

Terms and Conditions of Contract Supply of Goods and/or Services Agreement

1. Interpretation

The following definitions and rules of interpretation apply in this agreement (unless the context requires otherwise).

1.1 Definitions:

Act of Insolvency:

- the taking of any step in connection with any voluntary arrangement or any other compromise or arrangement for the benefit of any creditors of the Contractor;
- the making of an application for an administration order or the making of an administration order in relation to the Contractor;
- the giving of any notice of intention to appoint an administrator, or the filing at court of the prescribed documents in connection with the appointment of an administrator, or the appointment of an administrator, in any case in relation to the Contractor;
- the appointment of a receiver or manager or an administrative receiver in relation to any property or income of the Contractor;
- the commencement of a voluntary winding-up in respect of the Contractor or any guarantor, except a winding-up for the purpose of amalgamation or reconstruction of a solvent company in respect of which a statutory declaration of solvency has been filed with the Registrar of Companies;
- the making of a petition for a winding-up order or a winding-up order in respect of the Contractor;
- the striking-off of the Contractor or any guarantor from the Register of Companies or the making of an application for the Contractor to be struck-off;
- the Contractor otherwise ceasing to exist (but excluding where the Contractor dies);
- the making of an application for a bankruptcy order, the presentation of a petition for a bankruptcy order or the making of a bankruptcy order against the Contractor

The paragraphs above shall apply in relation to a partnership or limited partnership (as defined in the Partnership Act 1890 and the Limited Partnerships Act 1907 respectively) subject to the modifications referred to in the Insolvent Partnerships Order 1994 (SI 1994/2421) (as amended), and a limited liability partnership (as defined in the Limited Liability Partnerships Act 2000) subject to the modifications referred to in the Limited Liability Partnerships Regulations 2001 (SI 2001/1090) (as amended).

Act of Insolvency includes any analogous proceedings or events that may be taken pursuant to the legislation of another jurisdiction in relation to a Contractor incorporated or domiciled in such relevant jurisdiction.

Business of the Council: all district council functions for the administrative district of the Council.

Business Day: a day, other than a Saturday, Sunday or public holiday in England.

Capacity: as agent, consultant, director, employee, owner, partner, shareholder or in any other capacity.

Confidential Information: information in whatever form (including without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, customers, clients, suppliers, products, affairs and finances of the Council for the time being confidential to the Council and trade secrets including, without limitation, technical data and know-how relating to the Business of the Council or any of their suppliers, customers, clients, agents, distributors, shareholders, management or business contacts, including (but not limited to) information that the Contractor creates, develops, receives or obtains in connection with their Engagement, whether or not such information (if in anything other than oral form) is marked confidential.

Contract: means the contract between the Council and the Contractor consisting of the RFQ, the Quotation, and these Conditions of Contract.

Contract Commencement Date: the date of commencement of the Contract as detailed in the Contract Particulars or otherwise agreed in writing between the parties.

Contract Particulars: the RFQ and the Contractor's Quotation to provide the Services.

Contractor: the consultant, person, firm or company to whom the Contract is issued

Council: [] District Council

Council Property: all documents, books, manuals, materials, records, correspondence, papers and information (on whatever media and wherever located) relating to the Business or affairs of the Council or their customers and business contacts, and any equipment, keys, hardware or software provided for the Contractor's use by the Council during the Engagement, and any data or documents (including copies) produced, maintained or stored by the Contractor on the Council or the Contractor's computer systems or other electronic equipment during the Engagement.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation (EU) 2016/679) (UK GDPR), the Data Protection Act 2018 (and regulations made thereunder) or any successor legislation, and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications) **Controller, Personal Data, Processing, Processor** shall be interpreted as defined in the Data Protection Legislation.

Deliverable: any outputs of the Services and any other documents or materials provided by the Contractor to the Council as more particularly described in the Contract Particulars and any other documents and materials provided by the Contractor to the Council in relation to the Services (excluding the Contractor's equipment).

Engagement: the engagement of the Contractor by the Council on the terms of this agreement and the Contract Particulars.

Goods: the goods to be supplied by the Contractor more particularly described in the RFQ where applicable.

