****

**CONTRACT FOR THE SUPPLY AND INSTALLATION FOR CALTHORPE PARK play equipment**

**This agreement is dated 20**

**PARTIES**

(1) **Fleet Town Council**  (the “**Council**”).

(2) [**FULL COMPANY NAME**] [incorporated and registered in England and Wales] with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the “**Supplier**”).

**BACKGROUND**

The Supplier has tendered for the Services and the Council and the Supplier have agreed the Supplier shall provide the Services in accordance with this Agreement.

**AGREED TERMS**

1. Interpretation
   1. In these terms and conditions:

|  |  |
| --- | --- |
| “Agreement” | means the contract between (i) the Council and (ii) the Supplier for the Services and comprises these terms and conditions and the schedules appended to them and any purchase order provided by the Council to the Supplier but excluding any terms and conditions on the reverse of such purchase order; |
| “Council’s Representative” | has the meaning given to it in clause 3.2; |
| ”Best Value” | means the general duty of the Council to achieve continuous improvement in the way in which its functions are exercised pursuant to the provision of the Local Government Act 1999; |
| “Commencement Date” | means [ ]; |
| “Controller”, “Processor”, “Data Subject”, “Personal Data”, “Personal Data Breach”, “Data Protection Officer”: | have the same meanings as set out in the GDPR; |
| “Charges” | means the charges for the Services as specified in the Pricing Schedule; |
| “Confidential Information” | means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential (including any Personal Data) subject always to clause 13.3; |
| “Deliverables” | all materials produced by the Supplier in relation to the Services on and / or in any media, including without limitation reports, diagrams, computer programs, data and specifications (including without limitation drafts); |
| “Data Protection Legislation” | means (i) the General Data Protection Regulation (Regulation (EC) 2016/679 (GDPR), the Law Enforcement Directive (Directive( EU) 2016/6900 (LED) and any national implementing laws, as amended from time to time, (ii) the Data Protection Act 2018 (DPA 2018) (subject to Royal Assent) to the extent that it relates to the processing of personal data and privacy (iii) all applicable law about the personal data and privacy, including in each of (i), (ii) and (iii) all relevant regulatory policy, mandatory guidance and codes of practice. |
| “Data Loss Event” | means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier 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” | means 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; |
| “Data Protection Impact Assessment” | means an assessment by the Supplier of the impact of the envisaged processing on the protection of Personal Data; |
| “Equipment” | means all such equipment as is necessary for the proper performance of the Services; |
| “FOIA” | means the Freedom of Information Act 2000; |
| “Information” | has the meaning given under section 84 of the FOIA; |
| “Intellectual Property Rights” | patents, rights to inventions, copyright and related rights, trademarks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all existing and future rights capable of present assignment, applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world; |
| “Joint Controllers” | where two or more Controllers jointly determine the purpose and means of processing |
| “Method Statements” | means the methodologies submitted by the Supplier in his tender for the Services and as contained at Item 4; |
| “Party” | means the Supplier or the Council (as appropriate) and “Parties” shall mean both of them; |
| “Practical Completion Date”  “Pricing Schedule” | The date at when the project is complete except for minor defects that will be imminently put right.  means the Pricing Schedule submitted by Supplier as part of its tender and as set out in schedule 2; |
| “Protective Measures” | means 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 measures adopted by it; |
| “Purchase Order Number ” | means the Council’s unique number relating to the supply of the Services as specified on the purchase order provided by the Council to the Supplier before or at the beginning of the provision of the Services; |
| “Request for Information” | has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply); |
| “Services” | means the services to be supplied by the Supplier to the Council under the Agreement as described in the Specification; |
| “Specification” | means the specification for the Services set out in schedule 1; |
| “Staff” | means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement; |
| “Staff Vetting Procedures” | means vetting procedures that accord with good industry practice or, where requested by the Council, the Council’s procedures for the vetting of personnel as provided to the Supplier from time to time; |
| “Sub-Processor” | meansany third party appointed to process Personal Data on behalf of the Supplier related to this Agreement. |
| “Supplier’s Representative” | has the meaning given to it in clause 3.1; |
| “Term” | means the Initial Term or such period as may be varied by any extensions to this Agreement in accordance with clause 4 or the earlier termination of this Agreement in accordance with its terms; |
| “VAT” | means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and |
| “Working Day” | means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London. |

