



Bovey Tracey Town Council



BOVEY TRACEY TOWN COUNCIL

MILL MARSH PLAY AREA

CONDITIONS OF CONTRACT

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1. DEFINITIONS

- a) 'The Employer' means the Bovey Tracey Town Council and its assignees.
- b) 'The Contractor' means the person or persons, firm or company whose Tender has been accepted by the Employer.
- c) 'The Authorised Officer' means the Town Clerk Bovey Tracey Town Council, or such other person appointed from time to time by the Employer and notified in writing to the Contractor to act as Authorised Officer for the purpose of the Contract.
- d) 'The Contract' means the Conditions of Contract, the Specifications and Schedules annexed, the priced Bill of Quantities, the Grounds Maintenance Policy, the Information and Instructions for Tendering, the Tender, the written acceptance thereof, the Form of Agreement and Addendum sheets.
- e) 'The Tender Total' means the total of the priced Bill of Quantities and Schedule of Rates at the date of acceptance of the Contractor's Tender for the Services.
- f) 'The Contract Price' means the sum to be ascertained and paid in accordance with the provisions hereinafter contained for the performance of the Services in accordance with the Contract.
- g) 'The Contract Period' means the Contract shall commence on 01 August 2023 and terminate on 31 March 2024.
- h) 'The Commencement Date' means the 01 September 2023.
- i) 'The Council' means the Council of Bovey Tracey Town, or any successor Authority.
- j) 'The Services' means the design, construction and provision of play equipment, surfacing, drainage, fencing and ancillary items, e.g. seating, waste bins etc. as described in the Contractor's Submission, Specifications, and Bill of Quantities.

2. ASSIGNMENT AND SUBLETTING

- a) The Employer shall be entitled to assign the benefit of the Contract to a statutory or other public body and shall give written notice of any assignment to the Contractor.
- b) The Contractor shall in no circumstances assign, sublet, or purport to assign or sublet, any part of the Contract to any person whomsoever without the Employer's express consent in writing.

3. AMBIGUITIES

In the case of ambiguities or discrepancies between the several documents forming the Contract, the Authorised Officer's verbal or written determination shall be final and binding.

4. GENERAL CONDITIONS

- a) Contractor's general responsibilities
 - i) The Contractor shall, subject to the provisions of the Contract, perform the Services from the Commencement Date and for the contract period specified in Clause g hereof, and provide all labour, plant, depots, and transport to and from or in and about the Borough, and everything, whether of a temporary or permanent nature, required in and for the performance of the Services, and to carry out the same to the entire satisfaction of the Authorised Officer.
 - ii) The Authorised Officer shall have full power and authority to issue instructions and directions on any matter in connection with the proper and adequate performance of the Services, and the Contractor shall carry out and be bound by the same.
- b) Contractor's responsibility for safety of operations.
- c) The Contractor shall take full responsibility for the safety of all operations involved in the performance of the Services.

5. HEALTH AND SAFETY

- a) The Contractor shall at all times comply with the requirements of the Health and Safety at Work Act 1974, and with any and all Regulations, Rules and Orders made under that Act and/or with any re-enactment of the same, including the provision by the Contractor of a copy of its Risk Assessment, and that of its sub-contractors under such Regulations, when requested by the Council.
- b) The Contractor shall also, and at all times comply with all other Acts, Regulations, Rules and Orders pertaining to the health and safety of employees.
- c) The Contractor shall forward to the Authorised Officer a copy of all accident reports.
- d) All persons employed by the Contractor whilst working for Bovey Tracey Town Council, either directly or indirectly, including the self-employed, must comply in all aspects with all the requirements of current health and safety legislation, or any such further legislation which comes into force during the currency of the contract.

It is a requirement of this tender that all Tenderers shall submit with their Tender, documentary evidence as to their health and safety policy, its enforcement, and evidence that the assessment of risk, as detailed below, has been completed by the Tenderer for the tasks he is currently engaged upon. The documents submitted with the Tender shall be considered when the Tenders are evaluated and shall form part of that assessment.

Risk Assessment

The successful Tenderer must be able to produce, on demand at any stage of the Contract, current documentary evidence to prove that the assessment of risk, as required by the Regulations as listed below, and any other pertinent legislation, has been completed and implemented in respect of their own employees, or any persons engaged to work for them or on their behalf on either a sub-contracted or self-employed basis.

The list of Regulations is as follows:

The Noise at Work Regulations 1988

The Control of Substances Hazardous to Health Regulations 1994

The Electricity at Work Regulations 1989

Workplace (Health, Safety & Welfare) Regulations 1992

Provision and Use of Work Equipment Regulations 1992

Manual Handling Operations Regulations 1992

Personal Protective Equipment at Work Regulations 1992

The Management of Health and Safety at Work Regulations 1992

The Supply of Machinery (Safety) Regulations 1992

Failure of a Contractor to comply with the requirements of these Regulations shall be grounds for the Employer to determine the Contractor's employment.

