**DATED**

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Corby Borough Council

Party 1

xxxxx

Party 2

Agreement FOR TREE MANAGEMENT WORKS

This Agreement is dated 2020

Parties

1. Corby Borough Council of The Corby Cube, Parkland Gateway, George Street, Corby, Northamptonshire NN17 1QG (Council)
2. [xxx] incorporated and registered in [xxx] with company number [xxx] **whose** registered office is at [xxx] ( **Contractor**)

BACKGROUND

1. The Council has, through a competitive process, selected the Contractor to provide these services and the Contractor is willing and able to provide the services in accordance with the terms and conditions of this Agreement.

Agreed terms

1. Definitions and Interpretation
   1. The following definitions and rules of interpretation in this clause apply in this Agreement.
2. Associated Company: any holding company from time to time of the Contractor and any subsidiary from time to time of the Contractor, or any subsidiary of any such holding company.
3. Authorised Representatives: the persons respectively designated as such by the Council and the Contractor, the first such persons being set out in Schedule 5.
4. Council's Premises: the premises made available for use by the Contractor for the provision of the Services on the terms set out in this Agreement.
5. Best Industry Practice: the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the term, the pricing structure and any other relevant factors.
6. Bribery Act: the Bribery Act 2010 together with any guidance or codes of practice issued by the relevant government department concerning the legislation.
7. Change: any change to this Agreement including to any of the Services.
8. Critical Failure: any action by the Contractor, whether in relation to the Services and this Agreement or otherwise, which in the reasonable opinion of the Council's Authorised Representative has or may cause significant harm to the reputation of the Council.
9. Variation Agreement: the written record of a Change agreed or to be agreed by the parties.
10. Charges: the charges which shall become due and payable by the Council to the Contractor in respect of the Services in accordance with the provisions of this Agreement, as such charges are set out in Schedule 4.
11. Commencement Date: means xxxxxxx
12. Confidential Information: means all confidential information (however recorded or preserved) disclosed by a party or its Representatives to the other party and that party's Representatives in connection with this Agreement, including but not limited to:
    1. any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, Contractors or plans of the disclosing party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;
    2. any information developed by the parties in the course of carrying out this Agreement;
    3. Personal Data;
13. Data Controller: shall have the same meaning as set out in the Data Protection Legislation.
14. Data Processor: shall have the same meaning as set out in the Data Protection Legislation.
15. Data Protection Legislation: the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the GDPR and any other directly applicable European Union regulation relating to privacy.
16. Data Subject: shall have the same meaning as set out in the Data Protection Legislation.
17. Dispute Resolution Procedure: the procedure set out in clause 19.
18. EIRs: the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.
19. FOIA: the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.
20. Force Majeure: any circumstance not within a party's reasonable control including, without limitation:
    1. acts of God, flood, drought, earthquake or other natural disaster;
    2. epidemic or pandemic;
    3. terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
    4. nuclear, chemical or biological contamination or sonic boom;
    5. any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
    6. collapse of buildings, fire, explosion or accident; and
    7. any labour or trade dispute, strikes, industrial action or lockouts (excluding any labour or trade dispute, strike, industrial action or lockout confined to the Contractor's workforce or the workforce of any Subcontractor of the Contractor).
21. GDPR: the General Data Protection Regulation (*(EU) 2016/679*).
22. Insolvency Event: where:
    1. the Contractor suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
    2. the Contractor commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
    3. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Contractor (being a company, limited liability partnership or partnership);
    4. an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Contractor (being a company);
    5. the holder of a qualifying floating charge over the assets of the Contractor (being a company) has become entitled to appoint or has appointed an administrative receiver;
    6. a person becomes entitled to appoint a receiver over the assets of the Contractor or a receiver is appointed over the assets of the Contractor;
    7. a creditor or encumbrancer of the Contractor attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
    8. any event occurs, or proceeding is taken, with respect to the Contractor in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (i) (inclusive); or
    9. the Contractor suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
23. Intellectual Property Rights: patents, utility models, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
24. Key Personnel: those personnel identified in Schedule 5 for the roles attributed to such personnel, as modified pursuant to clause 14.
25. Law: any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body apply to the provision of the Services;
26. Necessary Consents: all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Services.
27. Personal Data: shall have the same meaning as set out in the Data Protection Legislation.
28. Prohibited Act: the following constitute Prohibited Acts:
    1. to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to: (i) induce the person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity;
    2. to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
    3. committing any offence: (i) under the Bribery Act; (ii) under legislation or common law concerning fraudulent acts; or (iii) defrauding, attempting to defraud or conspiring to defraud the Council;
    4. any activity, practice or conduct which would constitute one of the offences listed under (a) to (c), if such activity, practice or conduct had been carried out in the UK.

