

## **CONDITIONS OF CONTRACT**

### **1. Definitions**

- 1.1 In these conditions of contract save where the context otherwise requires, the following expressions shall have the meanings hereby assigned to them
- 1.1.1 "Approval" means the written consent of the Council
  - 1.1.2 "Change" means any variation, modification, or addition to the Contract
  - 1.1.3 "Conditions" means these conditions and any modifications of these conditions or supplementary conditions made in accordance with the provisions of the Contract
  - 1.1.4 "Confidential Information" means any information which has been designated as confidential in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how and all Personal Data.
  - 1.1.5 "Contract" means the Agreement of which these conditions are deemed to form a part
  - 1.1.6 "Contract Manager" means the representative of the Contractor appointed in accordance with the Contract
  - 1.1.7 "Contract Price" means the price (exclusive of any applicable VAT) payable to the Contractor by the Council pursuant to the Contract for the full and proper performance by the Contractor of its obligations under the Contract
  - 1.1.8 "Contract Term" means the period specified in Clause 39 hereof
  - 1.1.9 "Contractor" means the organisation responsible for providing the Services under the Contract
  - 1.1.10 "Council" means Chiltern District Council of King George V House King George V Road Amersham Bucks HP6 5AW
  - 1.1.11 "Dispute" means any dispute, difference or question of interpretation arising out of or in connection with this Contract, including but not limited to any dispute, difference or question of interpretation relating to the Services.
  - 1.1.12 "DPA" means the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation
  - 1.1.13 means the date on which the Contract is signed by the parties
  - 1.1.14 "Fraud" means any offence under Law creating offences in respect of

fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract

- 1.1.15 "Intellectual Property Rights" means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off
- 1.1.16 "Key Personnel" means those persons named in the Contract as being key personnel
- 1.1.17 "Law" means any applicable Act of Parliament, subordinate legislation, enforceable community right, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any regulatory body with which the Contractor is bound to comply
- 1.1.18 "Personal Data" shall have the same meaning as set out in the DPA
- 1.1.19 "Premises" means the location(s) where the Services are supplied
- 1.1.20 "Property" means the property, other than real property, issued or made available to the Contractor by the Council in connection with the Contract
- 1.1.21 "Services" means the services to be provided by the Contractor pursuant to the Contract
- 1.1.22 "Specification" means the specification a copy of which is annexed to the Contract
- 1.1.23 "Staff" means all persons employed or engaged by the Contractor to perform its obligations under the Contract together with all persons employed by its agents, suppliers and sub-contractors and used in the performance of its obligations under the Contract
- 1.1.24 "Supervising Officer" means [ ] for the time being of the Council or any other person appointed by the Council from time to time and notified in writing to the Contractor to act as the Supervising Officer

- 1.2 In the terms of the Contract references to the masculine shall include the feminine and vice versa and the singular shall include the plural and vice versa.

## **2. Variation of Contract**

- 2.1 No omission from, addition to or variation of the Contract shall be valid or of any effect unless it is agreed in writing and signed by the Supervising Officer.
- 2.2 Save for any omissions, additions or variations agreed pursuant to Clause 2.1, any provisions inconsistent with the Conditions and contained in any other document or in any oral agreement shall be void and of no effect.

**3. The Supervising Officer**

- 3.1 The functions, rights and powers conferred by the Contract upon the Council shall be exercised by the Supervising Officer.

**4. Performance of Services**

- 4.1 During the Contract Term the Contractor shall perform the Services (and any modifications thereto agreed in writing) in a manner totally consistent with the Contract and to the reasonable satisfaction of the Supervising Officer. The Council may inspect and examine the manner in which the Contractor performs the Services at the Premises.
- 4.2 The Contractor acknowledges having made all necessary enquiries to ensure that it can and will perform the Services and comply with the provisions of the Contract throughout the Contract Term. Without prejudice to the generality of the foregoing, the Contractor shall be deemed to have fully acquainted itself with all conditions likely to affect the performance of the Services and to have satisfied itself as to the nature and extent of the Services to be undertaken and as to all matters likely to affect the performance thereof.
- 4.3 The Contractor shall be deemed to have satisfied itself before submitting its offer as to the correctness and sufficiency of the rates and prices stated by it in its offer which shall (except insofar as is otherwise provided in the Contract) cover all of its obligations under the Contract and all of its costs and expenses arising from or connected with the performance of the Services.
- 4.4 No claim by the Contractor for additional payment shall be allowed on the grounds of any misunderstanding or misrepresentation due to lack of knowledge of the conditions, regulations or requirements for or the costs and expenses of performing the Services or of any other matter.
- 4.5 The Contractor shall throughout the Contract Term immediately notify the Council of any information, advice or recommendations relevant to the Contract or the Services which might assist the Council, and the Council may make such use (if any) of such information etc. as they think fit.

