**Conditions of Contract**

**Replacement of Passenger Lift Westport house**

1. **Definitions and Construction**
   1. In these conditions except where the context otherwise requires the following expressions shall have the following meanings:

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| “**Agreement**” | means the agreement to be entered into by the Council and the Contractor in the form set out in the Instructions to Tenderers; |
| “**Bank Holiday**” | has the meaning given by the Banking and Financial Dealings Act 1971 section 1; |
| “**Commencement Date**” | has the meaning given in the Agreement; |
| “**Conditions**” | means these conditions; |
| “**Contract**” | means the Agreement these Conditions, the Specification, the Tender Form, and the Schedules and Annexes to them (if any); |
| “**Contractor**” | means the contractor chosen to carry out the Services. |
| “**Contractor’s Representative**” | means the representative of the Contractor authorised and notified in writing to the Council to act on behalf of the Contractor for the purposes of the Contract; |
| “**Contract Period**” | has the meaning given in the Agreement; |
| **“Council”** | means Purbeck District Council; |
| “**Daywork Rates**” | the rates for the performance of the Services described in the Bills of Quantities (if any) |
| “**Default**” | means any breach of the obligations of the Contractor under the Contract or any default, act, omission or negligence of the Contractor or Staff in connection with or in relation to the subject matter of the Contract; |
| “**Enactments**” | means directives, statutes, regulations, orders, instruments, national and governmental codes of practice and best practice guidelines or other similar instruments as the same may be amended, replaced, or re-enacted by any subsequent directive, statute, regulation, order, instrument, code or guidelines and references to any statute shall also include any secondary legislation made under it; |
| “**Intellectual Property Rights**” | means patents, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, semi-conductor topography rights, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including the United Kingdom) and the right to sue for passing off; |
| “**Review**” | means the review of the to be undertaken on the Review Dates; |
| '**Review Dates**' | means the relevant anniversary of the Commencement Date as the context requires; |
| “**Services**” | means the services to be provided comprising services as set out in the Specification; |
| “**Staff**” | means all persons engaged by the Contractor to perform the Contract or used in the performance of the Contract including the Contractor’s employees, agents and sub-contractors; |
| **“the Supervising Officer”** | means the officer of the Council authorised and notified in writing to the Contractor to act on behalf of the Council for the purposes of the Contract; |
| “**Working Day**” | means Monday to Friday inclusive other than Bank Holidays and any other public holidays; |

* 1. Words denoting an obligation on a party to do any act, matter or thing include an obligation to procure that it is done and words placing a party under a restriction include an obligation not to cause permit or allow infringement of this restriction.
  2. The headings and titles in this Contract are for ease of reference only and shall not be taken into account in its construction or interpretation.
  3. The expression “**person**” used in this Contract shall include (without limitation) any individual, partnership, local authority, or incorporated or unincorporated body.
  4. The expression “**including**” means including without limitation or prejudice to the generality of any preceding description, defining term, phrase or word(s) and “include” shall be construed accordingly;
  5. Words importing the masculine gender include the feminine gender and words in the singular include the plural and vice versa.
  6. The Contract represents the entire understanding between the Contractor and the Council in relation to the subject matter of the Contract and supersedes all prior contracts, undertakings, representations and negotiations whether oral or written except that nothing this condition shall exclude or restrict liability for fraudulent or fundamental misrepresentations.

1. **Appointment of the Contractor and Provision of the Services**
   1. The Contractor will provide the Services (and any modifications authorised by or under the Contract) for the Contract Period and will otherwise perform its obligations under the Contract in accordance with the Contract.
   2. The Contractor will provide the Services and perform its obligations under the Contract in a proper, skilful and professional manner in accordance with all relevant professional and technical standards and the service standards specified in the Specification.
   3. The Contractor shall employ sufficient staff in and about the provision of the Services and shall ensure that every person so employed is at all times properly and sufficiently qualified, competent, careful, skilled, experienced, instructed and supervised as the case may be with regard to the Services to be provided.
2. **Contract Period**
   1. This Contract shall remain in force from the Commencement Date for a period of 18 months and shall not be terminable by the Council or the Contractor within the Contract Period otherwise than in accordance with this Contract.
   2. If provided for in the Agreement the Council may extend the Contract Period at their option by giving six month’s written notice to the Contractor or such lesser period of notice as may be agreed with the Contractor for a further period as the Council may determine, not exceeding 2 years, but otherwise upon the same terms and conditions set out in this Contract except that any Review shall be extended to the relevant anniversaries of the Commencement Date.
   3. The option shall be exercisable as follows:

3.3.1 the Council shall give notice of its wish to extend the Contract Period to the Contractor not less than 18 months before the expiry of the original Contract Period;

3.3.2 the Service Provider shall serve a counter-notice on the Council accepting the extension or not accepting the extension within 6 weeks of the Council’s notice;

3.3.3 a failure to serve a notice or a counter-notice shall be taken as indicating that the Council does not wish to exercise the option, or that the Contractor does not wish the Contract to be extended, as the case may be.

1. **Payment and method of payment**
   1. Provided that the Contractor shall have performed the Services in accordance with the Contract, the Council shall pay to the Contractor upon receipt of a valid VAT invoice at 3 key Instalment stages in arrears for the Services. These instalment will be factored and are shown in Table 1 below:

|  |  |
| --- | --- |
| **Table 1** | |
| **Period** | **% of Total Sum** |
| Start | 40 |
| Middle | 30 |
| Completion | 30 |
| **Total** | **100** |

* 1. Where the Contractor submits an invoice to the Council in accordance with clause 4.1, the Council will consider and verify that invoice in a timely fashion.
  2. ​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.
  3. ​Where the Council fails to comply with clause 4.2 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 4.2 after a reasonable time has passed.
  4. ​Where the Contractor enters into a Sub-Contract, the Contractor  
     shall include in that Sub-Contract:
     1. ​Provisions having the same effect as clauses 4.2 to 4.4 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 clauses 4.2 to 4.4 of this Agreement.
     3. ​In this clause 4, “Sub-Contract” means a contract between two or more  
        suppliers, 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..
  5. Each invoice shall contain a detailed breakdown of Services supplied and shall be supported by any information required by the Council to substantiate such invoice.
  6. Without prejudice to any other right or remedy, the Council may reduce payment in respect of any Services which the Contractor has failed to provide or has provided inadequately.

1. **VAT**

Sums payable to the Contractor under this Contract are exclusive of VAT.

1. **Method of Review**

The Contract Price and the prices and rates stated in the Pricing Schedule shall be reviewed on each annual review date and shall be increased or reduced by a percentage equivalent to the percentage increase or reduction (if any) shown in the Retail Price Index.