Intellectual Property Rights: patents, rights to Inventions, copyright and related rights, trademarks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Invention: any invention, idea, discovery, development, improvement or innovation made by the Contractor in the provision of the Services, whether or not patentable or capable of registration, and whether or not recorded in any medium.

Order: the purchase order accompanying these Conditions of Contract

Quotation: the Contractor's (bidder's) response to the RFQ.

RFQ: the Request for Quotation, and any other documents (or parts thereof) specified therein, issued by the Council setting out the Council's requirements in respect of the Services

Services: the services or project provided by the Contractor in a consultancy capacity for the Council as more particularly described in the RFQ and where applicable the Order and shall, where the context so admits, include any Deliverable.

Site: the location where the Services etc. are performed as more particularly described in the RFQ.

Termination Date: the date of termination of this agreement, howsoever arising.

Works: all records, reports, documents, papers, drawings, designs, transparencies, photos, graphics, logos, typographical arrangements, software, and all other materials in whatever form, including but not limited to hard copy and electronic form, prepared by the Contractor in the provision of the Services.

1.2 The headings in this agreement are inserted for convenience only and shall not affect its construction.

1.3 A reference to a particular law 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.

1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

2. Term of Engagement

The Council shall engage the Contractor and the Contractor shall provide the Services or Goods in accordance with the Contract.

3. Inspection of Site

3.1 The Contractor is deemed to have inspected the Site before submitting his Quotation so as to have understood the nature and extent of the Services to be carried out and satisfied himself in relation to all matters connected with the Goods or Services and the Site.

3.2 The Council shall, at the request of the Contractor, grant such access as may be reasonable for this purpose.

4. Time of Performance

4.1 The Contractor shall begin and complete the performance of the Services and/or supply the Goods on the dates promised or stated in the Order.

4.2 During the Engagement the Council may:

- by written notice require the Contractor to execute the Services in a particular order
- require the Contractor to submit detailed programmes of work and progress reports for the Services.

4.3 Failure to supply Goods within time shall enable the Council to release itself from any obligation to accept or pay for the Goods and/or to cancel all or part of the order without prejudice to any other rights or remedies.

5. Duties and Obligations

5.1 The Contractor shall complete the Services, including any Deliverables with reasonable skill, care and diligence in accordance with this Contract.

5.2 The Contractor shall provide the Council with such information and reports as it may reasonably require in connection with matters relating to the provision of the Services, including the Deliverables (if any), or the Business of the Council, at such intervals and in such form as the Council may from time to time require.

5.3 Unless they have been specifically authorised to do so by the Council in writing, the Contractor shall not:

- have any authority to incur any expenditure in the name of or for the account of the Council; or
- hold themselves out as having authority to bind the Council.

5.4 The Contractor shall comply with all professional standards of safety and comply with the Council's health and safety procedures from time to time in force at the premises where the Services are provided and report to the Council any unsafe working conditions or practices.

5.5 Where applicable the Council shall provide to the Contractor and the Contractor shall comply with the Council's policies on social media use of information and communication systems anti-harassment and bullying equal opportunities and no smoking.

6. Prevention of Bribery

6.1 The Contractor shall:

- comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;
- comply with any relevant industry code on anti-bribery as the relevant industry body may update them from time to time;

(c) 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 performance of this agreement;

(d) ensure that all persons associated with the Contractor or other persons who are performing services in connection with this agreement comply with this clause 6; and

(e) ensure that it has in place adequate procedures to ensure compliance with this clause 6.

6.2 The expressions "adequate procedures" and "associated" in clause 6 shall be construed in accordance with the Bribery Act 2010 and all documents published under it.

6.3 The Council may terminate the Contract and recover any losses if the Contractor, its employees, directors, agents, representatives or anyone acting on the Contractor's behalf do any of the following things:

(a) fail to comply with clause 6.