* 1. In these terms and conditions, unless the context otherwise requires:
     1. references to numbered clauses are references to the relevant clause in these terms and conditions;
     2. any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
     3. the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
     4. any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
     5. the word ‘including’ shall be understood as meaning ‘including without limitation’.
  2. Where there is any conflict or inconstancy between the provision of this Agreement, such conflict or inconsistency shall be resolved according to the following order of priority
     1. the clauses of this Agreement
     2. the schedules to this Agreement

1. Supply of Services
   1. In consideration of the Council’s agreement to pay the Charges, the Supplier shall supply the Services to the Council for the Term subject to and in accordance with the Agreement.
   2. In supplying the Services, the Supplier shall:
      1. co-operate with the Council in all matters relating to the Services and comply with all the Council’s instructions;
      2. provide the Services and Deliverables within the timescales as may from time to time be specified by the Council acting reasonably;
      3. perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Supplier’s industry, profession or trade;
      4. provide the Services in such a manner as to ensure that the services provided by the Council are not disrupted;
      5. use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier’s obligations are fulfilled in accordance with the Agreement;
      6. ensure that the Services shall conform with all descriptions and specifications set out in the Specification [and are carried out in accordance with the Method Statements];
      7. comply with all applicable laws; and
      8. maintain and document a quality control system in respect of the Services reasonably acceptable to the Council’s Representative.
   3. Without prejudice to the generality of clause 23 where the Supplier has Personal Data the Supplier shall ensure that it complies with the Data Protection Legislation. Without in anyway limiting the foregoing the Supplier shall treat any Personal Data with no less care and security that it treats the personal data of its own employees.
   4. Both Parties shall act in good faith towards each other in relation to all matters arising under this Agreement and without limiting the generality of the foregoing:
      1. the Supplier shall inform the Council’s Representative fully and as soon as possible of any circumstances which might affect the Supplier’s ability to provide the Services whether temporarily or permanently;
      2. each Party shall inform the other fully and as soon as possible of any circumstances which might lead to any substantial change in the nature, composition or amount of work involved in the provision of the Services or any other circumstance which might alter the burden of a Party’s obligations under this Agreement
   5. The Supplier shall provide such assistance and information to the Council as the Council may reasonably request in order for the Council to comply with its obligations in relation to Best Value and continuous improvement generally.
   6. The Council may by written notice to the Supplier at any time request a variation to the scope of the Services. In the event that the Supplier agrees to any variation to the scope of the Services and that variation affects the costs to the Supplier of providing the Services, the Charges shall be subject to fair and reasonable adjustment (taking into account the Pricing Schedule) to be agreed in writing between the Council and the Supplier. No variation to this agreement shall be valid or take any effect unless it is it is signed by the Council’s Representative and the Supplier’s Representative.
2. Representatives
   1. The Supplier’s Representative means the following person who shall be the agent of the Supplier for all purposes in connection with this Agreement:
      1. Name [insert]
      2. Telephone Number [insert]
      3. Address [insert]
      4. E-Mail Address [insert]
   2. The Council’s Representative means the following person who shall be the agent of the Council for all purposes in connection with this Agreement:
      1. Name [insert]
      2. Telephone Number [insert]
      3. Address [insert]
      4. E-Mail Address [insert]
3. Term
   1. The Supplier shall provide the Services for the Term from the date of Purchase Order to practical completion date.
4. Charges, Payment and Recovery of Sums Due
   1. The Charges shall be the full and exclusive remuneration to the Supplier in respect of the Services. Unless otherwise agreed in writing by the Council, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services. The Supplier may not make any claim for additional payment on the grounds of any misunderstanding as to the conditions, regulations or requirements relating to the provision of the Services.
