

## Contractor Brief

### ***Facilitator for Coastal Code (development & production)***

*A project for 'Headlands to Headspace'<sup>1</sup>, Morecambe Bay's Landscape Partnership Scheme funded by the Heritage Lottery Fund. Contract to be let by Morecambe Bay Partnership / Cumbria County Council.*

#### **1. Background**

- 1.1. Morecambe Bay Partnership wishes to appoint someone to facilitate the development of a Coastal Code, to complement the work being done to raise awareness of, and better manage recreational disturbance in Morecambe Bay, as one of a number of projects. The code is a voluntary code of conduct which we hope people/groups will sign up to. This will complement the work on the English Coast Path (route to be published for consultation April 2018).
- 1.2. The project is part of Morecambe Bay Partnership's Headlands to Headspace (H2H) Landscape Partnership's Scheme, which has been in delivery since 2014. The aims of the H2H Scheme are to deliver training, improve access and present the Bay's heritage in fresh, new ways. More information can be found here: [www.morecambebay.org.uk/our-work](http://www.morecambebay.org.uk/our-work).
- 1.3. Morecambe Bay Partnership aims to provide a Coastal Code, with as many groups and organisations on board as possible, including interest and recreational groups, and statutory organisations. Natural England will be a key player in particular, as most of the Bay is in some form of legal protection.
- 1.4. The objectives of the Coastal Code process will be 4-fold. Firstly, to raise awareness of the wildlife of the Bay (specifically birds); secondly to identify and raise awareness of the issues of recreational disturbance; thirdly to gain a deeper understanding of users' activities and perspectives; fourthly to build trust amongst recreational users and to have them on board, engaged and signing up to the voluntary Coastal Code.
- 1.5. Note that enforcement of this code is not part of the contract, and indeed enforcement generally is going to be difficult to undertake due to constraints on resources in the current economic climate.

#### **2. Requirements**

- 2.1. **The contract will be in 4 parts.** The first is to put together an **Engagement Plan**, which sets out what groups and organisations will be approached and how, with information about the identified issues that have arisen where that group/organisations is or may

---

<sup>1</sup> To understand more about the Headlands to Headspace scheme, please read the Executive Summary included as Appendix 1

be involved and other relevant information and contacts and the timescale. The Engagement Plan must be approved by MBP officers before delivery starts. A proposal/s on how the Coastal Code (CC) will look and be set out will need to be included also (though there is flexibility in this as the process will help influence the structure and approach). A programme of meetings /discussions will be drawn up beforehand as part of the Engagement Plan (see below).

- 2.2. The second part of the contract is to **deliver on the agreed Engagement Plan**, which is essentially to go and talk to groups and individuals to raise awareness of the wildlife of the Bay and the detrimental effects of recreational activities, and gain a better understanding their activities, and what they can do/are doing to reduce disturbance. Some engagement in forums/blogs may be required, plus meetings and/or workshops.
- 2.3. Evidence and experience shows that people like to be listened to, and respond more favourably when they feel they have been listened to and their interests and concerns have been considered. People generally do not respond well when restrictions (which the CC could be perceived to be) are foisted upon them. People generally prefer to be part of the solution, and not seen as part of the problem. Hence our approach in how to develop the CC in about what people can do rather than what they can't do (though in recognition that the latter is just as relevant though not the first point of discussion). Groups will also help signpost as to where the final Coastal Code is distributed (through digital/print).
- 2.4. The third part of the contract is to collate all the information from the groups/organisations in one place and **produce a report**. This will be an important document for referring back to in future, as the Coastal Code itself will not have this level of detail. This may be made available to groups/individuals, as well as individual meeting /discussion notes.
- 2.5. The fourth part of the contract is to provide a **draft of the Coastal Code** and discuss this with the key groups/organisations that have been involved in its development (a time-defined feedback period), with a **final version produced** (this must be approved by MBP/Recreational Disturbance Steering Group).
- 2.6. In addition to this, but not part of this contract, the Coastal Code will be designed for print/digital purposes, and will tie in to other interpretation materials (which are currently being developed).
- 2.7. Note that some recreation groups have already engaged with Morecambe Bay Partnership as part of the occasional stakeholder meetings held over the last 3 years. Contacts for these groups will be given to the Consultant when the contract commences. Staff at Natural England have engaged with groups in the past, and will be key to this process.

### 3. Price and payment schedule

- 3.1. The contract value is a maximum of £4,000 (excluding VAT).

- 3.2. This price covers the Consultant's time to deliver the above requirements and all other business expenses and overheads related to this delivery. All the key tasks will be required to be completed within the maximum sum available.
- 3.3. The Consultant will keep records of time spent on the project.
- 3.4. The schedule for payment will be agreed following appointment.