7. DELAY AND EXTRA COST

If, in pursuance of Clause 4(a) (ii), the Authorised Officer's representative shall issue instructions or directions which involve the Contractor in disruption of his arrangements or methods of work so as to cause him to incur costs beyond that reasonably to have been foreseen by an experienced Contractor at the time of Tender, then the Authorised Officer shall take such disruptions into account in determining any sum to which the Contractor is entitled and the Contractor shall be paid the amount of such cost as the Authorised Officer may deem reasonable. If such instructions or directions require any variation to any part of the Contract, the same shall be deemed to have been issued pursuant to Clause 28

8. PERFORMANCE BOND

Prior to the Commencement Date, The Contractor shall, at his own expense, provide a Bond in the form annexed from a Bank or Insurance Company approved by the Employer for a sum equal to 10 per cent of the Tender Total to guarantee the due performance of his obligations under the contract.

9. SUFFICIENCY OF TENDER

The Contractor shall be deemed to have satisfied himself before submitting his Tender as to the correctness and sufficiency of his rates and prices which shall (except insofar as it is otherwise provided in the Contract) cover all his obligations under the Contract.

10. PROGRAMMING

- a) Programme to be furnished
- b) Within 21 days after acceptance of his Tender, the Contractor shall submit to the Authorised Officer for his approval a programme showing the manner in which he proposes to carry out the Contract and thereafter shall furnish such details and information as the Authorised Officer may reasonably require in regard thereto. This shall include Safe Operating Practices based on detailed risk assessments for each element of the work. It shall also include arrangements for site protection, public safety and minimising damage during the construction stage. As the site has a waterway running through it, the contractor shall also provide details of the arrangements to be in force during the whole period of the contract, to avoid and pollution of this waterway. The Contractor shall at the same time also provide in writing for the information of the Authorised Officer a general description of the arrangements and methods of work which the Contractor proposes to adopt for the carrying out of the Services.

- c) Authorised Officer's consent

The Authorised Officer shall inform the Contractor in writing within a reasonable period after receipt of the information submitted in accordance with sub-clause (a) of this Clause either:

- i) that the Contractor's proposals have the consent of the Authorised Officer;

or

- ii) in what respects, in the opinion of the Authorised Officer, they fail to meet the requirements of the Contract.

In the latter event the Contractor shall take such steps or make such changes in the said proposals as may be necessary to meet the Authorised Officer's requirements and to obtain his consent. The Contractor shall not change the proposals which have received the

Authorised Officer's consent without the further consent in writing of the Authorised Officer which shall not be unreasonably withheld.

d) Revision of programme

Should it appear to the Authorised Officer at any time that the actual performance of the Services does not conform with the approved programme referred to in sub-clause (a) of this Clause, the Authorised Officer shall be entitled to require the Contractor to produce a revised programme showing the modifications to the original programme necessary to ensure compliance with the Contract.

e) Responsibility Unaffected by Approval

Approval by the Authorised Officer of the Contractor's programme in accordance with this Clause shall not relieve the Contractor of any of his duties or responsibilities under the Contract.

11. CONTRACTOR'S SUPERVISION AND MONITORING

a) Contractor's Superintendence

The Contractor shall give or provide all necessary management and superintendence during the performance of the Services. Such management and superintendence shall be given by sufficient persons having adequate knowledge of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and the methods of preventing accidents) as may be requisite for the satisfactory performance of the Services.

b) Local Supervision

The Contractor shall appoint a competent employee ('the nominated employee') approved of in writing by the Authorised Officer (which approval may at any time be withdrawn) to be constantly available and who shall give his whole time during normal working hours to the superintendence of the Services and who shall be available in any emergency outside normal working hours. Such employee shall be based in or within a five mile radius of the Town Council boundary, shall be in full charge of the Services and shall receive on behalf of the Contractor directions and instructions from the Authorised Officer or the Authorised Officer's representative. Such employee shall also be responsible for setting up and maintaining a complaints procedure in a manner to be approved by the Authorised Officer.

12. REMOVAL OF CONTRACTOR'S EMPLOYEES

- a) The Contractor shall employ or cause to be employed in and about the performance of the Services and in the superintendence thereof, only such persons as are careful, skilled and experienced in their several trades and callings and the Authorised Officer shall be at liberty to object to and require the Contractor to remove any person employed by the Contractor in or about the execution of the Services who, in the opinion of the Authorised Officer, misconduct's himself or is incompetent or negligent in the performance of his duties or fails to conform with any particular provisions with regard to safety or persists in any conduct which is prejudicial to safety or health and such persons shall not again be employed in the performance of the Services without the permission of the Authorised Officer.
- b) Without prejudice to sub-clause (a) of this clause and to the generality thereof the Contractor shall ensure that persons employed shall have qualifications approved of by the Authorised Officer.

13. SAFETY AND SECURITY

The Contractor shall, throughout the performance of the Services, have full regard for the safety of all persons associated with the Services and shall keep all sites, depots, plant vehicles and machinery (so far as the same are under his control) in an orderly state appropriate to the avoidance of danger to such persons and shall *inter alia* in connection with the Services provide and maintain at his own cost all lights, guards, fencing, warning signs, and watch when and where necessary or as required by the Authorised Officer or by any competent statutory or other authority for the protection or for the safety and convenience of the public or any employees of the Contractor or the Employer or any others.

