

CORBY BOROUGH COUNCIL

And

[xxxxxxx]

**LED LIGHTING AT CORBY EAST MIDLANDS INTERNATIONAL POOL & LODGE PARK
SPORTS CENTRE**

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CONTRACT DETAILS

Date:	[]
Corby internal contract reference number:	
Council:	CORBY BOROUGH COUNCIL
Council's address:	The Corby Cube, Parkland Gateway, George Street, Corby, Northants, NN17 1QG
Council's representative:	Name: [xxxxxxxxxxxxxxxxxxxx] Title: [xxxxxxxx] Email: [xxxxxx]@corby.gov.uk Postal Address: [xxxxxxxx]
Supplier:	[xxxxxxx] (Co No. xxxxxx)
Supplier's registered office address:	[xxxxxxxx]
Supplier's VAT number:	XXXXXXXXXX
Supplier's representative:	Name: [xxxxxxx] Title: Director Email: [xxxxxxx] Telephone: [xxxxx] Postal Address: [xxxxxxx]
Services Start Date:	The date the Contract is entered into by the parties.
Services:	As further detailed in the Specification at Schedule 1.
Charges:	As further detailed in Schedule 3.
Supplier's limit of liability under clause 7.2.2	£1,000,000.00
Insurance required under clause 8	Public liability insurance with a limit of cover of no less than £10,000,000.00 in relation to any claim or connected series of claims; Employers liability insurance with a limit of indemnity of not less than £10,000,000.00 in relation to any claim or connected series of claims;

	Professional Indemnity Insurance with a limit of cover of no less than £1,00,000.00 in relation to any claim or connected series of claims; Product Liability Insurance with a limit cover of no less than £5,00,000.00 in relation to any claim or connected series of claims.
Schedules:	1: SPECIFICATION 2: CHARGES 3: SUPPLIER'S TENDER SUBMISSION, PROCUREMENT CLARIFICATIONS

1. This Contract is made up of the following:

- (a) the Contract Details;
- (b) the Conditions;
- (c) the Schedules specified in the Contract Details.

2. If there is any conflict or ambiguity between the terms of the documents listed in paragraph 1, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list.

This Contract will not be binding on any party until all the parties have executed the Contract and the Contract will be entered into on the date that the final party executes the contract.

Signed by an authorised officer for and on behalf of CORBY BOROUGH COUNCIL
	Signature of authorised officer ()

	Print name (ALL CAPITALS)

	Signature of authorised officer

	Print name (ALL CAPITALS)

	Date

Signed for and on behalf of [xxxxxx]
	Signature of director

	Print name (ALL CAPITALS)

	Date

	Signature of director

	Print name (ALL CAPITALS)

.....
Date

DRAFT

IT IS NOW AGREED AS FOLLOWS

1. INTERPRETATION

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday, in England when banks in London are open for business.

Charges: the charges payable by the Council for the Services by the Supplier, as set out in the Contract Details and Schedule 1.

Conditions: these terms set out in clause 1 (Interpretation) to clause 16 (General) (inclusive).

Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.

Confidential Information: means information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored), including trade secrets, Intellectual Property Rights and Know-How of either Party, information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, and all personal data and sensitive personal data within the meaning of Data Protection Legislation

Council Materials: all materials, equipment and tools, drawings, specifications and data supplied by the Council to the Supplier.

Data Processor: takes the meaning in the GDPR.

Data Protection Legislation:

1. to the extent that they are in force in the UK, the GDPR, the LED and any applicable national implementing Laws;
2. to the extent where they are in force, the DPA 1998 and DPA 2018 to the extent that they relate to processing of personal data and privacy; and
3. all applicable Law about the processing of personal data and privacy.

DPA 2018: the Data Protection Act 2018.

EIRs: the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

FOIA: the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

GDPR: the General Data Protection Regulation (Regulation (EU) 2016/679).

Services: the services to be provided by the Supplier pursuant to the Contract, as described in the Specification at Schedule 1.