1. **Monitoring and review of performance**
   1. During the Contract Period the Contractor shall perform the Services (and any modifications thereof authorised under the Conditions) in a manner totally consistent with the agreed Specification.
   2. The Contractor shall maintain comprehensive and accurate records of work carried out in the provision of the Services and shall provide the Council with access to such records upon request.
   3. The Contractor shall provide and supply to the Council at no cost to the Council such other information or access to such information as the Council may reasonably request as to the provision of the Services and the performance of the Contractor’s obligations under the Contract and render the Council all reasonable assistance in connection with their monitoring and review.
   4. Reviews shall be carried out on a quarterly basis at a time to be agreed between the Council and the Contractor.
2. **Changes to Services and variation to contract**
   1. Without prejudice to any other of these Conditions, no omission from, addition to or variation of this Contract shall be valid or of any effect unless it is agreed in writing and signed by the Supervising Officer and the Contractor’s Representative
   2. The Supervising Officer shall be entitled to issue to the Contractor reasonable instructions in writing requiring the Contractor to do all or any of the following and the Council will reimburse the Contractor his reasonable costs in carrying out any instructions under this Clause:
3. to omit and to cease to perform any part of the Services for such period as the Supervising Officer may require;
4. to perform the Services or any part thereof in such a modified manner as the Supervising Officer may require;
5. to perform such Additional Services outside the scope of the Services as the Supervising Officer may require provided that such Additional Services shall be the same as or similar to the Services under the Contract in which case rates shall be agreed between the Supervising Officer and the Contractor based on the rates in the Contract;
6. AND for the avoidance of doubt no increase in the Contract price or additional payment shall be made in respect of a variation or any additional work if there is a compensating reduction or re­ organisation of any other part of the Services equal to that of the variation or any additional work;
7. the Supervising Officer may order additions or deductions to the Services and the Contractor will not be paid additional or reduced monies as a result of these variations, unless they can be shown to be substantial variations which involve significantly increased or reduced costs to the Contractor;
8. if the Contractor wishes to claim increased or reduced payments, as a result of any addition or deduction to the Services, negotiations will take place, during which either side should show that significantly increased or reduced costs can be proven as a result of the said variations. If a significant cost can be proven, then additions or reductions from the Contract payments will be agreed, wherever possible using the appropriate rates contained within the Schedule.
9. in the event of both sides being unable to reach an agreement, then Condition 32 (Disputes and Arbitration) will apply.
   1. Save for an omission, addition or variation agreed pursuant to Condition 8.2 of these Conditions any provision inconsistent with these Conditions contained in any other document or in any oral agreement is agreed to be void and of no effect
10. **Confidentiality**
    1. The Contractor shall not, and shall ensure that Staff shall not use, or disclose any confidential material provided by the Council pursuant to the Contract save as may be agreed by the Council or required by law.
11. **Vehicles, Plant and Machinery**
    1. The Contractor shall at all times during the Contract provide and maintain all such vehicles, plant and machinery (hereinafter referred to as "Contractor's Vehicles") as are necessary for the proper performance of the Services.
    2. All Contractor's Vehicles must be either owned by the Contractor or hired by the Contractor which must contain a clause permitting the Contractor to assign the benefit of the Contract to the Council.
    3. The Contractor shall at all times be fully responsible for licensing and for the payment of all licensing fees, taxes and insurance required in connection with or arising out of the possession or use of all Contractor's vehicles employed in the performance of the Services.
    4. The Contractor shall at all reasonable times permit the Supervising Officer access to all Contractor's vehicles employed for the purposes of this Contract. The Supervising Officer shall be entitled to serve upon the Contractor a notice in writing requiring the Contractor to put any Contractor's vehicle into such condition as is required by paragraph 9.1 above and the Contractor shall forthwith upon receipt of such notice cause all necessary works to be carried out to comply with such notice.
    5. No Contractor's vehicles shall bear any advertising matter of any sort without the prior written consent of the Supervising Officer.
12. **Copyright & Intellectual Property Rights**
    1. The Contractor warrants and represents that neither the performance of the Contract nor the provision or use of the Services will in any way constitute an infringement or other violation of any Intellectual Property Rights of any third party.
    2. Before utilising any material in relation to the performance of the Contract which is or may be subject to any third party Intellectual Property Rights, the Contractor shall procure the necessary licences to enable the Council to use such material at all times for the Council’s purposes at no cost to the Council.
    3. All Intellectual Property Rights in any specifications, instructions, plans, drawings, patents, patterns, models, designs, reports or other material:
       1. furnished to or made available to the Contractor by the Council shall remain the property of the Council;
       2. prepared by or for the Contractor for use, or intended for use, in relation to the performance of the Contract shall belong to the Council and the Contractor shall not, and shall procure that Staff shall not (except when necessary for the implementation of the Contract) without prior approval of the Council, use or disclose any such Intellectual Property Rights. The Contractor shall, at its cost and expense, do all such further acts and things and execute or procure the execution of all such documents as the Council may reasonably require, for the purpose of transferring any such Intellectual Property Rights to the Council.
    4. The Contractor shall not assume any Intellectual Property Rights in any documentation or material provided by the Council to the Contractor under this Contract.
    5. All Intellectual Property rights in any information contained in the Contractor’s information database that relates to:
       1. this Contract;
       2. the contaminated land sites made good under this Contract;
       3. any contaminated land sites in the administrative area the Council that were made good under the previous contract or that are awaiting remediation,

shall be the property of the Council to which it relates. The Contractor shall, at the end of the Contract Period or upon termination of the Contract for any reason, return all such information to the Council.