**5. Assets and Equipment**

- 5.1 The Contractor shall provide at its sole cost all the equipment and software required to deliver the Services to the standards required in the Contract.

**6. Asset Maintenance**

- 6.1 The Contractor shall ensure on a continuing basis that at all times all the equipment and software used to deliver the Services are maintained and refreshed at no additional cost to the Council sufficiently to ensure:
- 6.1.1 the Services are performed in a manner totally consistent with the Contract;
- 6.1.2 it owns the Intellectual Property Rights or obtains licences from the owner of those rights (to the extent they exist) in the equipment and software.

**7. Licence to enter the Premises**

- 7.1 The Council hereby grant the Contractor a non-exclusive licence to enter the Premises for the duration of the Contract solely for the purpose of performing its obligations under the Contract.
- 7.2 The Contractor shall limit access to the Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Contractor shall ensure that such Staff co-operate with other persons working concurrently thereon.
- 7.3 The Contractor shall comply with all security and confidentiality requirements of the Council while on the Premises and shall ensure that all Staff comply with such requirements.
- 7.4 The parties agree that there is no intention on the part of the Council to create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Council retain the right at any time to use any premises owned or occupied by them in any manner they see fit.

**8. Mistakes in Information**

- 8.1 The Contractor shall be responsible for the accuracy of all information, documentation and drawings supplied to the Council by the Contractor in connection with the supply of the Services and shall pay the Council any extra costs occasioned by any errors, omissions or discrepancies therein.

**9. Change Control**

- 9.1 Any change to the Contract shall be subject to the procedure to be used by the Council and the Contractor to effect changes to the Contract as detailed in the Schedule to the Conditions.

**10. Payment and Contract Price**

- 10.1 Provided the Contractor shall have performed the Services in accordance with the Contract, the Council shall pay to the Contractor through the Bank Automated Clearing System (BACS) the amounts due from it to the Contractor for services which it has received under the Contract subject to receipt of a VAT invoice submitted electronically and otherwise in accordance with the Contract. The Contractor shall supply the Council with such of its banking details as to enable such payments to be made.
- 10.2 The Council shall pay the Contractor's invoices no later than 30 days from the date on which it has determined that the invoice is valid and undisputed.
- 10.3 The Council shall consider and verify an invoice submitted to it for payment in a timely fashion. Where there is an undue delay in considering and verifying an invoice, the invoice shall be regarded as valid and undisputed for the purposes of paragraph 10.2 after a reasonable time has elapsed.
- 10.4 The Contractor shall invoice the Council and shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and is supported by any other documentation reasonably required by the

Council to substantiate the invoice.

10.5 Where the Contractor enters into a subcontract, the Contractor shall include in that subcontract:

- (a) Provisions having the same effect as paragraphs 10.2 and 10.3; and
- (b) A provision requiring the other party to that subcontract to include in any subcontract which it awards provisions having the same effect as paragraphs 10.2 and 10.3.
- (c) In this paragraph, 'subcontract' 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 the Contract.

10.6 The Contract Price shall be adjusted by the Council on each anniversary of the commencement of the Contract Term in line with the percentage change in the all items Consumer Price Index (the CPI) over the preceding twelve month period starting with the date of commencement of the Contract Term or the anniversary thereof as the case may be.

## **11. Recovery of Sums Due**

11.1 Whenever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum payable in respect of breach of the Contract) the Council may unilaterally deduct that sum from any sum then due or which at any later time may become due to the Contractor under the Contract or any other agreement with the Council.

11.2 Any overpayment by any of the parties shall be a sum of money recoverable by the party who made the overpayment from the party in receipt of the overpayment.

## **12. Euro**

12.1 Any legal requirement to account for the Services in Euro (or to prepare for such accounting) instead of or in addition to sterling shall be implemented by the Contractor free of charge to the Council. The Council shall provide all reasonable assistance to facilitate compliance by the Contractor with this clause.