1. Public Body: any local authority or department, office or agency of the Crown.
2. Public Contracts Directive: Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2015.
3. Regulations: The Public Contracts Regulations 2015.
4. Representatives: means, in relation to a party, its employees, officers, representatives and advisors.
5. Request for Information: a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs.
6. Services: the services to be delivered by or on behalf of the Contractor under this Agreement, as more particularly described in Schedule 1.
7. Service Failure: a shortfall or failure by the Contractor to provide the Services in accordance with any Performance Standards, as specified in Schedule 2.
8. Contractor Party: the Contractor's agents and contractors, including each Sub-Contractor.
9. Contractor's Personnel: all employees, staff, other workers, agents and consultants of the Contractor and of any Sub-Contractors who are engaged in the provision of the Services from time to time.
10. Contractor's Tender: the tender submitted by the Contractor and other associated documentation set out in Schedule 3.
11. Sub-Contract: any contract between the Contractor and a third party pursuant to which the Contractor agrees to source the provision of any of the Services from that third party.
12. Sub-Contractor: the contractors or Contractors that enter into a Sub-Contract with the Contractor.

Term: [xxxxxxx] from the Commencement Date or the earlier termination of this Agreement in accordance with its terms.

1. Termination Date: the date of expiry or termination of this Agreement.
2. **TFEU:** the Treaty on the Functioning of the European Union.
3. **the Treaties:** the Treaty on European Union and TFEU.
4. UK Data Protection Legislation: any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation.
5. **Working** Day: Monday to Friday, excluding any public holidays in England and Wales.
6. Working Hours: the period from 9.00 am to 5.00pm on any Working Day.
   1. Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
   2. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
   3. The schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the schedules.
   4. A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
   5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
   6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
   7. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and includes any subordinate legislation for the time being in force made under it.
   8. A reference to **writing** or **written** includes e-mail.
   9. Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
   10. A reference in this Agreement to any other agreement or a document is a reference to such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this Agreement) from time to time.
   11. References to clauses and schedules are to the clauses and schedules of this Agreement and references to paragraphs are to paragraphs of the relevant schedule.
   12. Any words following the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
   13. If there is any conflict or inconsistency between the provisions in the main body of this Agreement and the schedules, such conflict or inconsistency shall be resolved according to the following order of priority:

* + 1. Schedule 1 to this Agreement;
    2. the clauses of this Agreement;
    3. the remaining schedules to this Agreement other than Schedule 3;

* + 1. Schedule 3 to this Agreement.

Commencement and duration

1. Term
   1. This Agreement shall take effect on the Commencement Date and shall continue for the Term.
2. Performance Bond and Guarantees
   1. The Contractor shall on execution of this contract, provide to the Council a performance bond or guarantee of the of the Contractors due performance of the Services from a bank of other surety approved by the Council in an amount equal to ten percent of the Charges [OR] a guarantee by the Contractor’s parent company [name of parent company to be entered here]
   2. The [bond] [guarantee] unless agreed with the Council shall be substantially in the form of the document at schedule 6
3. Due diligence and Contractor's warranty
   1. The Contractor acknowledges and confirms that:
      1. the Council has delivered or made available to the Contractor all of the information and documents that the Contractor considers necessary or relevant for the performance of its obligations under this Agreement;
      2. it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied or made available to it by or on behalf of the Council pursuant to clause 4.1(a);
      3. it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Council before the Commencement Date) of all relevant details relating to the performance of its obligations under this Agreement (including without limitation the suitability of Council Premises); and
      4. it has entered into this Agreement in reliance on its own due diligence.
   2. Save as provided in this Agreement, no representations, warranties or conditions are given or assumed by the Council in respect of any information which is provided to the Contractor by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.
   3. The Contractor:
      1. warrants and represents that all information and statements made by the Contractor as a part of the procurement process, including without limitation the Contractor's Tender or response to any pre-qualification questionnaire (if applicable), remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of this Agreement; and
      2. shall promptly notify the Council in writing if it becomes aware during the performance of this Agreement of any inaccuracies in any information provided to it by the Council during such due diligence which materially and adversely affects its ability to perform the Services or meet any Target KPIs.
   4. The Contractor shall not be entitled to recover any additional costs from the Council which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Council by the Contractor in accordance with clause 4.3(b), save where such additional costs or adverse effect on performance have been caused by the Contractor having been provided with fundamentally misleading information by or on behalf of the Council and the Contractor could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Contractor shall be entitled to recover such reasonable additional costs from the Council or shall be relieved from performance of certain obligations as shall be determined by the parties and documented in writing by Variation Agreement or equivalent document.
   5. Nothing in this clause 4 shall limit or exclude the liability of the Council for fraud or fraudulent misrepresentation.

The services

1. Supply of services
   1. The Contractor shall provide the Services to the Council with effect from the Commencement Date and for the duration of this Agreement in accordance with the provisions of this Agreement, including without limitation Schedule 1 and Schedule 2.
2. Service standards

6.1 Without prejudice to clause 5, the Contractor shall provide the Services, or procure that they are provided:

* + 1. with reasonable skill and care and in accordance with Best Industry Practice;
    2. in all respects in accordance with the Specification set out in Schedule 1 and the Performance Standards set out in Schedule 2; and
    3. in accordance with all applicable Law.