1. **Insurance**
   1. The Contractor shall at all times maintain insurance cover with a reputable company to include public liability insurance employers liability professional indemnity insurance to the limits set out in the Agreement.
   2. The Contractor shall supply to the Council’s Representatives annually and at any other time within 14 days of request a copy of all insurance policies, cover notes, premium receipts or such other documents as may satisfy the Council that such insurance is in place.
   3. The Contractor shall immediately notify the Council if any claim or demand is made or action brought against the Contractor for infringement or alleged infringement of any Intellectual Property Rights in connection with the performance of the Contract.
2. **Indemnity**
   1. The Contractor shall indemnify and keep indemnified for the Contract Period (and any extension) the Council from and against any and all claims, demands, proceedings, actions, damages, costs, expenses, loss and liability arising from a Default, save to the extent that it arises from any default or negligence of the Council, a Council Member or its/their employees provided always, for the avoidance of doubt, that this does not extend to any loss of profits suffered by the Council.
3. **Performance Bond**
   1. On the execution of the Contract, the Contractor shall at his own expense provide a Performance Bond from a bank or insurance company approved by the Council for a sum equal to 10% of the Annual Sum to guarantee the due performance of his obligations under the Contract and for the payment by the Contractor to the Council of all sums due hereunder. The Contractor shall ensure that such Performance Bond remains in force throughout the Contract Period and the value of the Performance Bond shall be increased at each review date in line with the Average Earnings Index.
4. **No agency**
   1. Nothing in this Contract shall be construed as creating a legal partnership or a relationship of principal and agent between the Council and the Contractor and the Contractor shall not at any time or in any circumstances take any action so as to bind (or purport to bind) the Council and nor shall the Contractor hold itself out as having authority to bind the Council and shall ensure that Staff do not hold themselves out likewise.
   2. Status of the Contractor
      1. During the Contract Period the Contractor shall be an independent contractor and not an employee of the Council. In such capacity, the Contractor shall bear exclusive responsibility for the payment of his national insurance contributions as a self-employed person and for discharge of any income tax and VAT liability arising out of remuneration for his work performed by him under this Contract.
      2. For the avoidance of doubt the Contractor shall not be subject to directions from the Council as to the manner in which he performs his work.
5. **Statutory Obligations**
   1. The Contractor shall, in the provision of the Services and the performance of its obligations under the Contract, comply with all Enactments.
6. **Data Protection**
   1. The Contractor shall in connection with the provision of the Services and the performance of its obligations under the Contract comply with the Data Protection Act 1998.
   2. Where processing personal data (as defined in the Data Protection Act 1998) received from the Council, the Contractor shall act only on the Council’s instructions and shall take all appropriate technical and organisational security measures to protect against any unauthorised or unlawful processing or accidental loss or destruction of or damage to the personal data and the Contractor shall provide to the Council such information as the Council may reasonably require to satisfy itself that the Contractor is complying with the obligations referred to in this Condition.
   3. The Contractor must exercise its best endeavours to ensure the accuracy of any personal data processed in carrying out its obligations under the Contract and that where necessary such personal data is kept up to date.
   4. The Contractor shall take such steps as may be necessary to afford the Council at no cost to the Council access to personal data which is reasonably required by the Council in connection with any of its statutory functions and for any purpose connected with the Council’s rights and obligations under the Contract.
   5. The Contractor shall co-operate with any and all Council requests and supply to it/them all information properly required in connection with any request received by the Council under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 and shall supply all such information and documentation at no cost to the Council within 7 days of a request.
   6. The Contractor acknowledges that in responding to requests received by the Council under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, the Council will be entitled to provide information relating to the Contract.
7. **Equal Opportunities**
   1. The Contractor shall not in relation to the employment of persons for the purposes of providing the Services or in relation to the provision of the Services to any person unlawfully discriminate within the meaning of any Enactment relating to discrimination whether in relation to race, gender, religion, disability or otherwise.
   2. The Contractor shall have due regard to the need to eliminate unlawful racial discrimination to promote equality of opportunity and to promote good relations between different racial groups and shall where reasonably requested by the Council assess and monitor its policies and practices so as to impact on the promotion of race equality, and report on this to the Council.
   3. The Contractor shall in the provision of the Services comply with the duties imposed by the Equality Act 2010 and the requirement not to discriminate against persons with a protected characteristic contained in that Act as if it were a public authority for the purposes of that Act.
8. **Assignment and Sub-Contracting/Substitution**
   1. The Contractor shall not assign the benefit or advantage of the Contract in whole or in part.
   2. The Contractor shall not sub-contract the provision of the Services to any person without the prior written consent of all of the Council’s Representative(s) and should such consent be given it shall not relieve the Contractor from any liability or obligation under the Contract and the Contractor shall be responsible for the acts, omissions, defaults or neglect of any sub-contractor and its agents or employees in all respects as if they were the acts, omissions, defaults or neglect of the Contractor.
   3. Where the Council gives permission for the provision of Services under this Contract to be sub-contracted, it shall be on the condition that:
      1. the contract between the Contractor and the sub-contractor shall require the sub-contractor to maintain at all times with a reputable insurance company public liability and employers liability insurance at the levels set out in Condition 12.1 above;
