



MANCHESTER
CITY COUNCIL

Corporate Procurement Service

Terms and Conditions of Contract for
the Supply of Services and/or Goods

Manchester City Council
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Manchester
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1. Definitions and Interpretations

1.1 In these Conditions of Contract unless the context otherwise requires the following expressions shall have the meaning set out below:

"Authorised Officer" means the person for the time being or from time to time appointed by the Council and notified in writing to the Contractor to act as the representative of the Council for the purposes of this Contract;

"Best Value Duty" means the duty imposed on the Council by Part 1 of the Local Government Act 1999 and under which the Council is under a statutory duty to continuously improve the way its functions are exercised, having regard to a combination of economy, efficiency and effectiveness and to the guidance issued from time to time by the Secretary of State, the National Audit Office and the Chartered Institute of Public Finance and Accountancy pursuant to, or in connection with, Part 1 of the Local Government Act 1999;

"Commencement Date" means the date specified in the Contract Documents on which the Contractor shall begin to perform the Services;

"Conditions of Contract" means these printed terms and conditions of contract;

"Confidential Information" means any information or data in whatever form disclosed, which ought reasonably to be considered as confidential or which the disclosing party acting reasonably states in writing to the receiving party is to be regarded as confidential or which the disclosing party acting reasonably has marked "confidential" including information which relates to the business, affairs, properties, assets, trading practices, services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of the disclosing party;

"Contract" means this agreement entered into between the Council and the Contractor for the performance of the Services comprising the Contract Documents;

"Contractor" means the person whose Tender to provide the Services

has been accepted by the Council or is otherwise appointed by the Council to provide the Services;

"Contract Documents" means these Conditions of Contract, the Articles of Agreement signed by the Parties, the Specification, the Invitation to Tender, the Contractor's Tender (including the Pricing Schedule and Method Statements therein), any Purchase Orders, any provisions of the Framework Agreement which are specified either in these Conditions or the Framework Agreement as applying to this Contract, and any other documents incorporated by reference therein in any of the aforesaid documents;

"Contract Period" means the duration of the Contract specified in the Contract Documents unless terminated earlier pursuant to the provisions of this Contract;

"Contract Price" means the price exclusive of any applicable VAT, payable to the Contractor by the Council under the Contract, as set out and/or ascertained in the Pricing Schedule or otherwise the Tender and/or other Contract Documents, or as otherwise agreed in writing between the Parties, for the full and proper performance by the Contractor of the Services in accordance with the Contract;

"Conviction" other than for minor road traffic offences, means any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being made subject of a prohibition or restriction under section 218 (6) of the Education Reform Act 1988;

"Council" means the Council of the City of Manchester of the Town Hall, Albert Square, Manchester, M60 2LA;

"Council Asset" means any item, equipment or vehicle issued or made

available to the Contractor by the Council in connection with the Contract;

“Data Protection Legislation” means (i) the UK GDPR, and any applicable national implementing Laws as amended from time to time (ii) the DPA to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy including where applicable the guidance, best practise and codes of practice issued by the Information Commissioner as amended or superseded from time to time;

“DPA” means the Data Protection Act 2018;

“EIR” means the Environmental Information Regulations 2004;

“Equipment” means any item of equipment and plant provided and used by the Contractor to provide the Services and which the Contract does not require the Contractor to incorporate into the Services as a deliverable item;

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under this 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 legislation;

“Force Majeure” means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by the Party concerned including but not limited to governmental act, Act of God, but not including any industrial action occurring within the Contractor’s or any Sub-Contractor organisation;

“Framework Agreement” means a framework agreement entered into between the Council and the Contractor relating to the Services pursuant to which the Contract is entered into;

“Goods” means all goods, (or any instalment or part of them) materials or articles required to be supplied by the Contractor under the Contract

as referred to in the Contract Documents;

“Good Industry Practice means the exercise of reasonable skill, care and diligence which would reasonably and ordinarily be expected from a skilled and experienced contractor engaged in the provision of services similar to the Services under the same or similar circumstances as those applicable to this Contract;

“Information” has the meaning given to it under section 84 of the FOIA;

“Intellectual Property Rights” means any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, techniques, business methods, drawings, logos, instruction manuals, lists and including the look and feel of any websites, and “Intellectual Property” shall refer to such materials;

“Invitation to Tender” means the Council’s invitation to tender document supplied to the Contractor pursuant to which the Tender was submitted;

“Key Personnel” means those employees or subcontractors of the Contractor specified in the Contract Documents or otherwise approved in accordance with the Contract;

“Law” means any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, judgment of a relevant court of law or requirements of any Regulatory Body in each case in the United Kingdom;

“Method Statements” means the detailed written statements submitted by the Contractor as part of its Tender setting out how the Contractor will perform the Services;

“Parties” means the Council and the Contractor and “Party” means either the Council or the Contractor as the context requires;

“Personnel” means the employees of the Contractor including the Key Personnel used in the provision of the Services together with the Contractor’s servants, agents, suppliers and Sub-Contractors used in the performance of the Contractor’s obligations under the Contract;

“Personal Data” means personal data as defined in Data Protection Legislation which is supplied to the Contractor by the Council or is obtained by the Contractor in the course of performing the Services;

“Premises” means the location(s) where the Services are to be performed and/or the Goods are to be supplied pursuant to the Contract;

“Pricing Schedule” means the document submitted by the Contractor as part of its Tender specifying and/or providing the mechanism for ascertaining the Contract Price;

“Prohibited Act” means:

- (i) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:
 - (a) induce that person to perform improperly a relevant function or activity; or
 - (b) reward that person for improper performance of a relevant function or activity;

- (ii) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract or any other contract with the Council;

- (iii) Committing any offence:
 - (a) under the Bribery Act 2010; or
 - (b) under Law creating offences concerning fraudulent acts; or
 - (c) at common law concerning fraudulent acts relating to this Contract or any other contract with the Council; or

- (iv) defrauding, attempting to defraud or conspiring to defraud the Council.

