CHURCH CROOKHAM PARISH COUNCIL

**CONTRACT FOR**

**GREENSPACE MANAGEMENT SERVICES FOR CHURCH CROOKHAM PARISH COUNCIL**

**PART TWO**

CONDITIONS OF CONTRACT

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# 1. DEFINITIONS AND INTERPRETATION

1.1 "The Council" means Church Crookham Parish Council.

1.2 "Authorised Officer" means the person appointed by the Council and notified in writing to the Contractor by the Parish Clerk of the Council to perform the function set forth in these documents.

1.3 "The Agreement" means the documents comprising the tender, conditions of contract, specification, site plans, Bill of Quantities and Part One.

1.4 "Bill of Quantities" means the schedule of work provided of the amount of grass, shrubs, hard standing, etc to be priced by the Tenderer.

1.5 "The Contractor" means the individual or company whose tender shall have been accepted.

1.6 "Contract Manager" means the representative of the Contractor appointed pursuant to Condition 8.

1.7 "Commencement Date" means the **1st April 2024.**

1.8 "Review Date" shall mean the **1st September 2025**, **2026, 2027 and 2028**

1.9 "Contract Period" means the period during which the Agreement shall remain in force; this shall be 5 years from the Commencement Date, unless terminated earlier. The Council may, at its absolute discretion, extend the Contract Period by 5 years under Condition 2.1.

1.10 "The Service" means the whole of the work to be executed in accordance with the Agreement including the Conditions, Part One and Specifications at the Location(s).

1.11 "The Contract Standard" means such standard as complies in each and every respect with all relevant provisions of the Contract Documents and where to the extent that no criteria are stated in the Contract Documents the standard is to be to the entire satisfaction of the Authorised Officer. Where such standard is specified in a Contract Document that is the minimum standard, and the work and service shall in any event be to the entire satisfaction of the Authorised Officer.

1.12 "Litter" shall be any item, thrown down, fallen, dropped or deposited and will include but is not limited to leaves, twigs, blossom and dog faeces.

1.13 "Rectification Notice" means a notice or notices given by the Council to the Contractor in respect of the performance or non-performance in the provision of the Service in accordance with Condition 24.

1.14 "Default Notice" means a notice or notices given by the Council to the Contractor in respect of the performance or non-performance in the provision of the Service in accordance with Condition 25.

1.15 "Open Book Review" means the annual mechanism through with the increase or decrease in the Annual Sum and associated performance payments will be determined

1.16 "Location(s)" means the place(s) as indicated on the Site Plans where the Service or any part thereof is to be performed by the Contractor or to which goods, equipment or materials are to be delivered or stored or where work is to be executed by the Contractor or where documents or records are held or stored by or on behalf of the Contractor in connection with the provision of the Service.

1.17 "The Act" means The Environmental Protection Act 1990 and any subsequent regulations issued thereunder and any subsequent re-enactment thereof.

1.18 "Specification" means the description of the Service referred to in any specification in the Agreement and any variation thereof pursuant to Condition 17.

1.19 "Contract Documents" mean the documents comprising the Agreement.

1.20 Reference to time shall be construed, during the period of summertime, to be British Summer Time and otherwise to be Greenwich Mean Time.

1.21 A reference to any Act of Parliament, or to any Order, Regulation, Statutory Instrument, Code of Practice or the like shall be deemed to include a reference to any amendment or re-enactment of the same.

1.22 "The Arbitrator" shall be a person appointed under Condition 33.

1.23 "Employee(s)" means the employees of the Contractor and also any other servants, agents or sub-contractors which the Contractor engages to provide the Service.

1.24 "Site Plan(s)" means the plan or plans provided with any additional site plans issued by the Authorised Officer during the Contract Period under Condition 3.5.

1.25 "Annual Sum" means the Tender Sum as amended under Condition 21.

1.26 "Tender Sum" means the sum specified on the completed Form of Tender.

1.27 "Form of Tender" or "Tender" means the form of tender of the Contractor accepted by the Council.

1.28 "Condition(s)" means the terms and conditions of the Conditions of Contract.

1.29 "Conditions of Contract" means this document.

1.30 "Account" means the application for payment and/or invoice submitted by the Contractor under Condition 20.

1.31 "Variation Order" means an instruction issued by the Authorised Officer under Condition 17.1.

1.32 "Force Majeure" means, in relation to either party, any circumstances beyond the reasonable control of that party (including, without limitation, any strike, lockout or other form of industrial action).

# 2. PERIOD OF CONTRACT

* 1. The Agreement shall commence on the:

**1st APRIL 2024** & shall operate for **five** **years** thereafter, concluding on the **31st MARCH 2029,** provided that and without prejudice to the Council's specific rights of termination, the Council may at any time from the Commencement Date, give to the Contractor, three months’ notice of its desire to terminate the Agreement and upon the expiration of the notice, this Agreement shall absolutely cease. Such termination shall not affect any rights of either party which shall have accrued or shall accrue thereafter. **The Council may, at its absolute discretion, extend the Agreement by a further five years by giving three months written notice.**

# 3. CONTRACT DOCUMENTS

3.1 Except as otherwise expressly provided, the Contract Documents are to be taken as mutually explanatory of one another. Any ambiguities or discrepancies shall be resolved by the Authorised Officer who shall thereupon issue to the Contractor appropriate instructions in writing and the Contractor shall act on and be bound by such instructions.

3.2 In the event of any inconsistency between the Conditions and any provision in any of the other Contract Documents, the Conditions shall prevail.

3.3 No deletion from, addition to, or variation of the Conditions shall be valid or of any effect unless agreed in writing (email acceptable) and acknowledged by both parties.

3.4 The Authorised Officer may from time to time during the Contract Period supply to the

Contractor such modified or further Site Plans, Specifications or drawings which shall in the Authorised Officer's opinion be necessary for the purpose of the proper and adequate provision of the Service, and the Contractor shall be bound by the same. If such Site Plans, Specifications or drawings require any variation to part of the Service, the same shall be deemed to be a Variation Order under Condition 17.1 and shall be valued accordingly.

# 4. STATUTORY OBLIGATIONS

4.1 The Contractor shall ascertain and comply with, and give all notices required by any Act of Parliament, any instrument rule or order made under any Act of Parliament, or any regulation or byelaw of any local Authority or of any statutory undertaker or authority which is applicable to the Service.

4.2 The Contractor shall indemnify and keep indemnified the Council against all and any penalties and liabilities of every kind for breach of any such Act, Regulation or Byelaw.