(b) off offers, offered, promised or gave a bribe (as defined by the Bribery Act 2010) to the Council or any of its employees or members whether prior to or after the date of this Contract concerning the negotiation, the entering into, the terms and conditions of or the performance of this Contract (even if the Contractor does not know what has been done); or

(c) commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members of employees

7. Anti-Tax Evasion

7.1 The Contractor shall:

(a) not engage in any activity, practice or conduct which would constitute either:

(i) a UK tax evasion facilitation offence under section 45(1) of the Criminal Finances Act 2017; or

(ii) a foreign tax evasion facilitation offence under section 46(1) of the Criminal Finances Act 2017;

(b) comply with the Council's anti-corruption and bribery policy and relevant industry code on anti-facilitation of tax as the Council or the relevant body may update them from time to time;

(c) promptly report to the Council any request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017 or any suspected tax evasion offences or facilitation of tax evasion offences, whether under UK law or under the law of any foreign country, in connection with the performance of this agreement;

(d) ensure that all persons associated with the Contractor or other persons who are performing services in connection with this agreement comply with this clause 7; and

7.2 Failure to comply with clause 7 may result in the immediate termination of this agreement.

8. Price, Fees, Payment and Risk

8.1 Payment shall be due 28 days after completion of the Services or after receipt of the Goods or after the Payment Date as set out in the Order, provided that the Goods or Services have been supplied in accordance with the Order, to the Council's satisfaction and after receipt of detailed invoices.

8.2 VAT, where applicable, shall be shown separately on all invoices.

8.3 Where the Council has agreed to pay the Contractor fees on a time spent basis rather than a fixed contract price:

(a) the Council shall pay to the Contractor the fees at the rate specified in the Order; and

(b) the Contractor shall bear their own expenses incurred except that, the Contractor shall be entitled to be reimbursed by the Council the amount of any expenses previously agreed between the parties and confirmed in writing by the Council and reasonably and properly incurred by the Contractor in the performance of his duties hereunder subject to production of such evidence thereof as the Council may reasonably require.

8.4 The Council will not accept any increase in the Contract Price or fees specified in the Quote.

8.5 Property and risk in Goods pass to the Council upon delivery but without prejudice to any of the rights or remedies including the rights under clause 13.

8.6 Goods paid for and stored by the Contractor shall be stored separately from goods owned by the Contractor and shall be clearly marked that they are the property of the Council. The ownership will pass to the Council on payment but the risk shall remain with the Contractor until delivery to the Council

8.7 Wherever under the Order any sum of money is recoverable from or payable by the Contractor, that sum may be deducted from any sum then due, or which at any later time may become due, to the Contractor under this Contract or under any other agreement or contract with the Council

8.8 Payment in full or in part of the fees claimed under clause 8 shall be without prejudice to any claims or rights of the Council against the Contractor in respect of the provision of the Services or Goods.

9. Other Activities

Nothing in this agreement shall prevent the Contractor from being engaged, concerned or having any financial interest in any Capacity in any other business, trade, profession or occupation during the Engagement provided that:

(a) such activity does not cause a breach of any of the Contractor's obligations under this agreement;

(b) the Contractor shall not engage in any such activity if it relates to a business which is similar to or in any way competitive with the Business of the Council without the prior written consent of the Council (such consent not to be unreasonably withheld); and

(c) the Contractor shall give priority to the provision of the Services to the Council over any other business activities