“Purchase Order” means any order on the Council’s official order form issued from time to time by the Council to the Contractor to provide the Services or any part of them;

“Regulatory Bodies” means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Council and “Regulatory Body” shall be construed accordingly;

“Request for Information” means a request for Information relating to this Contract under the FOIA or EIR;

“Services” the whole of the services to be performed by the Contractor including the supply of the Goods (if any) in accordance with the Contract as specified in the Specification and/or Invitation to Tender;

“Specification” means the Council’s document describing the Services to be performed by the Contractor under this Contract supplied to the Contractor with the Invitation To Tender including where appropriate the quality of any Goods, location to which Goods are to be delivered date of delivery of Goods and if appropriate shall include any additional description of the Services pursuant to a mini-competition held under the Framework Agreement;

“Sub-Contract” means any contract or proposed contract between the Contractor and a third party pursuant to which the third party agrees to provide to the Contractor the Services or any part thereof or to provide facilities or services necessary for the provision of the Services;

“Sub-Contractor” means an individual, partnership or corporate body who has a contract with the Contractor to provide part of the Services or to supply Equipment for the provision of the Services, as specified in the Tender or otherwise approved by the Council in accordance with these Conditions of Contract;

"Tender" means the Contractor’s written offer to provide the Services to

the Council, including Method Statement(s) and Pricing Schedule, submitted by the Contractor in response to the Council's Invitation to Tender;

“UK GDPR” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act of 2018;

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended;

“VAT” means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and

“Working Day” means Monday to Friday, excluding any public holiday in England and Wales.

1.1 In this Contract, unless the context otherwise requires:

- a) references to Parties, Schedules or conditions in this Agreement are references to Parties, Schedules or conditions of this Agreement;
- b) words denoting the singular shall include the plural also and vice and versa
- c) references to the masculine shall include the feminine and the neuter; words denoting persons shall include corporations, partnerships and unincorporated associations;
- d) references to any Party shall, where relevant, be deemed to be references to or to include, as appropriate, its respective successors or permitted assigns;
- e) headings have been included for convenience only and shall not be used in construing any provision herein; and
- f) a reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

2. General and Parties

- 2.1 These conditions shall apply to the Contract to the exclusion of any other terms and conditions contained or referred to in any acknowledgment of order, Tender, form of contract, letter or other communication sent by the Contractor to the Council.
- 2.2 The Contractor is deemed to have satisfied itself before submitting its Tender as to the accuracy and sufficiency of the rates and prices stated by the Contractor in its Tender which shall (except in so far as is otherwise expressly provided to the contrary in the Invitation to Tender and Specification) cover all the Contractor's obligations under the Contract and shall be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances which may influence or affect the Contractor's Tender.
- 2.3 In the event of other parties being eligible to use the Framework Agreement as identified in the advert notifying of the procurement opportunity relating to the Services and the Invitation to Tender, the term "Council" shall mean such other body using the Framework Agreement pursuant to the provisions of the Framework Agreement in respect of and for the purposes of any contract entered into by such body with the Contractor pursuant to the Framework Agreement from time to time.

3. Duration of Contract and Provision of the Services

- 3.1 The rights and obligations of the Parties shall commence on the date of this Contract and the Contractor shall commence the performance of the Services on the Commencement Date and shall thereafter perform the Services during the Contract Period in accordance with the Contract.
- 3.2 The Contractor shall perform the Services throughout the Contract Period:
- a) in compliance with the Specification; and
 - b) pursuant to its Tender; and
 - c) in accordance with Good Industry Practice; and
 - e) in accordance with the Law; and

f) otherwise in accordance with this Contract and the Contract Documents.

3.3 The Contractor acknowledges that the Council is subject to the Best Value Duty and the Contractor agrees to support and co-operate with the Council in complying with its Best Value Duty and agrees within the Contract Price to comply with all reasonable requests of the Council in respect of achieving its Best Value Duty.

4. Ordering of Services

4.1 Orders for Goods and/or Services shall be in writing on a Council Purchase Order from time to time stating the place and time at or within which the Services are to be delivered.

4.2 No Goods and/or Services shall be delivered or performed by the Contractor unless it shall first have received an order in respect thereof on a Purchase Order.

4.3 The reference numbers of such Purchase Order must be stated on the accounts and/or invoices submitted by the Contractor to the Council, and no payment shall be made for any Goods and/or Services not covered by a Purchase Order.

5. Delivery

5.1 The Contractor shall supply any Goods to the Council Premises under the Services in accordance with the provisions of the Contract;

5.2 The Goods shall be properly packed and secured in such a manner as to reach their destination in good condition having regard to the nature of the Goods and the other circumstances of the case.

5.3 The Council shall be entitled at its sole discretion to vary the date for the delivery of the Goods or the performance of the Services on reasonable notice to the Contractor.

- 5.4 Unless otherwise agreed in writing, delivery of the Goods or performance of the Services shall take place during the Council's normal working hours. The Contractor shall supply the Council in good time with any instructions or other information required to enable the Council to accept delivery of the Goods and the performance of the Services.
- 5.5 The Council shall be entitled to reject any Goods delivered which are not in accordance with the Contract and the Council shall not be deemed to have accepted any Goods until it has had a reasonable opportunity to inspect the Goods, following delivery, or if later, within a reasonable time after any latent defect in the Goods has become apparent.

6. Contract Price, Invoicing and Payment

- 6.1 In consideration of the performance of the Contractor's obligation under the Contract by the Contractor the Council shall pay to the Contractor the Contract Price. Save as expressly provided for in the Invitation to Tender and Specification, the Contract Price shall be fixed for the Contract Period and shall include all costs, expenses, overheads and profit of the Contractor directly or indirectly incurred in connection with the performance of the Contract.
- 6.2 Payment shall be made within the period after delivery of the Goods or performance of the Services specified in the Contract or if delivery of the Goods or performance of the Services is postponed at the Council's request pursuant to condition 5.3 within the same period after the date of actual delivery or performance.
- 6.3 If no express period of payment is otherwise specified in the Contract Documents or is otherwise agreed in writing between the Parties, payment in respect of the Services shall be subject to performance of the Services and made by equal payments monthly in arrears and payments shall be made within 30 (thirty) days of receipt of a valid undisputed invoice in respect thereof. The Contractor shall submit invoices to the Council at the address stated in the Contract Documents.