   2. The Supplier shall invoice the Council at practical completion. 10% of the invoice amount will be retained by The Council until 12 months after practical completion.
   3. The invoices shall include the Purchase Order Number and such other supporting information as the Council may reasonably require to verify the accuracy of the invoice.
   4. In consideration of the supply of the Services by the Supplier, the Council shall consider and verify all invoices submitted by the Supplier in a timely manner and shall pay the Supplier the invoiced amounts no later than 30 days after receipt of a valid invoice. The Council may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.
   5. All amounts stated are exclusive of VAT, which shall be charged at the prevailing rate. The Council shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Services.
   6. If there is a dispute between the Parties as to the amount invoiced, the Council shall pay the undisputed amount. The Supplier shall not suspend the supply of the Services. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 19.
   7. If a Party fails to make any payment due to the other Party under this agreement by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 4% per annum above Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount
   8. Without prejudice to clause 11.1 if the Supplier uses sub-contractors for the provision of the Services the Supplier shall:
      1. ensure that contracts with such sub-contractors contain a provision requiring the Supplier to consider and verify all invoices submitted by the sub-contractor in a timely manner and a provision to pay any undisputed sums which are due from it to the sub-contractor within a specified period no exceeding 30 days from the receipt of a valid invoice;
      2. pay any undisputed sums which are due from it to a sub-contractor within 30 days from the receipt of a valid invoice; and
      3. ensure that its sub-contracts (and any further sub-contracts) contain provisions analogous to this clause 5.8.
5. Intellectual Property Rights
   1. The Supplier hereby assigns to the Council, with full title guarantee and free from all third party rights, the Intellectual Property Rights and all other rights in the products of the Services (including the Deliverables).
   2. The Supplier shall do or procure to be done all such further acts and things and execute or procure the execution of all such other documents for the purpose of securing for the Council the full benefit of this Agreement, including all right, title and interest in and to the Intellectual Property Rights and all other rights assigned to the Council in accordance with clause 6.1 and / or clause 16.4.3.
   3. The Supplier shall indemnify the Council against all claims, demands, actions, costs, expenses (including legal costs 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.
6. Premises
   1. The Council shall provide the Supplier with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All Equipment and other items brought onto the Council’s premises or otherwise used in the provision of the Services by the Supplier shall be at the Supplier’s risk.
   2. The Supplier shall be solely responsible for making good any damage to the Council’s premises and / or to any objects contained on such premises which is caused by the Supplier, other than fair wear and tear.
   3. While on the Council’s premises the Supplier shall, and shall procure that all Staff shall, comply with the Council’s security requirements.
7. Equipment / Surveying and Evaluation of Works
   1. The Supplier shall at all times during the Term provide and maintain all Equipment as is necessary for the proper performance of the Services.
   2. The Supplier shall at its own expense keep all Equipment at all times in good and serviceable repair and in such condition as is required to perform the Services in accordance with this Agreement.
   3. The Supplier shall ensure that Equipment used to provide the Services complies with all applicable laws and be entirely suitable for the performance of the Services.
   4. Any equipment provided by the Council for the purposes of this Agreement shall remain the property of the Council and shall be used by the Supplier and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Council on expiry or termination of the Agreement.
   5. The Supplier shall reimburse the Council for any loss or damage to the equipment provided by the Council (other than deterioration resulting from normal and proper use) caused by the Supplier or any Staff.

## 8.6 It is a strict condition of this Contract/Agreement that identified site is thoroughly inspected and evaluated prior to Tender submission. The Council and/or Participant will under no circumstances accept any increase to Tendered sums on the grounds of lack of knowledge or unplanned works.