14. LIABILITY OF CONTRACTOR

The Company shall at all times indemnify and keep indemnified the Authority fully against all actions costs claims proceedings demands payments charges and expenses which may be made or brought against the Authority as the result of arising out of or in connection with the provisions hereof of the breach of those provisions in relation to the injury to or death of any person and the loss of or damage to any property including property belonging to the Authority or as the result of any act or omission of the Company or its staff or agents however it shall arise which

indemnity shall include any claims of maladministration which are truly found by the Ombudsman following investigation.

15. INSURANCE OF WORKS

Without limiting his obligations and responsibilities under any other clause hereof the Contractor shall insure in their full value:

- a) All premises occupied by the Contractor for the purposes of or in connection with the Contract, against all usual or appropriate risks.
- b) All vehicles, plant, equipment and materials used for the purposes of or in connection with the Contract, against all usual or appropriate risks.

Such Insurance shall be effected with an insurer and in terms approved by the employer (which approval shall not be unreasonably withheld) and the Contractor shall, whenever required, produce to the Employer the policy or policies of insurance and the receipts for payment of the current premiums and shall use any insurance monies paid in making good the relevant loss.

16. INSURANCE

- a) Insurance against damage to person and property

Throughout the Contract Period the Contractor (but without limiting his obligations and responsibilities under any other Clause) shall insure in the joint names of the Employer and the Contractor against any damage, loss or injury which may occur to any property or to any person by or arising out of the performance of the Services or in carrying out the Contract.

- b) Amount and terms of insurance

Such insurance shall be effected with an insurer and in terms approved by the Employer (which approval shall not be unreasonably withheld) and for at least the sum of £5,000,000. The terms shall include a provision whereby in the event of any claim in respect of which the Contractor should be entitled to receive indemnity under the policy being brought or made against the Employer, the insurer will indemnify the Employer against such claims and any costs, charges and expenses in respect thereof. The Contractor shall, whenever required, produce to the Employer the policy or policies of insurance and the receipts for payment of the current premium. The

insurance shall be for a period of one year in the first instance and for each subsequent period of 12 months the sum insured shall be increased by such amount as shall be required by the Authorised Officer.

17. ACCIDENT OR INJURY TO STAFF

The Employer shall not be liable for or in respect of any damages or compensation payable at law in respect or in consequence of any accident or injury to any staff or other person in the employment of the Contractor, or any Subcontractor, save and except to the extent that such accident or injury results from or is contributed to by the negligence of the Employer, his agents or servants and the Contractor shall indemnify and keep indemnified the Employer against all such damages and compensation (save and except as aforesaid) and against all claims, demands, proceedings, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

18. REMEDY ON CONTRACTOR'S FAILURE TO INSURE

If the Contractor shall fail upon request to produce to the Employer satisfactory evidence that there is in force the insurance's referred to in Clauses 15 and 16 hereof or any other insurance which he may be required to effect under the terms of the Contract then and in any such case the Employer may effect and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and from time to time may deduct the amount so paid by the Employer as aforesaid from any monies due or which may become due to the Contractor or recover the same as a debt due from the Contractor.

19. STATUTES AND NOTICES

a) Giving of notices and payment of fees

The Contractor shall give all notices and pay all fees required to be given paid by any Act of Parliament or any Regulation or Bye-law of any local or other statutory authority in relation to the performance of the Services and by the rules and regulations or all public bodies and companies whose property or rights are or may be affected in any way by the performance of the services.

b) Contractor to confirm with statutes, etc.

The Contractor shall ascertain and confirm in all respects with the provisions of any general or local Act of Parliament and any orders and regulations made thereunder and the regulations and bye-laws of any local or other statutory authority which may be applicable and with such rules and regulations of such public bodies and companies as aforesaid in connections with the performance of the Services and shall keep the Employer indemnified against all penalties and liability of every kind for breach of any such Act, order, regulations or bye-law. Provided always that:

- i) The Contractor shall not be required to indemnify the Employer against the consequence of any such breach which is the unavoidable result of complying with the Specifications or instructions of the Authorised Officer.
- ii) If the Specifications or instructions of the Authorised Officer shall, at any times, be found not to be in conformity with any such Act, order, regulation or bye-law the Authorised Officer shall issue such instructions including the ordering of a variation under Clause 29 as may be necessary to ensure conformity with such Act, order, regulation or bye-law

20. INTELLECTUAL PROPERTY

The Contractor shall provide all drawings, plans and procedural notes for the execution of the works required for the provision of the service. The Contractor shall save harmless and indemnify the Employer from and against all claims and proceedings for or on account of the infringement of any patent rights, copyright, design, trademark or name, or other protected rights in respect of any machine, work, drawings or material used for or in connection with the Services and from and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

21. INTERFERENCE

- a) Interference with traffic and adjoining properties

All operations necessary for the performance of the Services shall so far as compliance with the requirements of the Contract permits, be carried on so as not to interfere unnecessarily or improperly with the public convenience or the access to or use or occupation of public or private roads and footpaths or to or of any properties whether in the possession of the Employer or of any other person and the

Contractor shall save harmless and indemnify the Employer in respect of all claims, demands, proceedings, damages, costs, charges and expenses whatsoever arising out of or in relation to any such matters.

b) Noise and disturbance

All work shall be carried out without unreasonable noise and disturbance. The Contractor shall indemnify the Employer from and against any liability for damages on account of noise or other disturbances created while or in carrying out the Services and from and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in regard or in relation to such liability.