#### 4. Deadlines and timetable

The contract is to begin in March 2018 and will run until August 2018.

#### 5. Project management

- 5.1. The contractor/consultant will report to the client immediately if there are any unforeseen problems which may limit the ability to complete the work to schedule.
- 5.2. The contractor/consultant will keep the Natural Heritage Office regularly informed of progress as the project is delivered, and the NHO will attend meetings/workshops with recreational groups when possible.
- 5.3. The contractor/consultant will ensure that he/she will stay in touch with groups that they engaged, through to completion of the Coastal Code (and give contact details to the Natural Heritage officer).

#### 6. Work proposals and submission (criteria on which scoring will take place 6.4 to 6.6)

- 6.1. Expressions of interest – contact us by 5pm Wednesday 14<sup>th</sup> March 2018 so that we may get in touch with new information/clarity etc. before the submission deadline. This is not obligatory in order for you to submit a tender.
- 6.2. Please get in touch if you have any questions or concerns about anything in this brief, by 5pm Wednesday 14<sup>th</sup> March 2018, to allow enough time for a response and sharing of that response, if appropriate, before the deadline.
- 6.3. Interested contractors/consultants should submit a proposal by **5pm Wednesday 21<sup>st</sup> March 2018**. Late submissions will not be accepted. Submissions should be sent by email to Annabelle Kennedy (Natural Heritage Officer) [annabelle@morecambabay.org.uk](mailto:annabelle@morecambabay.org.uk) and copied to Sophie Cringle, [Sophie@morecambabay.org.uk](mailto:Sophie@morecambabay.org.uk) and will be acknowledged.
- 6.4. The proposal should be as brief as possible, but should include your approach, potential participants and how to engage them (citing examples), and any other information that you feel would make your tender stronger.
- 6.5. Consultants/contractors will be assessed on their suitability and experience. Note that an interview may be necessary (w/c 26<sup>th</sup> March 2018) to better assess suitability. It is expected that applicants can demonstrate in their tender, the following qualities and experience:
  - 6.5.1. Ecological knowledge and experience and ideally knowledge and understanding of Morecambe Bay.

- 6.5.2. Experience with consultation where the issues are complex or contentious.
  - 6.5.3. An ability to listen to people and understand different perspectives, and ideally have some experience with some of the recreational activities that have been flagged up in the Recreational Disturbance Study.
  - 6.5.4. An ability to communicate clearly and succinctly.
  - 6.5.5. Have excellent interpersonal and persuasive skill, and able to build trust.
  - 6.5.6. Be familiar with, and have a working knowledge of legislation in relation to protected areas.
- 6.6. Please confirm that you have read and agree to the general terms and conditions listed in Appendix 2.

## 7. Contract management

- 7.1. The contract manager is Annabelle Kennedy, Natural Heritage Officer. Contact details are Morecambe Bay Partnership, The Factory, Castle Mills, Aynam Road, Kendal, LA9 7DE. 01539 734888/ 07760 884 357 [annabelle@morecambabay.org.uk](mailto:annabelle@morecambabay.org.uk).
- 7.2. Please refer to the Cumbria County Council Terms and Conditions, Appendix 2 attached, and ensure you are familiar with them. The contractor, by submitting a proposal, will agree and adhere to these. Please note these terms and conditions are unable to be changed once the contract has been awarded so any changes proposed, including those determined by any company legal/department should be raised prior to submission of the tender.
- 7.3. Public liability Insurance certificates (and Employer's if relevant) will be required before commencement of work.

## 8. Background and essential guidance

- 8.1. A copy of the Recreational Disturbance study 2015 is available at <https://www.morecambabay.org.uk/sites/default/files/Morecambe%20Bay%20Bird%20Disturbance%20Report%202015.pdf>

This reports sets out the issues on specific sites, which gives some insight into the recreational users in the Bay.

- 8.2 The H2H Landscape Conservation Action Plan (LCAP) will be provided on appointment along with details of the H2H Project area.
- 8.3 The H2H team has access to data and support from their partners. This will be shared when appropriate/possible.
- 8.4 Note that there are examples of (coastal) Codes of Conduct throughout the UK on which research may be useful. Examples - <https://www.exe-estuary.org/review-of-codes-of-conduct> and <https://www.dorsetdogs.org.uk/dorset-dogs-doggy-do-code.html>
- 8.5 Note that national and local guidance may already be in place for some activities.
- 8.6 Note that as MBP works under CCC, Freedom of Information requests apply.