- 6.4 The Contract Price is exclusive of VAT applicable to the supply of Services and Goods which if properly chargeable shall be payable by the Council at the prevailing rate subject to receipt of a valid VAT invoice from the Contractor.
- 6.5 Where the Contractor submits an invoice to the Council in accordance with condition 6.4, the Council will consider and verify that invoice in a timely fashion. The Contractor will provide such details and supporting documents as the as may reasonably be required from time to time by the Council in respect of invoices submitted.
- 6.6 The Contractor will provide such details and supporting documents as may reasonably be requested by the Council from time to time in respect of any invoices submitted.
- 6.7 If the Council fails to pay any sum properly due to the Contractor on the due date for payment, then the Contractor may charge interest on such sum from the due date for payment until the date of payment in full, both before and after any judgement, at 4% (four per cent) above the base rate from time to time of Barclays Bank Plc.
- 6.8 If the Services relate to a concession arrangement and/or opportunity as referred to in the Invitation to Tender and/or Specification then notwithstanding any other provision of the Contract the Council shall not be liable to pay any price to the Contractor for the provision of the Services (unless otherwise expressly provided for in the Invitation to Tender and/or Specification) and the Contractor shall pay such sums to the Council as specified in and/or calculated pursuant to and/or ascertained in accordance with the Invitation to Tender, Specification and Tender.
- 6.9 Where the Contractor enters into a Sub-Contract with a supplier or Sub-Contractor for the purpose of performing its obligations under the Contract, it shall ensure that such Sub-Contract includes a provision which requires payment to be made of all sums due by the Contractor to the supplier or Sub-Contractor within a specified period not exceeding 30 (thirty) days from receipt

of a valid invoice.

7. Risk and Title to Goods

- 7.1 The Contractor shall deliver the Goods at the time(s) and date(s) specified in the Specification and/or any Purchase Order(s).
- 7.2 Risk of damage to or loss of the Goods shall pass to the Council on delivery to the Council.
- 7.3 The title and property in the Goods shall pass to the Council on delivery to the Council in accordance with the Contract, but without prejudice to any right of rejection which may accrue to the Council whether under these Conditions of Contract or otherwise.
- 7.4 The Council or the Authorised Officer may inspect or test the Goods either complete or in the process of manufacture during the normal business hours on reasonable notice at the Contractor's premises and the Contractor shall provide all reasonable assistance in relation to any such inspection or test free of charge. No failure to make a complaint at the time of any such inspection or test and no approval given during or after such inspection or test shall constitute a waiver by the Council of any rights or remedies in respect of the Goods and the Council reserves the right to reject the Goods in accordance with condition 7.5.
- 7.5 The Council may by written notice to the Contractor reject any of the Goods which fail to conform to the approval sample or fail to meet the Specification. Such notice shall be given within a reasonable time after delivery to the Council of such Goods. If the Council rejects any of the Goods pursuant to this condition the Council may (without prejudice to other rights and remedies) either:
- a) have such Goods promptly, and in any event within 5 (five) Working Days, either repaired by the Contractor or replaced by the Contractor with Goods which conform in all respects with the approved sample or with the Specification and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; and

- b) treat the Contract as discharged by the Contractor's breach and obtain a refund (if payment for the Goods has already been made) from the Contractor in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Council in obtaining other goods in replacement provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement goods.

For the avoidance of doubt, the Council will be deemed to have accepted the Goods if it expressly states that the same in writing or fails to reject the Goods in accordance with this condition 7.5.

- 7.6 The issue by the Council of a receipt note for the Goods shall not constitute any acknowledgement of the condition, quantity or nature of those Goods, or the Council's acceptance of them.
- 7.7 The Contractor hereby guarantees the Goods for the period from the date of delivery to the date 12 (twelve) months thereafter against faulty materials or workmanship. If the Council shall within such guarantee period or within 20 (twenty) Working Days thereafter give notice in writing to the Contractor of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use, the Contractor shall (without prejudice to any other rights and remedies which the Council may have) promptly remedy such defects (whether by repair or replacement as the Council shall acting reasonably elect) free of charge to the Council.
- 7.8 Any Goods rejected or returned by the Council as described in condition 7.5 shall be returned to the Contractor at the Contractor's risk and expense.

8. Quality and Warranties

- 8.1 The Goods shall be new, and shall be supplied strictly in accordance with the Specification and/or any sample previously provided to the Council and, unless otherwise agreed in writing, shall conform to all relevant standards, specifications and conditions.
- 8.2 The Contractor warrants its expertise and confirms the accuracy of all statements and representations made in respect of the Goods prior to and subsequent to, the Order.

8.3 The Contractor agrees to assign to the Council upon request the benefit of any warranty, guarantee or similar right which it has against any third party manufacturer or supplier of the Goods or any part thereof.

8.4 The Contractor covenants and undertakes that:

- a) the Goods will:
 - (i) conform as to quantity, quality and description with the particulars stated in the Contract;
 - (ii) (without prejudice to condition 8.4 a) (i) above) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for the purpose held out by the Contractor or made known to it either expressly or by implication by the Council;
 - (iii) be equal in all respects to any samples or patterns provided by either Party and accepted by the other and to the Specification;
 - (iv) be capable of any standard of performance specified in the Contract;
 - (v) comply with all applicable Laws including relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods at the time when the same are supplied.

8.5 The Contractor warrants and undertakes that:

- a) the Services will be performed by appropriately qualified, trained, skilled and experienced Personnel;
- b) the execution, delivery and performance of the Services by the Contractor, its Sub-Contractors and suppliers is within the Contractor's corporate capacity and powers;
- c) all requisite resolutions of its directors have been duly and properly passed to authorise execution, delivery and performance of the Contract;
- d) there is no Law binding on the Contractor and no provision in any document binding on the Contractor that prevents or would prevent the Contractor from observing any of the Contractor's obligations contained

in the Contract;

- e) it has the necessary expertise, skill and experience to provide the Goods and Services, and in providing the Goods and Services will use all reasonable skill and care to be expected of a competent contractor experienced in such activities;
- f) it has satisfied itself as to the nature of the scope of the work required by the Services in the Contract and that its Personnel who will provide the Services will be sufficiently skilled, experienced, competent, honest and qualified and of a sufficient number to carry out the Services;
- g) all Personnel used in the performance of the Services shall be entitled to work in the United Kingdom either by right or by virtue of possessing the necessary visa or permits;
- h) it will provide Goods supplied in the provision of the Services with full title guarantee to the Council;
- i) it shall not act in any manner which in the reasonable opinion of the Council is prejudicial to the image of the Council;
- j) it shall not make any representation or give any warranty on behalf of the Council nor create any expense chargeable to the Council or otherwise pledge the credit of the Council;
- k) it shall promptly observe and comply with all reasonable instructions, directions or regulations issued by or on behalf of the Council.

8.6 The Contractor warrants that it is free and entitled to enter into the Contract and to perform the obligations undertaken by it hereunder and that it has not entered into any agreement with any third party which might conflict with the terms hereof.

