



TERMS AND CONDITIONS OF CONTRACT

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THIS CONTRACT is made on the nineteenth day of August in the Year 2019.

BETWEEN

(1) Bedford Borough Council of Borough Hall, Cauldwell Street, Bedford, Bedfordshire MK42 9AP (“THE COUNCIL”);

Signed on Behalf of the Council:

Council Officer 1

..... (Authorised Signatory)

..... (Name in Capitals)

..... (Position)

Council Officer 2

..... (Authorised Signatory)

..... (Name in Capitals)

..... (Position)

And;

(2) (“THE CONTRACTOR”)

Signed on Behalf of the Contractor:

..... (Authorised Signatory)

..... (Name in Capitals)

..... (Position)

Registered Address:

.....

.....

.....

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATIONS

1.1 As used in this Contract:

- 1.1.1 the terms and expressions set out in Clause 1.3 below shall have the meanings set out therein;
- 1.1.2 the masculine includes the feminine and the neuter;
- 1.1.3 the singular includes the plural and vice versa; and
- 1.1.4 the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”.

1.2 A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.

1.3 In this Contract the following expressions shall have the meanings hereby ascribed to them:

- **Authority:** means Bedford Borough Council;
- **Charges:** means fees, disbursements and expenses payable by the Council for the performance of the Ordered Services undertaken by the Contractor as set out in the Pricing Schedule in the Contractor’s Proposal;
- **Contractor:** the body with whom the Council is contracting with in this document as set out above;
- **Council:** Bedford Borough Council;
- **Contractor’s Representative:** means the person named in the Proposal as having primary responsibility for carrying out the Ordered Services;
- **Council’s Representative:** means the person specified by the Council as being the person to whom the Contractor’s Representative should report;
- **Default:** means any breach of the obligations of either party or any default, act, omission, negligence or statement of either party, its employees, agents or sub-Contractors in connection with or in relation to this Contract and in respect of which such party is liable to the other;
- **Information:** has the meaning given under section 84 of the Freedom of Information Act 2000;
- **Ordered Services:** means all services which the Council has instructed the Contractor to carry out under this Contract as outlined in the Proposal;
- **Proposal:** means the Proposal submitted by the Contractor in connection with the Invitation to Tender documents issued by the Council in relation to the Ordered Services;
- **Term:** means for the purposes of this Contract the initial contract period and any extensions thereof;
- **Working Days:** means Monday to Friday inclusive, excluding English public and bank holidays;
- **Year:** means a calendar year
- **Data Protection Legislation:** (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
- **Data Protection Impact Assessment:** an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
- **Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer:** take the meaning given in the GDPR.

- **Data Loss Event:** any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
- **Data Subject Request:** a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
- **DPA 2018:** Data Protection Act 2018
- **GDPR:** the General Data Protection Regulation (Regulation (EU) 2016/679)
- **LED:** Law Enforcement Directive (Directive (EU) 2016/680)
- **Protective Measures:** appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of 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 such measures adopted by it.
- **Sub-processor:** any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement

1.4 This Contract shall comprise the following:

MAIN BODY: The Terms and Conditions of this Contract

SCHEDULE 1: Specification of Services

SCHEDULE 2: Tender Submission

SCHEDULE 3: NOT USED

SCHEDULE 4: NOT USED

SCHEDULE 5: NOT USED

SCHEDULE 6: Insurance Certificates

SCHEDULE 7: NOT USED

SCHEDULE 8: NOT USED

2. ENGAGEMENT

- 2.1 This Contract governs the overall relationship of the Contractor and the Council with respect to the provision of the specified Services. The Council has specified the Ordered Services and the Contractor shall provide those Ordered Services in accordance with the provisions of this Contract.
- 2.2 The Contractor purports to have the know-how, qualifications and necessary ability to undertake the Ordered Services.
- 2.3 The Contractor and any parent or subsidiary company, partner or joint venture partner, warrants that it has no commercial or other interests which might conflict with or influence its advice to the Council and warrants that it is not disbarred in any way from working on this Contract.
- 2.4 Subject to Clauses 2.1, 2.2 and 2.3 above, the Council hereby engages and the Contractor hereby accepts such engagement to serve the Council.