1. Service Failure

Where in the reasonable option of the Council, a Service Failure occurs, the Council shall be entitled to withhold a sum equal to any Charges which would otherwise have been due to the Contractor in respect of that Service, provided that the operation of this paragraph shall be without prejudice to the right of the Council to terminate this Contract and/or to claim damages from the Contractor for material Default

1. Compliance
   1. The Contractor shall ensure that all Necessary Consents are in place to provide the Services and the Council shall not (unless otherwise agreed in writing) incur any additional costs associated with obtaining, maintaining or complying with the same.
   2. Where there is any conflict or inconsistency between the provisions of this Agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Contractor has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services and the Contractor has notified the Council in writing.
   3. The Contractor shall (and shall procure that the Contractor's Personnel shall) perform its obligations under this Agreement (including those in relation to the Services) in accordance with all applicable Law regarding health and safety
   4. Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Council Premises of which it becomes aware and which relate to or arise in connection with the performance of this Agreement. The Contractor shall instruct the Contractor's Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.
   5. Without limiting the general obligation set out in clause 7, the Contractor shall (and shall procure that the Contractor's Personnel shall):
      1. perform its obligations under this Agreement (including those in relation to the Services) in accordance with:
         1. all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
         2. any other requirements and instructions which the Council reasonably imposes in connection with any equality obligations imposed on the Council at any time under applicable equality law;
      2. take all necessary steps, and inform the Council of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation); and
      3. at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Agreement. The Contractor shall also undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998.

**Counter-terrorism and the Prevent duty**

* 1. The Contractor is aware of the Council’s obligations under the Counter-Terrorism and Security Act 2015 including any guidance, amendments and all subsequent regulations pursuant to this Act and in particular its obligation under s26 to have due regard to the need to prevent people from being drawn into terrorism in the exercise of its functions (the “Prevent duty”)
  2. The Contractor will:
     1. co-operate with the Council in ensuring the Council’s compliance with its requirements under the Counter-Terrorism and Security Act 2015 and the Prevent duty;
     2. comply with any Counter-Terrorism and Security Act policy produced by the Council;
     3. demonstrate an awareness and understanding of the risk of radicalisation within through effective leadership, working in partnership with the Council and the utilisation of appropriate capabilities in relation to the delivery of the Services;
     4. ensure appropriate frontline staff have a good understanding of the Prevent duty and are trained to recognise vulnerability to being drawn into terrorism, are aware of available programmes to deal with this issue and will make appropriate referrals to Channel;
     5. ensure that any Council -owned venues and resources involved in the provision of the Services do not provide a platform for extremists and are not used to disseminate extremist views;
     6. use filtering solutions on any IT equipment made available to the general public under this Agreement which limit access to terrorist and extremist material.

1. Council's Premises
   1. The Council shall, subject to clause 8 and clause 15, provide the Contractor (and its Sub-Contractors) with access to such parts of the Council's Premises as the Contractor reasonably requires for the purposes only of providing the Services. The Contractor's right of access will terminate upon termination of this Agreement, subject to clause 9.2.
   2. Subject to the requirements of clause 33, in the event of the expiry or termination of this Agreement, the Council shall on reasonable notice provide the Contractor with such access as the Contractor reasonably requires to the Council's Premises to remove any of the Contractor's equipment. All such equipment shall be promptly removed by the Contractor.
   3. The Contractor shall ensure that:
      1. where using the Council's Premises they are kept properly secure and it will comply and cooperate with the Council's security requirements from time to time regarding the security of the same;
      2. only those of the Contractor's Personnel that are duly authorised to enter upon the Council's Premises for the purposes of providing the Services, do so;
   4. The Contractor shall notify the Council immediately on becoming aware of any damage caused by the Contractor, its agents, employees or Sub-Contractors to any property of the Council, to any of the Council's Premises or to any property of any other recipient of the Services in the course of providing the Services.
   5. The Contractor shall indemnify the Council against all and any damage to the Council Premises caused by the same.
2. Charges and payment
3. Payment
   1. In consideration of the provision of the Services by the Contractor in accordance with the terms and conditions of this Agreement, the Council shall pay the Charges to the Contractor.
   2. Unless otherwise stated in Schedule 4, the Charges:
      1. shall remain fixed during the Term; and
      2. is the entire price payable by the Council to the Contractor in respect of the Services and includes, without limitation, any royalties, licence fees, supplies and all consumables used by the Contractor, travel costs, accommodation expenses and the cost of Contractor's Personnel.
   3. The Contractor shall invoice the Council for payment of the Charges at the end of each calendar month. All invoices shall be directed to the Council's Authorised Representative and shall contain such information as the Council may inform the Contractor from time to time. Any such invoices shall take into account any Service Credits which have been accrued in the previous period.
   4. Where the Contractor submits an invoice to the Council in accordance with clause 11.3, the Council will consider and verify that invoice in a timely fashion.
   5. The Council shall pay the Contractor any sums due under such an invoice no later than a period of 30 days from the date on which the Council has determined that the invoice is valid and undisputed.
   6. Where the Council fails to comply with clause 11.4, and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of clause 11.5 after a reasonable time has passed after the date on which it is received by the Council.
   7. Where the Contractor enters into a Sub-Contract, the Contractor shall include in that Sub-Contract:
      1. provisions having the same effect as clause 11.4 to clause 11.6 of this Agreement; and
      2. a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clause 11.4 to clause 11.6 of this Agreement.

In this clause 11.7, "Sub-Contract" means a contract between two or more Contractors, at any stage of remoteness from the Council in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.