4.3 For the avoidance of doubt, the Contractor shall not be entitled to payment for any work carried out in the provision of the Service if such work is carried out in breach of any Act, Regulation or Byelaw.

# 5. PARENT GUARANTEES

5.1 If the Contractor is a subsidiary company within the meaning of Section 736 of the Companies Act 1985 it shall provide on the execution of the Agreement, a Guarantee in the form in Part One duly executed by its holding company or companies (as defined by the said Section 736) to secure the due performance by the Contractor of its obligations to the Council under the Agreement.

# 6. AUTHORISED OFFICER

6.1 The Authorised Officer shall be the Facilities Officer.

6.2 The Council shall give notice in writing to the Contractor of the replacement of the Authorised Officer or if any person ceases to be the Authorised Officer.

# 7. CONTRACTOR'S OBLIGATIONS

7.1 The Contractor shall commence provision of the Service on the Commencement Date.

7.2 During the Contract Period the Contractor shall provide the Service (and any variations thereof authorised under the Agreement) in a proper, skilful, and workmanlike manner in accordance with the requirements of the Agreement and in particular the Specification, to the entire satisfaction of the Authorised Officer and to the Contract Standard.

7.3 The Contractor shall at all times comply with the instructions of the Authorised Officer. Unless such instructions amount to a Variation Order under Condition 17, the Contractor shall not be entitled to any additional payment for complying therewith.

7.4 The Contractor shall at all times throughout the Contract Period allow such persons as may be nominated from time to time by the Authorised Officer or the Council access to: -

i) the Service being performed,

ii) records and documents in the possession of the Contractor in connection with the performance of the Service,

iii) inspect the condition of any premises, plant or equipment used by the Contractor for the performance of the Service,

iv) any Employee for the purposes of interviewing them in connection with the carrying out of all or any part of the Service,

v) materials, stores and spare parts used by the Contractor to provide the Service, in order to ensure that such items comply with manufacturers' specifications.

7.5 The Contractor shall maintain current and accurate records of all work carried out in the provision of the Service. These records shall be open for inspection by the Authorised Officer at all reasonable times.

7.6 The Contractor shall at all times be fully responsible for the payment of all income or other taxes, national insurance contributions or levies of any kind, relating to or arising directly or indirectly out of the employment of any persons in the provision of the Service and shall fully and promptly indemnify the Council in respect of any claims in respect thereof including for penalties, interest, legal and other professional fees.

7.7 The Contractor shall maintain proper financial records in connection with the Service in accordance with accepted accounting practice.

7.8 No later than 14 days from the date of written acceptance of the Contractor's Form of Tender and also on each Review Date, the Contractor shall prepare a detailed programme of work for the following year dealing with such matters as the Council may require. The Council shall within 28 days after receipt of the Contractor's Programme: -

i) accept the programme in writing, or

ii) reject the programme in writing with reasons, or

iii) request the Contractor to supply further information to clarify or substantiate the programme or to satisfy the Council as to its reasonableness having regard to the Contractor's obligations under the Agreement.

Provided that if none of the above actions is taken within the said period of 28 days, the Council shall be deemed to have accepted the programme as submitted. If the Contractor fails to provide a satisfactory programme within 14 days of receipt of a rejection or request under Condition 7.8(i) or (ii), or if for any reason the parties cannot agree on a suitable programme, then the Council may issue its own programme which shall bind the Contractor. Such programme of work as shall have been so issued or approved shall and/or shall be deemed for the purposes of the Agreement, to comprise part of the Specification.

7.9 The Contractor shall inform the Authorised Officer on the following working day of any work not carried out in accordance with the approved programme and of any instructions awaited by the Authorised Officer. Emergency works, complaints received, any problems encountered or anticipated, shall be reported to the Authorised Officer on a daily basis and confirmed in writing or email.

7.10 Unless otherwise permitted by the Authorised Officer, the Contractor shall not in any circumstances use any premises, vehicles or other property of the Council to perform, either on its own behalf, or on behalf of any person other than the Council, any work or service other than that provided for in the Agreement.

7.11 If the Contractor fails to provide the Service or any part thereof with due diligence or in a proper, skilful and workmanlike manner, or to the Contract Standard or to the entire satisfaction of the Authorised Officer, the Council may itself provide or may employ and pay other persons to provide the Service or any part thereof and all costs incurred thereby may be deducted from any sums due or to become due to the Contractor under the Agreement or shall be recoverable from the Contractor by the Council as a debt without any set-off, abatement, counterclaim or deduction whatsoever. The rights of the Council under this condition shall be without prejudice to its rights under Condition 18.

7.12 Any approval given by the Authorised Officer of any work carried out, or material or Plant supplied in the provision of the Service shall not relieve the Contractor of any of its obligations or liabilities under the Agreement, save where such approval indicates the Authorised Officer's entire satisfaction with the work, material or Plant in question, and it only has to satisfy the Authorised Officer and not any other standard or obligation under the Agreement.

7.13 Any failure of the Authorised Officer or of any staff of the Council to disapprove any work carried out, or material or Plant supplied, shall not prejudice the Council in taking any action and shall not relieve the Contractor of any of its obligations or liabilities under the Agreement.

# 8. CONTRACTOR'S EMPLOYEES

8.1 The Contractor shall appoint a suitably experienced and qualified Contract Manager empowered at all times to act on behalf of the Contractor and for all purposes connected with the Agreement. Any notice, information, instruction or other communication given or made to the Contract Manager, or his nominated Deputy shall be deemed to have been given to the Contractor.

8.2 The Contractor shall ensure that the Contract Manager duly authorised by the Contractor to act on his behalf, is available to the Authorised Officer at all times during normal working hours throughout the Contract Period by mobile phone. If the Contract Manager is not available due to sickness, injury or holiday, the Contractor shall nominate a suitably experienced and qualified Deputy to act in his/her place and shall notify the Authorised Officer.

8.3 The Contractor shall ensure that all Employees are at all times properly and sufficiently qualified, competent, careful, skilled, honest, experienced, instructed and supervised as the case may be with regard to the provision of the Service and in particular are aware of and/or will comply with:-

8.3.1 the task or tasks such person has to perform,

8.3.2 all relevant provisions of the Agreement,

8.3.3 all relevant policies, rules, procedures and standards of the Council,

8.3.4 all relevant rules, procedures and statutory requirements concerning health and safety at work, including any Council safety policy which shall have been provided to the Contractor,

8.3.5 fire risks and fire precautions,

8.3.6 the need to maintain the highest standards of hygiene, courtesy and consideration,

8.3.7 the need to recognise situations which may involve any actual or potential danger or risk of personal injury to any person at any Location and where possible without personal risk, to make safe such situations, and forthwith to report such situations to the Authorised Officer or in the event of any emergency to the member of the Council's staff with responsibility for the Location.