3. THE SERVICES

- 3.1 The Contractor shall perform the Ordered Services to the reasonable satisfaction of the Council.
- 3.2 The Contractor's Representative shall report to the Council's Representative.
- 3.3 The Contractor's Representative in addition to and in respect of carrying out the Ordered Services shall do and perform all matters and things which are usually done and performed by people/officers/staff providing those services according to the practice of their relevant professions including giving of regular reports and advice to the Council during the Contract and attending Committees/Panels of the Council if and when required.
- 3.4 The Contractor shall while this Contract is in force, unless prevented by ill health, ensure that the Contractor's Representative, and any of his/her colleagues engaged in the Ordered Services devote such of their time attention and abilities to the Ordered Services as may be necessary for the completion thereof to the Council's satisfaction.
- 3.5 The Contractor agrees to:
 - 3.5.1 advise and assist the Council with respect to all aspects of the Assignment and in that context to comply with all reasonable requests and directions of the Council;
 - 3.5.2 use all reasonable endeavours to comply with all local or internal policies and regulations operated by or affecting the Council; and
 - 3.5.3 when carrying out the Ordered Services exercise reasonable skill and care in conformity with the highest standards of the Contractor's profession.
- 3.6 The Contractor shall notify the Council as soon as it becomes aware of any event occurring or which it believes is likely to occur which will cause material delay to or materially impede the performance of the Ordered Services or any part thereof and the Contractor shall take all necessary steps consistent with good practice to minimise the delay to the Council.
- 3.7 In the event that the Contractor fails to deliver an Ordered Service by the date specified by the Council due to non-observance of any of the conditions of this Contract, the Contractor shall, at the request of the Council and without prejudice to the Council's other rights and remedies, arrange all such additional resources as are necessary to fulfil the said Ordered Service as early as practicable thereafter at no additional charge to the Council.

4. COUNCIL'S RESPONSIBILITIES

- 4.1 Subject to the provisions of **Clause 15 (Confidentiality and Publicity)**, the Council undertakes to provide to the Contractor all information, services, facilities, and responses reasonably required by the Contractor to perform the Ordered Services.

5. COMMUNICATIONS

- 5.1 Except as otherwise expressly provided, no communication from one party to the other shall have any validity under this Contract unless made in writing by or on behalf of the party sending such communication.
- 5.2 For the purposes of Clause 5.1, the address of each party shall be:
 - For the Council: As set out in the issued tender documentation.
 - For the Contractor: As set out in the tender return documentation.

6. TERM AND TERMINATION

- 6.1 This Contract shall take effect on the Commencement Date specified in the Clause 6.5.
- 6.2 This Contract shall expire on **31 March 2022**, unless terminated earlier pursuant to Clause 6.3.

6.3 Subject to the provisions of **Clause 8 (Default)**, the Council may at any time and for any reason terminate the Contract, or a part thereof, by providing a written notice in accordance with **Clause 26 (Notices)** and giving full explanation for its decision.

6.4 NOT USED

6.5 The Commencement Date is defined as the nineteenth Day of August, in the Year 2019.

7. CONSEQUENCES OF TERMINATION AND EXPIRY

7.1 In the event of expiry or termination of this Contract for any reason whichever shall be earlier in accordance with **Clause 6 (Term and Termination)** the Council shall reimburse the Contractor any Charges incurred prior to termination which are wholly, reasonably and properly chargeable by the Contractor in connection with the Contract.

7.2 In the event of termination of the Contract by the Council for any reason, the Contractor shall deliver to the Council all correspondence, reports, documents, specifications, papers, information on whatever media and property belonging to the Council which may be in its possession or under its control;

7.3 Upon expiry or termination of this Contract for any reason, the Contractor shall render reasonable assistance to the Council (and any third parties appointed by the Council) if requested, to the extent necessary to effect an orderly continuation of the Ordered Services. Where such assistance is required, the Council shall reimburse the Contractor for such assistance in accordance with **Clause 10 (Invoicing and Payments)**.

