

## STANDARD CONDITIONS OF CONTRACT

These conditions apply to the quotation and subsequent contract. There may be special conditions around this particular quotation and subsequent contract. Where standard and special conditions vary, special conditions will prevail.

### 1. GENERAL PROVISIONS

The following terms shall have the following meanings:

#### 1.1 Definitions

Term	Definition
"Approval" and "Approved"	The written consent of the Council.
"Council"	Daventry District Council and includes where relevant other bodies on whose behalf Daventry District Council is acting.
"Council Property"	Any property, other than real property, issued or made available by the Council to the Contractor in connection with the Contract.
"Conditions"	The terms and conditions within this Contract.
"Confidential Information"	All information designated as such by either Party in writing and all other information which relates to the business, affairs, properties, assets, trading practices, goods, services, developments, trade secrets, know-how, personnel, customers and suppliers of either Party which may reasonably be regarded as the confidential information of the disclosing Party.
"Contract"	The agreement between the Council and the Contractor consisting of these Conditions and the Contract Documents.
"Contract Documents"	All those documents referred to in the Contract Document Schedule including the Order and (insofar as applicable) the Specification, Invitation to Quote and the Contractor's Quote, and any other documents (or parts thereof) specified by the Council.
"Contract Document Schedule"	The list of documents (or parts) of documents forming the Contract, whether or not entitled in this way. This will either be a list on the Order or referred to in that order.
"Contract Term"	The contract period which shall be from the agreed commencement date until the agreed termination date referred to in the Contract subject to any termination for breach or otherwise.
"Contract Price"	The price exclusive of any applicable Tax, payable to the Contractor by the Council under the Contract, as set out in the Pricing Schedule/or Quote, for the full and proper performance by the Contractor of its part of the Contract as determined under the Contract.
"Contractor"	The person, firm, company or other legal entity, with whom the Council enters into this Contract.
"Contractor's Representative"	The individual authorised, including their sub-contractor or any agent, to act on behalf of the Contractor for the purposes of the Contract.
"Default"	Any breach of the obligations of either party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either party and its Staff in connection with or in relation to the subject matter of the Contract and in respect of which such party is liable to the other.
"Equipment"	The Contractor's equipment, plant, materials, etc. used in the performance of its obligations under the Contract.
"Goods"	Both tangible and intangible items (including software).
"Goods and/or Services"	Any goods services and related works, as are to be provided by the Contractor (or by the Contractor's sub-contractor) under the Contract as specified in the Contract Document Schedule.
"Invitation to Quote"	An invitation for Contractor to bid for the Goods and/or Services and related works required by the Council.
"Intellectual Property Rights"	Patents, registered designs, trademarks and service marks (whether registered or not), domain names, copyright, design right, trade secrets and all similar property rights including those subsisting in any part of the world in inventions,

	computer programs, semiconductor topographies, confidential information, and in applications for protection of any of the above rights.
"Order"	The order issued by the Council under clause 2.2.
"Payment"	The amount paid to the Contractor by the Council in consideration for the provision of the goods and/or service and related works and calculated in accordance with the Pricing Schedule/Quote.
"Party"	A party to this Contract and "Parties" shall be construed accordingly.
"Premises"	The location where the Goods are to be delivered and/or the Services are to be performed, as specified in the Contract.
"Pricing Schedule"	The schedule containing details of the contract price which shall be annexed to and incorporated with and form part of the Contract Documents.
"Quote"	The Contractor's quote response to the invitation to quote.
"Related Works"	Any Works related to the purchase of Goods or Services under the Contract.
"Service(s)"	The provision of services other than Works.
"Specification"	The description of the goods and/or services and related works to be provided under the Contract.
"Staff"	All persons employed by the Contractor to perform the Contract together with the Contractor's employees, agents and sub-contractors used in the performance of the Contract.
"Tax"	Value added tax, customs duties and any other taxes or duties.
"Works"	As defined the EU Public Sector Procurement Directive (2014/24/EU).

## 1.2 Interpretation

1.2.1 The Contract including the Contract Documents constitute the entire agreement between the Parties relating to the subject matter of the Contract.

1.2.2 This Contract shall supersede any prior agreement with the Contractor, whether written or oral, and shall have precedence over any printed terms and conditions appearing on any acceptance form, delivery form or other documents or letters emanating from the Contractor. The Contractor's terms and conditions shall have no effect whatsoever.

1.2.3 Headings contained in this Contract are for reference purposes only and should not be incorporated into the Contract and shall not be deemed to be any indication of the meaning of the clauses to which they relate

1.2.4 Reference to any statute or statutory provision includes a reference to:

- (a) That statute or statutory provision as from time to time amended, extended, re-enacted or consolidated and
- (b) All statutory instruments or orders made pursuant to it.