      2. where the sub-contract is for professional services, the sub-contractor shall also be required to maintain at all times with a reputable insurance company professional indemnity insurance to the level set out in Condition 12.1 above;
      3. where the sub-contract is for the delivery of goods or the carrying out of non-professional services or works, the sub-contractor shall also be required to maintain at all times with a reputable insurance company product liability, contractors all-risks or such other insurance policy as may be appropriate to the sub-contract, at a level sufficient to safeguard the Contractor and the Council from all reasonably foreseeable risks associated with a breach of the sub-contract by the sub-contractor;
      4. the sub-contract shall recognise the Council’s interest in its proper performance and shall allow the Council to enforce its terms if necessary directly against the sub-contractor under the Contracts (Rights of Third Parties) Act 1999; and
      5. the contract between the Contractor and the sub-contractor will include terms which give effect to the provisions of clause 4.5.
9. **Break**
   1. The Council shall have the right to terminate the Contract on any anniversary of the Commencement Date by giving not less than six months’ written notice to the Contractor.
10. **Default in Performance**
    1. At any time after the six week settling in period from the Commencement Date the Supervising Officer may investigate each case where in his opinion the Contractor has failed to perform the Services completely in accordance with the provisions of the Contract.
    2. Where the Supervising Officer is satisfied that in any particular case the Contractor has failed to perform the Services completely in accordance with the provisions of the Contract he shall be entitled to instruct the Contractor to remedy the failure at the Contractor's own cost in order to comply fully therewith within such reasonable period as the Supervising Officer may determine.
    3. If the Contractor fails to comply, within the specified time, with an instruction of the Supervising Officer issued under 21.2 above, the Supervising Officer shall be entitled to record in writing a Notice of Non-Complainance which shall be sent to the Contractor.
    4. Where more than ten (10) Non-Complainance Notices are recorded in any 3 monthly period, this shall be treated as a fundamental breach of Contract and the Council may terminate the Contract in accordance with the appropriate Condition of Contract.
    5. If the Contractor fails to provide or perform the Services in whole or in part completely in accordance with the terms of the Contract, then without prejudice to any other remedy contained herein the Council may provide and perform such Services or part thereof in which the Contractor has made default. The costs and charges incurred by the Council in so doing shall be paid by the Contractor to the Council on demand or may be deducted by the Council from any monies due or which may become due to the Contractor and shall include an administration charge equal to 10% of such costs and charges.
11. **Works in Default**
    1. If by reason of accident or failure or other event occurring to, on or in connection with any vehicle, plant or machinery or any part thereof either during the performance of the Services or at any other times any remedial or other work shall in the opinion of the Supervising Officer be urgently necessary and the Contractor is unable or unwilling at once to do such work the Council may bring its own or other workmen to do such work as the Supervising Officer may consider necessary.
    2. If the work so done by the Council is work which in the opinion of the Supervising Officer the Contractor was liable to do at his own expense under the Contract all costs and charges properly incurred by the Council in so doing shall on demand be paid by the Contractor to the Council or may be deducted by the Council from any monies due or which may become due to the Contractor, provided always that the Supervising Officer shall as soon after the occurrence of any such emergency as may be reasonably practicable notify the Contractor thereof in writing.
12. **Termination – Corruption, Insolvency, Change of Control, False Information, Suspension**
    1. The Council may terminate the Contract by notice in writing such notice to have effect from the date specified in it and recover from the Contractor the amount of any loss resulting from such termination if:
       1. the Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act 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 the like acts shall have been done by any person employed by it or acting on its behalf (whether with or without the knowledge of the Contractor); or
       2. in relation to any contract with the Council, the Contractor or any person employed by it or acting on its behalf shall have committed any offence under the Bribery Act 2010 shall have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.
    2. If the Contractor:
       1. commits a Default and the Contractor has not remedied the Default to the satisfaction of the Council within 20 days or such other period which may be specified by the Council after issue of a written notice specifying the Default and requesting it to be remedied; or
       2. commits a material Default which is not capable of remedy; or
       3. commits a Default on a persistent or repeated basis; or
       4. is an individual or a firm and a petition is presented for the Contractor’s bankruptcy or a criminal bankruptcy order is made against the Contractor or any partner in the firm, or the Contractor or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or an administrator is appointed to manage the Contractor’s affairs; or
       5. is a company, and the company passes a resolution for its winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation the company or any person gives or files notice of intention to appoint an administrator or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrator, administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or
       6. is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
       7. ceases to carry on its business or disposes of all its assets or ceases to carry on a substantial part of its business or disposes of a substantial part of its assets which in the reasonable opinion of the Council would materially affect the delivery of the Services; or
       8. undergoes a change of control and for this purpose where the Contractor is a company, there is a change of control if the majority of shares carrying a right to vote in the Contractor or its holding company are acquired by a person who is not at the Commencement Date of the Contract a major shareholder (“holding company” having the same meaning as in section 736 of the Companies Act 1985) save that if there is a change of control which is only a change from one subsidiary company to another (“subsidiary company” having the same meaning as in section 736 of the Companies Act 1985) then that shall be deemed not to be a change of control for the purposes of this Condition,