7.4 The termination, determination or expiry of this Contract shall not constitute unfair dismissal nor shall the Contractor be entitled to the payment of any compensation, redundancy payments or otherwise upon the occurrence of the same.

7.4.1 Subject to the provisions of Clause 11.5, the obligations under this Contract shall remain in full force for one year.

8. DEFAULT

8.1 If the Contractor shall be guilty of any serious misconduct or any serious breach or non-observance of any of the conditions of this Contract or shall neglect or fail or refuse to carry out the duties assigned to it hereunder, the Council shall be entitled to terminate its engagement hereunder with immediate effect by giving written notice to the Contractor, without prejudice to any rights or claims the Council may have against the Contractor arising out of such default.

8.2 If the Contractor:

8.2.1 commits a breach of any of its obligations under the Contract;

8.2.2 makes a composition or arrangement with its creditors, or has a proposal in respect of the company for the voluntary arrangements for a composition of debts, or scheme or arrangement approved in accordance with the Insolvency Act 1986;

8.2.3 has an application made under the Insolvency Act 1986 in respect of the company to the Court for the appointment of an administrative receiver;

8.2.4 has a winding-up order made, or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding-up passed;

8.2.5 has a provisional liquidator, receiver, or manager of its business or undertaking duly appointed;

8.2.6 has an administrative receiver, as defined in the Insolvency Act 1986, appointed;

8.2.7 has possession taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in, or subject to, the floating charge;

8.2.8 is in circumstances which entitle the Court or a creditor to appoint, or have appointed, a receiver, a manager, or administrative receiver, or which entitle the Court to make a winding-up order;

8.2.9 Bribery & Corruption - if the Contractor, its employees or anyone acting on the Contractor's behalf do any of the following things:

- (i) offer, give or agree to give to anyone any inducement or reward in respect of this or any other Council contract (even if the Contractor does not know what has been done); or
- (ii) commit an offence under the Bribery Act 2010 or Section 117(2) of the Local Government Act 1972; or
- (iii) commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members, Contractors or employees.

Any clause purporting to limit the contractor's liability shall not have any effect in restricting or disapplying this clause

8.2.10 then the Council may without prejudice to any accrued rights or remedies under the Contract, terminate the Contractor's employment under the Contract by notice in writing either with immediate effect or on such date as specified in the notice.

8.3 If the Council commits a material breach of any of its obligations under the Contract, the Contractor shall have the power to terminate the contract by providing a written notice to the Council's representative within 7 working days of such a material breach having satisfactorily demonstrated to the Council.

9. BREAK

9.1 The Council shall have the right to terminate the Contract or any part thereof at any time by giving three Months' written notice to the Contractor.

10. INVOICING AND PAYMENTS

10.1 In consideration of the satisfactory performance of the Ordered Services in accordance with the terms of the Contract, the Council shall pay the Charges in accordance with the Pricing Schedule set out in the Contractor's Proposal.

10.2 The Council shall only reimburse expenses to the Contractor, at cost, which are properly and reasonably incurred directly in performing the Ordered Services and are either identified in the Quotation documents or have been approved beforehand by the Council's Authorised Representative.

10.3 The Contractor shall be entitled to charge for the time spent travelling in the course of undertaking an Ordered Service at the rates specified in the Pricing Schedule set out in the Contractor's Proposal, provided that such time is kept to a minimum practical level, that such travel is wholly necessary for the performance of the Ordered Services, that such travel has been authorised in advance by the Council and that the Contractor is unable to undertake any other activities outside of this Contract during the period of travel.

10.4 Clause 10.3 shall not apply to Ordered Services that were instructed by the Council at a fixed rate as such travelling costs shall be inclusive.

10.5 Invoices submitted by the Contractor, which are incorrect, shall be returned to the Contractor for correction and re-submission.

10.6 Each invoice shall contain all appropriate and required references and a detailed dated breakdown of the Ordered Services provided and shall be supported by any other documentation required by the Council to substantiate the invoice. A valid Purchase Order must also be obtained and added to the Invoice before being sent to the Council. This can be obtained from the person who ordered the goods/services.