22. USE OF OTHER CONTRACTORS

a) Facilities for other contractors

The Contractor shall, in accordance with the requirements of the Authorised Officer, afford all reasonable facilities for any other contractors employed by the Employer and their staff and for the staff of the Employer and of any other properly constituted authorities or statutory bodies who may be employed in the performance of the Services or any part thereof.

b) Delay and extra cost

If compliance with sub-clause (a) of this Clause shall involve the Contractor in delay or cost beyond that reasonably to be foreseen by an experienced Contractor at the time of Tender, the Contractor shall subject to his making a claim under Clause 29(c) (ii) be paid the amount of such cost as the Authorised Officer shall determine to be reasonable.

c) Subcontractors

The Contractor shall procure that any Subcontractor appointed by him shall observe and perform all of the provisions of the Contract and the Contractor shall indemnify the Employer from and against the costs, claims, demands and liabilities whatsoever arising out of or in respect of any breach of any such Subcontractor of any such provision.

23. RESOURCES

- a) Returns showing labour and plant

The Contractor will be required by the Authorised Officer to deliver to the Authorised Officer or at his office a return in such form and at such intervals as the Authorised Officer will prescribe showing in detail the numbers of the several classes of labour from time to time employed by the Contractor in connection with the Services and such information respecting vehicles, plant and machinery as the Authorised Officer may require.

24. COMMENCEMENT OF SERVICES

The Contractor shall commence the performance of the Services on the Commencement Date and thereafter shall proceed with the Services with due expedition and without delay in accordance with the Contract.

25. LIQUIDATED DAMAGES

- a) Liquidated damages for whole of services

In the event that the Contractor shall fail to commence to perform the whole of the Services or at any time during the Contract Period shall cease to perform the whole of the Services he shall pay to the Employer for each day of such failure (without prejudice to the Employers right to determine the Contract):

- i) The sum of £650 per day which represents the Employers genuine pre-estimate of the damages likely to be suffered by it in the event of the whole of the Services not being performed at any time;

N.B. The definition of “site” shall be the area identified on each map that forms part of the tender documents.

- ii) Such amount being less than £650 per day as the Employer shall notify the Contractor that it will accept on or at any time after the failure in question.
- iii) The parties hereto agree that sub-clauses (i) and (ii) hereof are separate clauses capable of severance.

26. NON-PERFORMANCE OF PART OF SERVICE

- a) All Services with the exception of force majeure.

Without prejudice to Clause 25 hereof, if the Contractor omits or fails to perform any part (as opposed to the Whole) of the Services in accordance with this Contract, the Authorised Officer will be entitled to issue a RECTIFICATION notice to the Contractor or to the person appointed by him pursuant to Clause 11(b) hereof requiring the Contractor forthwith to remedy such omission or failure. If the omission or failure is not remedied within 48 hours of being notified the Authorised Officer will issue a DEFAULT notice. The Contractor will not be paid for the work and will also incur the cost of a secondary Contractor's charges to rectify the work. In addition, expenses incurred by the Client officers, e.g. time and travel costs will also be recharged. If in the course of an invoice period a Default Notice is issued, this will be subject to a charge of £50 (to cover client expenses) to be deducted from that period invoice.

27. SUMS PAYABLE

- a) All sums payable by the Contractor to the Employer under Clauses 25 and 26 hereof shall be paid as liquidated damages and shall be deductible from any sums due to the Contractor under the terms of the Contract.
- b) The amount of the sums payable by the Contractor under Clause 25 hereof will be reviewed on each anniversary of the Commencement Date and will increase or decrease in direct proportion to any increase or decrease in the Contract Price as determined pursuant to Clause 33 hereof.
- c) The provisions of Clauses 25 and 26 hereof are without prejudice to the Employers right to determine the contract under Clause 39 hereof

28. ALTERATIONS, ADDITIONS AND OMISSIONS

a) Ordered variations

The Authorised Officer shall order any variations to any part of the Services that may, in his opinion, be necessary for the proper performance of the Services and shall have power to order any variation that for any other reason shall in his opinion be desirable for the satisfactory completion and functioning of the Services. Such variations may include additions, omissions, substitutions, alterations, changes in quality, form, character, kind, position, dimension, changes in the specified sequence and method of timing.

b) Ordered variations to be in writing

No such variation shall be made by the Contractor without an order by the Authorised Officer. All such orders shall be given in writing provided that if for any reason the Authorised Officer or an assistant of the Authorised Officer shall find it necessary to give any such order orally in the first instance the Contractor shall comply with such oral order. Such oral order shall be confirmed in writing by the Authorised Officer as soon as is possible in the circumstances.

No variation ordered in accordance with sub-clauses (a) and (b) of this Clause shall in any way vitiate or invalidate the Contract but the value (if any) of all such variations shall be taken into account in ascertaining the amount of the Contract Price.