Services Start Date: the day on which the Supplier is to start provision of the Services respectively, as set out in the Contract Details.

Group: in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company, and in relation to the Council, any person, company, partnership, firm, association and/or other body with whom the Council is associated or has a relationship, financial or otherwise.

Intellectual Property Rights: any and all patents, trade marks, service marks, copyright, moral rights, rights in design, Know-How, and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United

Kingdom or any other part of the world together with all or any goodwill relating or attached thereto; **Laws:** means all relevant Acts of Parliament and statutory regulations, instruments or orders, guidance, codes of practice, by-laws and directives, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply and all applicable European Community legislation, which may be in force during the period of the Contract, as enacted, amended or interpreted from time to time;

LED: the Law Enforcement Directive (Directive (EU) 2016/680).

Personal Data: takes the meaning in the GDPR.

Request for Information: a request for information or an apparent request relating to this Contract under the Code of Practice on Access to Government Information, FOIA or the EIRs.

Supplier IPRs: all Intellectual Property Rights owned by the Supplier necessary or desirable to enable the Council to receive and use the Goods and/or Services.

- 1.2 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision includes any subordinate legislation made from time to time under that statute or statutory provision.
- 1.3 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.4 A reference to **writing** or **written** includes email but does not include fax.
- 1.5 The parties acknowledge and agree that this agreement is intended to benefit all of the parties equally and have had the opportunity to take legal advice. Accordingly, the rule of construction known as "contra proferentem" shall not apply.

2. COMMENCEMENT AND TERM

- 2.1 The Contract shall commence on the date when it has been signed by both parties and shall continue, unless terminated earlier in accordance with its terms. .

3. SUPPLY OF GOODS AND/OR SERVICES

- 3.1 The Supplier shall supply the Services to the Council from the Services Start Date in accordance with the Contract, in particular the Specification at Schedule 1.
- 3.2 In performing the Services the Supplier shall meet, and time is of the essence as to, any performance dates specified in the Specification at Schedule 1.
- 3.3 In supplying the Services, the Supplier shall:
 - 3.3.1 perform the Services with the highest level of care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
 - 3.3.2 co-operate with the Council in all matters relating to the Services, and comply with all instructions of the Council;
 - 3.3.3 appoint or, at the request of the Council, replace without delay a manager, who shall have authority to contractually bind the Supplier on all matters relating to the Services. The initial manager shall be the Supplier's representative;
 - 3.3.4 only use personnel who are suitably qualified, skilled and experienced to perform the tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled;

- 3.3.5 ensure that it obtains, and maintains all consents, licences and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary to enable it to comply with its obligations in the Contract;
- 3.3.6 ensure that the Services conform in all respects with the description set out in the Specification at Schedule 1;
- 3.3.7 provide all equipment, tools, vehicles and other items reasonably required or necessary to provide the Services;
- 3.3.8 ensure that its employees, agents and representatives associated with the supply of the Services comply in all respects with this clause 3;
- 3.3.9 comply with all applicable Laws from time to time in force;
- 3.3.10 observe and comply with all health and safety and environmental rules and guidance and any other reasonable security requirements that apply at any of the Council's premises from time to time and are notified to the Supplier;
- 3.3.11 hold all Council Materials in safe custody at its own risk, maintain the Council Materials in good condition until returned to the Council, and not dispose of or use the Council Materials other than in accordance with the Council's written instructions or authorisation;
- 3.3.12 not do or omit to do anything which may cause the Council to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business;
- 3.3.13 not deliver or provide the Services in instalments or stages unless otherwise agreed in writing with the Council;
- 3.3.13 not engage in any conduct or activity that would constitute an offence under the Bribery Act 2010 nor receive or agree to receive from any person, or offer or agree to give to any person, or procure for any person any gift or consideration of any kind as an inducement or reward for doing or not doing anything, or for showing favour or disfavour to any person in relation to this Contract, or any other contract with the Council; and
- 3.3.14 notify the Council in writing immediately upon the occurrence of a change of Control of the Supplier.