10.7 The Council may, without prejudice to its other rights, reduce payment in respect of any Ordered Services which the Contractor has either failed to provide or has provided inadequately or satisfactorily.

- 10.8 Ordinarily payment shall be made within thirty (30) days of receipt by the Council. Unless otherwise instructed, all invoices should be addressed to

invoices@bedford.gov.uk

Information on the required format of Invoices can be found here <https://www.bedford.gov.uk/council-and-democracy/about-the-council/council-budgets-and-spending/supplier-payments/>

Failure to follow any of the above may lead to a delay in payment.

- 10.9 The payment profile in respect of the Ordered Services provided under this Contract is Monthly in arrears.
- 10.10 Interest on any late payments shall be payable under the Contract in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 10.11 Payments due to the Council shall be paid within fourteen (14) days from request.
- 10.12 Where the payment rate of an employee or agent of the Contractor materially changes as a result of a promotion or for any other reason, the Contractor must notify the Council by providing thirty (30) days written notice prior to this change in the payment rate becoming effective.
- 10.13 In the event of a disputed invoice, the Council shall make payment in respect of any undisputed amount in accordance with the provisions of **Clause 10 (Invoicing and Payments)** and return the invoice to the Contractor within ten (10) Working Days of receipt with a covering statement proposing amendments to the invoice and/or the reason for any non-payment. The Contractor shall respond within ten (10) Working Days of receipt of the returned invoice stating whether or not the Contractor accepts the Council's proposed amendments. If it does then the Contractor shall supply with the response a replacement valid invoice. If it does not then the matter shall be dealt with in accordance with the provisions of **Clause 13 (Dispute Resolution)**.
- 10.14 All sub-contractors engaged by the Contractor must be paid within 10 days of receipt of payment

11. LIABILITY AND INSURANCE

- 11.1 The Contractor shall effect and maintain policies of insurance to provide a level of cover sufficient for all risks which may be incurred by the Contractor under this Contract, including any loss of or damage suffered by the Council as a result of information negligently supplied by the Contractor, or death or personal injury, or any loss of or damage to property subject to the proviso as to liability set out in 10.3.
- 11.2 The Contractor shall produce to the Council, within five (5) Working Days of request, copies of all insurance policies referred to in Clause 11.1 or such other evidence as agreed between the Council and the Contractor that will confirm the extent of the cover given by those policies, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 11.3 The Contractor shall indemnify and keep the Council indemnified from and against all losses, claims, damages or proceedings (including injury or damage to any property, real or personal) and costs suffered or incurred, directly or indirectly, arising out of or in the course of carrying out this Contract, unless due to any act or neglect of the Council or its servants. Without thereby limiting and the provisions of this clause and its responsibilities under this **Clause 11 (Liability and Insurance)**, the Contractor shall insure with a reputable insurance company against all loss of and damage to property and injury to, or death of, persons arising out of or in consequence of the Contractor's obligations under this Contract and against all actions, claims, demands, proceedings, damages, costs, charges and expenses in respect thereof and shall contain a clause for indemnity to any Principal.

- 11.4 For all matters to which this **Clause 11 (Liability and Insurance)** applies, the insurance cover shall be a sum not less than:
- 11.4.1 Public liability insurance cover - £10 million per claim unlimited in the number of claims
 - 11.4.2 Employer's liability insurance cover - £10 million per claim unlimited in the number of claims
 - 11.4.3 Professional Indemnity Insurance cover - £5 million per claim unlimited in the number of claims
- 11.5 **Clause 11 (Liability and Insurance)** shall remain in full force for a period beginning from the Commencement Date and ending five (5) years from, either expiry of the Contract as defined in **Clause 6 (Term and Termination)** or the termination or determination of the Contract, whichever is the earlier.