1.2.5 Words denoting the singular number only shall include the plural and vice versa. Words denoting any gender include all genders and words denoting persons shall include firms and corporations and vice versa.

1.2.6 'Including' means including without limitation.

## 1.3 Scope

Nothing in the Contract shall be construed as creating a partnership, a Contract of employment or a relationship of principal and agent between the Council and the Contractor.

## 1.4 Terms of Appointment

The Council appoints the Contractor to provide the Goods and/or Services and Related Works for the Contract Term in return for the Payment. The Contract does not confer any exclusivity upon the Contractor and will not warrant or guarantee any level of business and the Council reserves the right to use other contractors/service providers at its discretion.

**1.5 Contract Term**

The Contract shall commence and shall expire automatically at the end of the Contract Term unless it is terminated in accordance with these Conditions, or otherwise lawfully terminated or extended under the Contract.

**1.6 Contract Extension**

Subject to satisfactory performance by the Contractor during the Contract Term, the Council may wish to extend the Contract for a further period to be mutually agreed between the parties.

**1.7 Quality Assurance**

The Contractor shall operate a system of quality assurance that will ensure that the Goods and/or Services and Related Work fully comply with the Contract. The Contractor shall on request provide the Council with a copy of their quality assurance manual or other documentation and any results of quality performance measurements appropriate to the Contract.

**1.8 Variation**

**1.8.1 Conditions** - No deletion from, addition to, or variation of the Conditions shall be valid or of any effect unless agreed in writing by the parties.

**1.8.2 Price** - Where the Contract expressly provides for this (and not otherwise) the Contractor shall notify the Council in writing, quoting the appropriate index or price formulae of any proposed price variation, and/or provide supporting evidence of the rise or fall in materials, labour or any other factors. Any rise or fall, resulting from the submission of a claim for price variation, shall not be paid in respect of any period before the expiration of 90 days from the date the claim is notified to the Council.

**1.8.3 Goods** - The Contractor shall not alter or substitute any of the Goods unless Approved. The Council shall have the right from time to time by written notice to change the specification, add to or omit, or otherwise vary the Goods. Any variation by the Council shall not relieve the Contractor of any of his obligations in the Contract.

**1.8.4 Service(s)** - The Council acting reasonably can vary the Service(s) provided by the Contractor at any time and the Council will notify the Contractor of any such variation in writing. Any price variation shall be subject to the provisions in clause 1.8.2 and any resulting change in payments due to the Contractor shall be determined in the absence of agreement by the Council acting reasonably.

**1.9 Scope of Pricing**

The compliance by the Contractor with the terms of the Contract including all aspects of the Conditions shall be deemed to be included in the price(s) included in the Quote/Pricing Schedule. No additional charge shall be due to the Contractor for the fulfilment of any duty under any specific clause of the Conditions.

**2. PRICES ORDERS AND PAYMENTS**

**2.1. Payment**

The Council's standard terms of payment are 30 days from the date payment is due, receipt of invoice or delivery of goods and/or service whichever is the later.

**2.2. Orders**

An Order shall be an official instruction in writing or recordable electronic form and the Contractor shall ensure that Goods and/or Services and Related Works are provided on the terms and conditions set out in the Contract. No payment for Goods and/or Service and Related Works will be made unless the Contractor provides a relevant official order number/reference that corresponds with an Order.

**2.3. Tax**

All sums payable under this Contract unless otherwise stated are exclusive of VAT and other duties or taxes. Where VAT applies, the Contractor will produce for the Council a valid VAT invoice.

#### **2.4. Interest on Late Payment**

In the event of failure by the Council to make any payment of any charges for the Goods and/or Services for undisputed claims, then the Contractor shall be entitled to interest on any payment overdue there under from the due date to the date of actual payment at base rate per annum over the prevailing Bank of England Repo Rate.

#### **2.5. Prompt Payment**

2.5.1 Where the Contractor submits an invoice to the Council in accordance with clause 2.1, the Council will consider and verify that invoice in a timely fashion.

2.5.2 The Council shall pay the Contractor any sums due under such an invoice no later than a period of 30 days from the date on which the Council has determined that the invoice is valid and undisputed.

2.5.3 Where the Council fails to comply with clause 2.5.1 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of clause 2.5.2 after a reasonable time has passed.

2.5.4 Where the Contractor enters into a Sub-Contract, the Contractor shall include in that Sub-Contract:

- (a) Provisions having the same effect as clauses 2.5.1-2.5.3 of this Contract; and
- (b) A provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clauses 2.5.1-2.5.3 of these Conditions.
- (c) In clause 2.5.4, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the Council in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.

### **3. CONTRACTOR'S OBLIGATIONS**

#### **3.1 Goods**

##### **3.1.1 Samples**

The Contractor if required will provide, free of charge, samples of goods for evaluation and Approval. All subsequent deliveries shall be equal in quality to the Approved samples and conform in all respects to the Specification and the conditions detailed in the Contract.