8.4 The Contractor shall to the satisfaction of the Authorised Officer implement a scheme for ensuring that the Employees maintain the appropriate skills and knowledge so as to ensure a continuous and efficient provision of the Service at no extra cost to the Council.

8.5 The Contractor shall ensure that sufficient persons are employed in and about the provision of the Service in order to ensure that the Service is provided in accordance with the Contract Documents and in all respects in accordance with the requirements of the Agreement.

8.6 The Contractor shall ensure that all monies or other items of value found by the Contractor's Employees at any Location other than the premises of the Contractor, shall be handed to the Authorised Officer as soon as possible and a written receipt obtained.

8.7 The Authorised Officer shall be entitled to require the Contractor, by notice in writing, to immediately remove from the provision of the Service any Employee of the Contractor specified in such notice including the Contract Manager who in his opinion misconducts himself/herself or is incompetent, negligent or prejudices health and safety, or is rude or discourteous to any other person at the Locations, or whose presence at a Location may damage the reputation of the Council. The Contractor shall forthwith remove such Employee from the provision of the Service and shall immediately provide a replacement if necessary.

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

8.9 The Contractor shall, on a continuous basis, disclose to the Authorised Officer the names and addresses of the Employees and sufficient information including details of all criminal convictions to enable proper checks to be made. If owing to the nature of the Service, Employees of the Contractor are exempt from the provisions of Section 4(2) of the Rehabilitation of Offenders Act 1974 then the Contractor shall ensure that all Employees engaged in provision of the Service shall provide information in accordance with the said Act about convictions which would otherwise be spent under the provisions of the said Act.

8.10 The Contractor shall immediately inform all relevant trade unions or other bodies or organisations representing the Contractor's Employees of the award of the Agreement and the Commencement Date and shall confirm compliance with this condition in writing to the Authorised Officer.

8.11 The Contractor shall comply with any law that prohibits discrimination in relation to employment on the grounds of sex, colour, race, ethnic or nature of origin or religion or disability.

8.12 The Contractor shall ensure that the Contract Manager attends any meetings which the Council may reasonably require her/him to attend, including meetings with the Council's customers.

8.13 Without prejudice to Condition 8.7, the Contractor shall ensure that all Employees engaged in the performance of the Service are at all times courteous and understanding towards residents, visitors and members of the public and he shall discipline any of his Employees who behave in a manner contrary to this requirement.

# 9. CONTROL AND SUPERVISION OF CONTRACTOR'S EMPLOYEES

9.1 The Contractor shall employ a sufficient number of supervisory employees to ensure that the Employees engaged in and about the provision of the Service are adequately supervised and are properly performing their duties to the Contract Standard.

9.2 The Contractor shall ensure that its Employees perform their duties in an orderly and quiet manner as may reasonably be practicable having regard to the nature of the duties being performed by them.

9.3 The Contractor shall provide and shall ensure that its Employees wear at all times when engaged in provision of the Service such identification (including photographic identification) as provided by the Council.

9.4 The Contractor shall ensure that when requested to do so by any of the Council's staff or its tenants, any Employee of the Contractor shall disclose his or her identity and status as an Employee of the Contractor and shall not attempt to avoid so doing.

9.5 The Contractor shall require its Employees at all times while engaged in provision of the service to be properly and presentably dressed in appropriate uniforms or workwear to the satisfaction of the Council. Such uniforms or workwear to be worn by the Contractor's Employees shall be provided, maintained and replaced as necessary by the Contractor.

9.6 The Contractor shall maintain current and accurate records of all its Employees. These records shall include employee attendance and shall differentiate between those engaged as operatives and those exercising supervision. These records shall be open for inspection by the Authorised Officer at all reasonable times, and a copy of these records shall be provided to the Authorised Officer if so requested free of charge.

9.7 The Contractor shall prepare a schedule of operations for each Location in a form to be approved by the Authorised Officer, which shall be available for reference by the Authorised Officer and for the Contractor's Employees. The Contractor shall provide a copy of this schedule to the Authorised Officer if so requested.

# 10. CONFIDENTIALITY

10.1 The Contractor shall not during the Contract Period or at any time thereafter make use for his own purpose or disclose to any person (except as may be required by law), any information contained in any material provided to him by the Council pursuant to the Agreement, all of which information shall be deemed to be confidential.

10.2 The Contractor shall not dispose nor part with possession of any material provided to him by the Council pursuant to the Agreement or prepared by the Contractor pursuant to the Agreement, other than in accordance with the express written instructions of the Authorised Officer.

# 11. OBSTRUCTIONS AND OTHER CONSTRAINTS

11.1 Obstructions and other constraints with regard to access to some locations may prevent the use of large plant. It is the responsibility of the Contractor to ensure that he is aware of all access problems. No claims will be submitted or allowed on the basis that access is inadequate or other constraints exist. Certain areas may require access via locked gates for which the Contractor will be issued with keys and in this respect, he will be totally responsible for replacing locks resulting from the loss of keys. He must also make the keys supplied available for the use of the Authorised Officer or his representative at all reasonable times if so requested.

11.2 Locations identified in the Site Plans may be obstructed by parked cars or other vehicles. The Contractor will nonetheless be required to work at such Locations effectively in accordance with the requirements of the Agreement and any action needed to obtain removal of the obstruction is the responsibility and liability of the Contractor.

11.3 The Contractor shall make return visits to Locations previously obstructed by parked vehicles or obstructions as necessary. No additional payment will be made to the Contractor on account of any additional work or return visits necessitated as a result of parked vehicles or other obstructions whatsoever.

11.4 Where any construction or maintenance works are being carried out at the Locations (including any works by a Local Authority or Statutory Undertaker) which completely obstruct the carrying out of any operations required, then to the extent only that such operations are impracticable the Contractor will not be required to carry out the same whilst the obstruction remains. The Contractor must notify the Authorised Officer of any such situations immediately.

11.5 The Contractor shall ensure that full maintenance of any areas affected under Condition 11.4 is carried out at the next programmed occasion following completion of the works at no additional cost to the Council.