29. VALUATION AND NOTICES OF ORDERED VARIATIONS

a) Valuation of ordered variations

The value of all variations ordered in accordance with Clause 28 shall be ascertained by the Authorised Officer after consultation with the Contractor in accordance with the following principles: where work is of a similar character and executed under similar conditions to work priced in the Bill of Quantities, it shall be valued at such rates and prices contained therein as may be applicable. Failing agreement between the Authorised Officer and the Contractor as to any rate or price to be applied in the valuation of any variation the Authorised Officer shall determine the rate or price in accordance with the foregoing principles and he shall notify the Contractor accordingly.

b) Authorised Officer to fix rates

If the nature or amount of any variation relative to the nature or amount of the whole of the Services or to any part thereof shall be such that in the opinion of the Authorised Officer or Contractor any rate or price contained in the Contract for any item of work is by reason of such variation rendered unreasonable or inapplicable either the Authorised Officer shall give to the Contractor or the Contractor shall give to the Authorised Officer notice before the variation is commenced or as soon thereafter as is reasonable in all the circumstances the such rate or price should be varied and the Authorised Officer shall fix and notify to the Contractor such rate or price as in the circumstances he shall think reasonable and proper.

c) Notice of claims

- i) If the Contractor intends to claim a higher rate or price than one notified to him by the Authorised Officer pursuant to sub-clauses (a) or (b) of this Clause, the Contractor shall within 28 days after such notification give notice in writing of his intention to the Authorised Officer.
- ii) If the Contractor intends to claim any additional payment pursuant to the Clause of these Conditions other than sub-clauses (a) or (b) of this Clause, he shall give notice in writing of his intention to the Authorised Officer as soon as reasonably possible after the happening of such event giving rise to the claim. Upon the happening of such event the Contractor shall keep such contemporary records as may reasonably be necessary to support any claim he may subsequently wish to make.
- iii) Without admitting the Employer's liability to make any such additional payment the Authorised Officer may upon receipt of a notice under this Clause instruct the Contractor to keep such contemporary records or further contemporary records as the case may be as are reasonable and may be material to the claim of which notice has been given and the Contractor shall keep such records. The Contractor shall permit the Authorised Officer to inspect all records kept pursuant to this Clause and shall supply him with copies thereof as and when the Authorised Officer shall so instruct.
- iv) After the giving of a notice to the Authorised Officer under this sub-clause the Contractor shall as soon as is reasonable in all the circumstances send to the Authorised Officer a first interim account giving full and detailed particulars of the amount claimed to that date and of the grounds upon which the claim is

based. Thereafter at such intervals as the Authorised Officer may reasonably require the Contractor shall send to the Authorised Officer further up-to-date accounts giving the accumulated total of the claim and any further grounds upon which it is based.

- v) If the Contractor fails to comply with any of the provisions of this sub-clause in respect of any claim which he shall seek to make then the Contractor shall be entitled to a claim in respect thereof only to the extent that the Employer has not been prevented from investigating the claim or substantially prejudiced by such failure.
- vi) In the event that the Authorised Officer and the Contractor shall fail to agree upon the amount of any higher rate or price or any additional payment pursuant to this sub-clause within 56 days of the giving of notice by the Contractor the same shall be referred to arbitration pursuant to Clause 39 hereof.

d) Daywork

- i) The Authorised Officer may if his opinion it is necessary or desirable order that any additional or substituted work shall be executed on a daywork basis. The Contractor shall then be paid for such work in accordance with the Dayworks rate specified in the Bill of Quantities.
- ii) The Contractor shall furnish to the Authorised Officer such receipts or other vouchers as may be necessary to prove the amounts paid for plant and material and the wages paid to employees and before ordering materials shall submit to the Authorised Officer quotations for the same for his approval.
- iii) In respect of all work executed on a daywork basis the Contractor shall during the continuance of such work deliver each week to the Authorised Officer's representative an exact list in duplicate of the names, occupation and time of all staff employed on such work and statement also in duplicate showing the description and quality of all materials and plant used thereon or therefor. One copy of each list and statement will if correct or when agreed be signed by the Authorised Officer's representative and returned to the Contractor. At the same time as submitting the statements referred to in Clause 38 hereof the Contractor shall deliver to the Authorised Officer's representative a priced statement of the labour, material and plant used for work executed on a daywork basis

and the Contractor shall not be entitled to any payment unless such lists and statements have been fully and punctually rendered. Provided always that if the Authorised Officer shall consider that for any reason the sending of such list or statement by the Contractor in accordance with the foregoing provision was impracticable he shall nevertheless be entitled to authorise payment for such work either as daywork (on being satisfied as to the time employed and plant and materials used on such work) or at such value therefore as he shall consider fair and reasonable.

30. VEHICLES USED ON THE CONTRACT

- a) The Contractor shall ensure that all vehicles used on the Contract are properly licensed and insured and comply with all statutes and regulations and are of a design and construction approved by the Authorised Officer.
- b) The Contractor shall allow the Authorised Officer all reasonable facilities to inspect any vehicle used in connection with the Contract and shall not use any vehicle which in the opinion of the Authorised Officer does not comply with the requirements of the Contract.