Then in any such circumstances the Council may, without prejudice to any other rights or remedies terminate the Contract by notice in writing, such notice to have effect from the date specified in it.

* 1. Where the Contract is terminated under this Condition:
     1. the Council shall be entitled to recover from the Contractor the amount of any loss resulting from the termination including, but not limited to, the cost of arranging alternative provision of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period (calculated on the basis that there had been no early termination of the Contract); and
     2. the Council shall cease to be under any obligation to make any payment until the costs, loss and/or damage resulting from or arising out of the termination of the Contract have been calculated and the Council shall then be entitled to deduct from any sum or sums due from the Council to the Contractor under the Contract the amount of such costs, loss and/or damage.
  2. The Council shall be entitled to carry out, or engage a third party to carry out, the Services or any of them on a temporary basis where the Contractor is in Default and the Contractor shall be liable for any costs incurred by the Council.
  3. The rights of the Council under this Condition 18 are in addition to and without prejudice to any other rights or remedies which the Council may have whether against the Contractor or any other person.

1. **Recovery on End of Contract**
   1. The expiry or termination of this Contract for whatever reason shall not affect any provisions of the Conditions capable of surviving or operating in the event of termination of the Contract and termination of this Contract shall be without prejudice to the rights and remedies of one party against the other party.
   2. For the avoidance of doubt, Condition 24.1 shall apply where:
      1. this Contract is terminated by the Council.
      2. the Council breaks the Contract under Condition 20 (Break);
      3. the Council decides not to extend the Contract under Condition 3.
   3. On expiry or termination of the Contract howsoever arising, the Contractor shall forthwith deliver to the Council upon request:
      1. all or any records of the Council and any records, documentation, drawings, data or other information produced or received for the purposes of the Contract and stored on whatever medium;
      2. all the property issued or made available to the Contractor by the Council (including, but not limited to, materials, clothing, equipment, vehicles, documents, information, access keys) in its possession or under its control or in the possession or under the control of any Staff.
2. **Conflict of Interest**
   1. The Contractor shall use its best endeavours to avoid being engaged in any activity where there is, or is likely to be, an actual or reasonably perceivable conflict with the interests, aims or objectives of the Council further to this Contract.
   2. The Contractor shall as soon as practicably possible disclose to the Council any such potential conflict and shall comply with any reasonable measures required by the Council to mitigate such conflict.
   3. The Council agrees that this shall not restrict the Contractor from being involved in other activities and holding other interests.
3. **Publicity and Advertising**