11.6 Without prejudice to any entitlement to payment in respect of a Variation Order under Condition 17, the Contractor shall not be entitled to make any claim for any extra cost arising out of any delay or disruption to the provision of the Service or any part thereof unless caused by any negligent act or omission or breach of contract of the Council. Accordingly, and without prejudice to the generality of the foregoing, the Contractor shall not be entitled to make any claim for any extra cost for any delay or disruption caused or contributed by any weather conditions.

# 12. HEALTH AND SAFETY AT WORK

12.1 Without prejudice to Condition 4.1, the Contractor shall at all times conform with the requirements of the relevant Health and Safety at Work legislation, Welfare of Employees and other persons, or similar legislation and also to any related British or European Standards and Codes of Practice.

12.2 The Contractor shall at all times co-operate with the Council's Health and Safety Representative who shall have the right to inspect and report to the Authorised Officer upon the Contractor's compliance with the statutory requirements, standards and the Codes of Practice referred to in 12.1.

12.3 The Contractor shall provide the Service safely and in a manner that is not likely to be injurious to health or detrimental to the environment or the fabric of any Location.

12.4 The Contractor shall keep all plant, machinery and equipment used for the performance of the Service in a safe condition at all times.

12.5 The Contractor shall not later than 7 days prior to the Commencement Date provide a copy of his Health and Safety Policy to the Authorised Officer.

12.6 The Contractor shall review his Health and Safety policy in the light of changing legislation or changes in the Council's policies.

12.7 The Council's authorised Health and Safety Representative may suspend for such period as he may think fit the provision of the Service at any one or more Location if in his sole opinion the Contractor has failed to comply with health and safety regulations or procedures including matters affecting public safety, and the safety of the Council's or the Contractor's Employees, or is otherwise working unsafely in his opinion.

12.8 The Contractor shall not resume provision of the Service until the Council's authorised Health and Safety Representative certifies that she/he is satisfied that the Contractor has now complied with Health and Safety regulations and procedures or is otherwise working safely.

12.9 All and any additional costs, fees and expenses occasioned by such suspension shall be borne by the Contractor and the Contractor shall reimburse the Council for any costs incurred by it through such a suspension.

# 13. BRITISH/EUROPEAN STANDARDS

13.1 Where an appropriate British or European Standard Specification applies, all goods, materials, plant and equipment used or supplied and all workmanship shall, as a minimum requirement, be in accordance with that standard, without prejudice to any higher standard required by the Agreement.

# 14. ENVIRONMENTAL PROTECTION ACT 1990

14.1 Without prejudice to Conditions 4 and 13 and any other provisions of the Agreement it is the responsibility of the Contractor to familiarise himself with the **Act** and all Statutory Instruments either now or in the future and to carry out the provision of the Service in accordance therewith.

14.2 Without prejudice to Condition 14.1 and any other Condition or provision in any other Contract Document, all work shall be carried out by the Contractor without unreasonable noise or other pollution.

14.3 To the extent that noise, disturbance or other pollution is not the unavoidable consequence of providing the Service, the Contractor shall indemnify the Council from and against any liability for damages on that account and against all claims, demands, proceedings, costs, charges and expenses whatsoever in regard or in relation to such liability.

14.4 If the Contractor realises or ought to realise that providing the Service or any part thereof is unavoidably going to cause noise or disturbance or other pollution it must immediately notify the Authorised Officer in writing. If the Contractor fails to so notify the Authorised Officer, then the exclusion on the indemnity in Condition 14.3 shall not apply.

# 15. AGENCY

15.1 Neither the Contractor nor its Employees shall in any circumstances hold itself or themselves out as being the servant or agent of the Council, otherwise than in circumstances expressly permitted by the Agreement.

15.2 Neither the Contractor nor its Employees shall in any circumstances hold itself or themselves out as being authorised to enter into any contract on behalf of the Council, or in any other way empowered to bind the Council to the performance, variation, release or discharge of any obligation.

15.3 Neither the Contractor nor its Employees shall in any circumstances hold itself or themselves out as having the power to make, vary, discharge or waive any legislation, bye-law or regulation of any kind.

# 16. INDEMNITY AND INSURANCE

16.1 The Contractor shall be liable for, and shall indemnify the Council against any liability, damages, costs, charges, expenses, loss, claim or proceedings whatsoever (including without prejudice to the generality of the foregoing, the cost of defending an unsuccessful claim), arising under or in connection with any legislation or at common law in respect of personal injury to or the death of any person whomsoever arising out of or in the course of or caused by the carrying out of the Service, unless solely resulting from any act or neglect of the Council or its agents, servants or other contractors (not being employed by the Contractor).

16.2The Contractor shall be liable for, and shall indemnify the Council against any expense, liability, loss, claim, damages, costs, charges or proceedings in respect of any injury or damage whatsoever (including, without prejudice to the generality of the foregoing, the cost of defending an unsuccessful claim), to any property real or personal whether owned by the Council or not, or in respect of any interference whether temporary or permanent with any right of way, light, air or water or other easement or quasi-easement in so far as such injury or damage or interference arises out of or in the course of or by reason of the carrying out of the Service, unless solely resulting from any act or neglect of the Council or its agents, servants, or other contractors (not being employed by the Contractor).

16.3 The Contractor's liability to indemnify the Council under Conditions 16.1 and 16.2 shall be reduced in proportion to the extent that the act or neglect of the Council, its agents, servants or other contractors (not being employed by the Contractor) contributed to the said death, injury, loss, damage or interference.

16.4Without prejudice to the Contractor's liability to indemnify the Council under Conditions 16.1 and 16.2, the Contractor shall obtain and maintain for the Contract Period such insurance as is necessary to cover the liability of the Contractor in respect of those matters for which the Contractor is liable to indemnify the Council under Conditions 16.1 and 16.2. The insurance in respect of claims for personal injury to, or the death of, any person under a contract of service or apprenticeship with the Contractor arising out of and in the course of such person's employment, shall comply with the Employer's Liability (Compulsory Insurance Act 1969) and any statutory orders made thereunder or any amendment or re-enactment thereof but without prejudice to that all claims to which this Condition applies the insurance cover shall be the minimum sum of £10,000,000 (or such greater sum as the Contractor may choose) for any one occurrence or series of occurrences arising out of one event

16.5 The Contractor shall ensure that any sub-contractor it engages in connection with the provision of the Service shall obtain and maintain insurance which is equivalent to that required under Condition 16.4.