* 1. Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 19. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of 7 days after resolution of the dispute between the parties.
  2. Subject to clause 11.8, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this Agreement in accordance with clause 12. The Contractor shall not suspend the supply of the Services if any payment is overdue.
  3. The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Council following delivery of a valid VAT invoice. The Contractor shall indemnify the Council against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Council at any time in respect of the Contractor's failure to account for, or to pay, any VAT relating to payments made to the Contractor under this Agreement.
  4. The Contractor shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Council pursuant to this Agreement. Such records shall be retained for inspection by the Council for 6 years from the end of the Contract.
  5. The Council may retain or set off any sums owed to it by the Contractor which have fallen due and payable against any sums due to the Contractor under this Agreement or any other agreement pursuant to which the Contractor or any Associated Company of the Contractor provides goods or services to the Council.
  6. If the Council wishes to set off any amount owed by the Contractor to the Council against any amount due to the Contractor pursuant to clause 11.12 it shall give notice to the Contractor within 30 days of receipt of the relevant invoice, setting out the Council's reasons for withholding or retaining the relevant Charges.
  7. The Contractor shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Contractor.

1. Interest
   1. Each party shall pay interest on any sum due under this Agreement, calculated as follows:
      1. Rate. 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
      2. Period. From when the overdue sum became due, until it is paid.
2. Unitary
   1. In the event of the establishment of a unitary authority or another legal structure, or change in the legal status of the Council which means that it ceases to be a public authority, the Council shall be freely entitled to assign, novate or otherwise transfer its rights and obligations under this Agreement to;
      1. a government body; or
      2. to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Council;
   2. The Council shall be entitled to novate this Agreement to any other body which substantially performs any of the functions that previously had been performed by the Council (and the Contractor shall be deemed to consent to any such novation).

Staff

1. Key personnel
   1. Each party shall appoint the persons named as such in Schedule 5 as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each party as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of their respective party on the matters for which they are expressed to be responsible.
   2. The Contractor shall not remove or replace any of the Key Personnel unless:
      1. requested to do so by the Council;
      2. the person is on long-term sick leave;
      3. the element of the Services in respect of which the individual was engaged has been completed to the Council's satisfaction;
      4. the person resigns from their employment with the Contractor; or
      5. the Contractor obtains the prior written consent of the Council.
   3. The Contractor shall inform the Council of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified.
   4. Each party shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than 14 Working Days. Any replacement shall be as, or more, qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Contractor or the Council becoming aware of the role becoming vacant.
   5. The Council may require the Contractor to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities.
   6. If the Contractor replaces the Key Personnel as a consequence of this clause 14, the cost of effecting such replacement shall be borne by the Contractor.
2. Other personnel used to provide the services
   1. At all times, the Contractor shall ensure that:
      1. each of the Contractor's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
      2. there is an adequate number of Contractor's Personnel to provide the Services properly;
      3. only those people who are authorised by the Contractor (under the authorisation procedure to be agreed between the parties) are involved in providing the Services; and
      4. all of the Contractor's Personnel comply with all of the Council's policies notified to the Contractor including those that apply to persons who are allowed access to the applicable Council's Premises.
   2. The Council may refuse to grant access to, and remove, any of the Contractor's Personnel who do not comply with any such policies, or if they otherwise present a security threat.
   3. The Contractor shall replace any of the Contractor's Personnel who the Council reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Contractor's Personnel for any reason, the Contractor shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
   4. The Contractor shall maintain up-to-date personnel records on the Contractor's Personnel engaged in the provision of the Services and shall provide information to the Council as the Council reasonably requests on the Contractor's Personnel. The Contractor shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.
   5. The Contractor shall use its reasonable endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good at the prevailing industry norm for similar services, locations and environments.

Contract Management

1. Reporting and meetings
   1. The Contractor shall provide reports in the form and at the intervals required by the Council’s Authorised Representative.
   2. The Authorised Representatives and relevant Key Personnel shall meet at the times and dates required by the Council’s Authorised Representative.
2. Monitoring
   1. The Council may monitor the performance of the Services by the Contractor as detailed in the Monitoring Arrangements sections of Schedule 2
   2. The Contractor shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Council in carrying out the monitoring referred to in clause 17.1 at no additional charge to the Council.
3. Continuous improvement
   1. Any requirement for a Change shall be agreed mutually by the parties
   2. The Contractor shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services. As part of this obligation the Contractor shall identify and report to the Council's Authorised Representative as soon as reasonably possible:
      1. the emergence of new and evolving relevant technologies which could improve the Services;
      2. new or potential improvements to the Services including the quality, responsiveness, procedures, methods, performance mechanisms and customer support services in relation to the Services;
      3. new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Council which might result in efficiency or productivity gains or in reduction of operational risk; and
      4. changes in ways of working that would enable the Services to be delivered at lower costs and/or bring greater benefits to the Council.
   3. Any potential Changes highlighted as a result of the Contractor's reporting in accordance with clause 18.2 shall be addressed by the parties by way of a Variation Agreement.
4. Dispute resolution
   1. If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the procedure set out in this clause:
      1. either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;
      2. if the Authorised Representatives are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Council's Head of Housing and Neighbourhood Services and the Contractor's Director who shall attempt in good faith to resolve it; and
      3. if the Council's Head of Housing and Neighbourhood Services and the Contractor's Director are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. The mediation will start not later than 14 days after the date of the ADR notice.
   2. The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 45 which clause shall apply at all times.
5. Sub-Contracting and assignment
   1. Subject always to clause 13 and 20.3, neither party shall assign, novate, subcontract or otherwise dispose of any or all of its rights and obligations under this Agreement without the prior written consent of the other party, neither may the Contractor sub-contract the whole or any part of its obligations under this Agreement except with the express prior written consent of the Council, such consent not to be unreasonably withheld.
   2. In the event that the Contractor enters into any Sub-Contract in connection with this Agreement it shall:
      1. remain responsible to the Council for the performance of its obligations under this Agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;
      2. impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this Agreement and shall procure that the Sub-Contractor complies with such terms; and
      3. provide a copy, at no charge to the Council, of any such Sub-Contract on receipt of a request for such by the Council's Authorised Representative.
   3. Provided that the Council has given prior written consent, the Contractor shall be entitled to novate this Agreement where:
      1. the specific change in contractor was provided for in the procurement process for the award of this Agreement;
      2. there has been a universal or partial succession into the position of the Contractor, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this Agreement.