- undertaken by the Contractor during the course of the Engagement.
- 10. Contractor's Personnel**
- 10.1 The Contractor shall take reasonable steps to prevent unauthorised persons being admitted to the Site. If the Council gives the Contractor notice that any person is not to be admitted to or is to be removed from the Site or 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 another suitably qualified person and procure that any pass issued to the person removed is surrendered. The decision of the Council shall be final and conclusive.
- 10.2 If required by the Council, the Contractor shall give to the Council a list of names and addresses of all persons who are or may be at any time concerned with the Services or any part, 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.
- 10.3 The Contractor shall bear the cost of any notice, instruction or decision of the Council under this condition.
- 11. Manner of Carrying Out the Services**
- 11.1 The Contractor shall make no delivery of materials, plant or other things nor commence any work on the Site without obtaining the Council's prior consent.
- 11.2 Non-exclusive access to the Site shall be granted by the Council to enable the Contractor to carry out the Services concurrently with the execution of work by others. The Contractor shall co-operate with such others as the Council may reasonably require.
- 11.3 The Council shall have the power at any time during the progress of the Services to demand in writing, at nil cost to the Council:
- the removal from the Site of any materials which in the opinion of the Council are either hazardous, noxious or not in accordance with the Contract; and/or
 - the substitution of proper and suitable materials; and/or
 - the removal and proper re-execution notwithstanding any previous test thereof or interim payment theretofore of any work which in respect of material or workmanship, is not in the opinion of the Council in accordance with the Contract.
- 11.4 On completion of the Services, the Contractor shall remove his plant, equipment and unused materials and shall clear away from the Site all rubbish arising out of the Services and leave the Site in a neat and tidy condition.
- 12. The Goods**
- 12.1 Any Goods shall be to the reasonable satisfaction of the Council and shall conform in all respects with any particulars specified in the Order.
- 12.2 The Goods shall be delivered to the place named in the Order.
- 13. Inspection, Rejection and Guarantee of the Goods**
- 13.1 The Contractor shall permit the Council to make any inspections or tests it may reasonably require and the Contractor shall afford all reasonable facilities and assistance free of charge at his premises. No failure to make complaint at the time of such inspection or tests and no approval given during or after such tests or inspections shall constitute a waiver by the Council of any rights or remedies in respect of the Goods.
- 13.2 The Contractor warrants, represents and undertakes and guarantees that the Goods supplied under this Contract shall:
- be free from manifest and/or latent defects in materials and workmanship and remain so for the guarantee period;
 - be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and comply with any applicable Law relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;
 - conform with the specifications drawings, descriptions given in quotations, estimates, brochures, sales, marketing and technical literature or material (in whatever format made available by the Contractor) supplied by, or on behalf of the Contractor;
 - be free from design defects; and
 - be fit and sufficient for the purpose for which such goods are ordinarily used and for any particular purpose held out by the Contractor or made known to the Contractor by the Council expressly or by implication and in this respect the Council relies on the Contractor's skill and judgement.
- 13.3 The Contractor acknowledges that the approval by the Council of any designs provided by the Contractor shall not relieve the Contractor of any of its obligations under this Condition.
- 13.4 The guarantee period for the Goods shall be 12 months from putting into service or 18 months from delivery whichever shall be the shorter (unless agreed otherwise in writing between the Parties).
- 13.5 Whereas
- the Contractor fails to Deliver the Goods or part of the Goods;
 - the Goods or part of the Goods do not comply with the provisions of Condition 13.2; or
 - the Council becomes aware of any defect in any of the Goods under proper and normal use within a reasonable time after delivery to the Council
- then without prejudice to other rights and remedies, the Council shall be entitled:
- to terminate this Contract;
 - request the Contractor, free of charge, to deliver substitute Goods within a specified timescale;
 - to require the Contractor to repair or replace the rejected Goods free of charge or to provide a full refund of the price of the rejected Goods (if paid);
 - to reject the Goods (in whole or part) and either return them to the Contractor at the Contractor's own risk and expense, or require the Contractor to collect the Goods and the Council shall be given a full refund on those Goods or part thereof; or