1. Staff
   1. The Supplier shall:
      1. ensure that all Staff are appropriately supervised, DBS checked where necessary, qualified, trained and experienced to provide the Services and that they provide the Services with all reasonable skill, care and diligence;
      2. retain control of the Staff at all times so that the Staff shall not be deemed to be employees, agents or contractors of the Council;
      3. be liable at all times for all acts or omissions of Staff, so that any act or omission of a member of any Staff which results in a default under this Agreement shall be a default by the Supplier;
      4. replace at its own cost (temporarily or permanently, as appropriate) any member of Staff as soon as practicable if any Staff have been removed or are unavailable for any reason whatsoever;
      5. if requested, provide the Council with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Council’s premises in connection with the Agreement;
      6. procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Council; and
      7. ensure that all Staff are vetted in accordance with the Staff Vetting Procedures.
   2. If the Council reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:
      1. refuse admission to the relevant person(s) to the Council’s premises;
      2. direct the Supplier to end the involvement in the provision of the Services of the relevant person(s); and/or
      3. require that the Supplier replace any person removed under this clause with another suitably qualified person.
   3. All persons employed by or in the agency of the Supplier(s) in the performance or supervision of the Services shall at all times during working hours carry identity badges on their persons in a form approved by the Supervising Officer. Such identity badges must be made available for inspection as required by any officer of the Council and/or Participant who shall similarly disclose his or her own identity.

9.4 The Supplier(s) shall ensure that all persons employed in the performance of the Services shall at all times be properly attired and presentable.

1. Default in Performance
   1. Without prejudice to any other right or remedy the Council may have, if the Supplier fails to provide the Services in whole or in part in accordance with this Agreement the Council may, itself or using one or more third parties, provide such Services. The costs and charges incurred by the Council in so doing shall be paid by the Supplier to the Council on demand or may be deducted by the Council from any moneys due or which may become due to the Supplier.
2. Assignment and sub-contracting
   1. The Supplier shall not without the prior written consent of the Council assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Council may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
   2. Where the Council has consented to the placing of sub-contracts, the Supplier shall, at the request of the Council, send copies of each sub-contract, to the Council as soon as is reasonably practicable.
   3. The Council may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier’s obligations under the Agreement.
3. Governance and Records
   1. The Supplier shall at no additional cost to the Council:
      1. on reasonable notice attend such meetings as the Council may reasonably require with officers and / or members of the Council and / or attend any committee or sub-committee of the Council as the Council may reasonably require and shall ensure that its representatives are suitably qualified and knowledgeable of the Services to attend such meetings; and
      2. submit progress reports to the Council at the times and in the format specified by the Council.
   2. The Supplier shall keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services supplied under it and all payments made by the Council. The Supplier shall on request afford the Council or the Council’s representatives such access to those records as may be reasonably requested by the Council in connection with the Agreement.
4. Confidentiality, Transparency and Publicity
   1. Subject to clause [13.2](#bookmark), each Party shall:
      1. treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
      2. not use or exploit the disclosing Party’s Confidential Information in any way except for the purposes anticipated under the Agreement.
   2. Notwithstanding clause [13.1](#bookmark1), a Party may disclose Confidential Information which it receives from the other Party:
      1. where disclosure is required by applicable law or by a court of competent jurisdiction;
      2. to its auditors or for the purposes of regulatory requirements;
      3. on a confidential basis, to its professional advisers;
      4. to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
      5. where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier’s obligations under the Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause [13.2.5](#bookmark2) shall observe the Supplier’s confidentiality obligations under the Agreement; and
      6. where the receiving Party is the Council:
         * 1. on a confidential basis to the employees, agents, consultants and contractors of the Council;
           2. on a confidential basis to any successor body or organisation to which the Council transfers or proposes to transfer all or any part of its business;
           3. to the extent that the Council (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions (including without limitation pursuant to clause 18.5); or
           4. in accordance with clause [14](#bookmark3)

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement, employment contract or arrangement containing terms no less stringent than those placed on the Council under this clause 13.