Liability

1. Indemnities
   1. Subject to clause 21.2, the Contractor shall indemnify and keep indemnified the Council against all liabilities, costs, expenses, damages and losses incurred by the Council arising out of or in connection with:
      1. the Contractor's breach or negligent performance or non-performance of this Agreement;
      2. any claim made against the Council arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Agreement by the Contractor or Contractor Personnel;
      3. the enforcement of this Agreement.
   2. The indemnity under clause 21.1 shall apply except insofar as the liabilities, costs, expenses, damages and losses incurred by the Council are directly caused (or directly arise) from the negligence or breach of this Agreement by the Council or its Representatives.
2. Limitation of liability
   1. Subject to clause 22.2, neither party shall be liable to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with this Agreement.
   2. Notwithstanding the provision of clause 22.1, the Contractor assumes responsibility for and acknowledges that the Council may, amongst other things, recover:
      1. sums paid by the Council to the Contractor pursuant to this Agreement, in respect of any services not provided in accordance with this Agreement;
      2. wasted expenditure;
      3. additional costs of procuring and implementing replacements for, or alternatives to, the Services, including consultancy costs, additional costs of management time and other personnel costs and costs of equipment and materials;
      4. losses incurred by the Council arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third party (including any Subcontract, Contractor's Personnel, regulator or customer of the Council) against the Council caused by the act or omission of the Contractor; and
      5. any anticipated savings.
   3. Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage arising out of or in connection with this Agreement, including any losses for which the relevant party is entitled to bring a claim against the other party pursuant to the indemnities in this Agreement.
   4. Notwithstanding any other provision of this Agreement neither party limits or excludes its liability for:
      1. fraud or fraudulent misrepresentation;
      2. death or personal injury caused by its negligence (or the negligence of its personnel, agents or subcontractors);
      3. breach of any obligation as to title implied by statute; or
      4. any other liability for which may not be limited under any applicable law

(shall be unlimited)

* 1. in respect of all other types of liability falling outside those listed in Clause 22.2 but arising out of or in connection with the Contractor’s performance of this Agreement, the Contractor’s liability to the Council shall be limited to £Contract1 million pounds for each and every occurrence or connected series of occurrences giving rise to losses.
  2. The Council liabilities under this Agreement shall be limited to the value of the Charges.

1. Insurance
   1. The Contractor shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:
      1. public liability insurance with a limit of indemnity of not less than £10,000,000.00 (Ten Million Pounds) in relation to any one claim or series of claims;
      2. employer's liability insurance with a limit of indemnity of not less than £10,000,000.00 (Ten Million Pounds)**;**

(the Required Insurances). The cover shall be in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of this Agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor.

* 1. The Contractor 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 Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
  2. If, for whatever reason, the Contractor fails to give effect to and maintain the Required Insurances, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
  3. The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under this Agreement.