The Contractor shall not advertise nor seek any publicity or respond to press enquiries relating to the Services and shall refer all enquiries to the Council’s Representative.

1. **Service of Notices**
   1. Any demand, notice or other communication required to be given hereunder shall be sufficiently served if served personally on the addressee or if sent by prepaid first class recorded delivery post or facsimile transmission to the registered office or last known address of the Contractor where notice is required to the Contractor and to Westport House, Worgret Road, Wareham, Dorset, BH20 4PP where notice is required unless otherwise agreed.
   2. Where any demand, notice or other communication is required to be given to the Council it shall be sent to the Council’s own address.
   3. Any demand, notice or other communication falling under Condition 27.2 that is delivered to any address shall not be deemed to have been received by the Council until five Working Days after the usual time of receipt set out in Condition 27.4.
   4. Any such communication as referred to in Conditions 27.1 and 27.2 shall be deemed to have been made two Working Days from the date of posting (if by letter) and if by facsimile transmission on the date of such transmission where it is a Working Day save that transmissions received after 4 p.m. shall be deemed to have arrived on the following Working Day and transmissions received on a day which is not a Working Day on the first Working Day after the transmission.
2. **Force Majeure**

Neither the Contractor nor the Council shall be liable for breach of their obligations under the Contract to the extent that such breach is caused by any act of God, natural flood, fire (save where such fire is due to the negligence or fault of the Contractor), lightning or earthquake, war, military operations, act of terrorism or riot, but nonetheless each party shall use all reasonable endeavours to perform its obligations under the Contract.

1. **Severance**

If any of these Conditions shall become or shall be declared by a court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall in no way impair or affect any other provisions all of which shall remain in full force and effect.

1. **The Contracts (Rights of Third Parties) Act 1999**

The Contracts (Rights of Third Parties) Act 1999 shall not apply to the Contract, but this does not affect any rights which are available apart from this Act.

1. **Waiver**
   1. The failure of the Council or the Contractor to exercise any right or remedy shall not constitute a waiver of that right or remedy.
   2. No waiver shall be effective unless it is communicated to either the Council or the Contractor in writing.
   3. A waiver of any right or remedy arising from a breach of Contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.
2. **Disputes and Arbitration**
   1. A dispute relating to the provision of the Services, the Daywork Rates, or payments which cannot be resolved in the first instance between the Contractor’s Representative and the Council’s Representative within a month shall be referred to a senior manager of the Council and the Contractor.
   2. Nothing in this Condition shall prejudice the right of either party to apply to the court for interim relief to prevent the violation by the other party of any proprietary interest or any breach of that party’s obligations.
   3. Services to be provided under the Contract shall not cease or be delayed by this dispute resolution procedure.
   4. If any dispute cannot be resolved between the Contractor and the Council within a month of referral as set out in Condition 32.1 then at the instance of the Contractor or the Council it will be referred to mediation in accordance with the Centre for Effective Dispute Resolution’s (“CEDR”) Model Mediation Procedure.
   5. To initiate the mediation, either party may give notice in writing to the other requesting mediation in accordance with this Condition. The initiating party shall send a copy of such request to CEDR.
   6. If there is any issue on the conduct of the mediation (including as to the nomination of the mediator) upon which the parties cannot agree within a reasonable time, CEDR will, at the request of either party, decide the issue.
   7. If the dispute is not resolved within 90 days of the initiation of the mediation, or if either party will not participate in the mediation either party may commence proceedings.
3. **Applicable Law and Jurisdiction**

The Contract shall be governed by and interpreted in accordance with English law and shall be subject to the jurisdiction of the courts of England and Wales.