any statutory modification or re-enactment thereof
- 11.1 The Contractor shall adopt a policy to comply with its statutory obligations under the Race Relations Act 1976 and accordingly will not treat one group of people less favourably than others because of their colour, race, nationality or ethnic origin in relation to decisions to recruit train or promote employees
- 11.2 In the event of any finding of unlawful racial discrimination being made against the Contractor in the last three years by any Court or Employment Tribunal or of an adverse finding in any formal investigation by the Commission for Racial Equality over the same period the Contractor shall take appropriate steps to prevent repetition of the unlawful discrimination
- 11.3 The Contractor shall on request provide the Authority with details of any steps taken under Clause 11.2
- 11.4 The Contractor shall set out its policy on race relations:
 - (a) in instructions to those concerned with recruitment training and promotion
 - (b) in documents available to employees recognised trade unions or other representative groups of employees

(c) in recruitment advertisements or other literature

- 11.5 The Contractor shall, on request provide the Authority with examples of the instructions and other documents recruitment advertisements or other literature
- 11.6 The Contractor shall observe as far as possible the Commission for Racial Equality's Code of Practice in employment as approved by Parliament in 1983 or any variation or amendment thereof which gives practical guidance to employers and others on the elimination of racial discrimination and the promotion of equality of opportunity in employment including the steps that can be taken to encourage members of the ethnic minorities to apply for jobs or take up training opportunities
- 11.7 The Contractor shall provide such information as the Authority may reasonably request for the purpose of assessing the Contractor's compliance with Clause 11.6
12. The Contractor must be fully aware of and comply with his/her/their obligations under the Health and Safety at Work etc Act 1974 the current Health and Safety Regulations and any other relevant health and safety legislation and appropriate codes of practice in force or brought into force during the currency of this Agreement
13. The Contractor shall ensure that any information supplied by or obtained from the Authority is treated as confidential and shall not be disclosed to any person (except as may be required by law) and the Contractor shall not make use of any such information for their own purposes
14. A reference to any Act of Parliament or to any Order Regulation Statutory Instrument or the like shall include a reference to any amendment or re-enactment of the same
15. Any notice required to be served on the Contractor hereunder shall be sufficiently served if sent by pre-paid post or facsimile transmission or e-mail to or left at

its/his/their usual place of business or in the case of an incorporated company at the registered office of the company

16. Failure by the Authority at any time to enforce the provisions of this Agreement or to require performance by the Contractor of any of the provisions of the Agreement shall not be construed as a waiver of or of creating an estoppel in connection with any such provision and shall not affect the validity of the Agreement or any part thereof or the right of the Authority to enforce any provision in accordance with its terms
17. The Authority shall be entitled to offset against payments due to the Contractor any amounts owing to the Authority from the Contractor (whether or not payment has been demanded and whether such amounts are due) under this or any other agreement/contract between the Authority and the Contractor
18. The Contractor shall in addition to complying with the Terms and Conditions herein contained carry out this Agreement in accordance with the attached papers
19. The Terms and Conditions contained in this Agreement shall have precedence over any printed condition appearing on any acceptance form delivery form quotation or other documents or letter emanating from the Contractor and such conditions shall have no effect whatsoever except insofar as they confirm the terms of this Agreement
20. If any of the Terms of this Agreement become or are declared by a Court of competent jurisdiction to be invalid or unenforceable such invalidity or unenforceability shall in no way impair or affect any other conditions all of which shall remain in full force and effect
21. Any variation of this Agreement shall be of no effect unless recorded in writing and signed by a duly authorised representative of the parties
22. All parts of the Agreement are to be read as mutually explanatory except that

these Terms and Conditions shall prevail over any inconsistent terms or provisions elsewhere and the Authority's view as to interpretation of any ambiguity or discrepancy shall prevail.

- 23. This Agreement shall be governed by the Law of England and Wales and shall be deemed to have been made in England
- 24. The Contracts (Rights of Third Parties) Act 1999 has no application to this Agreement
- 25. The Authority's Whistle Blowing Policy shall apply to the Contractor. A copy of the Policy can be obtained from the Authority's Secretariat upon request.

AS WITNESS the hands of

on behalf of the Contractor and of _____ on
behalf of the Authority the day and year first before written

SIGNED by the said _____)
in the presence of _____)

SIGNED by the said _____)
in the presence of _____)