##### **3.1.2 Standards**

Goods and/or Services and Related Work shall comply with any statutory, British, International and European Standards and other requirements from time to time in force.

##### **3.1.3 Rejection of Goods**

The Council may reject any goods wholly or in part if the Goods do not comply with the standards and the Council may purchase the same elsewhere. The Council may also require that the Contractor remove the goods (perishable or non-perishable) within an agreed time period and provide goods to the Approved standard. The Contractor shall be responsible for any and all costs incurred in so doing.

##### **3.1.4 Delivery**

- (a) Goods shall be delivered at the times dates and places specified in the Contract. A delivery note shall be included with each consignment, and an invoice shall be submitted to the address shown on the Order. Receipt or delivery of the Goods does not constitute any acknowledgement of the condition or nature of Goods delivered to the Council.
- (b) The Council shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity in the Order and the Contractor shall be responsible for any and all reasonable

costs incurred. Goods shall be properly packed and secured in such a manner to reach their destination in good condition. Except where otherwise expressly agreed in writing, delivery shall be free of charge to the Council.

- (c) Unless specified otherwise delivery of Goods and/or Services and Related Work shall include unloading and stacking by the Contractor and the Contractor's Representative at such a place as the Council shall reasonably direct.

### **3.1.5 Default by Contractor**

Should the Contractor fail to deliver the Goods at the times, dates, and places specified or agreed, the Council, shall without prejudice to any other remedy for breach of Contract, determine the Contract either wholly or in part and purchase replacement Goods of the same or similar description at the Contractor's cost.

### **3.1.6 Risk/Title of Goods**

The Goods shall remain the property and risk of the Contractor until delivered to; accepted by and signed for by the Council (without prejudice to the Council's right to reject the goods, wholly or in part), at which time the title to the goods shall pass from the Contractor to the Council. The risk of any over-delivered Goods that do not comply with the Order shall remain with the Contractor.

### **3.1.7 Guarantee**

Goods and/or Services and Related Works shall be free of defects in design, materials and workmanship and shall be fit and sufficient for all purposes for which they are ordinarily used and for any particular purpose made known to the Contractor by the Council. The Contractor shall guarantee the goods from implementation for 12 months, or 18 months from initial delivery, and shall (without prejudice to any other rights and remedies) remedy such defects immediately without cost to the Council. The Contractor shall notify the Council and receive agreement in writing to any deviation from the above time periods.

### **3.1.8 Inspection of Premises**

The Contractor, upon being given reasonable notice by the Council, shall allow free access to any premises where Services and Related Work are carried out, by the Contractor or the Contractor's representative. The Contractor shall give assistance to the Council as necessary to enable inspection of this work. Any inspection or Approval by the Council shall not relieve the Contractor of any of the obligations under this Contract.

## **3.2 Services**

### **3.2.1 Provision of Service(s)**

The Contractor shall provide the Service(s) during the Contract Term within the time agreed and on a specified date(s), in accordance with the requirements of the Contract.

### **3.2.2 Standards and Performance**

- (a) To the extent that the standard of Service(s) has not been specified in the Contract; the Contractor shall exercise and continue to exercise in the performance of the Service(s) all reasonable skill care and diligence expected of a properly qualified and competent person(s) experienced in carrying out Service(s) of a similar size, timescale and degree of complexity.
- (b) The Contractor shall consult fully with the Council and keep the Council properly informed of all matters arising in the performance of the Service(s). The introduction of new methods or systems which impinge on the provision of the Service(s) shall be subject to prior Approval. The signing by the Council (or their representative) of time sheets or other similar documents shall not be construed as implying the Contractor's compliance with the Contract.

### **3.2.3 Remedies in the event of inadequate performance**

- (a) If the Council informs the Contractor that the Council considers any part of the Service(s) to be inadequate or in any way differing from the Contract, and this is other than as a result of default or negligence on the part of the Council, the Contractor shall at its own expense re-schedule and perform the Service(s) correctly within such reasonable time as may be specified by the Council.
- (b) Without prejudice to any other rights and remedies the Council may have pursuant to the Contract, the Contractor shall reimburse the Council for all reasonable costs incurred by the Council which have arisen as a direct consequence of the Contractor's failure to comply with such a request.
- (c) In the event that the Contractor persistently fails to comply with such requests, and such failures, taken as a whole, materially affect the commercial or other interests of the Council the Council reserves the right to terminate the Contract by notice in writing with immediate effect.
- (d) In the event that the Council is of the opinion that there has been a fundamental breach of this Contract by the Contractor, or the Contractor's performance of its duties under the Contract has failed to meet the requirements, then the Council may, without prejudice to its rights under the Termination Clause in this Contract, do any of the following:
  - (i) Without terminating the Contract, itself provide or procure the provision of part of the Service(s) until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Council that the Contractor will once more be able to perform such part of the Service(s) in accordance with the Contract.
  - (ii) Terminate the whole of the Contract.
- (e) The Council may charge to the Contractor any cost reasonably incurred by the Council and any reasonable administration costs in respect of the provision of any part of the Service(s) by the Council or by a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Service(s).
- (f) In the event that the Council enforces any of its rights under the termination clause in this Contract, the Contractor shall forthwith deliver up to the Council all Council Property (including keys) relating to the Service(s) or part of the Service(s). The remedies of the Council under this Condition may be exercised successively in respect of any one or more failures by the Contractor.