8.7 Notwithstanding any other provision of the Contract and for the avoidance of doubt, the fact that any provision within the Contract is expressed as a warranty shall not preclude any right of termination the Council may have in respect of breach of that provision by the Contractor.

9. Disclosure Checks

9.1 The Contractor shall procure that in respect of all Personnel performing any of

the Services before any such Personnel begins to perform any of the Services:

- a) each Personnel is questioned as to whether he or she has any Convictions which makes them unsuitable to provide the Services and is required to disclose any Convictions; and
- b) where any Personnel discloses any Convictions or is found to have any Convictions the same shall be immediately notified to the Council.

9.2 The Contractor shall procure that no person who discloses any Convictions, or who is found to have any Convictions following the results of a Disclosure and Barring Service check, is engaged in the provision of the Services without the Council's prior written consent (such consent not to be unreasonably withheld or delayed).

9.3 The Contractor shall procure that the Council is kept advised at all times of any Personnel who, subsequent to his/her commencement of employment as a member of staff, receives a Conviction or whose previous Convictions become known to the Contractor (or any Sub-Contractor) and shall ensure that such person(s) is not engaged in the provision of the Services without the Council's consent (not to be unreasonably withheld or delayed).

10. Contractor's Personnel

10.1 The Contractor shall employ sufficient persons to ensure that the Services are provided at all times and in all respects to the Contract Standard.

10.2 In the event that the Council reasonably considers any of the Personnel engaged in the performance of the Services is in any respect unsatisfactory then the Contractor shall remove such person from the provision of the Services and supply a replacement with appropriate skill and experience as soon as reasonably practicable.

10.3 The Council shall in no circumstances be liable either to the Contractor or to any of the Personnel in respect of any liability, loss or damage occasioned by such removal pursuant to condition 10.2 and the Contractor shall fully indemnify the Council against any claim made by such Personnel.

11. Key Personnel

11.1 The Contractor acknowledges that the Key Personnel are critical to the provision of the Services and hereby agrees:

- a) not to replace reassign or otherwise remove such Key Personnel without the prior written consent of the Council, such consent not to be unreasonably withheld or delayed;
- b) to use all reasonable endeavours to ensure the continuity of the Key Personnel assigned to perform the Services;
- c) that in the event the Contractor replaces any Key Personnel assigned to perform the Services, the Contractor will provide a replacement acceptable to the Council of equivalent calibre and experience as soon thereafter as is reasonably possible;
- d) that if the Council advises that any of the Key Personnel assigned to the Contract are in any respect unsatisfactory including where any such Key Personnel are, are expected to be, or have been absent for any period, then the Contractor shall remove such person from the provision of the Services and supply a replacement or substitute of suitable calibre and experience as soon thereafter as is reasonably possible;
- e) that any replacement or substitution of the Key Personnel shall not cause any disruption or other adverse effect on the performance of the Services.

12. TUPE

12.1 The Parties recognise that TUPE may apply in respect of this Contract and should it so apply that pursuant to TUPE the undertaking concerned (or any relevant part of the undertaking) shall transfer to the Contractor on the Commencement Date.

12.2 Following notice by the Council of its intention to re-tender the Services or service of a notice to terminate the Contract or if the Contractor stops trading, and within 20 (twenty) Working Days of being so requested by the Council, the Contractor shall provide to the Council for the purposes of TUPE full and accurate details of its Personnel engaged in providing the Services under the

Contract, in particular, but not necessarily restricted to, the following:

- a) the total number of Personnel whose employment with the Contractor is liable to be terminated at the expiry or termination of this Contract; and
- b) for each person details of their age, sex, length of service, continuous service date, grade; salary and pay settlements, contracted hours, redundancy entitlements, the percentage of time spent in the provision of the Services; and
- c) any grievances or disciplinary proceedings which are ongoing or which have concluded within the previous 24 months and any claims brought; and
- d) details of pensions entitlements and/or superannuation including type of scheme, contribution rates, length of reckonable pensionable service scheme membership; and
- e) full information about the other terms and conditions on which the affected Personnel are employed (including but not limited to their working arrangements); and
- f) job titles of the Personnel affected and the qualifications required for each position.

12.3 The Contractor shall permit the Council to use the information for the purposes of TUPE and of re-tendering. The Contractor will co-operate with the re-tendering of the Services the subject of this Contract by allowing the transferee to communicate with and meet the affected Personnel and/or their representatives.

12.4 The Contractor agrees to indemnify the Council fully and to hold it harmless at all times from and against all actions, proceedings, claims expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of information under condition 12.2.

12.5 The Contractor agrees to indemnify the Council from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities (including legal fees) in connection with or as a result of any claim or demand by any of the Personnel or person claiming to be Personnel or other such Personnel or

person claiming to be Personnel on any date upon which the Contract is terminated and/or transferred to any third party (“Relevant Transfer Date”) arising out of their employment or its termination whether such claim or claims arise before or after the Relevant Transfer Date.

12.6 In the event that the information provided by the Contractor in accordance with condition 12.2 above becomes inaccurate, whether due to changes to the employment and personal details of the affected Personnel made subsequent to the original provision of such information or by reason of the Contractor becoming aware that the information originally given was inaccurate, the Contractor shall notify the Council of the inaccuracies and provide the amended information.

12.7 Except with the prior written consent of the Council within the period of 12 (twelve) months immediately preceding the expiry of the Contract Period or service of a notice of termination under condition 14 the Contractor shall not other than bona fide in the ordinary course of business vary any terms and conditions of employment of any of the Personnel or any policy or collective agreement applicable to any of the Personnel then assigned by the Contractor to the provision of the Services nor remove or replace any particular Personnel so assigned (unless requested by any such Personnel or upon the resignation of such in which case the Contractor shall replace such person with another person of similar skills, qualifications and experience) nor make any material increase or decrease in the number of such assigned Personnel.

12.8 The provisions of this condition 12 shall apply during the continuance of this Contract and indefinitely after its termination.

13. Insurance and Indemnity

13.1 The Contractor shall procure and maintain at its own expense and throughout the Contract Period the following insurances:

- a) Public Liability £10,000,000 (ten million pounds) in (including product respect of any one claim or series of

- liability) claims arising out of the same event and without limit on the number of claims in any one year or other period and such insurance shall contain an indemnity to principals provision;
- b) Employers £10,000,000 (ten million pounds);
Liability
- c) Such other insurances as specified in the Contract Documents.