* 1. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the text of the Agreement is not Confidential Information and the Supplier hereby gives its consent for the Council to publish this Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. The Council may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA and The Local Government Transparency Code 2014. In addition the Supplier acknowledges that the Council publishes to the general public (including on its website) all payments the Council makes over £250 and the Supplier hereby consents to any such payment made in connection with the Services to be so published and acknowledges that such information is not Confidential Information.
  2. The Supplier shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Council.

1. Freedom of Information
   1. The Supplier acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and 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 the Environmental Information Regulations 2004;
      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 Supplier acknowledges that the Council may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Supplier or the Services (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances the Council shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier’s attention after any such disclosure.
   3. Notwithstanding any other provision in the Agreement, the Council shall be responsible for determining in its absolute discretion whether any Information relating to the Supplier or the Services is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.
2. Force Majeure
   1. Neither party to this Agreement shall be liable to the other for any delay or non-performance of its obligations under this Agreement (and for the avoidance of doubt no Deductions shall accrue) to the extent that such non-performance is due to a Force Majeure.
   2. In the event that either party is delayed or prevented from performing its obligations under this Agreement by a Force Majeure, such party shall:

(a) give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;

(b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under the Agreement; and

(c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

15.3 A party cannot claim relief if the Force Majeure is attributable to that party’s wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure.

15.4 The Supplier cannot claim relief if the Force majeure is one where a reasonable Supplier should have foreseen and provided for the cause in question.

15.5 As soon as practicable following the affected party’s notification, the parties shall consult with each other in good faith and use all the reasonable endeavours to agree appropriate measures to mitigate the effects of the Force Majeure and to facilitate the continued performance of this Agreement. Where the Supplier is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure in accordance with Good Industry Practice.

15.6 The affected party shall notify the other party as soon as practicable after the Force Majeure 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 unless agreed otherwise by the parties.

15.7 The Council may, during the continuance of the Force Majeure, terminate this Agreement by written notice to the Supplier if a Force Majeure occurs that affects al or a substantial part of the Services and which continues for more than 30 Working Days.

1. Termination
   1. Without prejudice to any other right or remedy it might have (including without limitation pursuant to clause 18.3), the Council may terminate the Agreement by written notice to the Supplier with immediate effect if the Supplier:
      1. (without prejudice to clause 16.1.5), is in material breach of any obligation under the Agreement which is not capable of remedy;
      2. repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;
      3. is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;
      4. undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010;
      5. breaches any of the provisions of clauses [13](#bookmark4), [14](#bookmark5) and [17](#bookmark6); or
      6. becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier’s assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause [16.1.6](#bookmark7)) in consequence of debt in any jurisdiction.
   2. The Supplier shall notify the Council as soon as practicable of any change of control as referred to in clause 16.1.4 or any potential such change of control.
   3. Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and clauses 1, 6, 8.6, 9.1, 10, 12, 13, 14, 16, 17.6, 18, 19, 20, 21, 22 and 23 and any other provision of the Agreement that either expressly or by implication has effect after termination shall continue to have effect.
   4. Upon termination or expiry of the Agreement, the Supplier shall:
      1. give all reasonable assistance to the Council;
      2. immediately deliver to the Council all copies of information or data provided by the Council to the Supplier for the purposes of the Agreement. The Supplier shall certify to the Council that it has not retained any copies of such information or data, except for one copy which the Supplier may use for audit purposes only and subject to the confidentiality obligations in this Agreement; and
      3. immediately deliver to the Council all specifications and other documentation comprised in the Deliverables and existing at the date of such termination, whether or not then complete. All Intellectual Property Rights in such materials shall automatically pass to and vest in the Council (to the extent that they have not already done so by virtue of clause 6).
2. Compliance and Insurance
   1. The Supplier shall perform the Services in accordance with:
      1. the requirements of the Health and Safety at Work Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Site in the performance of its obligations under the Agreement; and
      2. the Supplier’s health and safety policy.
   2. Without in anyway limiting the other provisions of the Contract the Supplier shall:
      1. comply with all relevant codes of practice relating to the Services including those issued by the Health and Safety Executive;
      2. ensure all Staff are issued with and, during the provision of the Services, use appropriate personal protective equipment;
      3. provide the Services in such a way as to eliminate or minimise, so far as is reasonably practicable, any health and safety risks to the Staff, members of the public and any other persons;
      4. accept full responsibility for the day-to-day operational aspects of health and safety while performing the Services;
      5. inform the Council immediately of any breaches in health and safety law;
      6. co-operate fully with the Council in its monitoring of health and safety standards;
      7. inform the Council immediately in writing of any health and safety issues relating to the Council’s health and safety responsibilities in relation to the Contract; and
      8. inform the Council in writing of all RIDDOR reportable incidents as soon as possible (including outside normal office hours).
   3. The Council may conduct monitoring, reviews and audits of the health and safety arrangements in place in relation to the provision of the Services. The Supplier shall co-operate and shall procure that any relevant sub-contractor co-operates with the Council in relation to such monitoring, reviews and audits.
   4. The Supplier shall provide its health and safety policy statement (as required by the Health and Safety at Work Act 1974) to the Council on request.
   5. The Supplier shall:
      1. perform its obligations under the Agreement in accordance with all applicable equality law; and
      2. take all reasonable steps to secure the observance of clause [17.5.1](#bookmark8) by all Staff.
   6. The Supplier 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:

The “Required Insurances”. The cover shall be in respect of all risks which may be incurred by the Supplier arising out of the Supplier’s performance of the Agreement, including death or personal injury, loss of or damage to property or any other loss.

* + 1. public liability insurance with a limit of indemnity of not less than £15,000,000 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 in relation to any one claim or series of claims; [and
    3. professional indemnity insurance with a limit of indemnity of not less than £5,000,000]
  1. The Supplier 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 Supplier 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 Supplier.
  3. The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under or in connection with the Agreement.

1. Prevention of Fraud and Corruption
   1. The Supplier shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.
   2. The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify the Council immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
   3. If the Supplier or the Staff engages in conduct prohibited by clause [18.1](#bookmark9) or commits fraud in relation to the Agreement or any other contract with the Council the Council may:
      1. terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the supply of the Services and any additional expenditure incurred by the Council throughout the remainder of the Agreement; or
      2. recover in full from the Supplier any other loss sustained by the Council in consequence of any breach of this clause.
   4. The Supplier shall ensure that its employees and agents are made aware of the Council’s whistleblowing policy and that the details of this policy are fully explained to them, and the Supplier shall provide the Council with evidence of doing so upon request.
   5. The Council is under a duty to protect the public funds it administers and consequently may use information about the Supplier which it has acquired for the prevention and detection of fraud. The Council may share for such purposes all such information with other bodies responsible for auditing or administering public funds, including as part of the National Fraud Initiative (or any such initiative as may from time to time replace the same).
2. Dispute Resolution
   1. The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.
   2. If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause [19.1](#bookmark10), the dispute may by agreement between the Parties be referred to the President of RIBA or JCT to nominate a mediator (the “Mediator”) chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
   3. If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.
   4. Nothing in this clause shall preclude either Party referring a dispute between them to adjudication where the Services comprise construction operations within the meaning of the Housing Grants Construction and Regeneration Act 1996 (as amended).
3. General
   1. Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
   2. A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
   3. The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
   4. The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
   5. Any waiver or relaxation by either partly, or wholly or partly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. 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 Agreement.
   6. The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party’s behalf.
   7. Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
   8. If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.
4. Notices
   1. Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class post or, subject to clause [21.3](#bookmark11), e-mail to the address of the relevant Party set out in clause 3, or such other address as that Party may from time to time notify to the other Party in accordance with this clause:
   2. Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.
   3. Notices under clauses [15](#bookmark12) (Force Majeure), [16](#bookmark13) (Termination) and 18 (Prevention of Fraud and Corruption) may be served by email only if the original notice is then sent to the recipient by personal delivery or first class post in the manner set out in clause [21.1](#bookmark14).
5. Governing Law and Jurisdiction

The validity, construction and performance of the Agreement, and all contractual and non contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts.