Information

1. Freedom of information
   1. The Contractor acknowledges that the Council is subject to the requirements of the FOIA and the EIRs. The Contractor shall:
      1. provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and EIRs;
      2. transfer to the Council all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
      3. provide the Council with a copy of all Information belonging to the Council requested in the Request For Information which is in its possession or control in the form that the Council requires within 5 Working Days (or such other period as the Council may reasonably specify) of the Council's request for such Information; and
      4. not respond directly to a Request For Information unless authorised in writing to do so by the Council.
   2. The Contractor acknowledges that the Council may be required under the FOIA and EIRs to disclose Information (including commercially sensitive information) without consulting or obtaining consent from the Contractor. The Council shall take reasonable steps to notify the Contractor of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Council shall be responsible for determining in its absolute discretion whether any commercially sensitive information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.
   3. Notwithstanding any other term of this Agreement, the Contractor consents to the publication of this Agreement in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA and EIRs.
   4. The Council shall, prior to publication, consult with the Contractor on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decisions in its absolute discretion. The Contractor shall assist and co-operate with the Council to enable the Council to publish this Agreement.
2. Data processing
   1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 25 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. In this clause 25, **Applicable Laws** means (for so long as and to the extent that they apply to the Contractor) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.
   2. The parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Data Controller and the Contractor is the Data Processor.
   3. Without prejudice to the generality of clause 25.1, the Council will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Contractor for the duration and purposes of this Agreement.
   4. Without prejudice to the generality of clause 25.1, the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this Agreement:
      1. process that Personal Data only on the written instructions of the Council, unless the Contractor is required by Applicable Laws to otherwise process that Personal Data. Where the Contractor is so required, it shall promptly notify the Council before processing the Personal Data, unless prohibited by the Applicable Laws;
      2. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Council, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
      3. not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
         1. the Council or the Contractor has provided appropriate safeguards in relation to the transfer;
         2. the Data Subject has enforceable rights and effective remedies;
         3. the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
         4. the Contractor complies with the reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
      4. notify the Council immediately if it receives:
         1. a request from a Data Subject to have access to that person's Personal Data;
         2. a request to rectify, block or erase any Personal Data;
         3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
      5. assist the Council in responding to any request from a Data Subject and in ensuring compliance with the Council's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
      6. notify the Council immediately and in any event within 24 hours on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this Agreement;
      7. at the written direction of the Council, delete or return Personal Data and copies thereof to the Customer on termination or expiry of this Agreement unless required by the Applicable Laws to store the Personal Data;
      8. maintain complete and accurate records and information to demonstrate its compliance with this clause 25 and allow for audits by the Council or the Council's designated auditor pursuant to clause 27;
   5. The Contractor shall indemnify the Council against any losses, damages, cost or expenses incurred by the Council arising from, or in connection with, any breach of the Contractor's obligations under this clause 25.
   6. Where the Contractor intends to engage a Sub-Contractor pursuant to clause 20 and intends for that Sub-Contractor to process any Personal Data relating to this Agreement, it shall:
      1. notify the Council in writing of the intended processing by the Sub-Contractor;
      2. obtain prior written consent to the processing;
      3. ensure that any Sub-Contract imposes obligations on the Sub-Contractor to give effect to the terms set out in this clause 25.
   7. Either party may, at any time on not less than 30 Working Days' written notice to the other party, revise this clause 25 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
   8. The provisions of this clause shall apply during the continuance of this Agreement and indefinitely after its expiry or termination.
3. Confidentiality
   1. Subject to clause 26.2, each party shall keep the other party's Confidential Information confidential and shall not:
      1. use such Confidential Information except for the purpose of performing its rights and obligations under or in connection with this Agreement; or
      2. disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 26.
   2. The obligation to maintain confidentiality of Confidential Information does not apply to any Confidential information:
      1. which the other party confirms in writing is not required to be treated as Confidential Information;
      2. which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
      3. which a party is required to disclose by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the FOIA or the EIRs;
      4. which is in or enters the public domain other than through any disclosure prohibited by this Agreement;
      5. which a party can demonstrate was lawfully in its possession prior to receipt from the other party; or
      6. which is disclosed by the Council on a confidential basis to any central government or regulatory body.
   3. A party may disclose the other party's Confidential information to those of its Representatives who need to know such Confidential Information for the purposes of performing or advising on the party's obligations under this Agreement, provided that:
      1. it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
      2. it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to this Agreement,
      3. and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this clause 26.3*.*
4. Audit
   1. During the Term and for a period of 6 years after the Termination Date, the Council (acting by itself or through its Representatives) may conduct an audit of the Contractor, including for the following purposes:
      1. to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this Agreement) and/or the costs of all Contractors (including Sub-Contractors) of the Services;
      2. to review the integrity, confidentiality and security of any data relating to the Council or any service users;
      3. to review the Contractor's compliance with the Data Protection Legislation, the FOIA, in accordance with clause 25 (Data Protection) and clause 24 (Freedom of Information) and any other legislation applicable to the Services;
      4. to review any records created during the provision of the Services;
      5. to review any books of account kept by the Contractor in connection with the provision of the Services;
      6. to carry out the audit and certification of the Council's accounts;
      7. to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources;
      8. to verify the accuracy and completeness of any reports delivered or required by this Agreement.
   2. Except where an audit is imposed on the Council by a regulatory body, the Council may not conduct an audit under this clause 27 more than twice in any calendar year.
   3. The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services.
   4. Subject to the Council's obligations of confidentiality, the Contractor shall on demand provide the Council and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
      1. all information requested by the above persons within the permitted scope of the audit;
      2. reasonable access to any sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
      3. access to the Contractor's Personnel.
   5. The Council shall endeavour to (but is not obliged to) provide at least 15 Working Days' notice of its intention or, where possible, a regulatory body's intention, to conduct an audit.
   6. The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this Agreement in any material manner by the Contractor in which case the Contractor shall reimburse the Council for all the Council's reasonable costs incurred in the course of the audit.
   7. If an audit identifies that:
      1. the Contractor has failed to perform its obligations under this Agreement in any material manner, the parties shall agree and implement a remedial plan. If the Contractor's failure relates to a failure to provide any information to the Council about the Charges, proposed Charges or the Contractor's costs, then the remedial plan shall include a requirement for the provision of all such information;
      2. the Council has overpaid any Charges, the Contractor shall pay to the Council the amount overpaid within 20 days. The Council may deduct the relevant amount from the Charges if the Contractor fails to make this payment; and
      3. the Council has underpaid any Charges, the Council shall pay to the Contractor the amount of the under-payment less the cost of audit incurred by the Council if this was due to a default by the Contractor in relation to invoicing within 20 days.
5. Intellectual property
   1. In the absence of prior written agreement by the Council to the contrary, all Intellectual Property Rights created by the Contractor or Contractor's Personnel:
      1. in the course of performing the Services; or
      2. exclusively for the purpose of performing the Services,