#### 3.2.4 Best Value and Benchmarking

- (a) In the performance of the Contract the Contractor shall assist the Council in achieving the performance of its duty to secure the continuous improvement of its services under local government legislation.
- (b) Without prejudice to the generality of the above the Contractor shall identify ways in which Service(s) may be carried out more efficiently or effectively and shall advise the Council accordingly; for example:
  - (i) by being undertaken in a different manner to achieve the Council's objectives
  - (ii) by assisting the Council to develop quality standards for the provision of Service(s)
  - (iii) by assisting the Council to develop and implement production methodology, including the application of information technology, to systemise, monitor and supervise its performance and to ensure consistency of quality method and performance
- (c) If so requested by the Council the Contractor shall provide a detailed breakdown of the activities required for the completion of the Service(s).
- (d) Where so requested by the Council, in order to assess the competitiveness of Service(s) which are provided or procured by the Council; the Contractor shall provide the Council with comparative costing information in terms of the price which the Contractor would charge, to the Council, for undertaking specified Service(s).

#### 3.2.5 Monitoring and Performance

- (a) The Council may inspect or examine the performance of the Service(s) at any reasonable time, and with reasonable notice, at any premises where part of the Service(s) is being performed. The Council shall have the right to record that which it considers to be relevant to the performance and monitoring of this Contract.
- (b) Where so requested by the Council the Contractor shall provide the Council with performance records in terms of the Contract in respect of any Service(s) undertaken on behalf of the Council. These records shall take the form of monitoring reports, the content and regularity of which may be specified in the Contract or otherwise shall be as reasonably determined by the Council. The Contractor shall attend contract management meetings as agreed between the parties acting reasonably.

### **3.2.6 Access to Premises**

- (a) Access to the Council's premises shall not be exclusive to the Contractor and shall be limited by the Contractor to such Staff and the Contractor's suppliers as are necessary to the performance of the Service(s) concurrently with the execution of service and/or related work by others. The Contractor shall co-operate with such others as the Council may reasonably require.
- (b) The Contractor shall make no delivery of equipment nor commence any Service(s) on the Council's premises without obtaining the Council's prior Approval, including compliance with systems the Council has in place to manage and monitor health, safety and environmental impacts.

### **3.2.7 Contractors Staff and Site Access**

- (a) If the Council gives the Contractor notice that any person is not to become involved in or is to be removed from involvement in the performance of the Contract, the Contractor shall take all reasonable steps to comply with such notice and if required by the Council the Contractor shall replace any person removed under this Condition with a suitably qualified person and procure that any pass issued to the person removed is surrendered.
- (b) If and when instructed by the Council, the Contractor shall give to the Council a list of names and addresses of all persons who are or who may be at any time concerned with the Service(s) or any part of them, specifying the capacities in which they are so concerned, and giving such other particulars and evidence of identity and other supporting evidence as the Council may reasonably require. The decision of the Council as to whether any person is not to become involved in or is to be removed from involvement in the performance of the Contract and as to whether the Contractor has furnished the information or taken the steps required by this Condition shall be final and conclusive.

### **3.2.8 Equipment**

- (a) The Contractor shall provide all the Equipment necessary for the provision of the Service(s).
- (b) The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its own cost. The Contractor shall ensure that the Council's Premises are appropriate to contain and operate the Equipment. The Contractor shall maintain all items of Equipment within the Council's Premises in a safe, serviceable and clean condition.
- (c) All Equipment brought onto the Council's Premises shall be at the Contractor's own risk and the Council shall have no liability for any loss of or damage to any Equipment unless and to the extent that the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the negligence or default of the Council.
- (d) The Council may at its option purchase any item of Equipment from the Contractor at any time, if the Council considers that the item is likely to be required in the provision of the Service(s) following the expiry or termination of the Contract. The purchase price to be paid by the Council shall be the fair market value.