16.6As and when the Contractor is reasonably required so to do by the Council the Contractor shall produce and shall cause any sub-contractor to produce for inspection by the Council documentary evidence that the insurance required by the Agreement is properly maintained and on any occasion the Council may require production for his inspection the policy or policies and receipts in question.

16.7Should the Contractor or any sub-contractor make default in insuring or in continuing or in causing to insure as provided in this Condition the Council may itself insure against any risk with respect to which the default shall have occurred and may deduct a sum or sums equivalent to the amount paid or payable in respect of premiums from any monies due or to become due to the Contractor or recover the same as a debt without any set-off, abatement, counterclaim or deduction whatsoever.

16.8 The Contractor shall inform the Authorised Officer in writing within seven days of any accident or damage caused in connection with the Service whether the incident will be subject to an insurance claim or not.

16.9 Without prejudice to any other Conditions, the Council shall not be liable for or in respect of any damages or compensation payable or agreed to be paid in respect of or in consequence of any accident or injury to any operative or other persons engaged by the Contractor or any of its sub-contractors save and except to the extent that such accident or injury results from or is contributed to by any act or default of the Council, its servants or agents, and the Contractor shall indemnify and keep indemnified the Council against all such damages and compensation (save and except the aforesaid) and against all claims, demands, proceedings, costs, charges and expenses whatsoever (including, without prejudice to the generality of the foregoing, the costs of defending an unsuccessful claim) in respect thereof or in relation thereto.

# 17. VARIATIONS

17.1 The Authorised Officer shall be entitled to issue to the Contractor instructions in writing (a Variation Order) requiring the Contractor to do all or any of the following:-

i) to omit or to cease to provide any part of the Service for such a period or periods as the Authorised Officer may determine, which period or periods may be of either a temporary or permanent nature.

ii) to provide such services additional to the Service as the Authorised Officer may reasonably require including changing or removing any vegetation or changing any landscape features.

iii) to permanently vary the Service or the method or the timing of supplying the Service at any Location (including varying the programme(s) produced under Condition 7.8).

iv) to provide any provisional items of work set out in the Specification.

17.2 No variation pursuant to this condition shall vitiate the Agreement.

17.3 Where the Authorised Officer exercises his power under Condition 17.1 he shall, except in emergencies, give to the Contractor not less than 7 days written notice before the Variation Order is to take effect. In an emergency, the Authorised Officer will issue the Variation Order within 14 days of the occurrence of such an emergency.

17.4 Where the Authorised Officer exercises his power under Condition 17.1, and in consequence the Contractor incurs additional costs, the Contractor may submit a claim to the Council for the additional costs in accordance with Clauses 17.5 to 17.8 inclusive.

17.5 In order for the Contractor to make a valid claim against the Council by virtue of a Variation Order, it must:-

i) within 14 days of the issue of the Variation Order, give notice in writing to the Council of his intention to make claim, and

ii) submit a fully detailed and substantiated claim for payment in writing to the Council as part of the monthly accounts to be submitted under Condition 20 as soon as practicable and in any event within 2 months of the issue of a Variation Order.

17.6 The Contractor shall be under a duty to take all practical steps to mitigate the additional costs and in calculating its claim, it shall make full allowance for any other reductions in costs which may flow directly or indirectly from the event giving rise to the claim.

17.7 Without prejudice to Condition 17.6 above, the valuation of any claim submitted by the Contractor under Condition 17.5 shall be assessed by the Authorised Officer in his absolute discretion, in accordance with the following provisions:-

i) the additional work required shall be valued at fair rates and prices which shall wherever possible be agreed between the Authorised Officer and the Contractor prior to the work being carried out and failing agreement, at such rates or prices determined by the Authorised Officer.

17.8 No additional payment, or as the case may be a reduced payment shall be made in respect of a Variation Order if in the opinion of the Authorised Officer.

1. There is as a consequence a commensurate reduction or re-organisation of any other part of the Service, or
2. It has been necessitated by any breach of the Agreement or other default of the Contractor.
3. The prices quoted for the work by the Contractor are deemed to be unreasonable, in which case the Council will be entitled to offer the work to any other contractor.

# 18. TERMINATION BY THE COUNCIL

18.1Without prejudice to any other rights or remedies which the Council may possess, if: -

i) the carrying out of the whole or substantially the whole of the uncompleted Service is suspended for a continuous period of one month by Force Majeure, or

ii) the Contractor without reasonable cause suspends in whole or in part the carrying out of the Service before completion thereof, or

iii) the Contractor fails to pay any sums due to the Council under the Agreement within 28 days of receipt of a written demand, or

iv) the Contractor fails to proceed regularly and diligently with the Service, or

v) the Contractor receives the requisite number of Default Notices under Condition 25.

then the Council shall be entitled to terminate the Agreement by notice in writing. The Authorised Officer shall determine how much notice is appropriate at his absolute discretion.

18.2If a bankruptcy petition is presented against the Contractor or if the Contractor becomes bankrupt or makes a composition or arrangement with the Contractor's creditors or has a proposal in respect of the Council for a voluntary arrangement for a composition of debts or scheme of arrangement approved in accordance with the Insolvency Act 1986, or has an application made under the Insolvency Act 1986 in respect of the Council to the court for the appointment of an administrator, or has a winding up order made (except for the purposes of amalgamation or reconstruction) or a resolution for voluntary winding up is passed or a provisional liquidator, receiver or manager of the business or undertaking is duly appointed, or has an administrative receiver, as defined in the Insolvency Act 1986 appointed, or possession is taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in or subject to the floating charge, this Agreement may at the option of the Council be terminated forthwith, by notice in writing, but the said Agreement may be reinstated and continued if the Council and the Contractor, and/or the Contractor's trustee in bankruptcy, liquidator, provisional Liquidator, receiver or manager, as the case may be shall so agree.

18.3The Council shall be entitled to terminate the Agreement if the Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this or any other Agreement with the Council, or for showing or forbearing to show favour or disfavour to any person in relation to this or any other Agreement with the Council, or if the like acts shall have been done by any person employed by the Contractor or acting on its behalf (whether with or without the knowledge of the Contractor), or if in relation to this or any other Agreement with the Council the Contractor or any person employed by him or acting on his behalf shall have committed any offence under the Prevention of Corruption Acts, 1889 to 1916, or shall have given any fee or reward the receipt of which is an offence under sub-section (2) of section 117 of the Local Government Act 1972 or any re-enactment thereof.