12. COUNCIL PROPERTY

- 12.1 Any Council Property issued to the Contractor for the performance of this Contract shall remain the property of the Council and title to the property shall remain with the Council. Property issued to the Contractor shall be deemed in good condition unless the Contractor notifies the Council otherwise within seven (7) days of receipt.
- 12.2 The Contractor shall keep secure and in good condition all Council Property and shall use it solely in connection with this Contract and for no other purpose without prior approval. The Contractor shall be liable for any loss or damage, unless the Contractor demonstrates that such was caused by the negligence or default of the Council. The Contractor shall return Council Property to the Council on demand.

13. DISPUTE RESOLUTION

- 13.1 Subject to the provisions of Clause 13.2, any dispute and/or disagreement arising under, or in connection with this Contract shall be dealt with in accordance with this **Clause 13 (Dispute Resolution)**, and neither the Council nor the Contractor shall be entitled to commence or pursue any legal proceedings under the jurisdiction of the courts in connection with any such dispute and/or disagreement, until the procedures set out in this **Clause 13 (Dispute Resolution)** have been exhausted.
- 13.2 Clause 13.1 shall be without prejudice to the rights of termination stated in **Clause 6 (Term and Termination)** and in addition shall not prevent the Council or the Contractor from applying for injunctive relief in the case of:
- 13.2.1 breach or threatened breach of confidentiality;
 - 13.2.2 infringement or threatened infringement of its intellectual property rights; or
 - 13.2.3 infringement or threatened infringement of the intellectual property rights of a third party, where such infringement could expose the Council or the Contractor to liability.
- 13.3 All disputes and/or disagreements between the Council and the Contractor arising out of or relating to this Contract shall be referred by the Council's Representative or the Contractor's Representative to the other for resolution in good faith by senior level negotiations.
- 13.4 Where the dispute and/or disagreement cannot be resolved pursuant to the provisions of Clause 13.3 within ten (10) Working Days, that dispute shall be referred to external mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") models of mediation procedure or an equivalent external mediation organisation as agreed by the Council and the Contractor.

- 13.5 The Council and the Contractor shall each bear their own costs in relation to any reference made to external mediation and the fees and all other costs of the mediator shall be borne jointly in equal proportions by both parties unless otherwise directed by the mediator.
- 13.6 Work and activity to be carried out under this Contract shall not cease or be delayed during the mediation process.
- 13.7 Where the dispute and/or disagreement has not been resolved within one (1) month of the initiation of the external mediation as described in Clause 13.4, such dispute and/or disagreement shall be referred to the courts for resolution in accordance with **Clause 25 (Law and Jurisdiction)**.

14. INTELLECTUAL PROPERTY RIGHTS

- 14.1 The copyright and all intellectual property rights in all Service materials prepared by the Contractor pursuant to this Contract shall, following payment of the Contractor's fees, be owned by the Council.
- 14.2 Without prejudice to the foregoing, if the Contractor ceases to act in accordance with the terms and conditions of this contract for any reason, the Council may take full use of all materials or documents prepared by the Contractor pursuant to this Contract.
- 14.3 The Contractor hereby grants to the Council a non-exclusive, royalty-free, world-wide, perpetual right to use, copy, adapt, modify, sub-license and market the Service materials, subject to the provisions of **Clause 15 (Confidentiality and Publicity)**.
- 14.4 The copyright and other intellectual rights in any materials or software (whether written or machine-readable) created by or licensed to the Contractor prior to or outside of this Contract and any subsequent modifications to the same shall remain vested in the Contractors (or its licensor) but to the extent that these form part of any of the Service materials the Council is hereby granted a licence to use them in accordance with Clause 14.5 below.
- 14.5 The Contractor shall procure that the provision of the Ordered Services shall not infringe any intellectual property rights of any third party.
- 14.6 The Contractor shall indemnify the Council against all claims, losses and damages arising from or incurred by reason of any infringement or alleged infringement of any intellectual property right by the availability of the Ordered Services, except to the extent that such liability has resulted directly from the Council's failure to observe its obligations under this **Clause 14 (Intellectual Property Rights)**.