### 3.2.9 Removal of Equipment, Rubbish and Unused materials

- (a) On completion of the Goods and/or Service and Related Works the Contractor shall remove the Equipment and unused materials and shall clear away from the Council's Premises all rubbish arising out of the Goods and/or Service and Related Works, make good any damage caused to the Council's Premises by the removal of the Equipment and leave the Council's Premises in a neat and tidy condition.
- (b) The Council shall have the power at any time during the delivery of the Service(s) to order in writing:
  - (i) the removal from the Council's Premises of any Equipment which in the opinion of the Council are either hazardous, noxious or not in accordance with the Contract; and/or
  - (ii) the substitution of proper and suitable materials, plant, Equipment; and/or
  - (iii) The removal and proper re-execution notwithstanding any previous test thereof or interim payment therefore of any service and/or work which, in respect of material or workmanship, is not in the opinion of the Council in accordance with the Contract.

## 4. PROTECTION OF INFORMATION

### 4.1 Data Protection

- 4.1.1 The Contractor shall throughout the term of this Contract comply with the provisions of the Data Protection Act 1998 ("DPA") or any subsequent amendment under the General Data Protection Regulation (the "GDPR") (which means General Data Protection Regulation (2016), Regulation (EU) 2016/679, as amended or re-enacted from time to time and any United Kingdom Act or European Union Regulation recognised in UK law substantially replacing the same. All compliance references to GDPR in this Contract are applicable from 25th May 2018) thereto and shall ensure that its agents and employees are trained in and comply with the data protection principles set out in the DPA and GDPR in their performance of the Services.
- 4.1.2 For the purposes of this clause 4, the terms "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Process" and "Processing" shall have the meaning prescribed under the DPA and or GDPR (when in force).
- 4.1.3 The Contractor shall (and shall ensure that its entire Staff) comply with any notification requirements under the DPA and GDPR and that both parties will duly observe all their obligations under the DPA and GDPR which arise in connection with the Contract.
- 4.1.4 Notwithstanding the general obligation in clause 4, where the Contractor is processing Personal Data (as defined by the DPA and GDPR) as a Data Processor for the Council the Contractor shall:
  - (a) Process the Personal Data only in accordance with instructions from the Council (which may be specific instructions or instructions of a general nature) as set out in this Contract or as otherwise notified by the Council; and
  - (b) Comply with all applicable laws and government guidance on the protection of information legislation;
  - (c) Process the Personal Data only to the extent; and in such manner as is necessary for the provision of the Contractor's obligations under this Contract or as is required by law or any regulatory body;
  - (d) Implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
  - (e) Take reasonable steps to ensure the reliability of its Staff and agents who may have access to the Personal Data;



- (f) Not disclose Personal Data to any third parties in any circumstances other than with the written consent of the Council or in compliance with a legal obligation imposed upon the Council; and

4.1.5 Notify the Council within one (1) working day if it receives:

- (a) A request from a Data Subject to have access to that person's Personal Data; or
- (b) A complaint or request relating to the Council's obligations under the DPA and GDPR;
- (c) If there is a breach of DPA and GDPR what steps the Contractor will be taking to rectify this.
- (d) The Contractor shall ensure all losses or breaches of security or information are reported to the Council within 1 (one) working day whether actual, potential or attempted, in order for the Council to notify the regulator and, where necessary the Data Subjects, as required by the GDPR.
- (e) The Contractor will ensure all breaches are internally investigated, and appropriate remedial action taken, along with supporting the Council and the Information Commissioner's Office in any investigation by it. A copy of the investigation report must be provided to the Council.
- (f) The Contractor will immediately take all reasonable steps to remedy such breaches and to protect the integrity of both parties against any actual, potential or attempted breach or threat and any equivalent attempted breach in the future.

4.1.6 The provision of clause 4.1 shall apply during the Contract Term and indefinitely after expiry.

#### 4.2 **Breach, termination and continuance**

4.2.1 The Contractor shall indemnify the Council for any breach of the requirements of this schedule which renders the Council liable for any costs, fines, claims or expenses under Legislation howsoever arising.

4.2.2 Failure on the part of the Contractor to comply with the provisions of this schedule shall amount to a breach of this contract and shall give the Council the right to exercise any and all of the remedies in this contract and recover all costs incurred as a consequence of the Contractor's breach.

4.2.3 On termination of this Contract howsoever arising; the Contractor shall when directed to do so by the Council, and instruct all its agents and subcontractors to:

- (a) Transfer to the Council the whole or any part of the Personal Data and other Information received or acquired by the Contractor for the purposes of or in the course of the delivery of the services the subject of this Contract; and
- (b) Ensure that such a transfer is made securely in a manner specified by the Council and the data complies with the requirement at clause 4.1; and
- (c) Securely destroy or erase the whole or any part of such Personal Data and other Information retained by the Contractor and provide to the Council such proof of destruction as the Council may reasonably specify.