18.4In the event of the Agreement being terminated as aforesaid and so long as it has not been reinstated and continued, then the Contractor shall immediately cease to perform any of the Service and the following shall be the respective rights and duties of the Council and Contractor: -

i) the Council may employ other persons to carry out part or all of the Service and recharge that cost to the Contractor and recover the same as a debt without any set-off, abatement, counterclaim or deduction whatsoever.

ii) the Contractor shall allow or pay to the Council in the manner hereinafter appearing the amount of any loss and/or damage caused to the Council by the determination including, without prejudice to the generality of the foregoing, any costs of re-tendering and any additional costs incurred by using another contractor. Until after completion of the Service the Council shall not be bound by any provision of the Agreement to make any further payment to the Contractor, but within a reasonable time of such completion the Authorised Officer shall determine the amount of any loss and/or damage caused to the Council by the determination and, if such amount when added to the monies paid to the Contractor before the date of determination exceed the total amount which would have been payable on due completion in accordance with the Agreement, the difference shall be a debt payable to the Council by the Contractor without any set-off, abatement, counterclaim or deduction whatsoever and if the said amount when added to the said monies be less than the said total amount, the difference shall be a debt payable by the Council to the Contractor.

# 19. TERMINATION BY THE CONTRACTOR

19.1Without prejudice to any other rights and remedies which the Contractor may possess, if

i) the Council does not pay to the Contractor an amount due in accordance with Clause 20 of these Conditions except for those amounts disputed under Condition 20.3, and continues such default for 7 days after receipt by registered post or recorded delivery of a notice from the Contractor stating that a notice of termination under this Condition will be served if payment is not made within 7 days from receipt thereof: or

ii) the carrying out of the whole or substantially the whole of the uncompleted Service is suspended for a continuous period of one month by reason of:

(i) Force Majeure, or

(ii) an instruction or Variation Order issued by the Authorised Officer unless caused by or contributed to by the negligence or default of the Contractor,

then the Contractor may thereupon by 28 days written notice by registered post or recorded delivery to the Council or Authorised Officer forthwith terminate its employment under this Agreement, provided that such notice shall not be given unreasonably or vexatiously.

19.2After taking into account amounts previously paid under this Agreement the Contractor shall be paid by the Council: -

i) the total value of work completed at the date of termination,

ii) less any monies outstanding to the Council.

# 20. PAYMENT

20.1 No later than 7 days after the end of each calendar month the Contractor will submit to the Authorised Officer a fully detailed application for payment (an Account) in respect of work and materials valued in accordance with the Agreement. This Account shall be for all works completed by the Contractor since the Commencement Date or the date of the last Account submitted as appropriate. The amount due will be paid by the Council within 28 days of receipt of the Account. The monthly payment is negotiable to take account of seasonal variation but payment for the twelve calendar months in each year will be equal to the Contract Sum subject to additions or reductions in accordance with these Conditions.

* 1. The Contractor's Account will specify and breakdown the sum or sums claimed

20.3 Within 14 days of receipt of the Account the Authorised Officer will notify the Contractor of any amounts incorrectly recorded in the Account or disputed by the Authorised Officer.

20.4 The Authorised Officer shall be entitled to withhold payment in respect of those items disputed under Condition 20.3 above and in his absolute discretion require the Contractor to either:-

i) submit an amended Account or;

ii) carry an adjustment forward to the next Account to be submitted.

20.5 Within 14 days of the Authorised Officer receiving a re-submitted Account, the Council shall pay any amount due thereunder.

20.6 In so far as an Account may include a claim for payment of Dayworks it must show the amounts for materials and labour separately.

# 21. FLUCTUATIONS

21.1 The Agreement for the first year shall be the stated and accepted Tender Sum, such that the tender prices, performance payment and rates will not be subject to any increase or decrease on account of inflation.

21.2 For the subsequent years of the Agreement there shall be a review of the tender rates, and prices, and accordingly the Annual Sum. With effect therefore from the First Day of April 2026, and on each subsequent 1st April, the tender rates and prices and therefore the Annual Sum shall be increased or decreased on each review date by reference to an annual ‘open book’ review - the first being held in September 2025.  Any increases/decreases in the rates and prices will be undertaken following negotiations rather than by the use of the RPI. (This is intended to ensure that any changes accurately reflect movements in the Contractor’s costs over the previous year.) In this Open Book Review the Contractor will be able to provide evidence of the costs’ movements.

# 22. VALUE ADDED TAX

22.1 The rates disclosed in the Form of Tender are to be exclusive of Value Added Tax. When submitting an Account to the Council for payment, the Contractor shall include on that Account any Value Added Tax properly chargeable by the Commissioners of Customs and Excise.

# 23. DAYWORKS

23.1 Daywork shall not be worked by the Contractor nor paid for by the Council without the prior written authority of the Authorised Officer. Payment will be made by the Council to the Contractor in accordance with the Specification.

23.2 The Contractor shall only carry out those works specified on an official order issued by the Authorised Officer and no additional works shall be charged until written approval has been requested from and obtained from the Authorised Officer. A further order will be issued to cover such additional works. Should an official order not be received within 3 days of any verbal instruction, the Contractor must inform the Authorised Officer as no payment will be made without an official written order.

# 24. RECTIFICATION NOTICE

24.1 Upon receipt of a complaint the Authorised Officer may issue the Contractor with either a rectification notice or an incident/instruction form depending on the nature of the complaint.

24.2 The Contractor will respond to the notice/form served as instructed by the Authorised Officer.

24.3 All notices/forms issued are to be completed and returned to the Authorised Officer within 5 working days in any event.

24.4 In the event of the Contractor failing to respond to a rectification notice within the timescale laid down by the Authorised Officer, the Contractor may be emailed, faxed or otherwise sent a non-compliance notice requesting him to respond within 2 hours of receipt.

24.5 In the event of the Contractor failing to respond to the non-compliance notice within 2 hours or otherwise satisfactorily, the Contractor may then be served with a Default Notice by the Council in accordance with Condition 25.

# 25. DEFAULT NOTICE

25.1 If the Contractor fails to respond to a non-compliance notice issued under Condition 24 above, the Authorised Officer shall be entitled to record in writing a notice of default (hereinafter called a "Default Notice"), provided that the non-compliance notice relates to a failure by the Contractor to comply with any term of the Agreement. The Default Notice shall record the nature of the breach of the Agreement. The Council shall send the Contractor a copy of the Default Notice.