## APPENDIX 1

# H2H LCAP Executive summary

## Headlands to Headspace: Morecambe Bay's Landscape Partnership Scheme

### Executive Summary

Headlands to Headspace (H2H) is a major new initiative motivated by a community desire to protect and celebrate the Bay's rich heritage. This exciting Scheme will deliver training, improve access, and present the Bay's heritage in fresh, new ways. It will bring local people and new audiences together by delivering engaging activities, high quality events and meaningful volunteering opportunities. All in all, it will significantly improve understanding of the natural and cultural heritage and help conserve that heritage for future generations. In so doing, it will bring new visitors, increase pride, and raise aspiration among the community. It will achieve a wide range of benefits - for heritage, for the Bay's communities, and economic benefits too.

We intend it to be a catalyst for community renewal and sustainable heritage management into the future. Headlands to Headspace will transform the way people think about Morecambe Bay. Its lasting legacy will be to deliver much greater profile and appreciation of the Bay's unique heritage.

### The Bay's Landscape

Morecambe Bay is the largest intertidal area in the UK where four estuaries join in a horseshoe-shaped Bay of a spectacular scale and grandeur. The Bay itself is the key unifying feature of the landscape with vast, shining sands alternating with seascapes in the constant rhythm of the tide. The surrounding landscapes reveal a narrative of man's work, shaping the land and tied to the coastline from one millennium to the next. For centuries humans have earned livelihoods from fishing, seafaring, trade and farming the coastal fringes, shaping the coastal landscape and carving out a unique history and tremendous cultural richness.

The coastal communities look towards one another across the Bay. The railway adds a physical link that echoes deep economic and social connections with the Bay.

Headlands, cliffs and promenades offer spectacular vistas over the elemental landscape. The scale of these views lifts the spirits and has made the Bay a place of contemplation and religious significance through the ages. This emotional response to the Bay prompted the Scheme title – Headlands to Headspace.

### Aims of Headlands to Headspace

Headlands to Headspace will put local people at the heart of managing and looking after the heritage assets of the Bay for the long term, especially the very features that local people value most.

Headlands to Headspace offers the chance to celebrate and explore what is distinctive about the Bay and make this better connected, more accessible to all, better appreciated and better understood. The scheme will help communities to restore, enhance and celebrate the cultural and natural heritage of Morecambe Bay.

### The Scheme's main priorities are

1. Securing landscape-scale management of the coastal marshes, grasslands, headlands and islands to re-connect a fragmented network of coastal habitats.
2. Restoring important habitats for ground-nesting birds such as terns, eiders, lapwing and curlew and securing improved management for these and other rare and sensitive species and habitats, to reverse recent declines.
3. Providing significantly improved access for diverse audiences to the key natural and cultural heritage sites. Support and promote sustainable transport via the Bay Cycle Way and using the railway and its stations, and the opportunities these provide to link communities.
4. Stimulating and coordinating Higher Level Stewardship (HLS) applications to ensure that available funding is used to best effect to secure positive changes for the next decade, at least.
5. Engaging the communities around the Bay in innovative projects about their shared cultural heritage, from the first human habitation (through archaeology) to the memories of veteran fishermen (through oral history recording and celebration).

6. Creating training and volunteering opportunities for community members for archaeological, cultural and natural heritage restoration and conservation.
7. Providing enjoyable and memorable learning opportunities for all ages that will increase a sense of community pride and ownership of this unique environment and heritage.
8. Taking this unique cultural and natural heritage and bringing it to life through imaginative, innovative and creative interpretation that will be a model of best practice.

## Themes and Projects

The 28 projects in Headlands to Headspace will be delivered as a suite of linked activity. They are presented under 4 outcomes and themes: (i) conservation - built and natural heritage; (ii) community participation; (iii) access and (iv) training.

## Conservation, Participation, Access, Training

The Scheme will

- Research and improve the management of 12 heritage buildings
- Connect 330 ha of priority habitat, joining up, restoring and managing coastal habitats at a landscape scale
- Improve and safeguard roost sites and nesting sites for terns and eiders
- Research 20+ community stories
- Connect 200 Km of cycleway
- Promote sustainable transport via the railway and the Bay Cycle Way and the stations as local transport hubs
- Provide 4 Trampers to improve access for disabled people
- Promote 3+ multisensory special routes
- Produce 4 innovative new interpretative maps developing a rich sense of place
- Improve and add new importance to 6 headland viewpoints and their views
- Explore the little understood prehistory of sites with a view-shed of the Bay through a community archaeology programme
- Support well over 250 days of high quality engaging volunteer experiences
- Deliver community exhibitions bringing pride to small local communities
- Start to record and archive the rich oral history of the traditional fishing
- Develop 2 new training courses for Innocent Guides<sup>2</sup>
- Deliver 180 training places and >500 training days
- Support >20 businesses, improve the skills of >5 local heritage workers
- Deliver >30 events including heritage open days at sites not before open and
- Bring a world-class outdoor exhibition to 2 sites around the Bay, shining a national spotlight on the richness of our local heritage
- Reach several thousand people through the activities of the Scheme.