## **13. Value Added Tax**

13.1 All sums quoted for and payable pursuant to the Contract are exclusive of Value Added Tax ("VAT"). The Contractor shall add to the Contract Price and the Council shall pay to the Contractor any VAT properly chargeable at the appropriate rate.

13.2 The Contractor shall indemnify the Council on a continuing basis against any liability including any interest penalties or costs incurred which is demanded levied or assessed on the Council at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this clause shall be paid by the Contractor not less than five working days before the date upon which the

tax or other liability is payable by the Council.

**14. Health and Safety**

- 14.1 The Contractor shall at all times take all such precautions as are necessary to protect the health and safety of the Council's staff and members, members of the public, and persons employed or contracted by the Contractor and shall comply with the requirements of the Health & Safety at Work, etc. Act 1974 (including any amendment or re-enactment thereof) and of any other Acts, Regulations or Orders pertaining to the health and safety of the Council's staff and members, the public or the Contractor's employees or contractors.
- 14.2 The Contractor shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract and of any incident occurring in the performance of such obligations where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 14.3 While on the Council's premises the Contractor shall comply with any health and safety measures implemented by the Council.
- 14.4 The Contractor shall ensure that a copy of its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) and risk assessments relevant to the Contract are provided to the Council upon request.

**15. Staff**

- 15.1 The Contractor shall employ staff with sufficient abilities and skills to ensure that the Services are performed in a proper and efficient manner and in accordance with the Contract.
- 15.2 The Contractor shall appoint a suitably skilled and qualified Contract Manager with experience of running similar services to be fully in charge of the performance of the Services and who shall be empowered to act on behalf of the Contractor for all purposes connected with the Contract. The Contractor shall give written notice thereof to the Supervising Officer forthwith following such appointment.
- 15.3 Any notice, information, instruction or other communication given or made to the Contract Manager shall be deemed to have been given or made to the Contractor.
- 15.4 The Contractor acknowledges that Key Personnel are essential to the proper provision of the Services to the Council and will not be released from supplying the Services without the agreement of the Council except by reason of long term sickness, maternity or paternity leave or termination of employment and other extenuating circumstances.
- 15.5 Any replacements to the Key Personnel shall be subject to the agreement of the Council. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

- 15.6 The Council shall not unreasonably withhold their agreement under clauses 15.4 or 15.5. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

**16. Equal Opportunities**

- 16.1 The Contractor shall at all times comply with the requirements of and not unlawfully discriminate in the provision of employment or services in accordance with the Equality Act 2010 or any statutory modifications or re-enactments thereof and any other Regulations, Statutory Instruments, Codes of Practice or Orders relating to the provision of the Services. The Contractor shall at all times adhere to and comply with all such common Equal Opportunities Standards for suppliers as shall be adopted and publicised by the Council from time to time. The Contractor shall use its best endeavours to secure observance of the aforesaid provisions by all Staff.

**17. Data Protection**

- 17.1 The Contractor shall duly observe all of its obligations under the DPA in connection with the Contract. All processing of Personal Data undertaken by the Contractor in accordance with the Contract shall at all times comply with the eight Data Protection Principles under the DPA.

- 17.2 In particular the Contractor shall:

17.2.1 act only on the written instructions of the Council when processing Personal Data and any protectively marked documents (as defined in the Government Code of Connection);

17.2.2 take appropriate security measures in accordance with ISO 27001 to safeguard against the unauthorised or unlawful processing or accidental or malicious loss or destruction of Personal Data, including (without prejudice to the generality of the foregoing) by the encryption of such data ;

17.2.3 strictly apply the principle of 'need to know' for data access in accordance with the Seventh Data Protection Principle;

17.2.4 ensure that all Staff who may have access to Personal Data are reliable and have integrity, and are aware of their statutory duties and have received adequate data protection and information handling training and that their knowledge is up-to-date;

17.2.5 ensure that all Staff who have access to Personal Data are informed of its confidential nature, comply with the obligations set out in this clause, and do not publish divulge or disclose it to third parties in any circumstances without the Council's prior written consent; and

17.2.6 grant the Council such reasonable access as is necessary to enable the Council to verify that the Contractor is complying with this clause.

17.2.7 immediately deny access to Personal Data to those of its staff who are found to be unreliable and give the Council written notification thereof.