shall vest in the Council on creation.

* 1. The Contractor shall indemnify the Council against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Council's acts or omissions.

Termination

1. Termination for breach
   1. The Council may terminate this Agreement in whole or part with immediate effect by the service of written notice on the Contractor in the following circumstances:
      1. if the Contractor is in breach of any material obligation under this Agreement provided that if the breach is capable of remedy, the Council may only terminate this Agreement under this clause 29.1 if the Contractor has failed to remedy such breach within 28 days of receipt of a notice to do so;
      2. if a Service Failure has occurred;
      3. if a Critical Failure has occurred;
      4. if there is an Insolvency Event.
      5. if there is a change of control of the Contractor within the meaning of section 1124 of the Corporation Tax Act 2010.
      6. the Council reasonably believes that the circumstances set out in regulation 73(1) of the Public Contracts Regulations 2015 apply.
      7. if this Agreement has been subject to a substantial modification which would have required a new procurement procedure pursuant to regulation 72 of the Regulations;
      8. if the Contractor has, at the time of this Agreement’s award, been in one of the situations referred to in regulation 57(1) to (3) of the Regulations and should therefore have been excluded from the procurement procedure; or
      9. if this Agreement should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the EU in a procedure pursuant to Article 258 of TFEU.
   2. The Council may terminate this Agreement in accordance with the provisions of clause 31 and clause 32.
   3. If this Agreement is terminated by the Council pursuant to this clause 29, such termination shall be at no loss or cost to the Council and the Contractor hereby indemnifies the Council against any such losses or costs which the Council may suffer as a result of any such termination.
2. Termination on notice

Without affecting any other right or remedy available to it, the Council may terminate this Agreement at any time by giving 3 months' written notice to the Contractor.

1. Force majeure
   1. Provided it has complied with the remaining provisions of this Clause 32, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations.
   2. The corresponding obligations of the other party will be suspended to the same extent as those of the Affected Party.
   3. The Affected Party shall:
      1. as soon as reasonably practicable after the start of the Force Majeure Event but not later than 7 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this Agreement; and
      2. use all reasonable endeavours to mitigate the effect of the Force Majeure Event.
   4. An Affected Party cannot claim relief if the Force Majeure Event is attributable to the Affected Party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event. The Contractor cannot claim relief if the Force Majeure Event is one which, in accordance with Best Industry Practice, the Contractor should have foreseen and provided for the cause in question.
   5. The Affected Party shall notify the other party in writing as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
   6. If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 4 weeks, the party not affected by the Force Majeure Event may terminate this Agreement by giving 2 weeks' notice to the Affected Party.
2. Prevention of bribery
   1. The Contractor represents and warrants that neither it, nor to the best of its knowledge any Contractor's Personnel, have at any time prior to the Commencement Date:
      1. committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
      2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
   2. The Contractor shall not during the Term:
      1. commit a Prohibited Act; and/or
      2. do or suffer anything to be done which would cause the Council or any of the Council's employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.
   3. The Contractor shall during the Term:
      1. establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and
      2. keep appropriate records of its compliance with its obligations under clause 32.3(a) and make such records available to the Council on request.
   4. The Contractor shall immediately notify the Council in writing if it becomes aware of any breach of clause 32.1 and/or clause 32.2, or has reason to believe that it has or any of the Contractor's Personnel have:
      1. been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
      2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
      3. received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.
   5. If the Contractor makes a notification to the Council pursuant to clause 32.4, the Contractor shall respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit any books, records and/or any other relevant documentation in accordance with clause 27.
   6. If the Contractor is in Default under clause 32.1 and/or clause 32.2, the Council may by notice:
      1. require the Contractor to remove from performance of this Agreement any Contractor's Personnel whose acts or omissions have caused the Default; or
      2. immediately terminate this Agreement.
   7. Any notice served by the Council under clause 32.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Council believes has committed the Prohibited Act and the action that the Council has elected to take (including, where relevant, the date on which this Agreement shall terminate).
3. Consequences of termination or expiry
   1. On termination or expiry of this Agreement the Contractor 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 and the Contractor shall certify full compliance with this clause.
   2. Any provision of this Agreement that expressly or by implication is intended to come into or continue force on or after termination or expiry, including clause 6.3 (provision of records), clause 21 (Indemnities), clause 22 (Limitation of Liability), clause 23 (Insurance), clause 24 (Freedom of Information), clause 25 (Data Protection), clause 26 (Confidentiality), clause 27 (Audit), clause 29 (Termination for Breach) and this clause 33 (Consequences of termination), shall remain in full force and effect.
   3. Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of this Agreement which existed at or before the Termination Date.