13.2 The Contractor shall provide on request evidence from its insurers or insurance brokers (or such other evidence acceptable to the Council) that the insurances are in full force and effect in accordance with this condition.

13.3 The Contractor shall, subject to condition 13.5, indemnify the Council its employees, agents and contractors on demand from and against all claims, damages, losses, liabilities, actions costs, and expenses in respect of:

- a) death or personal injury;
- b) loss of or damage to property (including property belonging to the Council);
- c) breach of statutory duty;
- d) fraud or fraudulent misrepresentation;
- e) actions claims demands, costs, charges and expenses (including legal expenses on an indemnity basis); and
- f) any other act or omission or liability which may not be limited under any applicable Law.

which may arise as a consequence of breach of this Contract by the Contractor

13.4 The Contractor shall not be responsible or obliged to indemnify the Council for:

- a) any claim arising as a direct result of the Contractor acting on the express instruction of the Council; and
- b) any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Council, its employees, servants, agents or

contractors or by breach of the Council of its obligations under the Contract.

13.5 An indemnity by either Party under an express provision of the Contract shall be without limitation to any indemnity by that Party under any other provision of this Contract.

14. Termination

14.1 Either Party may terminate this Contract forthwith prior to the expiry of the Contract Period by written notice to the other in the event that:

- a) the other Party is in material breach of any of its obligations under this Contract which is not capable of remedy or, where such breach is capable of remedy, has not remedied the same within 20 (twenty) Working Days of being given notice in writing specifying the breach; or
- b) a proposal is made for a voluntary arrangement of the other Party within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- c) a shareholders' meeting is convened for the purpose of considering a resolution that the other Party be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- d) a petition is presented for the winding up of the other Party (which is not dismissed within 10 (ten) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
a receiver, administrative receiver or similar officer is appointed over the whole or any part of the business or assets of the other Party; or
- f) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given in respect of the other Party; or
- g) the other Party is or becomes insolvent within the meaning of section

- 123 of the Insolvency Act 1986; or
- h) being a “small company” within the meaning of section 382 of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986 in respect of the other Party; or
- i) the other Party ceases or threatens to cease to carry on all or a substantial part of its business; or
- j) any event similar to those listed in sub-conditions (b)-(h) occurs under the law of any other jurisdiction respect of the other Party; or
- k) if the other Party repeatedly breaches the provisions of this Contract.

14.2 The Council may terminate the Contract with immediate effect by notice in writing where the Contractor is an individual and:

- a) an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor’s creditors; or
- b) a petition is presented and not dismissed within 10 (ten) Working Days or order made for the Contractor’s bankruptcy; or
- c) a receiver, or similar officer is appointed over the whole or any part of the Contractor’s assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- d) the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
- e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor’s assets and such attachment or process is not discharged within 10 (ten) Working Days; or
- f) he dies or is adjudged incapable of managing his affairs within the meaning in the Mental Health Act 2007; or
- g) he suspends or ceases to carry on all or a substantial part of his business.

14.3 The Council shall be entitled to terminate this Contract if the Contractor or any of its Personnel or anyone acting on its behalf has done or does any of the Prohibited Acts or has offered or given or agreed to give any person any gift, consideration inducement or reward of any kind for doing or not doing any action in relation to this Contract. The Council shall be entitled to recover from the Contractor the amount of loss resulting from such termination.

15. Effect of Expiry or Termination

15.1 Upon termination by the Council in accordance with condition 14, without prejudice to any other remedies the Council may have:

- a) the Contractor shall be liable forthwith to compensate the Council for any loss or damage it has sustained in consequence of any antecedent breaches of contract by the Contractor;
- b) the Contractor shall fully and promptly indemnify and compensate the Council in respect of the cost of causing to be performed such Services as would have been performed by the Contractor during the remainder of the Contract Period, to the extent that such cost exceeds such sums as would have been lawfully payable to the Contractor for performing such Services (such costs to include all costs of closing out the Contract and entering into new contract(s) with replacement contractor(s)). The Council may procure the performance of such Services by such persons as the Council shall in its absolute discretion determine;
- c) the Council shall be under no obligation to make any further payment to the Contractor and shall be entitled to retain any payments which may have fallen due to the Contractor before termination until the Contractor has paid in full to the Council all sums due under or arising from the Contract, or to deduct therefrom any sum due from the Contractor;
- d) the Council shall have the power to deduct from any monies owing to the Contractor such sums as are due to the Council or may thereafter become due to the Council under the Contract; and
- e) the Contractor shall forthwith release and hand over to the Council any and all of the Council's property, including but not limited to equipment, supplies, records and work in progress, whether in the form of

documents, plans, calculations, drawings, computer data or other material in any medium.

15.2 The termination of the Contract by either Party for whatever reason shall not prejudice or affect the rights or remedies of such Party against the other Party in respect of any antecedent breach of the Contract, and/or any accrued rights and obligations.

15.3 Conditions which expressly or impliedly are intended to have effect notwithstanding expiry or termination of this Contract shall remain in force following expiry or termination of this Contract.

15.4 On expiry or earlier termination of the Contract, such Goods provided to the Council by the Contractor prior to such expiry or earlier termination shall remain the property of the Council or its successors and the Contractor shall have no rights proprietary or otherwise in such Goods.

16. Liability

16.1 Notwithstanding any other provision of the Contract, neither party limits or excludes its liability for:

- a) fraud or fraudulent misrepresentation;
- b) death or personal injury caused by that party's negligence.

16.2 Each Party shall have no liability to the other for any indirect or consequential loss or damage (including but not limited to loss of profit, revenue or goodwill) howsoever arising under the Contract.

16.3 Each Party shall at all times take reasonable steps to minimise and mitigate any loss or other matters for which one Party is entitled to be indemnified by or to bring a claim against the other under the Contract.

17. Monitoring and Records

17.1 The Authorised Officer is the duly appointed and authorised representative of the Council for the purposes of this Contract and any consent required of the

Council is deemed to have been given if given by him.