- 17.3 The Contractor shall not without the prior written consent of the Council transfer

Personal Data to any third parties or cause or permit any personal data to be transferred outside the United Kingdom and the Contractor shall notify the Council within five working days if it receives either a request from a Data Subject (as defined by the DPA) to have access to that person's personal data or a complaint or a request relating to the Council's obligations under the DPA.

- 17.4 The Council's non personal data must not be processed outside the United Kingdom without the prior written consent of the Council.
- 17.5 Under no circumstances shall the Contractor gain any rights in the Personal Data and upon termination of the Contract the Contractor shall return the same to the Council.
- 17.6 The provisions of this clause shall apply during the Contract Term and indefinitely thereafter.

## **18. Agency**

- 18.1 Nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Council and the Contractor.
- 18.2 The Contractor is not and shall in no circumstances hold itself out as being the servant or agent or employer of the Council or as being authorised to enter into any Contract on behalf of the Council or in any other way to bind the Council to the performance, variation, release or discharge of any obligation.
- 18.3 The employees of the Contractor or any of its sub-contractors are not and the Contractor shall use its best endeavours to ensure that they do not hold themselves out as and the Contractor shall not hold them out as servants or agents of the Council for any purposes whatsoever and such employees shall not be entitled to receive any benefits provided by the Council to their employees.

## **19. Council's Obligations**

- 19.1 The obligations of the Council under the Contract are obligations of the Council as contracting counterparties and nothing in the Contract shall operate as an obligation upon or in any other way fetter or constrain the Council in any other capacity nor shall the exercise by the Council of their duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Council to the Contractor.

## **20. Confidentiality**

- 20.1 The Contractor shall treat the Confidential Information as confidential and shall not disclose it to any other person without the Council's prior written consent.
- 20.2 Notwithstanding the foregoing the Contractor may disclose the Confidential Information to Staff directly involved in the provision of the Services solely on a need-to-know basis provided the Contractor ensures that such Staff are aware of and comply with these obligations as to confidentiality.
- 20.3 The Contractor shall not, and shall ensure that the Staff do not, use the Confidential Information received otherwise than for the purposes of performing the Contractor's obligations under the Contract.



**21. Auditors' Access**

21.1 The Contractor shall maintain records in accordance with good professional practice of all work carried out for the Council. As and when they shall require the Contractor will provide access and assistance to the Council's internal auditors, external auditors, inspectors, investigators, Monitoring Officers and to the Supervising Officer on reasonable demand for the purposes of examining and reviewing the records and the Contractor's processing arrangements.

**22. Bribery and Corruption**

22.1 The Council shall be entitled to terminate the Contract and to recover from the Contractor the amount of any loss resulting from such termination (including but not limited to the costs incurred by the Council of making other arrangements for the supply of the Services) in the event of any of the occurrences set out in Clauses 22.1.1, 22.1.2 or 22.1.3

22.1.1 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 action in relation to the obtaining or execution of the Contract or any other contract with the Council, or for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other contract with the Council or either of them

22.1.2 like acts shall have been done by any person employed by the Contractor or acting on its behalf (whether with or without the knowledge of the Contractor)

22.1.3 in relation to any contract with the Council or either of them the Contractor or any person employed by it or acting on its behalf

22.1.3.1 has committed any offence under the Prevention of Corruption Acts 1889 to 1916 or the Bribery Act 2010; or

22.1.3.2 has given any fee or reward the receipt of which is an offence under Section 117 (2) of the Local Government Act 1972.

**23. Prevention of Fraud**

23.1 The Contractor shall take all reasonable steps to prevent Fraud by Staff and the Contractor (including its shareholders, members, and directors) in connection with receipt of monies from the Council.

23.2 The Contractor shall notify the Council immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

- 23.3 If the Contractor or its Staff commits Fraud in relation to this or any other contract with the Council, the Council may terminate the Contract and recover from the Contractor the amount of any loss suffered by the Council resulting from the termination or recover in full from the Contractor any loss sustained by the Council in consequence of any breach of this clause.

**24. Default in Performance**

- 24.1 The Services must be provided strictly in accordance with the Contract. If the requirements of the Specification are not complied with without prejudice to its other rights and remedies the Council shall be entitled to deduct from the Contract Price a sum equivalent to the amount of any loss incurred as a result of each failure by the Contractor to perform.