15. CONFIDENTIALITY AND PUBLICITY

- 15.1 The Contractor or any other person employed or engaged by them (in connection with this Contract in the course of such employment or engagement) shall not, without the prior written consent of the Council, during or after termination or expiry of this Contract disclose, directly or indirectly, to any person (including a person who is associated with or part of the Contractor's organisation, but not engaged on this Contract), firm, company or third party, and shall only use for the purposes of this Contract any information relating to this Contract, the Council, its business, customers, suppliers or any other information of whatever nature which is not in the public domain and which comes into the Contractor's possession in connection with this Contract.
- 15.2 The provisions of Clause 15.1 above shall not apply to information which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the Freedom of Information Act (FOIA) 2000 or the Environmental Information Regulations (EIR) 2004.

- 15.3 The Contractor shall not make any media or other announcements or publicise this Contract in any way without the Council's prior written consent. The Contractors shall ensure the observance of the provisions of this Clause 15.3 by all their employees, servants, agents and Sub-Contractors.

16. FREEDOM OF INFORMATION

- 16.1 The Contractor acknowledges that the Council is subject to the requirements of the Freedom of Information Act (FOIA) and the Environmental Information Regulations (EIR) and shall assist and cooperate with the Council to enable the Council to comply with its legal obligations.
- 16.2 The Contractor shall transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information.
- 16.3 The Contractor shall provide the Council with a copy of all information in its possession, or power in the form that the Council requires within five (5) Working Days (or such other period as the Council may specify) of the Council's request.
- 16.4 The Council shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, Freedom of Information Act or the Environmental Information Regulations.
- 16.5 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 16.6 The Contractor acknowledges that the Council may, acting in accordance with the legal requirements of the Freedom of Information Act and the Environmental Information Regulations, be obliged to disclose Information without consulting or obtaining consent from the Contractor, or despite having taken the Contractor's views into account.

17. CONFLICT OF INTEREST

- 17.1 The Contractor shall immediately notify the Council of any circumstances giving rise to or potentially giving rise to conflicts of interest relating to the Contractor (including without limitation its reputation and standing) and/or the Council of which it is aware or anticipates may justify the Council taking action to protect its interests.
- 17.2 Should the parties be unable to either remove the conflict of interest and/or to alleviate its effect, the Council shall have the right to terminate the Contract in accordance with **Clause 6 (Term and Termination)**.

18. ENTICEMENT

- 18.1 The Contractor undertakes that it shall not without the Council's prior written consent either during or after six (6) months following completion or termination of this Contract whichever is the later, engage, employ or otherwise solicit for employment, any person who during the relevant period was an employee, customer, supplier or agent of the Council.
- 18.2 The Contractor shall not whether as principal, employee, Contractor, or otherwise:
- 18.2.1 During the term of this Contract directly or indirectly either for itself or on behalf of any other person, firm or company advise or undertake any work or enter into employment or services with anyone where the work to be done shall be in conflict or competition with any work undertaken by the Contractor for the Council;

18.2.2 During this Contract and for a period of six (6) months after completion or termination of this Contract, directly or indirectly, either for itself or for any other person, firm or company solicit the business of any customer, Contractor, supplier or agent of the Council which the Contractor has become aware of directly or indirectly as a result of entering into this Contract, if such business would in the view of the Council be detrimental to the Council. For the avoidance of any doubt, this Clause 18.2 shall not apply to any pre-existing clients of the Contractor who may also be a customer, Contractor, supplier or agent of the Council.

19. TRANSFER AND SUB-CONTRACTING

19.1 The Contractor shall not without the prior written consent of the Council:

19.1.1 Dispense with the services of, or replace, the Contractor's Representative

19.1.2 Transfer or assign or charge or otherwise use as collateral value the whole or any part of this Contract

19.2 None of the Ordered Services shall be sub-contracted without the prior written consent of the Council.

20. FORCE MAJEURE

20.1 For the purposes of this Contract the expression "Force Majeure" shall mean any cause affecting the performance by either the Council or the Contractor of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control.

20.2 Neither the Council nor the Contractor shall in any circumstances be liable to the other for any failure to fulfil its obligations including but not limited to any damages or abatement of charges whether directly or indirectly caused to or incurred by the other party by reason of any failure or delay in the performance of its obligations hereunder which is due to Force Majeure.