## H2H Scheme Partnership and Board

Morecambe Bay Partnership will lead the Scheme. The Partnership has an impressive track record of collaborative work. The Headlands to Headspace Board will oversee delivery. This committed partnership comprises local authorities, community bodies, and conservation, heritage and arts organisations. All have signed up to work together to deliver a high quality Scheme with a lasting legacy. The H2H Board is chaired by Professor Mark E. Smith, Vice-Chancellor of Lancaster University.

## Budget and timetable

The Scheme's total budget is £2,956,009 comprising a grant request of £1.9million<sup>3</sup> from the Heritage Lottery Fund for the delivery phase and £840,000 match funding, largely already secured. The timetable is 5 years from the start date, anticipated to be January 2014 - 2019.

---

<sup>2</sup> Innocent Guides is the name we have given to the process of turning members of community or business people into effective ambassadors of the heritage of the Bay. This is based on understanding their critical importance – not least from a body of tourism evidence that shows that people's enjoyment of a destination is massively affected by the quality of the welcome they receive from professionals like taxi drivers and hotel receptionists.

<sup>3</sup> A development grant of £100,000 from the Heritage Lottery Fund supported the development phase for H2H between January 2012 and July 2013.

## Resources and Delivery

Much of the Scheme will be delivered by 5 specially recruited Headlands to Headspace staff: (i) H2H Manager, (ii) H2H Officer, (iii) Cultural Heritage Officer, (iv) Natural Heritage Officer, (v) Community and Training Officer. Specific projects will be delivered by partners, including Art Gene, Sustrans, Marketing Lancashire, Cumbria Wildlife Trust and external contractors.

Significant match funding has been secured from the Coastal Communities Fund and WREN Biodiversity Action Fund. Partner organisations will contribute in-kind and cash contributions.

## £5 million new investment

Morecambe Bay is now a place where great things are happening. Headlands to Headspace is being delivered alongside other significant new programmes which together will bring £5 million new investment to the Bay<sup>4</sup>.

These include the Nature Improvement Area and the 700 Days Scheme - a bold programme to kick-start growth in the visitor economy. Headlands to Headspace will undertake the heritage-focused elements of this activity, but has been carefully designed to complement and dovetail with parallel activities for mutual benefit.

Integrating delivery of Headlands to Headspace with 700 Days and the other schemes makes the Bay's heritage central to activity that will transform the Bay. This

- Makes the Bay's rich cultural and natural heritage a key driver in boosting the Bay's economy
- Secures better long term management for the heritage assets into the future
- Brings maximum added value: building capacity, engagement and skills; improving the image, and quality of place for the communities of the Bay
- Secures lasting economic benefits by making the Bay a more attractive place to live, invest, and visit
- Gives genuine sustainability and ownership to the heritage by making it actively produce socio-economic benefit for the communities.

## Headlands to Headspace will transform the Bay

The Scheme is the culmination of many years' work by the Morecambe Bay Partnership. It includes a strong 10-year legacy plan with significant funding attached to ensure that the work undertaken is protected and made accessible in the future.

Headlands to Headspace can help to bring about transformational change for Morecambe Bay by putting the heritage assets of the Bay centre-stage in a major programme of activity. This is a once-in-a-lifetime moment for Morecambe Bay, and Headlands to Headspace is the right Scheme at the right time to seize that moment.

---

<sup>4</sup> Section 9.3 summarises these other Schemes and initiatives running in parallel.

# Appendix 2: CCC Terms and Conditions for Services



## Cumbria County Council is the Accountable Body for Morecambe Bay Partnership's Headlands to Headspace Scheme

### TERMS AND CONDITIONS FOR SERVICES

#### 1. DEFINITIONS

"**Acceptance Letter**" means the letter attached hereto accepting the provision of the Services issued by the Council which includes a description of the Services, the price or rate applicable to the Services and any particular terms applying to the services which are additional to these Terms and Conditions.

"**Business Day**" is a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

"**Council**" means Cumbria County Council.

"**Council's Representative**" means any person named on the Acceptance Letter as a key contact or any person who the Council notifies the Provider is to be regarded as a key contact during the course of the Contract.

"**Key Contact**" means any person named on the Acceptance Letter as a key contact or any person who the Provider notifies to the Council is to be regarded as a key contact during the course of the Services.

"**Price**" means the price or rate for the Services given in the Acceptance Letter (including all expenses of the Provider save where the Acceptance Letter states otherwise).

"**Parties**" means the Council and the Provider.

"**Premises**" means any land or building where the Services are to be performed specified in the Acceptance Letter.