1. Data Protection
   1. This clause only applies where the Supplier is processing Personal Data on behalf of the Council as part of, or ancillary to, the Services. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Supplier is the Processor.
   2. The Supplier shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.
   3. The Supplier shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:
      1. a systematic description of the envisaged processing operations and the purpose of the processing;
      2. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
      3. an assessment of the risks to the rights and freedoms of Data Subjects; and
      4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
   4. The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
      1. process that Personal Data only in accordance with Schedule 4, unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Council before processing the Personal Data unless prohibited by Law;
      2. ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event which the Council may reasonably reject (but failure to reject shall not amount to the approval by the Council of the adequacy of the Protective Measures) having taken account of the:
         * 1. nature of the data to be protected;
           2. harm that might result from a Data Loss Event;
           3. state of technological development; and
           4. cost of implementing any measures;
      3. ensure that :
         * 1. the Staff do not process Personal Data except in accordance with this Agreement (and in particular Schedule 4);
           2. it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:

are aware of and comply with the Supplier’s duties under this clause;

are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;

are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Council or as otherwise permitted by this Agreement; and

have undergone adequate training in the use, care, protection and handling of Personal Data;

* + 1. not transfer Personal Data outside of the EU unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
       - 1. the Council or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Council;
         2. the Data Subject has enforceable rights and effective legal remedies;
         3. the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Council in meeting its obligations); and
         4. the Supplier complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
    2. at the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the Agreement unless the Supplier is required by Law to retain the Personal Data.
  1. Subject to clause 23.6, the Supplier shall notify the Council immediately if it:
     1. receives a Data Subject Request (or purported Data Subject Request);
     2. receives 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;
     4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
     5. receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
     6. becomes aware of a Data Loss Event.
  2. The Supplier’s obligation to notify under clause 23.5 shall include the provision of further information to the Council in phases, as details become available.
  3. Taking into account the nature of the processing, the Supplier shall provide the Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 23.5 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:
     1. the Council with full details and copies of the complaint, communication or request;
     2. such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
     3. the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
     4. assistance as requested by the Council following any Data Loss Event;
     5. assistance as requested by the Council with respect to any request from the Information Commissioner’s Office, or any consultation by the Council with the Information Commissioner's Office.
  4. The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:
     1. the Council determines that the processing is not occasional;
     2. the Council determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
     3. the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
  5. The Supplier shall allow for audits of its Data Processing activity by the Council or the Council’s designated auditor.
  6. The Supplier shall designate a data protection officer if required by the Data Protection Legislation .
  7. Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Supplier must:
     1. notify the Council in writing of the intended Sub-processor and processing;
     2. obtain the written consent of the Council;
     3. enter into a written agreement with the Sub-Processor which give effect to the terms set out in this clause 23 such that they apply to the Sub-processor; and
     4. provide the Council with such information regarding the Sub-processor as the Council may reasonably require.
  8. The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.
  9. The Supplier may, at any time on not less than 30 Working Days’ notice, revise this clause 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).
  10. The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. The Council may on not less than 30 Working Days’ notice to the Supplier amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner’s Office.

23.15 Where the Parties include two or more Joint Controllers as identified in Schedule 4 those Parties shall enter into a Joint Controller agreement.

Schedule 1

**Specification**

**(SPEC INSERTED POST TENDER)**

Schedule 2

**Pricing Schedule – INSERTED POST TENDER**

[Schedule 3

**Method Statements] – INSERTED POST TENDER**

Schedule 4

**Personal Data**

**NOT REQUIRED**

**This Agreement has been entered into on the date stated at the beginning of this Agreement.**

Signed on behalf of the Supplier by

……………………………………………

Director

Signed on behalf of Fleet Town Council by

……………………………………………… …………………………………………….

Councillor

……………………………………………… ……………………………………………..

Councillor

Witnessed by the Town Clerk

…………………………………………… Date……………………………………….

Janet Stanton