- buy the same or similar Goods from another Contractor and recover any reasonable additional expenses incurred in respect of buying the goods from another Contractor.
- 14. Labelling and Packaging of Goods**
- 14.1 Goods shall be packed in accordance with the Council's instructions and shall be clearly marked with the Order number, the net, gross and tare weights, the name of the contents and all containers of hazardous goods (and all documents relating thereto) shall bear prominent and adequate warnings.
- 14.2 All packaging materials will be considered non-returnable and will be destroyed
- 15. Health and Safety**
- 15.1 The Contractor represents and warrants to the Council that the Contractor comply with all current Health and Safety legislation.
- 15.2 The Contractor shall make available to the Council adequate information about the use for which any Goods have been designed and about any conditions necessary to ensure the safe use of the Goods.
- 16. Assignment and Sub-Contracting**
- 16.1 The Contractor shall not assign, novate or sub-contract the whole or any part of this Contract without the Council's prior written permission.
- 16.2 The Council shall be entitled to novate, assign or subcontract this Contract or any part of it to any other body which substantially performs any of the functions that previously had been performed by the Council.
- 17. Free-Issue Materials**
- Where the Council issues materials free of charge to the Contractor such materials shall remain the property of the Council. The Contractor shall maintain all such materials in good order and shall use the materials solely in connection with the Contract. The Contractor shall notify the Council of any surplus materials remaining after completion of the Services and shall dispose of them as the Council may direct. Waste of such materials arising from bad workmanship or negligence of the Contractor or any of his servants, agents or sub-contractors shall be made good at the Contractor's expense. Without prejudice to any other of the rights of the Council, the Contractor shall deliver up such materials whether processed or not to the Council on demand.
- 18. Confidential Information**
- 18.1 The Contractor acknowledges that in the course of the Engagement they may have access to Confidential Information. The Contractor has therefore agreed to accept the restrictions in this clause 18.
- 18.2 The Contractor shall not (except in the proper course of their duties), either during the Engagement or at any time after the Termination Date, use or disclose to any third party (and shall use their best endeavours to prevent the publication or disclosure of) any Confidential Information. This restriction does not apply to:
- any use or disclosure authorised by the Council or required by law; or
 - any information which is already in, or comes into, the public domain otherwise than through the Contractor's unauthorised disclosure.
- 18.3 At any stage during the Engagement, the Contractor will promptly on request return all and any Council Property in their possession to the Council.
- 18.4 Nothing in this clause 18 shall prevent the Contractor or the Council (or any of its officers, employees, workers or agents) from:
- reporting a suspected criminal offence to the police or any law enforcement agency or co-operating with the police or any law enforcement agency regarding a criminal investigation or prosecution; or
 - doing or saying anything that is required by HMRC or a regulator, ombudsman or supervisory authority; or
 - whether required to or not, making a disclosure to, or co-operating with any investigation by, HMRC or a regulator, ombudsman or supervisory authority regarding any misconduct, wrongdoing or serious breach of regulatory requirements (including giving evidence at a hearing); or
 - complying with an order from a court or tribunal to disclose or give evidence; or
 - making any other disclosure as required by law.
- 19. Publicity**
- The Contractor shall not, without prior written consent of the Council:
- make any press announcements or publicise this agreement or its contents in any way; or
 - use the Council's name or logo in any promotion or marketing or announcement of orders, except as required by law, any government or regulatory authority, any court or other authority of competent jurisdiction
- 20. Data Protection**
- 20.1 The Council will collect and process information relating to the Contractor in accordance with the privacy notice.
- 20.2 The Contractor will deliver effective and appropriate services having due regard to Data Protection principles and will comply with its duties under the Data Protection Legislation.
- 20.3 Where the Contractor processes data under this Contract, the Contractor and the Council acknowledge that for the purposes of the Data Protection Legislation, the Council is the controller and the Contractor is the processor.
- 20.4 The Contract Particulars sets out the scope, nature and purpose of the processing by the Contractor, the duration of the processing and the types of personal data and categories of data subject.
- 20.5 The Contractor shall, in relation to any Personal Data processed in connection with the Engagement:
- process that Personal Data only on written instructions of the Council;