21. WARRANTIES AND REPRESENTATIONS

21.1 The Contractor warrants and represents that:

21.1.1 it has full capacity and authority and all necessary consents to enter into and to perform this Contract;

21.1.2 the Ordered Services shall be provided and carried out by appropriately experienced, qualified and trained personnel with all due skill, care and diligence;

21.1.3 it shall discharge its obligations hereunder with all due skill, care and diligence including good current industry practice and in accordance with its own established internal procedures;

21.1.4 it shall take all measures to avoid any and all data loss and data corruption during the provision of the Ordered Services in accordance with good current industry practice; and

21.1.5 it shall take all measures to avoid the failure or reduced performance (in whole or in part) of the Ordered Services;

21.2 Both the Council and the Contractor warrants to the other that it has undertaken all requisite corporate and other action to approve and authorise the entering into and performance of this Contract.

22. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

22.1 Unless expressly provided in this Contract, the parties hereto do not intend any provisions hereof to be enforceable by any third party under the provisions of the Contract (Rights of Third Parties) Act 1999 and as such no person other than the said parties shall have any rights under this Contract nor shall it be enforceable by them.

23. SEVERABILITY

- 23.1 If any provision of this Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Contract had been executed with the invalid provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Contract, the Council and the Contractor shall immediately commence good faith negotiations to remedy such invalidity.

24. WAIVER

- 24.1 The failure of the Contractor or the Council to insist upon strict performance of any provision of this Contract or to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Contract.
- 24.2 A waiver of any default shall not constitute a waiver of any other default.
- 24.3 No waiver of any of the provisions of this Contract shall be effective unless it is expressed to be a waiver communicated in writing by either party.

25. LAW AND JURISDICTION

- 25.1 The Council and the Contractor agree that this Contract is to be governed by and construed according to the law of England and Wales and shall be subject to the exclusive jurisdiction of the English courts.

26. NOTICES

- 26.1 Notices must be served either personally, sent by pre-paid registered post or emailed to the address (with proof of delivery and receipt of the communication by email by the other party) of the other party given in this Contract or to any other address as the parties may have notified during the period of the Contract. Any notice sent by post will be deemed to have been delivered on the first working day following its dispatch.

27. ENTIRE AGREEMENT

- 27.1 This Contract constitutes the entire understanding between the Council and the Contractor relating to the subject matter.
- 27.2 No amendments to the provisions of this Contract shall be effective unless made as a result of a written agreement between the Council and the Contractor provided the same has been signed and dated by an authorised representative of both parties.
- 27.3 Both the Council and the Contractor unconditionally waives any rights it may have to claim damages against the other on the basis of any statement made by the other (whether made carelessly or not) not set out or referred to in this Contract (or for breach of any warranty given by the other not so set out or referred to) unless such statement or warranty was made or given fraudulently.
- 27.4 Both the Council and the Contractor unconditionally waives any rights it may have to seek to rescind this Contract on the basis of any statement made by the other (whether made carelessly or not) whether or not such statement is set out or referred to in this Contract unless such statement was made fraudulently.

28. NOT USED

29. TRANSPARENCY

- 29.1 The Contractor acknowledges and agrees that, in line with the relevant provisions of the Local Government Transparency Code 2015, the Council must observe its statutory duties and shall disclose (publish) all relevant information in compliance with the Transparency code.
- 29.2 Notwithstanding any other term of this Agreement, the Contractor hereby gives its consent for the Authority to publish this Agreement and its Schedules in its entirety, including from time to time agreed changes to the Agreement, to the general public in whatever form the Authority decides.

30. NOT USED

SCHEDULE 1: Specification of Services

SCHEDULE 2: Tender Submission

SCHEDULE 3: NOT USED

SCHEDULE 4: NOT USED

SCHEDULE 5: NOT USED

SCHEDULE 6: Insurance Certificates

SCHEDULE 7: NOT USED

SCHEDULE 8: NOT USED