**25. Warranties and Representations**

- 25.1 The Contractor warrants and represents that:

- (a) it has full capacity and authority and all necessary consents to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
- (b) in entering the Contract it has not committed any Fraud;
- (c) as at the commencement of the Contract all information contained in its tender remains true accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the Contract;
- (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- (e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- (f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- (g) it owns, has obtained or will obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (h) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;

- (i) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- (j) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.
- (k) it has not paid commission or agreed to pay commission to the Council or any other public body or any person employed by or on behalf of the Council or any other public body in connection with the Contract.

## **26. Termination**

26.1 Without prejudice to and notwithstanding any other rights or remedies which the Council may possess the Council may by notice in writing terminate the Contract with immediate effect if:

26.1.1 the Contractor commits a breach of any of the provisions of the Contract and:

26.1.1.1 the breach is capable of remedy and the Contractor fails to remedy the breach within seven (7) days (or such shorter time as the Council shall reasonably determine) of receipt of a written notice specifying the breach; or

26.1.1.2 the breach is not capable of remedy; or

26.1.1.3 the breach is a material breach.

26.1.2 there is a change of control of the Contractor, for which purposes "control" means the ability to direct the affairs of the Contractor whether by virtue of contract, ownership of shares or otherwise howsoever

26.1.3 the Contractor has any director or senior manager convicted of an offence involving fraud, theft or dishonesty

26.1.4 changes to the Contractor's composition or staffing in the reasonable opinion of the Supervising Officer are likely to affect the Contractor's ability to discharge its obligations under the Contract

26.1.5 any of the details set out in or submitted with the Contractor's tender or any of the warranties, representations and undertakings given by the Contractor and deemed to form part of the Contract shall prove to be untrue or incorrect in any way

26.2 If the Contractor shall cease to carry on business or shall suffer execution to be levied on its goods or, if the Contractor consists of one or more individuals, any such individual dies, enters into a composition or arrangement for the benefit of his creditors or has a receiving order in bankruptcy made against him or, if the Contractor consists of a body corporate, the Contractor shall have a receiver or a receiver and manager appointed or shall be the subject of a resolution or order for winding up, or shall enter into an arrangement with its creditors or be unable

to pay its debts as they fall due, the Council may forthwith terminate the Contract but without prejudice to the obligations rights and remedies of the parties whether under the Contract or otherwise.

- 26.3 Upon termination under clauses 26.1 or 26.2 hereof, in addition to such consequences as are set out in the other provisions of the Contract
- 26.3.1 the Contractor shall on such date as the Council in their sole discretion shall determine cease to perform the Services or any part thereof; and
- 26.3.2 the Contractor shall fully and promptly indemnify the Council in respect of all costs, expenses, losses and liabilities incurred in the termination of the Contract and as a result of the breach thereof including but without limitation the costs of causing the Services or any part thereof to be performed by another method to the extent that such costs exceed such sums as would have been lawfully payable to the Contractor for performing such Services. The Council shall be at liberty to have the Services or any part thereof performed by any persons (whether or not employees of the Council) as the Council shall in their entire discretion think fit and whether or not on a temporary basis and shall be under no obligation to employ the least expensive method of having the Services or any part thereof performed; and
- 26.3.3 the Council shall be under no obligation to make any further payment to the Contractor and shall be entitled to retain in their hands any payment which may have fallen due to the Contractor before termination.
- 26.4 If there has been a substantial modification to the Contract within the meaning of Regulation 72 of the Public Contract Regulations 2015 or if the Contractor should have been excluded under Regulation 57(1) or (2) of the said Regulations from the procurement procedure or if the Contract should not have been awarded to the Contractor in view of a serious infringement under European law which has been declared as such by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the European Union, the Council may by notice in writing terminate the Contract with immediate effect.
- 26.5 If the Council are in material breach of their obligation to pay the Contractor undisputed sums of money when due, the Contractor shall notify the Council in writing of such failure to pay. If the Council fail to pay such undisputed sums within 90 working days of the date of receipt of such written notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Council exercising their rights under clause 11.

## **27. Disruption**

- 27.1 The Contractor shall take reasonable steps to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Council, their employees or any other contractor engaged by the Council.