31. ADVERTISING ON VEHICLES, PLANT AND NOTICE BOARDS

- a) All vehicles, plant and materials used on this contract shall display the Contractor's logo, address and telephone number prior to the letting of the Contract. The Contractor shall be permitted to display his name on notice boards on site, but in addition, the crest and the name "Bovey Tracey Town Council" shall also be prominently displayed.

32. CONTRACT PRICE

The Contract Price for the Services shall include all vehicles, labour and all management, supervision, administration and other costs necessary, and all overheads, training, recruitment, planning, survey and all other costs whatsoever that may arise, in order to undertake the Service totally in accordance with the Specification and the Contracts.

33. CONTRACT PRICE FLUCTUATIONS

- a) The Contract Price will be fixed and shall not be subject to post award fluctuation save as provided for in Clause 34, 35 or 36.

34. IMPROVEMENTS IN EFFICIENCY

The Contractor is encouraged to discuss with the Authorised Officer any efficiency alterations to the Services which may reduce costs. In the event of the parties agreeing in writing any such alteration proposed by the Contractor the amount saved shall be shared equally between the Contractor and the Employer. For the avoidance of doubt the Employer shall retain the full benefit of any cost reducing alterations not proposed by the Contractor.

35. MEASUREMENT

a) Correction of errors

Any error in the Contract or omission therefrom shall not vitiate the Contract nor release the Contractor from the performance of the whole or any part of the Services or from any of his obligations or liabilities under the Contract. Any such error or omission shall be corrected by the Authorised Officer and the value of the work actually carried out shall be agreed or determined in accordance with Clause 29, provided that there shall be no rectification of any errors, omissions or wrong estimates in the description rates and prices inserted by the Contractor in his Tender.

36. MEASUREMENT AND VALUATION

The Authorised Officer shall except as otherwise stated ascertain and determine the value in accordance with the Contract of the Services actually performed.

a) Increase or decrease of rate

Should the actual quantities executed in respect of any item of the Services be greater or less than those stated in the Specifications or the Bill of Quantities and if in the opinion of the Authorised Officer such increase or decrease of itself shall so warrant the Authorised Officer shall after consultation with the Contractor determine an appropriate increase or decrease of any rates or prices affected thereby and shall notify the Contractor accordingly. A 10% tolerance will be borne in either case by both parties.

b) Attending for measurement

The Authorised Officer shall when he requires any part or parts of the Service to be quantified or measured give reasonable notice to the Contractor who shall attend or send a qualified agent to assist the Authorised Officer in making such quantification or measurement, and shall furnish all particulars required by him. Should the Contractor not attend or neglect or omit to send such agent then the measurement made by the Authorised Officer or approved by him shall be taken to be the correct measurement of the work.

37. CERTIFICATES

The Contractor and the Authorised Officer will meet at the end of each monthly period to agree the amounts to which the Contractor is entitled under the contract allowing for all additions and omissions.

38. PAYMENTS

Within 28 days of the date of delivery to the Authorised Officer of the Contractor's Statement as agreed in Clause 37 the Authorised Officer will certify and the Employer will pay the amount mutually agreed under Clause 37.

39. REMEDIES AND POWERS

a) Termination

The Employer shall be entitled to terminate the Contract forthwith by notice in writing to the Contractor upon the happening of any of the following events, namely:

- i) Failure of the Contractor to observe any of the terms hereof to a material extent and to remedy the same (where such failure is capable of being remedied) within the period of 14 days after notice given by the Authorised Officer to the Contractor calling for a remedy; or
- ii) Failure of the Contractor to perform the Services for a continuous period of 14 days or for a total period of 21 days in any period of 12 calendar months;
- iii) An order being made or a resolution being passed for the winding up of the Contractor (other than a voluntary liquidation for the purposes of a reconstruction or amalgamation whilst solvent and on terms previously approved by the Employer) or an administration order being made on the Contractor or if the Contractor being an individual shall become bankrupt or shall have a Receiving Order made against him or shall enter into any arrangement or composition with his creditors.
- iv) The accumulation of fifty (50) default points within any 13 week period of the contract as stated in Clause 26.

b) Rights of termination

Termination shall operate without prejudice to any right of action or remedy of either party against the other in respect of any antecedent breach of any of the obligations contained in the Contract.

40. SETTLEMENT OF DISPUTES

a) Settlement of disputes - arbitration

If any dispute or difference of any kind whatsoever shall arise between the Employer and the Contractor in connection with or arising out of the Contract or the carrying out of the Services including any dispute as to any decision, opinion, instruction, direction, certificate or valuation of the Supervising Officer (whether during the progress of the Contract or after its completion and whether before or after any prior determination of the Contract) it shall be referred to and settled by the Authorised Officer who shall state his decision in writing and give notice of the same to the Employer and the Contractor.

Unless the Contract shall have been already determined the Contractor shall in every case continue to proceed with the Services with all due diligence and he shall give effect forthwith to every such decision of the Authorised Officer unless and until the same shall be revised by an Arbitrator as hereinafter provided.