 - keep the Personal Data confidential;
- comply with the Council's data protection policy and data retention guidelines;
 - comply with the Council's reasonable instructions with respect to processing Personal Data
 - not transfer any Personal Data outside of the UK;
 - assist the Council in responding to any data subject access request at nil cost to the Council and to ensure compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, privacy impact assessments and consultations with supervisory authorities or regulators;
 - notify the Council without undue delay on becoming aware of a Personal Data breach or communication which relates to the Council's or Contractor's compliance with the Data Protection Legislation;
 - at the written request of the Council, delete or return Personal Data (and any copies of the same) to the Council on termination of the Engagement unless required by the Data Protection Legislation to store the Personal Data; and
 - maintain complete and accurate records and information to demonstrate compliance with this clause 20.
- 20.6 The Contractor shall ensure that they have in place appropriate technical or organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures. Such measures may include, where appropriate:
- pseudonymising and encrypting Personal Data;
 - ensuring confidentiality, integrity, availability and resilience of its systems and services;
 - ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident; and
 - regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it.
- 20.7 The Council does not agree to the Contractor appointing any third party processor of Personal Data under this agreement.
- 20.8 The Contractor shall indemnify the Council for any loss, liability, costs (including legal costs), damages, or expenses resulting from any breach by the of the Data Protection Legislation, and shall maintain in force full and comprehensive insurance policies.
- 21. Freedom of Information/Environmental Information Regulations**
- 21.1 Notwithstanding anything to the contrary contained or implied in any documents or negotiations leading to the formation of this Contract:
- the Council shall be entitled to publish and/or release any and all terms or conditions of this Contract, the contents of any documents and/or information relating to the formation of this Contract under the provisions of the Freedom of Information Act 2000 or Environmental Information Regulations 2004
 - nothing contained in this Contract shall prevent the Council from disclosing and/or publishing under the provisions of the Freedom of Information Act 2000 or Environmental Information Regulations 2004 any term or conditions or information contained in or relating to the formation of this Contract.
- 21.2 The Contractor shall:
- co-operate with the Council and supply to it all necessary information and documentation required in connection with any request received by the Council under the said legislation.
 - supply all such information and documentation at no cost to the Council and within seven days of receipt of any request.
- 21.3 The Contractor shall not publish or otherwise disclose any information contained in this Contract or in any negotiations leading to it without the Council's previous written consent unless the Contractor is bound to publish and/or disclose such information under the said legislation and such information is not exempt from such disclosure and/or publication under the provisions of the said legislation
- 22. Intellectual Property**
- 22.1 Except to the extent that the Services incorporate designs furnished by the Council, the Services will not infringe any patent, trade mark, registered design, copyright or other right in the nature of industrial property of any third party and the Contractor shall indemnify the Council against all actions, claims, demands, costs and expenses which the Council may suffer.
- 22.2 All Intellectual Property Rights (including ownership and copyright):
- furnished or made available to the Contractor by the Council; and
 - prepared by or for the Contractor for use, or intended use, in relation to the performance of this Contract
- are hereby assigned to and shall vest in the Council absolutely, and the Contractor shall not and shall procure that his servants and agents shall not (except to the extent necessary for the implementation of this Contract) without prior written consent of the Council use or disclose any such specifications, instructions, plans, drawings, patents, models, designs or other material as aforesaid or any other information (whether or not relevant to this Contract) which the Contractor may obtain pursuant to or by reason of this Contract, except information which is in the public domain otherwise than by reason of a breach of this provision, and in particular (but without prejudice to the generality of the foregoing) the Contractor shall not refer to the Council or the Contract in any advertisement without the Council's prior written consent.
- 22.3 The provisions of this Clause 22 shall apply during this Contract and after its termination howsoever arising.
- 23. Insurance and Liability**
- 23.1 The Contractor shall indemnify and keep indemnified the Council against all actions, claims, demands, loss, liability,