- 17.2 The Council shall during the Contract Period carry out monitoring/inspection of the Services including without prejudice to the generality of this condition:
- a) quality of Services and Goods;
 - b) quality of materials used;
 - c) general compliance with the Contract and all applicable Laws; and
 - d) verification of claims for payment.
- 17.3 The Contractor will allow access to the locations used by the Contractor for provision of the Services, such access to be made available at any reasonable time on not less than 24 hours' notice for the purpose of carrying out such checks as the Council thinks necessary for the monitoring of the Services.
- 17.4 The Contractor shall provide the Council with all such information, records and accounts in connection with the Services as the Council may reasonably require from time to time.
- 17.5 The Council may from time to time undertake formal quality control audits using consumer questionnaires, and the Contractor on such occasions shall co-operate in any such activities of the Council.
- 17.6 The Contract Manager or his duly authorised deputy shall attend regular review meetings with the Authorised Officer, such meetings to be held at the Council's premises at a time and date convenient to both Parties.
- 17.7 The Contractor shall procure that the Authorised Officer may from time to time interview any of the Personnel in connection with the monitoring programme.
- 17.8 The Contractor shall at all times keep and maintain, during the Contract Period and for 6 (six) years after the Contract Period, full, accurate and current records and accounts relating to the performance of its obligations under this Contract and the Services. The Contractor shall permit the Council, its auditors or other representatives at all reasonable times on reasonable notice to inspect and take

copies or extracts of all and any accounting documents, records and other information relating to the provision of the Services in the possession custody or control of the Contractor.

18. Intellectual Property

- 18.1 Save in respect of the Contractor's or a third party's pre-existing rights, Intellectual Property Rights in materials prepared by or for the Contractor for the purposes of the provision of the Services shall be the property of the Council and vest in the Council on creation and the Contractor waives and agrees not to assert (and to procure that any of its Sub-Contractors do likewise) any moral rights subsisting in such Intellectual Property Rights under the Copyright Designs and Patents Act 1988.
- 18.2 Nothing in this Contract shall assign to, or be taken to assign to, transfer to or vest in the Council any Intellectual Property Rights that are or which may be used to perform the Contract and which are already in existence prior to or independently of the performance by the Contractor of its obligations under the Contract ("Pre-Existing IPR") and the Contractor hereby grants and shall procure the grant to the Council in respect of such Pre-Existing IPR an irrevocable, royalty free, non-exclusive licence to use and/or reproduce such Pre-Existing IPR for the purposes of the Services.
- 18.3 The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the Council harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Council may suffer or incur as a result of or in connection with any breach of this condition, except where any such claim arises from:
- a) items or materials based upon designs supplied by the Council; or
 - b) the use of data supplied by the Council which is not required to be verified by the Contractor under any provision of the Contract.

19. Equipment, Materials and Consumables

- 19.1 At all times during the Contract Period the Contractor shall provide and maintain sufficient Equipment, materials and consumables as are required for the proper and efficient performance of the Services.

20. Premises and Council Assets

Licence to occupy Premises

- 20.1 Any Council Premises made available from time to time by the Council to the Contractor in connection with the Contract, shall be made available to the Contractor on a non-exclusive licence basis free of charge unless otherwise specified in this Contract and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.
- 20.2 The Contractor shall limit access to the Council's Premises to such Personnel as is necessary to enable it to perform its obligations under the Contract and the Contractor shall co-operate (and ensure that its Personnel co-operate) with such other persons working concurrently on such land or Premises as the Council may reasonably request.
- 20.3 Should the Contractor require modifications to Council Premises, such modifications shall be subject to the Council's prior approval and shall be carried out by the Council at the Contractor's expense. The Council shall undertake approved modification work without undue delay. Ownership of such modifications shall rest with the Council.
- 20.4 The Contractor shall (and shall ensure that its Personnel shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Council Premises as determined by the Council (including but not limited to health and safety and security) and the Contractor shall pay for the cost of making good any damage caused by the Contractor or its 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.
- 20.5 The Parties agree that there is no intention on the part of the Council to create a tenancy of any nature whatsoever in favour of the Contractor or its Personnel

in respect of any Council Premises and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Council retains the right at any time to use any Premises owned or occupied by it in any manner it sees fit.

- 20.6 The Council may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, any of the Council Premises any member of the Contractor's Personnel whose admission or continued presence would, in the reasonable opinion of the Council, be undesirable.
- 20.7 At the Council's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Council Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Council may reasonably request.
- 20.8 The decision of the Council as to whether any person is to be refused access to any Council Premises and as to whether the Contractor has failed to comply with condition 20.6 shall be final and conclusive.

Inspection of Premises

- 20.9 The Contractor is deemed to have inspected the Premises (including Council Premises) before submitting its Tender and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

Council Assets

- 20.10 Where the Council makes available Council Assets free of charge to the Contractor such Council Assets shall be used for the purposes of the provision of the Services and shall be and remain the property of the Council and the Contractor irrevocably licences the Council and its agents to enter upon any premises of the Contractor during normal business hours on reasonable notice to recover any such Council Assets. The Contractor shall not in any circumstances have a lien or any other interest on the Council Assets and the Contractor shall at all times possess the Council Assets as fiduciary agent and bailee of the Council. The Contractor shall take all reasonable steps to ensure that the title of the Council to the Council Assets and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other

appropriate persons and shall, at the Council's request, store the Council Assets separately and ensure that such are clearly identifiable as belonging to the Council.

- 20.11 The Council Assets shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Council otherwise within 5 (five) Working Days of receipt.
- 20.12 The Contractor shall maintain the Council Assets in good order and condition (excluding fair wear and tear), and shall use the Council Assets solely in connection with the Contract and for no other purpose without prior the Council's prior approval.
- 20.13 The Contractor shall ensure the security of all the Council Assets whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Council's reasonable security requirements as required from time to time.
- 20.14 The Contractor shall be liable for all loss of, or damage to, the Council Assets (excluding fair wear and tear), unless such loss or damage was caused by the Council's default and indemnifies the Council in respect thereof. The Contractor shall inform the Council within 2 (two) Working Days of becoming aware of any defects appearing in, or losses or of any defects appearing in, or losses or damage occurring to, the Council Assets.

21. Security

- 21.1 The Contractor shall comply with the Council's security and other site specific rules in respect of any Premises and shall ensure that all Personnel comply with such requirements.

22. Recovery of Sums Due to the Council

- 22.1 Whenever under the Contract any sum of money shall be recoverable or payable by the Contractor such sum may be deducted from or reduced by the amount of any sum or sums then due or which at any time thereafter may become due to the Contractor under or in respect of the Contract.

23. Health and Safety

- 23.1 The Contractor shall at all times comply with the requirements of the Health and

Safety at Work, etc, Act 1974, all approved codes of practice issued thereunder and all applicable Laws relating to health and safety and with the Council's policies and procedures relating to health and safety (which shall be made available to the Contractor) in respect of its own Personnel, the Council's employees and others who may be affected by the provision of the Services.