4.2.4 The provisions of clause 4.2 shall continue in effect notwithstanding termination of this Contract.

#### 4.3 **Freedom of Information**

4.3.1 The Contractor recognises that the Council has information disclosure obligations under the Freedom of Information Act 2010 ("FOIA") and the Environmental Information Regulations ("EIR"). The Contractor agrees to provide such assistance and support as may be requested from time to time by the Council for the purposes of enabling or assisting the Council to comply with these information disclosure obligations in respect of matters relating to or arising out of this Contract.

4.3.2 In the event that a request made to the Council for access to information under the FOI or the EIR, or any notice, recommendation or complaint is made to or against the Council in relation to its obligations under the FOIA or EIR, the Contractor will within five (5) Working Days of the date of a request from the Council provide to the Council, any details in its possession relating to this Contract or to the Contractor as the Council may require to deal with such access request or deal with such notice, recommendation or complaint.

4.3.3 The Contractor acknowledges the Council may be obliged under the FOIA or EIR to disclose information to third parties, including information relating to the appointment of the Contractor to provide the Services under this Contract, and the terms of this Contract, subject to certain exemptions. The Contractor further acknowledges and accepts that the decision to disclose information and the application of any such exemptions under the FOIA or EIR will be at the Council's sole discretion provided that the Council shall act reasonably and proportionately in determining whether any exemptions under the FOIA or EIR may apply to protect the Contractor's legitimate commercial interests trade secrets.

#### 4.4 **Transparency**

The Contractor acknowledges that the Council has information publication obligations under the Local Government Transparency Code 2015, and agrees that this Contract (including the Schedules), and any documentation including requests for quotes, advertisement issued by the Council seeking expressions of interest, the standard assessment questionnaire and the tender documents (the "Procurement Documents") issued by the Council in relation to this Contract are not Confidential Information, and may be published by the Council, save where in the reasonable opinion of the Council the contents of the Contract or the Procurement Documents are exempt from disclosure under the FOIA or EIR in which case, the Contractor consents to the Contract or Procurement Documents being redacted by the Council to the extent necessary to remove or obscure the exempt content, and to publication subject to those redactions.

#### 4.5 **Confidentiality and Council's Property**

4.5.1 Subject to clause 4.3 (Protection of Information) and clause 4.4 (Transparency), the Contractor shall not, without the prior written consent of the Council, publish or disclose to any person, or permit any such disclosure by any of its employees or representatives, any Confidential Information.

4.5.2 The restriction in clause 4.5.1 does not apply to:

- (i) Any information required to be disclosed by an order of court or other tribunal or required to be disclosed in accordance with any law, statute, proclamation, by-law, directive, decision, regulation, rule, order, notice, rule of court, delegated or subordinate legislation; or
- (ii) Any information which is already in, or comes into, the public domain otherwise than through unauthorised disclosure by the Contractor; or
- (iii) Any disclosure authorised by the Council.

4.5.3 All documents, manuals, hardware and software provided by the Council to the Contractor, and any data or documents (including copies) produced, maintained or stored on the Council's computer systems or other electronic equipment (including mobile phones, if provided by the Council) in relation to this Contract, remain the property of the Council.

4.5.4 All intellectual property rights and proprietary rights including copyright and all other rights of a like nature conferred under the laws of the United Kingdom (and all other countries of the World) in any works conceived originated or made by the Contractor pursuant to the Services ("Intellectual Property") shall automatically vest in the Council and Contractor hereby assigns to the Council by way of future assignment the copyright and all other intellectual property rights in the Intellectual Property for the full term during which the said rights and any renewals or extensions shall subsist.

4.5.5 The Contractor warrants and represents that the Intellectual Property will not infringe any intellectual property rights of which a third party is the proprietor. The Contractor agrees to indemnify the Council against any and all liability, loss, damages, costs and expenses which the Council or a third party may incur or suffer as a result of any dispute or contractual, tortious or other claims or proceedings brought against the Council by a third party alleging infringement of its intellectual property rights by reason of the use or exploitation of the Intellectual Property.

4.5.6 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the performance of the Contract, the Contractor undertakes to maintain security systems approved by the Council.

4.5.7 The Contractor will immediately notify the Council of any breach of security in relation to Confidential Information and all data obtained in the performance of the Contract and will keep a record of such breaches.