- costs (including reasonable legal costs), damages or expenses incurred or made against the Council, its servants or agents in respect of any losses or damage or personal injury (including death) which arises out of or in connection with this Contract.
- 23.2 The Contractor shall effect and have in force and shall require any sub-contractor to have in force:
- employer's liability insurance and public liability insurance in a sum of not less than £5,000,000 for any one occurrence or series of occurrences arising out of one event
 - If the Contractor is a consultant, the Contractor shall also maintain professional indemnity insurance during the Contract period and for 6 years to cover its liability to the Council under this Contract,
 - Any additional insurance cover in such a sum as specified in the RFQ
- and, on request, shall provide to the Council copies of the policies together with satisfactory evidence of payment of premiums.
- 23.3 The Contractor shall, on request, notify the insurers of the Council's interest and shall cause the interest to be noted on the insurance policies.
- 23.4 The Contractor shall comply with all terms and conditions of the insurance policies at all times. If cover under the insurance policies shall lapse or not be renewed or be changed in any material way or if the Contractor is aware of any reason why the cover under the insurance policies may lapse or not be renewed or be changed in any material way, the Contractor shall notify the Council without delay.
- 24. Termination**
- 24.1 The Council may terminate the Contract with immediate effect with no liability to make any further payment to the Contractor (other than in respect of amounts accrued before the Termination Date) if at any time the Contractor:
- commits any gross misconduct affecting the Business of the Council;
 - commits any serious breach which is not capable of remedy
 - commits any serious breach which is capable of remedy and that breach is not remedied within 30 days of the Contractor receiving notice specifying the breach and requiring it to be remedied
 - commits repeated breach or non-observance of any of the provisions of this agreement or refuses or neglects to comply with any reasonable and lawful directions of the Council;
 - is convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed);
 - is in the reasonable opinion of the Council negligent or incompetent in the performance of the Services;
 - is the subject of an Insolvency Event;
 - dies or is incapacitated (including by reason of illness; accident or mental or physical incapacity) from providing the Services or Goods;
 - commits any fraud or dishonesty or acts in any manner which in the opinion of the Council brings or is likely to bring the Contractor or the Council into disrepute or is materially adverse to the interests of the Council;
 - commits any breach of the Council's policies and procedures;
 - commits any offence under the Bribery Act 2010 or for the reasons set out in clause 7;
 - commits a UK tax evasion facilitation offence under section 45(1) of the Criminal Finances Act 2017 or a foreign tax evasion facilitation offence under section 46(1) of the Criminal Finances Act 2017; or
 - fails to comply with legal obligations in the field of environmental, social or labour law.
- 24.2 The rights of the Council under clause 24.1 are without prejudice to any other rights that it might have at law to terminate the Contract or to accept any breach of this agreement on the part of the Contractor as having brought the agreement to an end. Any delay by the Council in exercising its rights to terminate shall not constitute a waiver of these rights.
- 24.3 In addition to its rights of termination under paragraph 24.1, the Council shall be entitled to terminate this Contract by giving to the Contractor not less than thirty (30) days' notice in writing to that effect.
- 24.4 Termination under paragraphs 24.1 or 24.3 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Council and shall not affect the continued rights under clauses 8.7, 11.4, 20, 21, 22, 23, 26.2, 28, 30 or any other condition or provision that either expressly or by implication has effect after termination.
- 24.5 Upon termination under this clause 24 and without prejudice to any other rights the Council may complete the Services or have them completed by a third party, using for that purpose, (making a fair and proper allowance therefore in any payment subsequently made to the Contractor) all materials, plant and equipment on the Site belonging to the Contractor, and the Council shall not be liable to make any further payment to the Contractor until the Services have been completed in accordance with the requirements of the Contract, and shall be entitled to deduct from any amount due to the Contractor the costs thereof incurred by the Council (including the Council's own costs). If this total cost to the Council exceeds the amount (if any) due to the Contractor, the difference shall be recoverable by the Council from the Contractor.
- 25. Obligations on Termination**
- On the Termination Date the Contractor shall:
- immediately deliver to the Council all Council Property created or held in relation to this Contract and original Confidential Information in their possession or under their control;
 - subject to the Council's data retention guidelines, irretrievably delete any information relating to the Business of the Council stored on any magnetic or optical disk or memory (including but not limited to any Confidential Information) and all matter derived from such sources which is in their possession or
- under their control outside the premises of the Council. For the avoidance of doubt, the contact details of business contacts made during the Engagement are regarded as Confidential Information and, as such, must be deleted from personal social or professional networking accounts; and
- provide a signed statement that they have complied fully with their obligations under this clause 25, together with such evidence of compliance as the Council may reasonably request.
- 26. Status**
- 26.1 In carrying out the Services or supplying the Goods the relationship of the Contractor to the Council will be that of independent contractor and/or principal and nothing in this agreement shall render them an employee, worker, agent or partner of the Council and the Contractor shall not hold themselves out as such.
- 26.2 This agreement constitutes a contract for the provision of goods or services and not a contract of employment and accordingly the Contractor shall be fully responsible for and shall indemnify the Council for and in respect of:
- any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services, where the recovery is not prohibited by law. The Contractor shall further indemnify the Council against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Council in connection with or in consequence of any such liability, deduction, contribution, assessment or claim other than where the latter arise out of the Council's negligence or wilful default and