"**Provider**" means the person, firm or company who is to provide the Services identified in the Acceptance Letter.

"**Services**" means the services described in the Acceptance Letter.

"**Terms and Conditions**" means these terms and conditions for the supply of the Services.

#### 2. GENERAL

2.1 These Terms and Conditions together with the Acceptance Letter and any other document, plan or specification referred to in the Acceptance Letter constitute the contract between the Parties for the Services ("the Contract").

2.2 In the event of any conflict between a clause in these Terms and Conditions and a term of the Acceptance Letter, the terms of the Acceptance Letter shall prevail.

2.3 This Contract constitutes the entire agreement between the Parties relating to the Services and replaces all previous negotiations, agreements, understandings and representations whether oral or in writing. Any terms and conditions purported to be imposed by the Provider shall not be binding on the Council under any circumstances. Where the Provider appends its standard terms and conditions to any communication and/or invoice the Provider acknowledges that the terms and conditions in this Contract shall prevail.

2.4 Nothing in this Contract shall have the effect of making the Provider an agent, servant or employee of the Council.

2.5 The headings to these Terms and Conditions are for convenience only and will not affect construction or interpretation and reference to a clause shall be a reference to a clause of these Terms and Conditions unless explicitly stated otherwise.

2.6 Words denoting anyone gender include all genders and vice versa and the singular includes the plural and vice versa.

2.7 References to persons include individuals, partnerships, bodies corporate and unincorporated associations.

2.8 References to statutes or statutory provision shall be construed to include references to those statutes or provisions as amended or re-enacted from time to time.

2.9 The words and phrases "other", "including" and "in particular" shall not limit the generality of any preceding words.

#### 3. THE SERVICES

3.1 The Provider shall provide the Services set out in the Acceptance Letter.

3.2 The Provider shall perform the Services:

- with reasonable skill, care and diligence;
- in accordance with industry best practice and using the best available techniques and standards;
- in accordance with all applicable laws;
- using staff who have appropriate skills, qualifications and experience;
- using the appropriate number of staff; and
- to the reasonable satisfaction of the Council's Representative.

3.3 The Provider shall provide all equipment and materials necessary for the performance of the Services except as otherwise agreed in writing with the Council. All equipment and materials shall be at the Provider's risk.

3.4 All equipment and materials provided by the Provider shall be of a suitable quality and fit for the purpose for which they are provided.

3.5 The Provider shall ensure that it holds and that all its employees hold all relevant licences permits and authorisations to allow the lawful performance of the Services.

3.6 The Provider shall ensure that all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Service including without limitation any specific requirements set out in the Acceptance Letter ("Necessary Consents") are in place to provide the Services and the Council shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.

3.7 Where there is any conflict or inconsistency between the provisions of the Contract and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Provider has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services.

#### 4. TIME OF PERFORMANCE

4.1 The Provider shall carry out the Services for the period and/or in accordance with the timescales set out in the Acceptance Letter. In the event that the Acceptance Letter does not specify any timescales, the Provider shall comply with any reasonable timescales notified by the Council.

4.2 The Provider shall submit such programmes of work and progress reports as the Council may from time to time require.

4.3 The Provider shall notify the Council immediately if it becomes aware of any event that it believes is likely to delay or impede the performance of the Services.

4.4 In the event that the Provider fails to meet a date or dates set out in the Acceptance Letter it shall, on the request of the Council, and without prejudice to the Council's other rights and remedies, arrange to provide all such additional resources as are necessary to fulfil its obligations at no additional cost to the Council.

#### 5. REJECTION OF SERVICES

5.1 The Council may at any time reject the Services or anything delivered as part of the Services which in the reasonable view of the Council does not comply with the Contract in any material way.

5.2 If the Council rejects all or part of the Services under clause 5.1 above, it shall serve a notice on the Provider stating the reasons for such rejection.

5.3 Following receipt of a notice of rejection of the Services, the Provider shall have 5 Business Days (or such other period as the Parties may agree in writing) during which the Provider shall address the faults or failings which caused the notice of rejection to be issued.

5.4 If the Provider fails to correct the faults or failings which caused the notice of rejection to be issued to the reasonable satisfaction of the Council within 5 Business Days, the Council shall be entitled to terminate this Contract or any part of the Services.

5.5 The Council may require the immediate removal from its premises of anything delivered by the Provider which, in the reasonable view of the Council, is hazardous, not fit for purpose or noxious. The Provider shall comply with any such request at its own expense.

#### 6. PROVIDER'S PERSONNEL

6.1 The Provider shall make Key Contacts available for the purposes of the Services and shall not make any changes in the Key Contacts without the prior written approval of the Council.

6.2 If and when requested by the Council, the Provider shall provide the Council with a list of the names of any person being used in the Services

specifying, in each case, the capacities in which they are involved and giving such other particulars and evidence of identity and other supporting evidence as the Council may reasonably require.