4. COUNCIL'S OBLIGATIONS

- 4.1 The Council shall:
 - 4.1.1 provide such access to the Council's premises and data, and such office accommodation and other facilities as may reasonably be requested by the Supplier and agreed with the Council in writing in advance, strictly as may be necessary for the purposes of providing the Services; and
 - 4.1.2 provide such necessary information for the provision of the Services as the Supplier may reasonably request.
- 4.2 A failure by the Council to comply with the terms of the Contract can only relieve the Supplier from complying with its obligations under the Contract with effect from the date on which the Supplier notifies the Council in writing and in reasonable detail of the Council's failure and its effect or anticipated effect on the Services.

5. INTELLECTUAL PROPERTY

- 5.1 All Intellectual Property Rights created by the Supplier or its personnel in the course of performing the Services or exclusively for the purpose of performing the Services shall vest in the Council on creation.
- 5.2 The Supplier and its licensors shall retain ownership of all Supplier IPRs. The Council and its licensors shall retain ownership of all Intellectual Property Rights in the Council Materials.
- 5.3 The Supplier grants the Council, or shall procure the direct grant to the Council of, a fully paid-up, worldwide, non-exclusive, royalty-free, licence to copy and modify the Supplier IPRs for the purpose of receiving and using the Services.
- 5.4 The Council will be entitled to sub-licence the licence granted under clause 5.3.
- 5.5 The Council grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Council Materials for the term of the Contract for the purpose of providing the Services to the Council in accordance with the Contract.
- 5.6 The Supplier shall indemnify the Council against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (including the cost of defending a claim and calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Council arising out of or in connection with any claim brought against the Council for actual or alleged infringement of a third party's rights (including any Intellectual Property Rights) arising out of, or in connection with, the receipt, use or onward supply of the Services by the Council and its licensees and sub-licensees. This clause 5.6 shall survive termination of the Contract.
- 5.7 The provisions of this clause 5 shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

6. CHARGES AND PAYMENT

- 6.1 In consideration for the provision of the Services, the Council shall pay the Supplier the Charges in accordance with this clause 6.
- 6.2 All amounts payable by the Council exclude amounts in respect of value added tax (**VAT**) which the Council shall additionally be liable to pay to the Supplier at the prevailing rate (if applicable), subject to receipt of a valid VAT invoice.
- 6.3 The Supplier shall submit invoices for the Charges plus VAT if applicable to the Council in accordance with Schedule 2. Each invoice shall include all supporting information reasonably required by the Council.
- 6.4 The Council shall pay each invoice which is properly due and submitted to it by the Supplier, within 30 days of receipt, to a bank account nominated in writing by the Supplier.
- 6.5 If the Council fails to make any payment due to the Supplier under the Contract by the due date for payment, then, without limiting the Supplier remedies under clause 9 (Termination), the Council shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time
- 6.6 The Council may at any time, without notice to the Supplier, set off any liability of the Supplier to the Council against any liability of the Council to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. If the liabilities to be set off are expressed in different currencies, the Council may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by

the Council of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

7. LIMITATION OF LIABILITY

7.1 Nothing in the Contract:

7.1.1 shall limit or exclude the Supplier's or the Council's liability for:

7.1.1.1 death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;

7.1.1.2 fraud or fraudulent misrepresentation;

7.1.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or

7.1.1.4 any other liability which cannot be limited or excluded by applicable law; or

7.1.1.5 shall limit or exclude the Supplier's liability under clause 5.6 of these Conditions.

7.2 Subject to clause 7.1 of these Conditions:

7.2.1 neither party to the Contract shall have any liability to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with the Contract;

7.2.2 the Supplier's total liability to the Council, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the amount specified in the Contract Details.

7.3 No amounts awarded or agreed to be paid under clause 5.6 shall count towards the cap on the Supplier's liability under clause 7.2.2.