25.2 Without prejudice to any other rights under the Agreement or otherwise, where more than 5 Default Notices are recorded in any one week or more than 15 in any four week period, the Council may terminate the Agreement in accordance with Condition 18.

# 26. EQUIPMENT AND MATERIALS

26.1 Except as otherwise specified in the Agreement, the Contractor shall provide all materials and equipment necessary for the provision of the Service.

26.2 The Contractor shall maintain in a safe serviceable and clean condition and replace as necessary all equipment used by the Contractor's Employees in the provision of the Service at any Location or stored by the Contractor thereon.

26.3 The Contractor shall prepare, mix and use all materials and prepare and use all equipment in a safe manner and to the satisfaction of the Authorised Officer and shall keep the same when on the Council's premises under proper control and safe keeping and shall ensure that all materials are properly, accurately and clearly labelled on their containers.

26.4 The Contractor shall be responsible for the security of all materials and equipment used by the Contractor in connection with the provision of the Service and the Council shall be under no liability in respect thereof.

26.5 At the end of the Contract Period or upon earlier termination of the Contractor's employment, the Contractor shall leave the relevant Location in a secure, safe, and clean condition.

26.6 All materials and equipment belonging to the Council shall be returned to the Council in a safe, serviceable and clean condition.

# 27. VEHICLES, PLANT AND MACHINERY

27.1 The Contractor shall at all times during the Agreement period, provide and maintain all such vehicles, plant and machinery (hereinafter referred to as "plant") as are necessary for the proper performance of the Service and shall bear all running costs in respect thereof.

27.2 The Contractor shall not permit any Plant to carry a weight above that legally permitted for that Plant.

27.3 The Contractor shall at all times be fully responsible for licensing and for the payment of all licensing fees, taxes and insurance required in connection with or arising out of the possession or use of all Plant employed in the performance of the Service.

27.4 The Contractor shall at his own expense put and keep all Plant employed in the performance of the Service at all times in good and serviceable repair in accordance with all relevant legislation and in such condition as is commensurate with the proper performance by the Contractor of his obligations under this Agreement.

27.5 The Contractor shall at all times permit the Authorised Officer access to all Plant employed for the purposes of the Agreement. The Authorised Officer shall be entitled to serve upon the Contractor a notice in writing requiring the Contractor to put any item of Plant into such condition as is required above within the period specified in such notice and the Contractor shall forthwith upon receipt of such notice cause all necessary works to be carried out to comply with such notice at no additional cost to the Council.

27.6 The Contractor shall indemnify the Council against any liability arising out of an incident caused during the use of the Contractors Plant, as detailed in Condition 16.

# 28. SECURITY

28.1 The Contractor shall hold access keys as required by the Authorised Officer and particularly where any part of the Service is to be provided outside normal hours. In such circumstances the Contractor shall be responsible for the security of any location owned or occupied by the Council and shall ensure that such location is properly secure both whilst the Service is being provided and after any part of the Service has been provided during the Contract Period.

28.2 The Contractor shall be responsible for the safekeeping of any keys, passes and other means of access provided to the Contractor by the Council and shall only permit such keys, passes and other means of access to be given to those of the Contractor's Employees whose names and addresses have been supplied to the Council and then only to the extent required for the purposes of providing the Service. In addition, the Contractor shall ensure that the Authorised Officer is informed immediately of any loss of any keys, passes and other means of access and shall reimburse to the Council any cost of replacement and/or any reasonable security measures implemented as a result of such loss.

28.3 Upon termination of the Agreement the Contractor shall immediately return all keys and passes to the Council.

# 29. QUALITY CONTROL

29.1 The Contractor shall throughout the Contract Period utilise the Council’s existing mobile system of quality control designed to ensure that the Services are always provided and in all respects in accordance with the Agreement at no extra charge to the Council. The Council has its own quality control monitoring system and will require the appointed contractor’s operatives to complete online forms on completion of site activities and to report any issues. The Contractor will be responsible for providing a suitable device with internet connectivity for use by their operatives. The device could be a smart phone or tablet provided it can access a web browser and has internet access.

# 30. INFORMATION AND PROGRESS MEETINGS

30.1 The Council shall be entitled to require the Contractor to attend a formal meeting prior to the Commencement Date in order that the Council's and the Contractor's methods and systems of operating the Agreement can be fully explained.

30.2 Progress meetings will be held between the Authorised Officer or their representative and the Contractor at a mutually agreed time and place when progress of the work will be monitored and any other matters relative to the Agreement will be discussed. These meetings will be held as and when required. At these progress meetings the Contractor will be expected to give a detailed up to date report on the progress of the work and also any reasons for non-completion of the work.

# 31. WASTE DISPOSAL SITE

31.1 The Contractor shall be responsible for all waste disposal costs (including landfill tax) in connection with the provision of the Service.

# 32. ASSIGNMENT OR SUB-LETTING

32.1 The Council shall be entitled to assign the benefit of the Agreement or any part thereof and shall give to the Contractor written notice of any assignment.

32.2 The Contractor shall not assign the benefit of the Agreement or any part thereof.

32.3 The Contractor shall not sub-contract the provision of the Service or any part thereof to any person without the previous written consent of the Authorised Officer.

# 33. ARBITRATION

33.1If any dispute or difference shall arise between the Council (or the Authorised Officer on his behalf) and the Contractor, either during the Contract Period or thereafter, as to the construction of this Agreement or as to any matter or thing of whatsoever nature arising thereunder or in connection therewith (including any matter or thing left by this Agreement to the discretion of the Authorised Officer or the withholding by the Authorised Officer of any payment which the Contractor may claim to be entitled under Condition 20 or the rights and liabilities of the parties under any of these Conditions), then such dispute or difference may at the sole discretion of the Council be referred to arbitration in accordance with Condition 33.2.

33.2 The Contractor or the Council as the case may be shall serve a written notice of dispute ("Notice of Dispute") on the other party prior to commencing any Court or Arbitration proceedings and the Notice of Dispute shall briefly summarise the nature of the dispute and shall give not less than 14 days notice of intention to commence Court or Arbitration proceedings. Upon receipt of a Notice of Dispute from the Contractor, the Council may in its absolute discretion require the dispute to be referred to Arbitration or may require it to be determined by the Courts. The Council shall give written notice of its decision within 28 days of receipt of the Notice of Dispute and the Contractor irrevocably agrees to be bound by such decision. If the Council fails to give written notice of its decision within 28 days aforesaid, then the Contractor will have the option to decide whether the dispute is to be dealt with by Arbitration or the Courts.