If the Authorised Officer shall fail to give such decision for a period of 28 days after being requested to do so or if either the Employer or the Contractor be dissatisfied with any such decision of the Authorised Officer then and in any such case either the Employer or the Contractor may within 28 days after the notification to them of the decision of the Authorised Officer or after the expiration of the said period of 28 days (as the case may be) require that the matter shall be referred to the arbitration of a person to be agreed upon between the parties or (if the parties shall fail to appoint an Arbitrator within 28 days of either party serving on the other party a written notice to concur in the appointment of an Arbitrator) a person to be appointed on the application of either party by the President for the time being of the Institute of Leisure and Amenity Management.

If an Arbitrator declines the appointment or after appointment is removed by order of a competent court or is incapable of acting or dies and the parties do not within 28 days of the vacancy arising fill the vacancy then the Chair of Bovey Tracey Town Council may on the

application of either party appoint an Arbitrator to fill the vacancy. Any such reference to arbitration shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1979 or any statutory re-enactment or amendment thereof for the time being in force. Such Arbitrator shall have full power to open up, review and revise any decision, opinion, instruction, direction, certificate or valuation of the Authorised Officer and neither party shall be limited in the proceedings before such Arbitrator to the evidence or arguments put before the Authorised Officer for the purpose of obtaining his decision above referred to. The award of the Arbitrator shall be final and binding on the parties.

- ii) No decision given by the Authorised Officer in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the Arbitrator on any matter whatsoever relevant to the dispute or difference so referred to the Arbitrator as aforesaid.

41. NOTICES

- a) Service of notice on Contractor

Any notice to be given to the Contractor under the terms of the Contract shall be served by sending the same by post to or leaving the same at the Contractors principle place of business or at the office of the nominated employee pursuant to Clause 11(b) hereof (or in the event of the Contractor being a Company to or at its registered office).

b) Service of Notice on Employer

Any notice to be given to the Employer under the terms of the Contract shall be served by sending the same by post to, or leaving the same at the principal offices for the time being of the Employer marked for the attention of the Town Clerk.

42. VALUE ADDED TAX

- a) In this condition 'exempt supply', 'tax', 'taxable person' and 'taxable supply' have the same meanings as in the Value Added Tax Act 1994 (hereinafter referred to as 'the Act') including any amendment or re-enactment thereof and any reference to the Value Added Tax Regulations 1995 (SI 1995/2518) (hereinafter referred to any enactment corresponding to those regulations for the time being in force in consequence of any amendment or re-enactment of those regulations).
- b) The Contractor shall be deemed not to have allowed in his Tender for the tax payable by him as a taxable person to the Commissioners of Customs and Excise being tax chargeable on any taxable supplies to the Employer which are to be made under the Contract
- c)
 - i) The Contractor shall not in any statement of claim for extra costs or payment under the Contract include any element on account of tax.
 - ii) The Contractor shall concurrently with the submission of the statement referred to in (i) of this condition furnish the Employer with a written estimate showing those supplies of goods and services and the values thereof included in the said statement and on which tax will be chargeable under the VAT Regulations at a rate other than zero.
- d) At the same time as payment (other than payment in accordance with this paragraph) for goods and services which were the subject of a taxable supply provided by the Contractor as a taxable person to the Employer is made in accordance with the Contract there shall also be paid by the Employer a sum (separately identified by the Employer and in this condition referred to as 'the tax payment) equal to the amount of tax payable by the Contractor on that supply. Within seven days of each payment the Contractor shall:

- i) if he agrees with that tax payment or any part thereof issue to the Employer an authenticated receipt of the kind referred to in the VAT Regulations in respect of that payment or that part; and
 - ii) if he disagrees with that tax payment or any part thereof notify the Employer in writing stating the grounds for this disagreement.
- e)
 - i) If any dispute, difference or question arises between the Employer and the Contractor in relation to any of the matters specified in Section 40(a) of the Act then:
 - 1. If the Employer so requires the Contractor shall refer the matter to the said Commissioners for their decision on it
 - 2. If the Contractor refers the matter to the said Commissioners (whether or not in pursuance of paragraph (e) (i) (1) above) and the Employer is dissatisfied with their decision on the matter the Contractor shall at the Employers request refer the matter to a Value Added Tax Tribunal by way of appeal under Section 40 of the Act whether the Contractor is so dissatisfied or not
 - 3. A sum of money equal to the amount of tax which the Contractor in making a deposit with the said Commissioners under Section 40(3) of the Act is required so to deposit shall be paid to the Contractor; and
 - 4. If the Employer requires the Contractor to refer such a matter to the Tribunal in accordance with sub-paragraph (2) above, then he shall reimburse the Contractor any costs and any expenses reasonably and properly incurred in making that reference less any costs awarded to the Contractor by the Tribunal and the decision of the Tribunal shall be binding on the Employer to the same extent as it binds the Contractor.
 - ii) Clause 40 of the Conditions of Contract shall not apply to any dispute, difference or question arising under paragraph (i) of this sub-clause clause.
- f)
 - i) The Employer shall without prejudice to his rights under any condition thereof be entitled to recover from the Contractor:
 - 1. Any tax payment made to the Contractor of a sum which is in excess of the sum (if any) which in all the circumstances was due in accordance with paragraph (d) of this Clause.