7.4 Notwithstanding the provisions of clause 7.2.1, the losses for which the Supplier assumes responsibility and which shall (subject to clause 7.2.2) be recoverable by the Council include:

7.4.1 sums paid by the Council to the Supplier pursuant to the Contract, in respect of any services not provided in accordance with the terms of the Contract;

7.4.2 wasted expenditure;

7.4.3 additional costs of procuring and implementing replacements for, or alternatives to, the Services, including consultancy costs, additional costs of management time and other personnel costs and costs of equipment and materials;

7.4.4 losses incurred by the Council arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third party (including any subcontractor, Supplier personnel, regulator or customer of the Council) against the Council caused by the act or omission of the Supplier; and

7.4.5 anticipated savings.

7.5 The rights of the Council under the Contract are in addition to, and not exclusive of, any rights or remedies provided by common law.

8. INSURANCE

8.1 During the term of the Contract and for a period of six years thereafter, the Supplier shall maintain in force, with a reputable insurance company, the types of insurance specified in the Contract Details at the levels set out therein to cover the liabilities that may arise under or in connection with the Contract, and shall produce to the Council on request both the insurance

certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

9. TERMINATION

- 9.1 Without affecting any other right or remedy available to it, the Council may terminate the Contract with immediate effect by giving written notice to the Supplier if:
- 9.1.1 the Supplier's financial position (or that of any person that Controls the Supplier) deteriorates to such an extent that in the Council's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;
 - 9.1.2 the Supplier commits a breach of clause 3.3.9, 3.3.10, or 3.3.14;
 - 9.1.3 the Supplier gives any fee the receipt of which is an offence under section 117(2) of the Local Government Act 1972 or any other statutory provision; or
 - 9.1.4 the Supplier is subject to a change of Control.
- 9.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 9.2.1 the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 28 days after being notified in writing to do so;
 - 9.2.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business; or
 - 9.2.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
- 9.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.
- 9.4 Termination or expiry of the Contract shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

10. FREEDOM OF INFORMATION

- 10.1 The Supplier acknowledges that the Council is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- 10.1.1 provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and EIRs;
 - 10.1.2 in respect of any Requests for Information received, not respond to these and transfer these to the Council as soon as practicable and in any event within two Business Days of receipt.
- 10.2 The Supplier acknowledges that the Council may be required under the FOIA and EIRs to disclose information (including commercially sensitive information) without consulting or obtaining consent from the Supplier. The Council will be responsible for determining in its absolute discretion whether any such information is exempt from disclosure.

- 10.3 Notwithstanding any other term of this Contract, the Supplier consents to the publication of this Contract in its entirety, subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA and EIRs. The Council will be responsible for determining in its absolute discretion whether any such information is exempt from disclosure.

11. CONFIDENTIALITY

- 11.1 Subject to clauses 9, 10 and 11.1.1, each party shall keep the other party's Confidential Information confidential and the Confidential Information of any members of that party's Group confidential and shall not:
- 11.1.1 use such Confidential Information except for the purpose of performing its rights and obligations under or in connection with this Contract; or
 - 11.1.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 11.
- 11.2 The obligation to maintain confidentiality of Confidential Information does not apply to any Confidential information:
- 11.2.1 which the other party confirms in writing is not required to be treated as Confidential Information;
 - 11.2.2 which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
 - 11.2.3 which a party is required to disclose by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law;
 - 11.2.4 which is in or enters the public domain other than through any disclosure prohibited by this Contract;
 - 11.2.5 which a party can demonstrate was lawfully in its prior to receipt from the other party; or
 - 11.2.6 which is disclosed by the Council on a confidential basis to any central government or regulatory body.
- 11.3 A party may disclose the other party's Confidential information to those of its representatives who need to know such Confidential Information for the purposes of performing or advising on the party's obligations under this Contract, provided that:
- 11.3.1 it informs such representatives of the confidential nature of the Confidential Information before disclosure;
 - 11.3.2 it procures that its representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to this Contract; and
 - 11.3.3 at all times, it is liable for the failure of any representatives to comply with the obligations set out in this clause 11.3.
- 11.4 The provisions of this clause 11 shall survive for a period of three years from the expiry of this Contract.