6.3 The Provider shall comply with any notice reasonably given by the Council stating that a person named in the notice is not to be involved any further in the provision of the Services. The Provider shall replace any such person with someone of equivalent skills and qualifications.

6.4 The Council may terminate the Contract and recover from the Provider the amount of any loss resulting from such termination if under this Contract (or any other contract the Provider has):

- the Provider fails, to ensure provision of equality of treatment for anyone who shares a Protected Characteristic as defined in the Equality Act 2010 (whether it is on such grounds as maternity, gender, transgender, marital status, ethnicity, disability, age, religion and belief and sexual orientation or otherwise) in the provision of services and in the employment of its staff and sub-contractors; and/or
- the Provider unlawfully discriminates either directly or indirectly and does not comply with the obligations of the Equality Act 2010 and or any other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

#### 7. SECURITY AND USE OF COUNCIL'S PREMISES

7.1 Where the Services are being carried out at Premises that are owned or occupied by the Council the Provider shall:

- comply and shall ensure that its staff, sub-contractors and agents comply with any rules or regulations applied by the Council in relation to security at its premises;
- comply with any notice given by the Council stating that a person named in the notice is to be removed from the Premises and/or not deployed any further in the provision of the Services. The Provider shall ensure that the person is replaced by someone of at least equivalent skills and qualifications. The decision of the Council on whether someone may be admitted to its Premises is final. The Provider shall bear the cost of complying with such a notice;
- keep the Premises reasonably clean and tidy while the Services are being performed and shall leave them clean and tidy on completion;
- pay the costs of making good any damage to the Premises (including any fixtures and fittings of the Premises) done by its employees, agents or sub-contractors other than fair wear and tear;
- enter and/or occupy such Premises as a licensee; and
- co-operate with any other person, firm or company which is providing services to the Council at the same time as the Provider.

#### 8. PAYMENT\*

8.1 In consideration for the carrying out the Services in compliance with this Contract by the Provider the Council shall pay the Provider the Price.

8.2 The Provider shall submit monthly in arrears an invoice for the Services to the Council's address for invoices given in the Acceptance Letter. The invoice shall contain the Order Number and a description of the Services carried out and the proportion of the Price payable.

8.3 The Council shall pay the Provider within 30 days of receipt and agreement of invoices, for work completed to the satisfaction of the Council.

8.4 In addition to the Price, the Council shall pay the Provider where lawfully due a sum equivalent to any Value Added Tax chargeable in respect of the Services. Value Added Tax shall be shown as a separate item on the Provider's invoice.

#### 9. RECOVERY OF SUMS DUE

If any sum is recoverable from or payable by the Provider under the Contract, that sum may be deducted from any sum then due or which at a later date becomes due to the Provider under the Contract or under any other agreement with the Council.

#### 10. AUDIT

The Provider shall keep and maintain until 6 years after the Contract has been completed records to the satisfaction of the Council of all expenditures that are reimbursable by the Council. These records shall include records of the hours worked and costs incurred by the Provider or any employees of the Provider in connection with the Services. The Provider shall on request afford the Council or any person reasonably specified by the Council such access to those records as may be required by the Council in connection with the Contract.

#### 11. FREEDOM OF INFORMATION/DPA

11.1 The Provider acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) and shall assist and co-operate with the Council (at the Provider's expense) to enable the Council to comply with information disclosure requirements under the FOIA or EIR.

11.2 The Council shall be responsible for determining at its absolute discretion whether any information in connection with this Contract is exempt from disclosure in accordance with the provisions of the FOIA or the EIR and/or is to be disclosed in response to a request for information.

11.3 The Provider shall (and shall procure that any of its personnel involved in the provision of the Contract shall) comply with any notification requirements under the Data Protection Act 1998 (DPA) and shall duly observe all their obligations under the DPA, which arise in connection with the Contract.

#### 12. HEALTH AND SAFETY

12.1 The Provider shall notify the Council of any health and safety hazards which may arise in connection with the performance of this Contract.

12.2 Where the Services are being carried out at land or premises owned or occupied by the Council, the Council shall notify the Provider of any health and safety hazards which may exist or arise at its premises and which may affect the Provider. The Provider shall draw these hazards to the attention of any of its employees, sub-contractors or agents who may be affected by them and instruct such persons in connection with any necessary safety measures.

#### 13. CONFIDENTIALITY

13.1 The Provider undertakes to keep secret and not to disclose and to procure that its employees, sub-contractors and agents keep secret and do not disclose any information of a confidential nature which it has obtained by reason of this Contract. Nothing in this clause applies to information which is already in the public domain or the possession of the Provider other than by reason of breach of this clause.