- 4.5.8 The Contractor will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Contractor's obligations under clause 6 in this Contract. The Contractor will co-operate with the Council in any investigation that the Council considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data. The Council acting reasonably may require the Contractor to alter any security systems at any time during the Contract Term.
- 4.5.9 The Contractor shall hold as confidential information all matters relating to the goods and/or services to be supplied in any way whatsoever and shall not disclose the same or any of the same to any other person except such of his Staff as may be necessary for the performance of his obligations under his Contract. All documents and drawings containing such information and any copies thereof shall upon completion of the Contract, or its termination for any reason, be returned to the Council. The provisions of this Clause shall survive any termination of this Contract for a period of 5 years from termination.
- 4.5.10 The Council is committed to the highest possible standards of openness, probity and accountability. It expects anyone who we deal with, who has serious concerns about any aspect of the Council's activities, to come forward and voice them. The Council operates an Anti-Fraud, Bribery and Corruption Response Plan to provide a means to do so. Full details of the Policy are available on the Council's website.
- 4.5.11 All concerns will be treated in confidence and every effort will be made not to reveal your identity if you so wish. At the appropriate time, however, you may need to come forward as a witness. This policy encourages you to put your name to your allegation whenever possible as concerns expressed anonymously are much more difficult to investigate, and it may therefore be difficult to pursue such an investigation to a reliable conclusion.
- 4.5.12 If you make an allegation in good faith, but it is not confirmed by the investigation, no action will be taken against you. If, however, you make an allegation frivolously, maliciously or for personal gain, this may affect further work opportunities with the Council.
- 4.5.13 Concerns can be made orally or in writing to:
- Simon Bowers, Executive Director (Business) (direct line) 01327 302435
  - Scott Peasland, Internal Audit Manager (direct line) 01327 302408
  - Ian Vincent, Chief Executive (direct line) 01327 302420

#### **4.6 Copyright and Ownership of Documents**

- 4.6.1 Copyright and all other Intellectual Property Rights in all the material including to drawings, reports, specifications, bills of quantity, calculations and other similar documents prepared for the Contract by or on behalf of the Contractor shall unless otherwise specified in the Contract be vested in the Council and Contractor jointly, such that each shall have the right to use the material and to grant others the same right or any part of that right. The Contractor shall not be liable to the Council or any other person for any use of the material for any purpose other than that for which the same was prepared or provided by the Contractor.
- 4.6.2 The Council shall on written request be entitled to be supplied by the Contractor with copies of the items referred to above in such form as the Council may reasonably require.

#### **4.7 Third Party Intellectual Property Rights**

The Contractor warrants that the performance of the Contract does not in any way infringe the patent, design, copyright or trademark rights of any person or company and indemnifies the Council against any costs, damages, proceedings, claims and demands of whatever nature in respect of any alleged infringement.

#### **4.8 Publicity**

The Contractor shall not advertise the fact that it is supplying Goods and/or service to the Council under this Contract other than with the written permission of the Council. The Contractor shall not use the logo of the Council or any representation thereof, nor cause it to be used, without the written consent of the Council.

## **5. CONTROL OF THE CONTRACT**

### **5.1 Assignment**

- (a) The Contractor shall not assign or sub-contract any of its rights or duties under the Contract without the consent in writing of the Council, such consent not to be unreasonably withheld.
- (b) Should such consent be given to the Contractor by the Council, the Contractor shall continue to remain liable for all acts, defaults or negligence howsoever caused by any sub contractor. The Council may require a direct warrantee and undertaking from the subcontractor concerning the requirements and compliance with the Contract in which event the Contractor shall be released from that part of the Contract for which the Council has received a direct warranty.
- (c) The Contractor shall be responsible for the acts and omissions of its assignees and sub-contractors as though they were its own. Where the Council has consented to the placing of an assignment or sub-contracts, copies of each contract of assignment or sub-contract shall be provided by the Contractor to the Council within two (2) working days of issue.

### **5.2 Waiver**

The forbearance, indulgence or failure by the Council, or any Officer at any time or for any period to enforce the provisions of the Contract or to require performance by the Contractor or any of the provisions of the Contract shall not be construed as a permanent waiver of or as creating an estoppel in connection with any such provision and shall not affect the validity of the Contract or any part thereof or the right of the Council to enforce any provision in accordance with all terms and conditions of this Contract.

### **5.3 Severability**

If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

## **6. LIABILITIES**

### **6.1 Insurance**

- (a) The Contractor shall maintain at its own cost public and employers liability insurance for a minimum of £5 million for any one claim or series of claims in respect of any personal injury to or death of any person or any damage whatsoever to any real or personal property arising out of the performance of the Contract.
- (b) If so required the Contractor shall maintain professional indemnity insurance for an amount to be specified in the Contract, to cover the liability of the Contractor or their Staff in respect of any claim for damages for breach of professional duty as a result of any negligent act error or omission committed by the Contractor or their Staff arising out of the performance of the Contract. The Contractor shall maintain such professional indemnity insurance for a period specified in the Contract.
- (c) The Contractor shall produce for inspection when requested by the Council documentary evidence that the insurance cover is being properly maintained. Such insurance shall at all times be effected with insurers of repute carrying on business in the United Kingdom and the policies will not contain any unduly onerous conditions.