 - any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Contractor against the Council arising out of or in connection with the provision of the Services, except where such claim is as a result of any act or omission of the Council.
- 26.3 The Council may at its option satisfy such indemnity (in whole or in part) by way of deduction from any payments due to the Contractor.
- 27. Force Majeure**
- A party shall not be liable to the other for any breach of Contract for any delays or failures in performance of the Contract which result from circumstances beyond the relevant party's reasonable control.
- 28. Equality/Human Rights**
- 28.1 The Contractor agrees to comply with the Equality Act 2010 including any codes of practice issued thereunder and to perform this Contract in a non-discriminatory manner
- 28.2 The Contractor agrees to assist the Council to meet its responsibility to monitor the equality of the provision of any services provided by the Council. The Council may require the Contractor to complete a questionnaire and/or provide information to the Council on the extent and quality of the Contractor equalities and diversity policies and practice.
- 28.3 The Contractor shall not discriminate directly or indirectly, or by way of victimisation or harassment, against any person on grounds of the protected characteristics.
- 28.4 The Contractor shall notify the Council forthwith in writing as soon as it becomes aware of any equalities investigation or proceedings brought against the Contractor.
- 28.5 The Contractor shall indemnify the Council in respect of all costs, claims and demands arising from a third party claim resulting from the Contractor's obligations under this clause.
- 28.6 If the Contractor fails to meet the required standards set out in the above legislation or codes of practice and after having been given the opportunity to improve the Council may take further action, including the termination of this Contract.
- 28.7 The Council as a public authority has a positive obligation to ensure compliance with any human rights legislation in force from time to time in the UK including the Human Rights Act 1998 ("HR Laws") and as a Contractor working for and on behalf of the Council; the Contractor has a similar duty under HR Laws and agrees to deliver effective and appropriate services having due regard to HR Laws.
- 28.8 The Contractor shall indemnify the Council in respect of all costs, claims and demands arising from a third party claim resulting from the Contractor's obligations under this Condition
- 29. Audit**
- The Contractor shall keep and maintain for six (6) years after completion of the Contract records to the satisfaction of the Council of all expenditures which are reimbursable by the Council and of the hours worked and costs incurred in connection with any employees of the Contractor paid for by the Council on a time charge basis. The Contractor shall on request afford the Council or its representatives such access to those records as may be required by the Council.
- 30. Environmental**
- The Contractor shall in its provision of the service use working methods, equipment, materials and consumables, which minimise environmental damage. In particular the Contractor shall ensure that it is familiar with and fully complies with the environmental obligations laid down in the Council's Climate Emergency Strategy (the "CE Strategy") and Ecological Emergency Action Plan (the "EE Action Plan") and supplied with the Contract, and that it will support and assist the Council in meeting the aims laid down in it (where appropriate).
- 31. Notices**
- 31.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be:
- delivered by hand or by pre-paid first-class post or other next working day delivery service at the address given in this agreement or as otherwise notified in writing to the other party.
- 31.2 Unless proven otherwise, any notice shall be deemed to have been received:
- if delivered by hand, at the time the notice is left at the address given in this agreement or given to the addressee or
 - if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting.
- 31.3 If deemed receipt under clause 31.2 would occur outside business hours in the place of receipt, it shall be deferred until business hours resume. In this clause 31.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 31.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 31.5 If the parties agree to service by e-mail, they do not agree to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution unless specifically stated.
- 32. Entire Agreement**
- 32.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 32.2 Each party acknowledges that in entering into this agreement it does not rely any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.
- 32.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.
- 33. Waiver**
- 33.1 The failure by either party to exercise any right or remedy shall not constitute a waiver of that right or remedy.
- 33.2 No waiver shall be effective unless it is communicated to the other party in writing.
- 33.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.
- 34. Severability**
- If any Condition or provision of the Contract not being of a fundamental nature is held to be unlawful, invalid or unenforceable by a court or tribunal in any proceedings relating to the Contract, the validity or enforceability of the remainder of the Contract shall not be affected. If the court finds invalid a provision so fundamental as to prevent the accomplishment of the purpose of the Contract, the parties shall immediately commence negotiations in good faith to remedy the invalidity.
- 35. Amendments and Variation**
- No amendment or variation of this agreement or of any of the documents referred to in it shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 36. Counterparts**
- 36.1 This agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 36.2 No counterpart shall be effective until each party has delivered to the other at least one executed counterpart.
- 37. Third Party Rights**
- 37.1 Except as expressly provided elsewhere in this agreement, a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.
- 37.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.
- 38. Governing Law**
- This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 39. Jurisdiction**
- Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).
- 40. Priority of Terms and Conditions**
- 40.1 Any Quotations made to or orders accepted from the Council for Goods and/or Services shall be subject to these Conditions of Contract unless otherwise agreed in writing by the Council.
- 40.2 These Conditions of Contract shall take priority over the Contractor's terms and conditions and no terms introduced by the Contractor shall take priority over these Conditions of Contract.