- 27.2 The Contractor shall immediately inform the Council of any actual or potential industrial action, whether such action is by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- 27.3 In the event of actual or proposed industrial action by Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Contract.
- 27.4 If the Contractor's proposals are considered insufficient or unacceptable by the Council then the Contract may be terminated with immediate effect by the Council by notice in writing.

**28. Recovery upon Termination**

- 28.1 On the termination of the Contract for any reason, the Contractor shall at its own expense:
- (a) immediately return to the Council all Confidential Information, Personal Data and IP Materials (as defined in Clause 50.1) in its possession or in the possession or under the control of any permitted suppliers or sub-contractors, which was obtained or produced in the course of providing the Services;
  - (b) immediately deliver to the Council all Property (including materials, documents, information and access keys) provided to the Contractor. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
  - (c) assist and co-operate with the Council to ensure an orderly transition of the provision of the Services to the Council or the incoming Contractor and/or the completion of any work in progress.
  - (d) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Council for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Council or the incoming Contractor to conduct due diligence.

If the Contractor fails to comply with clause (a) and (b), the Council may recover possession thereof and the Contractor grants a licence to the Council or their appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or sub-contractors where any such items may be held.

**29. Disputes**

- 29.1 Any unresolved Disputes between the parties arising out of or connected with the Contract or the performance of the Services by the Contractor may be referred to an Arbitrator to be agreed between the parties and in default of such agreement to be nominated by the President of the Institute of Arbitrators or a person appointed by him. The Contractor shall continue to provide the Services in accordance with the terms of the Contract until a Dispute has been resolved.

- 29.2 The Arbitrator shall be entitled to make such decision or award as he thinks just and equitable having regard to the circumstances then existing.
- 29.3 The cost of such arbitration shall follow the event and in the event of neither party succeeding the costs shall be apportioned by the Arbitrator between the parties in such manner as the Arbitrator thinks fit.
- 29.4 Any award or decision of the Arbitrator shall be final and binding on the parties hereto.
- 29.5 Every reference to arbitration within this Clause shall be deemed to be a reference to arbitration within the meaning of the Arbitration Act 1996 and to any statutory modification or re-enactment thereof for the time being in force.

**30. British Standards**

- 30.1 All goods and materials used or supplied and all workmanship performed under this Contract shall be in accordance with the relevant appropriate British Standard Specification or British Standard Code of Practice issued by the British Standards Institution or its European equivalent current at the date on which supply or performance takes place.

**31. Observance of Statutory Obligations**

- 31.1 The Contractor shall ascertain and shall conform in all respects with all relevant laws, taxes, duties and regulations including but not limited to the provisions of any Act of Parliament, any instrument, rule or order made under any Act of Parliament, and any regulation, by-law or Statutory Notice issued by any local Authority or any Statutory Undertaker, which may be applicable or relevant to the provision of the Services and shall indemnify the Council against any losses damages liabilities penalties costs claims proceedings or expenses incurred by it arising from non compliance by the Contractor with this clause. Any breach of this clause shall constitute a material breach entitling the Council to terminate the Contract in accordance with clause 26.1 hereof.
- 31.2 The Contractor shall bear the costs of compliance with all legislation and any amendments thereto except that where any such amendment necessitates a change to the performance of the Contract and provided that such amendment could not have reasonably been foreseen by the Contractor at the date hereof or has not been raised in tender discussions the parties shall enter into good faith negotiations to make such adjustments to the Contract Price as may be necessary to compensate the Contractor for such additional costs (if any) as are both reasonably and necessarily incurred by the Contractor in accommodating such amendments. Should any amendment to any legislation result in a reduction of the Services required from the Contractor or in the costs incurred by the Contractor in the performance of the Contract the parties shall enter into good faith negotiations to make such adjustments to the Contract Price as may be necessary to compensate the Council for such reduction of costs as are reasonably realised by the Contractor.

**32. Default by Contractor**

- 32.1 If the Contractor, for whatever reason, 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 rights or remedies which it may possess the Council may by their own officers or other personnel provide and perform such of the Services in respect of which the Contractor has made default and 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.

- 32.2 The operation of this Clause shall not relieve the Contractor of any obligations under the Contract in respect of the Services as a whole, nor restrict the Council's right to terminate the Contract under Clause 26.