2. In respect of any sum of money deposited by the Contractor pursuant to paragraph (e) (l) (3) of this clause a sum equal to the amount repaid under Section 40(4) of the Act together with any interest thereon which may have been determined thereunder.
- ii) If the Contractor shall establish that the Commissioners have charged him in respect of a taxable supply for which he has received payment under this Clause, tax greater than the sums paid to him by the Employer the Employer shall subject to the provisions of paragraph (e) of this Clause pay to the Contractor a sum equal to the difference between the tax previously paid and the tax charged to the Contractor by the Commissioners.
 - (a) If after the date for return of tenders the description of any supplies or goods or services which at the date of tender are taxable or exempt supplies are with effect after the date for return of tenders modified or extended by or under the Act and that modification or extension shall result in the Contractor having to pay either more or less tax or greater or smaller amounts attributable to tax and that tax or those amounts as the case may be shall be a direct expense or direct saving to the Contractor in carrying out the Services and not recoverable or allowable under the Contract or otherwise then there shall be paid to or allowed by the Contractor as appropriate a sum equivalent to that tax or amounts as the case may be.

Provided always that before that tax is included in any payment by the Employer or those amounts are included in any certificate by the Authorised Officer as the case may be the Contractor shall supply all the information the Authorised Officer requires to satisfy himself as to the Contractor's entitlement under this paragraph.
 - (h) The Contractor shall upon demand pay to the Employer the amount of any sum due in accordance with paragraphs (f) and (g) of this Clause and such sum shall be deemed a debt due by the Contractor to the Employer and shall be recoverable accordingly.

43. COMPLAINTS

The parties agree that any complaints from any member of the public in regard to the provision of the Services, either orally, in writing or through social media shall be immediately referred to the Employer.

44. OTHER USAGE

The Contractor will not use any of the labour, vehicles, plant or machinery allocated to the Services within this Contract for any other purpose, except with the express permission of the Authorised Officer.

45. BRIBERY AND CORRUPTION

The Employer shall be entitled forthwith to cancel the Contract and to recover from the Contractor the amount of any loss resulting from such cancellation if:

- a) the Contractor shall have corruptly offered or given or agreed to give to any person any gift or consideration of any kind as an improper inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the Contract; or
- b) the like acts shall have been done by any person employed by the contractor or acting on his behalf (whether with or without the knowledge of the Contractor) or
- c) in relation to any contract with the Employer the Contractor or person employed by him or acting on his behalf shall:
 - i) have committed any offence under the Prevention of Corruption Acts 1889 to 1916; or
 - ii) have given any fee or reward the receipt of which is an offence under Sections 117(2) of the Local Government Act 1972.

46. GRATUITIES

The Contractor shall not, whether by himself or by any person employed by him to perform the Services, solicit any gratuity or tip or any other form of money-taking or reward, collection or charge for any of the Services other than bona fide charges approved by the Employer.

47. WORKS IN DEFAULT

If by reason of any accident or failure or other event occurring to, on or in connection with, any premises, depot, vehicle, plant or machinery or any part thereof occurring either during the performance of the Services or at any other times any remedial or other work or repair shall in the opinion of the Authorised Officer be urgently necessary and the Contractor is unable or unwilling at once to do such work or repair the Employer may by his own or other staff do such work or repair which the Contractor was liable to do at his own expense under the Contract.

All costs and charges properly incurred by the Employer in so doing shall on demand be paid by the Contractor to the Employer or may be deducted by the Employer from any monies due or which may become due to the Contractor provided always that the Authorised Officer shall as soon after the occurrence of any such emergency as may be reasonably practicable notify the Contractor thereof in writing.

48. AGENCY

- a) The Contractor is not and shall in no circumstances hold himself out as being the servant or agent of the Employer.
- b) The Contractor is not and shall in no circumstances hold himself out as being authorised to enter into any contract on behalf of the Employer or in any other way to bind the Employer to the performance, variation, release or discharge of any obligations.
- c) The Contractor has not and shall in no circumstances hold himself out as having the power to make, vary, discharge or waive any bye-law or regulation of any kind.
- d) The employees of the Contractor are not shall not hold themselves out to be and shall not be held out by the Contractor as being servants or agents of the Employer for any purposes whatsoever.

49. HEADINGS

The headings to these Conditions of Contract and the Index to conditions of Contract are given for convenience only and shall form no part of the Contract and shall not be referred to or used in connection with the proper construction or interpretation of the Contract.

50. JURISDICTION

This agreement shall be governed by the law of England and Wales.

APPENDIX 1

DEFAULT POINTS SCHEDULE

Code	Description	Default Points		
A	Fraudulent claims for work completed on job tickets.		10	
B	Failure to comply with the Health and Safety at Work requirements.		50	
C	Failure to comply with any statutory regulation regarding the Protection of the environment, COSHH or the control of pesticides.		50	
D	Failure to provide materials of the specified quality.		50	
E	Failure to carry out regular inspections of children's play area or failure to clean or sweep the site as soon as practicable.		10	
F	Failure to carry out any other element of work.		20	

APPENDIX 2

TERMINATION OF CONTRACT BY DEFAULT

The Contract may be determined by the Authorised Officer when:

- a. 30 default points are accrued **IN ANY 4 WEEK WORK PERIOD**

OR

- b. 50 default points are accrued **IN ANY THREE CONSECUTIVE 4 WEEK WORK PERIODS**