13.2 The provisions of this clause shall survive the termination of this Contract however that occurs.

#### 14. INDEMNITY AND INSURANCE

14.1 Without prejudice to any rights or remedies of the Council the Provider shall indemnify the Council against all actions, demands, losses, expenses and costs (including legal costs on a solicitor and client basis) which the Council may suffer or incur as a result of or in connection with any damage to property or any injury (whether fatal or otherwise) to any person which may result directly from any defect in the Services or any negligence or breach of this Contract by the Provider.

14.2 The Provider warrants that it has in place with a reputable insurance company a policy or policies of insurance covering all the liabilities and indemnities under this Contract.

14.3 The Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover as is reasonable (including without limitation any specific requirements set out in the Acceptance Letter) for delivery of the Services. The cover shall be in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of the Contract, including death or personal injury, loss of or damage to property or any other loss.

14.4 The Provider shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the insurances are in place.

14.5 Where professional indemnity insurance is required the Provider shall continue to maintain such insurance with a reputable insurer for a period of 3 years following completion of the Services.

14.6 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under this Contract.

14.7 Notwithstanding any other provision of this Contract neither Party limits or excludes its liability for fraud or fraudulent misrepresentation, death or personal injury caused by its negligence, or any other act or omission, liability for which may not be limited under any applicable law.

#### 15. VARIATION

15.1 This Contract may not be varied or amended unless the variation or amendment is in writing and agreed signed by both the Council and the Provider.

15.2 The price for any variation (if applicable) shall be the fair and reasonable price taking into account the market price available to the Council for similar services. The Provider shall supply the Council with all information necessary to allow the Council to ascertain whether the price is fair and reasonable.

15.3 These terms and conditions shall apply to any variation as if it were included in the original Acceptance Letter.

#### 16. ASSIGNMENT OR SUB-CONTRACTING

16.1 The Provider shall not assign, transfer or novate the Services or any part of the Contract.

16.2 The Provider shall not sub-contract the Services or any part of them without the prior written consent of the Council.

16.3 Sub-contracting of this Contract shall not in any way relieve the Provider of its obligations under the Contract.

16.4 Where consent is given by the Council for sub-contracting the Provider shall ensure that the sub-contractor has and maintains adequate insurance having regard to the obligations the sub-contractor is contracted to fulfil.

#### 17. RIGHTS OF THIRD PARTIES

Unless explicitly stated in a clause of this Contract, this Contract shall not create any rights which are enforceable by anyone other than the Parties.

#### 18. TERMINATION

18.1 The Provider shall notify the Council in writing immediately upon the occurrence of any of the following events:

a) (where the Provider is an individual) if a petition is presented for the Provider's bankruptcy or the Provider makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage his affairs;

b) (where the Provider is a firm; or a number of persons acting together in any capacity) if any event in (a) or (c) of this clause occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Provider to be wound up as an unregistered company; or

c) where the Provider is a company, if the company passes a resolution for winding-up or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.

18.2 The Council shall be entitled to terminate this Contract by notice to the Provider with immediate effect if:

a) any of the events described in clause 18.1 occurs;

b) the Provider has committed a material breach of this Contract and (if such breach is capable of remedy) has failed to remedy such breach within 5 Business Days of being required by the Council in writing to do so;

c) the Provider repeatedly breaches any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract; or

d) (where the Provider is an individual), if he shall die or be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983.

18.3 Notwithstanding clause 18.2 the Council shall be entitled to terminate this Contract at any time by giving to the Provider not less than 30 days notice to that effect.

18.4 The rights to terminate the Contract set out in this clause 18 are in addition to any other right to terminate set out elsewhere in this Contract.

18.5 Where this Contract provides for termination other than under clause 18 the exercise of such rights shall not be subject to the requirements of clause 18.

#### 19. CONSEQUENCES OF TERMINATION

19.1 On the expiry of the term or if this Contract is terminated in whole or in part for any reason the Provider shall co-operate fully with the Council to ensure an orderly migration of the Services to the Council or, at the Council's request, a replacement provider.

19.2 On expiry or termination of this Contract the Provider shall procure that all data and other material belonging to the Council (and all media of any nature containing information and data belonging to the Council or relating to the Services), shall be delivered to the Council forthwith.

19.3 On expiry or termination of this Contract the Provider shall collect any equipment and/or materials on the Council's premises placed there by

the Provider as part of the Services and the title of said equipment and/or materials has not transferred to the Council.

19.4 Where the Contract is terminated due to Provider default the Provider shall be liable for any costs incurred by the Council in finding a substitute provider to deliver the Services whether incurred before or after the termination of the Contract.