**33. Remedies Cumulative**

- 33.1 Except as otherwise expressly provided by the Contract, all remedies available to either party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

**34. Transfer and Sub-Contracting**

- 34.1 The Council shall be entitled to assign the benefit and burden of this Contract or any part thereof to a statutory or other public body and shall give written notice of any assignment to the Contractor.
- 34.2. The Contractor shall in no circumstances assign or sub-contract or purport to assign or sub-contract any part of this Contract to any person whatsoever without the prior written consent of the Supervising Officer.
- 34.3 Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract. The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.

**35. Liability of Council**

- 35.1 The Council shall indemnify the Contractor against all claims proceedings losses costs and expenses arising in respect of the personal injury, disease or death of any person or the damage to any property resulting from any act or neglect of the Council or any employee of the Council provided always that the Council's liability to indemnify the Contractor under this Clause shall be reduced proportionately to the extent that the act or neglect of the Contractor or its sub-contractors employees or agents has contributed to the said injury, disease, death or damage.
- 35.2 The Council shall not be liable for or in respect of any damages or compensation payable by law in respect of or in consequence of any accident or injury to any person in the employment of the Contractor or any sub-contractor save and except to the extent that such accident or injury results from or is contributed to by any act or default of the Council their agents or employees and (save and except to the extent aforesaid) the Contractor shall indemnify and keep indemnified the Council against all such liability incurred and damages and compensation paid in respect thereof.
- 35.3 The Council shall in no circumstances be liable to the Contractor for any loss of profit, business or production or for any similar loss or damage whether direct,

indirect or consequential and howsoever caused.

- 35.4 The Council accepts no liability for any representation which may have been made to the Contractor prior to its entering into this Contract and the Contractor acknowledges that it did not rely upon any representations whether written, oral or implied, made by or on behalf of the Council when entering into this Contract.

**36. Liability of Contractor**

- 36.1 The Contractor shall fully and promptly indemnify the Council against all costs, expenses, liabilities, losses, claims or proceedings whatsoever arising in respect of the personal injury or disease or death of any person whomsoever and in respect of any damage whatsoever to any property real or personal arising out of or in the course of or by reason of the performance of the Services or any act, neglect or omission of the Contractor or the Staff whether in connection with the supply or the late or purported supply of the Services or otherwise and howsoever such liability may arise provided always that the Contractor's liability to indemnify the Council as aforesaid shall be reduced proportionately to the extent that the act or neglect of the Council, its employees or agents has contributed to the said injury, disease, death or damage.

**37. Waiver**

- 37.1 Any failure by the Council to enforce any provision of this Contract shall not be construed as a waiver of such provision and shall not affect the ability of the Council to enforce such provision in accordance with the terms of the Contract
- 37.2 No waiver shall be effective unless it is expressly stated to be a waiver and notified to the other party in writing in accordance with clause 41 (Notices).

**38. Insurance**

- 38.1 The Contractor shall (but without limiting its obligations and liability under the Contract) procure and effect and at all times maintain while the Contract remains in force and for a minimum of 6 (six) years thereafter with reputable insurers or underwriters previously approved by the Council (which approval shall not be unreasonably withheld) all necessary and adequate insurances, including Public Liability Insurance of no less than five million pounds sterling (£5,000,000), Employers (Compulsory) Liability Insurance of no less than ten million pounds sterling (£10,000,000), Professional Indemnity Insurance of no less than two million pounds sterling (£2,000,000), and Product Liability Insurance of no less than £2,000,000, in each case in respect of any one claim or incident and with the scope of the cover appropriate to the Services as to insure and indemnify the Contractor fully against liability:
- 38.1.1 to the Council and to any employee of the Council
- 38.1.2 to the employees of the Contractor
- 38.1.3 to any other person
- 38.2 The Contractor shall, prior to the commencement of the Contract and at such other times as the Supervising Officer may require, supply the Supervising Officer with copies of all insurance policies, cover notes, premium receipts and other documents necessary to comply with Clause 38.1



- 38.3 The Supervising Officer shall be entitled to notify the Contractor in writing that in the opinion of the Supervising Officer any such policy of insurance does not effect sufficient cover to comply with the requirements of this Clause and to require the Contractor to effect such insurance as will so comply. Upon receipt of such notice the Contractor shall forthwith procure and effect such insurance as the Supervising Officer shall require.
- 38.4 If the Contractor shall fail upon request to produce to the Supervising Officer satisfactory evidence that such insurance policies are in force or shall fail to comply with a notice under Clause 38.3 then and in either such case the Council may effect and keep in force such insurance and pay such premiums as may be necessary for that purpose and from time to time deduct the amounts so paid by the Council from any monies due or which may become due to the Contractor or recover the same as a debt due from the Contractor.