### **6.2 Indemnity**

The Contractor shall (and it acknowledges that it will) indemnify and keep indemnified the Council from and against any and all loss damage or liability (whether criminal or civil) suffered together with legal fees and costs incurred by the Council resulting from a breach of this Contract by the Contractor against any act neglect or default of the Contractor its Staff and any breaches in respect of any matter arising out of the performance of this Contract.

### 6.3 **Warranty and Representations**

Each of the parties warrants that it has power to enter into the Contract and has obtained all necessary approvals to do so.

## 7. **STATUTORY OBLIGATIONS AND REGULATIONS**

### 7.1 **Statutory Requirements**

The Contractor shall comply with all statutory and other requirements (including those relating to race relations, equal opportunities, employment, corruption, health and safety and environmental protection) in relation to the Contract

### 7.2 **Health and Safety**

- (a) The Contractor shall take all necessary measures to comply with the requirements of the Health and Safety at Work Act 1974, and regulations made thereunder
- (b) This shall include compliance with the Council's own relevant health and safety policies and procedures for any work which shall form part of the Contract. The Contractor shall ensure that its health and safety policy statement (as required under the Health and Safety at Work Act 1974) is made available to the Council on request.

### 7.3 **Equalities and Human Rights**

- (a) In respect of the Contract and matters pertaining to it the Contractor and the Contractor's Representative shall comply with the Human Rights Act 1998 as if the Contractor were a public authority for the purposes of the Human Rights Act 1998 and with all legislation, official guidance and codes of practice relating to equal opportunities.
- (b) The Contractor shall inform the Council as soon as the Contractor becomes aware of any legal proceedings or complaint brought or likely to be brought against the Contractor under the legislation in sub-clause 7.3(a).
- (c) Where any investigation is conducted or proceedings are brought arising directly or indirectly out of this Contract or any other action by the Contractor or its employees, agents or sub-contractors, the Council shall be entitled to recover from the Contractor the full cost it may have incurred in such investigation or proceedings and such other financial redress to cover any payment the Council may have been ordered or required to pay to a third party.
- (d) The Contractor shall provide such information as the Council may reasonably request for the purpose of assessing the Contractor's compliance with this clause.

### 7.4 **Environment**

In respect of the Contract and matters pertaining to it the Contractor shall have due regard to the Council's Environmental Policy as listed in the Council's Publication Scheme.

### 7.5 **Rights of Third Parties**

The Contracts (Rights of Third Parties) Act 1999 is expressly excluded from this Contract unless otherwise expressly specified in writing in the Contract.

### 7.6 **Protection of Children and Vulnerable Adults**

The Contractor or anyone sub-contracted to them may have direct contact with children or vulnerable adults during any delivery or attendance at the premises. It is the responsibility of any Contractor to whom a Contract is awarded to ensure that those engaged in undertaking the duties under that contract (Staff, agents, and others) are of suitable standing and good character. If the Council considers it is likely children or vulnerable adults will be present it will supply a copy of its current policy on safeguarding which must be followed.

## 8. **BRIBERY, CORRUPTION AND COLLUSION**

8.1 The Council shall be entitled immediately to terminate this Contract and to recover from the Contractor the amount of any loss resulting from such termination if:

- (a) the Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to this Contract or any other contract with the Council;
- (b) the like acts shall have been done by any person employed by the Contractor or acting on its behalf (whether with or without the knowledge of the Contractor);
- (c) in relation to any contract with the Council the Contractor or person employed by him or acting on its behalf shall have committed any offence under the Prevention of Corruption Acts 1906 to 1916 or the Bribery Act 2010 or have given any fee or reward, the receipt of which is an offence under the Local Government Act 1972 Section 117;
- (d) the Contractor, when tendering, fixed or adjusted the amount of the Tender under or in accordance with any agreement or arrangement with any other person or before the hours specified for the return of tenders:
  - (i) Communicated to a person other than the Council the amount or the approximate amount of its Tender (except where the disclosure in confidence of the approximate amount of its Tender was essential to obtain insurance premium quotations required for the preparation of its Tender),
  - (ii) Entered into an agreement with any other person whereby that other person would refrain from tendering or as to the amount of any tender to be submitted,
  - (iii) Offered or paid or gave or agreed to give any sum of money or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other tender or proposed tender any act or thing of the sort described above.

## 9. FORCE MAJEURE

The Council shall have the right to defer the date of delivery or to cancel any Order in the event of its business being interrupted or restricted by Force Majeure, lockouts, strikes, industrial disputes, accidents, civil commotion, riot, war, fire, or any other cause whatsoever beyond the control of the Council.

## 10. LAW

This Contract shall be governed by and construed in all aspects in accordance with English Law and the parties agree to submit to the exclusive jurisdiction of the English Courts.

Version 3.1 January 2019