#### 20. NOTICES

20.1 Any notice or other communication given under or pursuant to this Contract must be given in writing and must be sent by first class post and must be sent to the address for communications given in the Acceptance Letter (which may be altered at any time by the altering Party giving the other Party 15 days notice of a changed address).

20.2 Communications to the Council must be sent to its address given for on the Acceptance Letter not its address for invoice and marked for the Council's Representative's attention.

20.3 A notice or communication shall be deemed to have been received 2 Business Days after posting.

#### 21. GOVERNING LAW

This Contract shall be governed by and construed in accordance with the laws of England and Wales and shall be subject to the exclusive jurisdiction of the courts of England and Wales.

#### 22. BRIBERY AND CORRUPTION

22. The Council may terminate the Contract and recover from the Provider the amount of any loss resulting from such termination:

a) if the Provider 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 so doing or forbearing to do or for having done or forbore to do any action in relation to the obtaining or execution of the contract or any other contract, with the Council or for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Council; or

b) if the like acts shall have been done by any person in the employ or on behalf of the Provider (whether with or without the Provider's knowledge); or

c) if in relation to any contract with the Council the Provider or any person in the employ of or acting on the Provider's behalf shall have committed any offence under the Bribery Act 2010, or shall have given any fee or reward the receipt of which is an offence under Section 117 of the Local Government Act 1972.

#### 23. SEVERANCE

23.1 If any provision of this Contract shall be found by any court or body or authority of competent jurisdiction to be invalid or unenforceable, that provision shall be severed from the remainder of the Contract which shall remain in full force and effect to the extent permitted by law.

23.2 If any provision of this Contract is found to be invalid or unenforceable but would be valid or enforceable if some part of the provision was deleted, the provision in question shall apply with any necessary modifications to make it valid.

#### 24. WAIVER

No forbearance or delay by either Party in enforcing its respective rights will prejudice or restrict the rights of that Party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach. In particular, but without limitation to the generality of the foregoing, any prior acceptance or approval communicated by the Council to the Provider in respect of the Services or any omission on the part of the Council to communicate such prior acceptance or approval shall not relieve the Provider of its obligations to deliver the Services in accordance with the provisions of this Contract.

#### 25. RIGHTS & REMEDIES

Subject to the specific limitations set out in this Contract, no remedy conferred by any provision of this Contract is intended to be exclusive of any other remedy except as expressly provided for in this Contract and each and every remedy shall be cumulative and shall be in addition to every other remedy given thereunder or existing at law or in equity by statute or otherwise.

26 **SURVIVAL** Any provision of this Contract which expressly or by implication is intended to come into or continue in force on or after termination of this Contract including but not limited to clauses 10, 13, 14.1, 14.5, 14.7, and 21 shall remain in full force and effect.

#### 27. TUPE

27.1 Where Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) does apply the Provider agrees that it shall

comply with all of its obligations under TUPE and the Acquired Rights Directive as applicable.

27.2 The Provider agrees to indemnify the Council against any claim howsoever arising from the application of TUPE or the Acquired Rights Directive.

27.3 During the term of this Contract, the Provider shall, on request by the Council, provide the Council within 10 Business Days, accurate and complete information as is necessary to allow bidders to assess the application of TUPE. The Provider shall warrant the accuracy of all the information provided to the Council and authorises the Council to use any and all of the information as it may consider necessary for the purposes of its business or as part of the procurement exercise. The Provider shall indemnify the Council against any financial losses arising from any differential between the information disclosed and the actual position should the Council suffer any extra cost or loss by relying on the information provided.

#### 28. PUBLICITY

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

#### 29. INTELLECTUAL PROPERTY

29.1 The intellectual property rights (including the copyright) in any reports, documentation or materials produced as part of the Services are hereby assigned to and shall vest in the Council. This clause shall survive the termination of this Contract.

29.2 Save where the Services uses documents and materials supplied by the Council, the Provider warrants that none of the documentation and materials used or created as part of the Services shall infringe any patent, trade mark, registered design, copyright or other rights in industrial property of any third party.

29.3 The Provider shall indemnify the Council against all actions, demands, charges, expenses and costs (including legal costs on a solicitor and Council basis) which the Council may incur as a result of or in connection with any breach of clause 29.2.

#### 30. PENSIONS

30.1 The Provider shall ensure that all transferring employees who were originally employed by the Council are offered membership of the pension scheme of which they were, or were eligible to be, members of prior to the relevant transfer date under this Contract, or are afforded pension rights which are certified by the Government actuary department or by a professionally qualified actuary as being broadly comparable to the terms of the pension scheme of which they were, or were eligible to be, members of prior to the relevant transfer under this Contract.

30.2 Transferring employees may in their own right enforce clause 30, even though they are not party to this Contract. This does not extend to any other clause in this Contract.