23.2 The Contractor shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of the Contract. The Contractor shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Council's Premises and which may affect the contractor in the performance of the Contract.

23.3 Whilst on the Council's Premises the Contractor shall comply with any health and safety measures and procedures implemented by the Council in respect of those premises.

23.4 The Contractor shall notify the Council immediately in the event of any incident occurring in the performance of the Contract on the Council's Premises where that incident causes any personal injury or damage to property.

24. Data Protection and Freedom of Information

24.1 The Parties shall comply with the requirements of Data Protection Legislation.

24.2 In relation to all Personal Data, the Contractor shall at all times comply with Data Protection Legislation.

24.3 The Contractor shall indemnify the Council against all claims and proceedings and all liability, loss, costs and expenses incurred in connection therewith in respect of any loss or damage caused by the disclosure of Personal Data by the Contractor or its Personnel.

24.4 The Contractor acknowledges that the Council is subject to the requirements of the FOIA and the EIR and shall assist and cooperate with the Council (at the Contractor's expense) to enable the Council to comply with these Information

disclosure requirements.

24.5 Where the Council receives a Request for Information in relation to Information that the Contractor is holding on its behalf and which the Council does not hold itself the Council shall refer to the Contractor such Request for Information that it receives as soon as practicable and in any event within five Working Days of receiving a Request for Information and the Contractor shall:

- a) provide the Council with a copy of all Information relating to a Request for Information in its possession or power in the form that the Council requires within 5 (five) Working Days (or such other period as the Council may specify) of the Council requesting that Information; and
- b) 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 of the EIR.

24.6 The Council shall be responsible for determining at its absolute discretion whether Information:

- a) is exempt from disclosure in accordance with the provisions of the FOIA or the EIR;
- b) is to be disclosed in response to a Request for Information, and in no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Council.

24.7 The Contractor acknowledges that the Council may, acting in accordance with the Cabinet Offices' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, July 2018), be obliged under the FOIA or the EIR to disclose Information:

- a) without consulting with the Contractor, or
- b) following consultation with the Contractor and having taken its views into account.

24.8 The Contractor shall ensure that all Information produced in the course of this Contract is retained for disclosure and shall permit the Council to inspect such

records as requested from time to time.

- 24.9 The Contractor acknowledges that any lists or schedules provided by it outlining confidential information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with condition 24.7.

25. Dispute Resolution

- 25.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 (twenty) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to head of the client department of the Council and the finance director (or equivalent) of the Contractor.
- 25.2 Subject to condition 25.1 above nothing in this Contract shall prevent either Party from commencing court proceedings in relation to the dispute under condition 35.8 at any time.

26. Audit

- 26.1 During the Contract Period and for a period of 7 (seven) years after the termination or expiry of the Contract the Council may conduct or be subject to an audit for the following purposes:
- a) to verify the accuracy of Contract Price (and proposed or actual variations to them in accordance with this Contract) and/or the costs of the Contractor (including Sub-Contractors) of the Services and/ or delivery of the Goods;
 - b) to review the integrity, confidentiality and security of any data relating to the Council;
 - c) to review the Contractor's compliance with Data Protection Legislation, the FOIA, in accordance with condition 24 (Data Protection and Freedom of Information) and any other legislation applicable to the Services and/or Goods;
 - d) 26.1.4 to review any records created during the provision of the Services

and/or delivery of the Goods;

- e) 26.1.5 to carry out the audit and certification of the Council's accounts;
and
- f) 26.1.6 to carry out an examination pursuant to sections 44 and 46 of the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Council has used its resources.

26.2 Except where an audit is imposed on the Council by a Regulatory Body, the Council may not conduct an audit under this condition 26 more than once in any calendar year.

26.3 The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services and/or delivery of the Goods.

26.4 Subject to the Council 's obligations of confidentiality, the Contractor shall on demand provide the Council and any relevant Regulatory Body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:

- a) all information requested by the above persons within the permitted scope of the audit;
- b) reasonable access to any sites controlled by the Contractor and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services and/or delivery of the Goods; and
- c) access to the Contractor's Personnel.

26.5 The Council shall endeavour to (but is not obliged to) provide at least 10 (ten) Working Days notice of its or, where possible, a Regulatory Body's, intention to conduct an audit.

26.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this condition, unless the audit identifies a material failure to perform its obligations under this Contract in any material manner by the Contractor in which case the Contractor

shall reimburse the Council for all the Council's reasonable costs incurred in the course of the audit.

26.7 If an audit identifies that:

- a) the Contractor has failed to perform its obligations under the Contract in any material manner, the parties shall agree and implement a remedial plan. If the Contractor's failure relates to a failure to provide any information to the Council about the Contract Price, or the Contractor's costs, then the remedial plan shall include a requirement for the provision of all such information;
- b) the Council has overpaid any Contract Price, the Contractor shall pay to the Council the amount overpaid within 20 (twenty) Working Days. The Council may deduct the relevant amount from the Contract Price if Contractor fails to make this payment; and
- c) the Council has underpaid any Contract Price, the Council shall pay to the Contractor the amount of the under-payment less the cost of audit incurred by the Council if this was due to a default by the Contractor in relation to invoicing within 20 (twenty) Working Days.

27. Equality and Diversity

27.1 The Contractor shall perform its obligations under this Contract in accordance with applicable equality Law and not unlawfully discriminate within the meaning and scope of any Law (whether because of race, sex, disability, sexual orientation, religion or belief, age, pregnancy and maternity, marital or civil partnership status, gender re-assignment, trade union membership or activities, part time or fixed term status or otherwise) including but not limited to the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

27.2 The Contractor shall take all reasonable steps to secure the observance of condition 27.1 by all Personnel including Sub-Contractors engaged in the performance of this Contract.

28. Assignment and Sub-contracting

28.1 The Contractor shall not be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this Contract without the prior written consent of the Council.

28.2 The Contractor shall not sub-contract the whole or any part of its obligations under this Contract (save as specified in the Tender) and/or the whole or any part of the Services without the prior written consent of the Council, such consent not to be unreasonably withheld or delayed.

28.2 In the event that the Contractor enters into any Sub-Contract in connection with this Contract it shall:

- A) remain responsible to the Council for the performance of its obligations under the Contract notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors; and
- B) provide a copy, at no charge to the Council, of any such Sub-Contract on receipt of a request for such by the Council's Authorised Officer.