General provisions

1. Waiver

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

1. Rights and remedies

The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

1. Severability
   1. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.
   2. If any provision or part-provision of this Agreement is deemed deleted under clause 36.1, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
2. Partnership or agency
   1. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
   2. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
3. Third party rights
   1. This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
   2. The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.
4. Publicity

The Contractor shall not:

* + 1. make any press announcements or publicise this Agreement or its contents in any way; or
    2. use the Council's name or logo in any promotion or marketing or announcement of orders,

except as required by law, any government or regulatory authority, any court or other authority of competent jurisdiction, without the prior written consent of the Council which shall not be unreasonably withheld or delayed.

1. Notices
   1. Any notice given to a party under or in connection with this Agreement shall be in writing marked for the attention of the party's Authorised Representative and shall be:
      1. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
      2. sent by e-mail.
   2. Any notice shall be deemed to have been received:
      1. if delivered by hand, on signature of a delivery receipt;
      2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service.
      3. if sent by e-mail at the time of transmission, or if this time falls outside working hours in the place of receipt, when working hours resume. In this clause 40.2(c), working hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
   3. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
   4. A notice given under this Agreement is not valid is sent by email.
2. Variation
   1. No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or in the case of the Contractor, its Authorised Representatives).
3. TUPE
   1. The Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”) as amended shall not apply to this Agreement.
4. NOT USED
5. Entire agreement
   1. This Agreement and the documents referred to in it constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
   2. Any terms purported to apply explicitly or implicitly by the Contractor by any means (including without limitation by way of a quote, invoice or tender) are expressly excluded from this Agreement.
6. Governing law

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

1. Jurisdiction

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

**IN WITNESS** whereof this Agreement has been executed as a DEED by the Parties;

|  |  |
| --- | --- |
| EXECUTED as a DEED |  |
| by the affixing of the COMMON SEAL of |  |
| Corby Borough Council |  |
| in the presence of: | ................................. |
|  | Authorised Signatory |
|  |  |
| EXECUTED as a DEED |  |
| [xxxx] |  |
| acting by and under the signatures of: |  |
| NAME OF DIRECTOR | ................................. |
|  | SIGNATURE OF DIRECTOR |
|  | Director |
|  |  |
| NAME OF DIRECTOR OR COMPANY SECRETARY | ................................. |
|  | SIGNATURE OF DIRECTOR OR COMPANY SECRETARY |

Schedule 1 Specification

Schedule 2

Performance Standards

1. All sites to be left safe and tidy at the end of each day, limbs to be left in a manageable lengths ready for collection by the Woodland Project, chippings to be chipped into the woodland in suitable locations
2. Tree works to be completed in adherence to the tender specification
3. Full compliance with the H&S executive guidance on tree works: <https://www.hse.gov.uk/treework/safety-topics/index.htm>
4. Any concerns raised by the Council will be remedied within 48 hours
5. All method statements and risk assessments (RAMS) will be provided prior to the commencement date
6. Each site is heavily used by the public and as such the use of signage and correct PPE will be used at all times as per the contractors RAMS

Monitoring Arrangements

1. Routine inspections will be carried out at any location by the Council’s Authorised Representative on a weekly basis. Such operations will be carried out throughout the contract period in order to check that works are being carried out or have been carried out in all respects in accordance with this Agreement.
2. The Council’s Authorised Representative will record the date, time and main findings of all such inspections. In the event of any works which fail to meet the required standards being discovered, then the Council’s Authorised Representative shall notify the Contractor of the elements of works which fail to meet the required standard and the Contractor shall remedy same within 48 hours of such notification.

Following the Monitoring Arrangements set out above if the level of performance of the Contractor:

1. is likely to or fails to meet any Performance Standard; or
2. is likely to cause or causes a Critical Failure to occur, the Contractor shall immediately notify the Council in writing and the Council, in its absolute discretion and without limiting any other of its rights, may:
   1. require the Contractor to immediately take all remedial action that is reasonable to mitigate the impact on the Council and to rectify or prevent a Performance Standard failure or Critical Failure from taking place or recurring
   2. if Performance Standards have not been met, make the deductions set out in clause 7
   3. if a Critical Failure has occurred, exercise its right to terminate for material default).

Schedule 3 Contractor's Tender/Clarification Questions and Responses

Schedule 4 Charges and payment

* + 1. Calculation of the Charges

The Charges shall be calculated on the basis of the rates and prices set out in this Schedule.

Schedule 5 Contract management

For the Council:

Authorised representatives

Name: Rebecca Jenkins

Title: Woodland Manager

Email: Rebecca.Jenkins@corby.gov.uk

Key personnel

1. Name: Rebecca Jenkins

Title: Woodland Manager

Email: Rebecca.Jenkins@corby.gov.uk

2. Name: Sarah Ransom:

Title: Parks and Woodland Ranger

Tel: 07966 155434

Email: Sarah.ransom@corby.gov.uk

For the Contractor:

[xxx]

Schedule 6 Performance Bond and Guarantees