33.3 If the Council requires the dispute to be referred to Arbitration under Condition 33.2 then any such Arbitration shall be conducted in accordance with the Arbitration Acts 1950 and 1979 or any amendment or re-enactment thereof. Prior to the appointment of the Arbitrator, the Council may give notice in writing to the Contractor if it requires the Arbitration to be conducted in accordance with any specified rules of procedure and the Contractor hereby agrees to be bound by any such rules of procedure so notified.

33.4 If the Council decides that the dispute should be referred to Arbitration, then if within 14 days of receipt of a Notice to Concur in the Appointment of an Arbitrator the parties have failed to appoint an Arbitrator, either party may apply to the President for the time being of the Royal Institute of Chartered Surveyors to appoint an Arbitrator and the parties hereby agree that the said President shall have the power to appoint an Arbitrator.

33.5 The Arbitrator or the Court shall, without prejudice to the generality of his or its powers, have power to direct such measurements and/or valuations as may in his or its opinion be desirable in order to determine the rights of the parties and to ascertain and award any sum which ought to have been the subject of or included in any payment and to open up, review and revise any payment, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him or it in the same manner as if no such payment, opinion, decision, requirement or notice had been given.

33.6The award of any Arbitrator shall be binding on the parties.

# 34. TRANSFER OF UNDERTAKINGS

34.1 The attention of Tenderers is drawn to the Transfer of Undertakings (Protection of Employment) Regulations 1981 as amended, Council Directive 2001/23/EC and the Transfer of Employment (Pension Protection) Regulations 2005 (referred to collectively for the purposes of the following section as ‘TUPE’).

34.2 The works are currently carried out by an external contractor and not by Church Crookham Parish Council. As a result, Church Crookham Parish Council will be neither the transferor nor the transferee for the purposes of TUPE.

34.3 The application or non-application of TUPE is a matter for each Tenderer to decide for themselves. Each Tenderer should make their own enquiries and take their own professional advice.

34.3 Tenderers should indicate on the form of tender whether or not the Tender is on the basis of TUPE applying.

34.5 Tenderers should be clear that the financial implications of TUPE are a matter for Tenderers. All Tenders will be treated by Church Crookham Parish Council as fully inclusive of any financial implications arising from the application of TUPE.

# 35. QUANTITIES OF WORK

35.1 Whilst reasonable care has been taken in the preparation of the Specification and Site Plans, neither the Council nor any of its employees or agents make any representation or warranty as to the accuracy of such information and such details are provided for the purpose of information and intended as a guide only.

35.2 The Contractor shall be deemed to have inspected and examined the Locations and surrounds and information available in connection therewith and to have satisfied itself before submitting its Tender as to the form, nature and extent of the Service, and in general to have obtained for itself all necessary information as to risks, contingencies and all other circumstances which may influence or affect its Tender.

35.3 The Contractor shall be deemed to have based its Tender on the information made available by the Employer and on its own inspection and examination aforesaid, and to have satisfied itself before submitting its Tender as to the correctness and sufficiency of the resources stated by it in the Agreement which shall (unless otherwise provided in the Agreement) cover all its obligations under the Agreement.

35.4The prices and rates to be inserted in the Agreement shall be the full inclusive value of the work, including all costs and expenses except VAT which may be required to provide a satisfactory grounds maintenance service together with all general risks, liabilities and obligations set forth in or implied as necessary to comply with the Conditions of the Agreement, the Specification and all other documents forming part of the Contract including the following:-

i) labour and all costs in connection therewith,

ii) vehicles, plant and equipment and all costs in connection therewith,

iii) premises and all costs in connection therewith,

iv) the supply of materials, goods, storage and all costs in connection therewith including delivery,

v) fixing, erecting and installing or placing of materials and goods in position,

vi) all general obligations, liabilities and risks involved in the execution of the Service set forth and reasonably implied in the documents on which the Tender is based,

vii) establishment charges, overheads and profit,

viii) Contractor's management, administration and supervision including preparation of reports to the Authorised Officer,

ix) the costs of regular inspections and reports reasonably called for,

x) supply of samples of materials and conveying such materials to approved laboratory for testing,

xi) any other charges to cover the works or management relating to the provision of the Service and attendance at meetings as may be required.

35.5All prices shall be exclusive of VAT.

35.6 Within the plans the different locations have been identified and before agreeing to the Agreement the Contractor should have particular regard to the differing factors affecting each site and ensure that his resources reflect the different work content and quantity of work.

35.7The Locations are identified on the Site Plans. The accuracy of these documents provided by the Council is not guaranteed and the Contractor should satisfy himself as to the total workload, work content and physical dimensions of all locations required to be maintained within the Contract. Subject to Condition 35.8, no claims will be entertained on the basis that the Contractor has been misled by any dimensions, sizes, lengths, lines, etc, provided by the Council to assist with Tender bids.

35.8The measurements specified are believed to be correct, but the Council does not accept any liability for the individual measurements.

35.9 Any error in description shall not vitiate the Agreement nor release the Contractor from the execution of the whole or any part of the Service or from any of its obligations or liabilities under the Agreement. The Contractor shall immediately notify the Authorised Officer if it is of the opinion that there is such an error or inaccuracy. The Contractor will be required to fulfil its obligations under the Agreement, notwithstanding any inaccuracies whether as the result of any error or due to any changes either before or after the date of the Tender and no additional payment will be made to the Contractor on account of any such error or change save as otherwise provided in the Agreement.

35.10 The Authorised Officer shall except as otherwise stated herein ascertain and determine by measurement the value in accordance with the Agreement of the work done in the provision of the Service.

# 36. WAIVER

36.1 Failure by the Council at any time to enforce the provisions of the Agreement or to require performance by the Contractor of any of the provisions of the Agreement shall not be construed as a waiver of any such provision and shall not affect the validity of the Agreement or any part thereof or the right of the Council to enforce any provision in accordance with the Agreement.

# 37. JURISDICTION AND ENTIRE AGREEMENT

37.1 The Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous agreements and understandings between the parties with respect thereto, and may not be modified except as provided in Condition 3.3.

37.2 The Agreement shall be governed by and construed in all respects in accordance with the Laws of England, and each party hereby submits to the jurisdiction of the English Courts.

# 38. NOTICES

38.1 Any notice or other document to be given to the Contractor under the terms of the Agreement shall be served in writing on the Contract Manager.

38.2 Any notice or other document required to be given to the Council under the terms of the Agreement shall be served in writing on the Authorised Officer.