28.3 The Council may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to: a) any contracting authority within the meaning of section 2 of the Procurement Act 2023; or

- b) any other body established by the Council or under statute in order substantially to perform any of the functions that had previously been performed by the Council; or
- c) any private sector body which substantially performs the functions of the Council,

provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.

28.4 Any change in the legal status of the Council such that it ceases to be a contracting authority shall not, subject to condition 28.3, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Council.

29. Notices

29.1 Any notice required to be given under this Contract shall be in writing and served upon the recipient personally by hand delivery or by first class recorded delivery or special delivery post and shall be deemed served on the day of delivery if delivered by hand or 2 (two) Working Days after the day on which it was posted. The address for service of each Party shall be its registered office address or main place of trading or such other address as either Party may have notified to the other in accordance with this condition 29.1 and in the case of the Council such notice shall be addressed to and served upon the Director/Head of the Council's client department for the Services.

30. Confidentiality

30.1 Except to the extent set out in this Condition 30 or where disclosure is expressly permitted elsewhere in this Contract each Party:-

- a) shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
- b) shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Contract or except where disclosure is otherwise expressly permitted by the provisions of this Contract.

30.2 The Contractor shall not and shall procure that its staff do not use any of the Council's Confidential Information received otherwise than for the purposes of this Contract.

30.3 The Contractor may only disclose the Council's Confidential Information to its employees, agents, professional and other advisors and consultants engaged in relation to this Contract and who need to know the information and shall ensure that they are under a similar obligation of confidentiality in respect of the Confidential Information.

30.4 The Contractor shall not use any Confidential Information it receives from the Council otherwise than for the purposes of the Contract.

30.5 The provisions of condition 30.1 shall not apply to any Confidential Information

received by one Party from the other:

- a) which is or becomes public knowledge (otherwise than by breach of this Condition);
- b) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- d) is independently developed without access to the Confidential Information; or
- e) which is disclosed pursuant to a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR.

30.6 Nothing in this condition 30 shall prevent the Council disclosing any Contractor Confidential Information:

- a) for the purpose of the examination and certification of the Council's accounts; or
- b) for the purpose of any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources; or
- c) to any other department, office or agency of the government; or
- d) to Regulatory Bodies; or
- e) to the Council's professional advisers, insurers and/or insurance advisers; or
- f) to any consultant, contractor or agent engaged by the Council for purposes relating to this Contract who need to know the information,

The Council shall use reasonable endeavours to ensure that any party to whom the Contractor's Confidential information is disclosed pursuant to condition 30.6 is made aware of the Council's obligation of confidentiality.

30.7 Nothing in this condition 30 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract

in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

31. Force Majeure

31.1 Neither Party shall be in breach of this Contract for any delay in or failure to perform its obligations under the Contract resulting from Force Majeure.

31.2 Each Party shall use all reasonable endeavours to continue to perform its obligations hereunder and/or overcome Force Majeure. If either Party is unable to perform its duties and obligations under this Contract as a direct a Force Majeure Event, that Party shall promptly give written notice to the other of the inability and which sets out full details of the reasons therefore. The Council will have the right to cancel any orders for Goods and/or Services ordered but not yet delivered in the event of Contractor Force Majeure.

32. Anti-Bribery Compliance

32.1 The Contractor shall:

- a) comply with all applicable Laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);
- b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- c) have and shall maintain in place throughout the Contract Period its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and shall enforce them where appropriate: and
- d) promptly report to the Council any request or demand for any undue financial or other advantage of any kind received by the Contractor in connection with the Contract.

33. Conflict of Interest

33.1 The Contractor warrants and covenants that it does not have any interest in any matter where there is or is likely to be a conflict of interest with this Contract provided always that nothing in this clause shall prevent the Contractor from carrying out its normal business activities for any other party where no such conflict exists.

33.2 Without prejudice to any rights of the Council under the Contract, the Contractor shall undertake ongoing and regular conflict of interest checks throughout the Contract Period and shall notify the Council in writing promptly upon becoming aware of any actual or potential conflict of interest with this Contract and shall work with the Council to do whatever is necessary to manage such conflict to the Council's reasonable satisfaction.

34. Whistleblowing and Modern Slavery Act 2015

34.1 The Contractor shall implement and maintain a whistleblowing policy which complies with applicable Law. The policy shall:

- (i). set out procedures by which staff can confidentially report concerns about illegal, unethical or otherwise unacceptable conduct; and
- (ii). ensure that it enables the staff to bypass the level of management at which the problem may exist.

34.2 The Contractor shall comply with the provisions of the Modern Slavery Act 2015 and shall take such steps as is necessary to promote ethical business practice and policy to protect employees and workers from abuse and exploitation. The Contractor shall use all reasonable endeavours to ensure that slavery and human trafficking is not taking place in its supply chains.

35. Miscellaneous

35.1 The failure or forbearance by either Party on any occasion to insist upon the full performance of the terms, conditions and provisions of the Contract shall not thereby constitute a waiver of such breach or an acceptance of any variation of the Contract, or any further such breach or any right of such Party to enforce such provision in accordance with its terms, unless a waiver is given in writing by that Party.

35.2 This Contract contains the whole agreement between the Parties relating to the subject matter hereof and supercedes, cancels or nullifies all prior arrangements and understandings either oral or written between the Parties relating to such matters.

35.3 Nothing herein contained shall be construed as constituting or be deemed to constitute a partnership or joint venture between the Parties hereto.

- 35.4 Should any provision of the Contract become void or otherwise unenforceable for any reason, the validity of the remaining provisions shall not be affected thereby and the parties shall use their respective best endeavours to replace the provision which is void or unenforceable with a provision of similar economic effect.
- 35.5 The Contract may be executed in any number of counterparts all of which shall constitute one and the same agreement.
- 35.6 Any variation to the Contract shall only be valid and binding once it has been agreed in writing and signed by an authorised representative of each Party.
- 35.7 The Contractor shall not make any press announcement or publicise the Contract or any part thereof in any way, without the prior written consent of the Council.
- 35.8 The Contract and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with English Law and the Parties hereby submit to the exclusive jurisdiction of the courts of England.
- 35.9 Where there is a conflict between the Tender and the other Contract Documents, the other Contract Documents shall prevail.
- 35.10 A person who is not a Party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 (the "Act") to enforce any terms of this Contract but this does not affect any right or remedy of a third party which exists or is available apart from under the Act. The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Contract are not subject to the consent of any other party.