12. DATA PROTECTION

- 12.1 The Supplier shall (and shall procure that any of its personnel involved in the provision of the Goods and/or Services shall) comply with any notification requirements under the Data Protection Legislation and both Parties shall duly observe all their obligations under the Data

Protection Legislation which arise in connection with this Contract, and the Supplier shall comply with the directions specified in article 28(3) of the GDPR.

12.2 Notwithstanding the general obligation in clause 12.1, where the Supplier is processing Personal Data as a Data Processor for the Council, the Supplier shall:

- 12.2.1 ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data;
- 12.2.2 provide the Council with such information as the Council may reasonably require to satisfy itself that the Supplier is complying with its obligations under the Data Protection Legislation;
- 12.2.3 promptly notify the Council of any breach of the security measures required to be put in place pursuant to clause 12.2.2; and
- 12.2.4 ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the Data Protection Legislation.

12.3 The provisions of this clause 12 shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

13. HUMAN RIGHTS

13.1 The Supplier shall (and shall use its reasonable endeavours to procure that its staff shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Contract.

13.2 The Supplier shall undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998.

14. COUNTER-TERRORISM AND THE PREVENT DUTY

14.1 The Supplier is aware of the Council's obligations under the Counter-Terrorism and Security Act 2015 including any guidance, amendments and all subsequent regulations pursuant to this Act and in particular its obligation under s26 to have due regard to the need to prevent people from being drawn into terrorism in the exercise of its functions (the "Prevent duty")

14.2 The Supplier will:

- 14.2.1 co-operate with the Council in ensuring the Council's compliance with its requirements under the Counter-Terrorism and Security Act 2015 and the Prevent duty;
- 14.2.2 comply with any Counter-Terrorism and Security Act policy produced by the Council;
- 14.2.3 demonstrate an awareness and understanding of the risk of radicalisation within through effective leadership, working in partnership with the Council and the utilisation of appropriate capabilities in relation to the delivery of the Goods and Services;
- 14.2.4 ensure appropriate frontline staff have a good understanding of the Prevent duty and are trained to recognise vulnerability to being drawn into terrorism, are aware of available programmes to deal with this issue and will make appropriate referrals to Channel;
- 14.2.5 ensure that any Council -owned venues and resources involved in the provision of the Goods and Services do not provide a platform for extremists and are not used to disseminate extremist views;

- 14.2.6 use filtering solutions on any IT equipment made available to the general public under this Contract which limit access to terrorist and extremist material.

15. EXIT ARRANGEMENTS

15.1 On termination of the Contract for whatever reason:

- 15.1.1 the Supplier shall immediately deliver to the Council all the Services and any outputs thereof whether or not then complete, and return all Council Materials. If the Supplier fails to do so, then the Council may enter the Supplier premises and take possession of them. Until they have been delivered or returned, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract; and
- 15.1.2 the Supplier shall, if so requested by the Council, provide all assistance reasonably required by the Council to facilitate the smooth transition of the Goods and/or Services to the Council or any replacement supplier appointed by it including any assistance set out in the Specification at Schedule 1.

16. GENERAL

- 16.1 Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract to the extent that such delay or failure results from events, circumstances or causes beyond its reasonable control including an act of god, war, protest, fire, flood, storm, tempest, epidemic, explosion, terrorism, national emergency, or industrial dispute (other than such a dispute affecting the workforce of the party seeking to rely on this clause 16.1). In the event that the Council requires the Services urgently and if, in the reasonable opinion of the Council, the event in question affecting the Supplier would cause unacceptable delay, the Council may terminate the Contract immediately. In any event, if the period of delay or non-performance continues for four weeks, the party not affected may terminate the Contract by giving five days' written notice to the affected party.
- 16.2 Subcontracting and assignment.** The Supplier may not assign, novate, subcontract or otherwise dispose of any or all of its rights and obligations under the Contract without the prior written consent of the Council. If the Council consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all acts and omissions of its subcontractors as if they were its own.
- 16.3 Local authority powers.** Nothing contained or implied in this Contract or any consent or approval granted pursuant to it shall prejudice or affect the rights, powers, duties and obligations of the Council whether before or after execution when acting in the exercise of its functions as the local authority, local planning authority, highway authority, water authority and/or any other statutory authority (rather than as a party to this Contract) and such rights, powers, duties, and obligations under all public and private Laws may be as fully and effectually exercised as if it were not party to this Contract and any approval, consent, direction or authority given by the Council as a local or other statutory authority shall not be or be deemed to be an approval, consent, direction, or authority given under this Contract and vice versa.
- 16.4 Entire agreement.**
- 16.4.1 The Contract constitutes the entire agreement between the parties and each party acknowledges that it has not relied on any previous agreements, statements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 16.4.2 Any terms purported to apply explicitly or implicitly by the Supplier by any means (including without limitation by way of a quote, invoice or tender) are expressly excluded from this Contract.

16.5 Variation. No variation of the Contract shall be effective unless it is in writing and signed by the parties (or in the case of the Supplier, its authorised representatives).

16.6 Waiver.

16.6.1 A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

16.6.2 A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

16.7 Severance.

16.7.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted and the parties will negotiate an alternative provision in good faith in order to validly reflect the intention behind the deleted provision. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

16.8 Notices.

16.8.1 Any notice or other communication given to a party under or in connection with the Contract 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 its registered office (if a company) or its principal place of business (in any other case); or sent by email to the Council's representative email address specified in the Contract Details.

16.8.2 A notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt; 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 or at the time recorded by the delivery service; or, if sent by email, on the next Business Day after transmission.

16.8.3 This clause shall not apply to the service of any proceedings or other documents in any legal action.

16.9 Third party rights.

16.9.1 The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract but this shall not affect any other right or remedy that exists apart from that act.

16.9.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

16.10 Non-solicitation.

16.10.1 Neither party shall (except with the prior written consent of the other) during the term of this Contract solicit the services of any employee of the other party who has been engaged in the provision of the Services or the management of this Contract or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open

national advertising campaign and not specifically targeted at such employee of the other party.

16.11 Publicity.

- 16.11.1** The Supplier shall not make any press announcements or publicise this Contract or its contents in any way or use the Council's name or brand in any promotion or marketing or announcement of orders without the prior written consent of the Council.

16.12 Partnership or agency.

- 16.12.1** Nothing in this Contract shall be construed as constituting a partnership or agency as between the parties for any purpose whatsoever except as specified by the terms of this Contract.

16.13 Governing law.

- 16.13.1** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with, the law of England and Wales.

16.14 Jurisdiction.

- 16.14.1** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

16.15 Counterparts.

- 16.15.1** This Contract may be executed in any number of counterparts, each of which, when executed [**and delivered**], shall constitute a duplicate original, but all the counterparts shall together constitute the one Contract.

SCHEDULE 1
SPECIFICATION

DRAFT

SCHEDULE 2
CHARGES

CHARGES FOR THE SERVICES

[XXXXXX]

INVOICING ARRANGEMENTS IN ACCORDANCE WITH CLAUSE 6

TO BE PAID BY WAY OF MONTHLY INSTALMENT IN ARREARS WITHIN 30 WORKING DAYS OF RECEIPT OF A VALID UNDISPUTED INVOICE.

DRAFT

SCHEDULE 3

SUPPLIER'S TENDER SUBMISSION

CLARIFICATIONS

FORM OF QUOTATION

COLLUSIVE QUOTATION CERTIFICATE

DRAFT