**39. Contract Term**

- 39.1 The Contract Term shall commence on [ ] and shall continue for a period of [ ] expiring automatically at midnight on [ ] unless the Contract is lawfully terminated whether in accordance with its provisions or otherwise. The Council shall have the right in their sole discretion to extend the Contract Term for [ ] by giving the Contractor notice in writing. Such notice shall be given no later than [ ] months before the date that the Contract Term would otherwise expire if not extended.

**40. Interpretation of Contract**

- 40.1 The clause headings shall not be construed as part of the Conditions.

**41. Notices**

- 41.1 Any notice to be served on the Contractor shall be valid and effective if it is sent to the principal place of business of the Contractor by one or more of the following methods:
- 41.1.1 recorded delivery post
  - 41.1.2 hand delivery
  - 41.1.3 facsimile
  - 41.1.4 electronic mail
- 41.2 No notice to be served upon the Council shall be valid and effective unless it is sent by recorded delivery post or delivered by hand to the Council at the address set out in 1.1.10 hereof or such other address (if any) as the Supervising Officer may notify the Contractor in writing.
- 41.3 Provided it is not returned as undelivered, any notice shall be deemed to have been given two working days after the day on which the letter was posted or four hours after the time of despatch in the case of electronic mail or facsimile transmission or sooner where the other party acknowledges receipt.

**42. Applicable Law**

- 42.1 The Contract shall be construed in accordance with English law. The parties hereto agree to submit to the exclusive jurisdiction of the English courts as

regards any claim or matter arising under the Contract or in connection with the performance of the Services.

- 42.2 All references within the Contract to Acts of Parliament shall be deemed to include any statutory modification or re-enactment thereof whether before or subsequent to the date of the Contract.

**43. Rights and Duties Reserved**

- 43.1 Nothing contained in the Contract or implied in consequence of it shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of their functions as local authorities.

**44. Freedom of Information**

- 44.1 The Contractor acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) and may be required to request information from the Contractor on behalf of a resident of the Council or other enquirer and the Contractor undertakes to assist and cooperate with the Council to enable the Council to comply with its obligations under the FOIA and EIR within the relevant timescales.
- 44.2 The Contractor further acknowledges that under the FOIA and EIR all information is open to scrutiny by the public subject to applicable exemptions. Should the Council consider that any information requested relating to the Contract is commercially sensitive and/or confidential, they will consult with the Contractor. The Contractor will in relation to such information specify upon request which (if any) elements are private and confidential and advise the Council in writing and if required justify why such information should be withheld for commercially sensitive and/or confidential reasons under FOIA or EIR.
- 44.3 The Council shall be entitled to determine in its absolute discretion whether information requested is exempt from disclosure in accordance with the provisions of the FOIA or the EIR.
- 44.4 The Contractor acknowledges that the Council may be obliged under FOIA or EIR to disclose information in certain circumstances concerning the Contractor or the Services without consulting the Contractor or following consultation with the Contractor and having taken its views into account. Where the Contractor has not been consulted, the Council shall take reasonable steps where appropriate to give the Contractor advance notice before any such disclosure is made.
- 44.5 The Contractor shall and shall procure that any sub-contractor shall transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two working days of receiving a Request for Information. In no event shall the Contractor or any sub-contractor respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 44.6 Notwithstanding any other term of the Contract, the Contractor hereby consents to details of the Contract (including amounts payable thereunder) and any changes thereto agreed from time to time being published by the Council in accordance with its intention to be transparent about their contracts and procurement.

**45. Skill and care of the Contractor**

- 45.1 The Contractor shall use all the care, foresight, skill and diligence to be expected of a suitable, skilled and experienced supplier providing services of the type to be performed under the Contract.

**46. Best Value**

- 46.1 The Contractor shall provide/supply to the Council any information necessary to monitor the performance of and for benchmarking the Contract and for achieving the targets set by the Council for the Contract as notified to the Contractor.
- 46.2 The Contractor shall review continuously the manner in which the Services are performed and shall advise the Supervising Officer of any changes that it considers could be of advantage to the Contractor, the Council and/or the users of the Services. Any such recommendations may be considered at a contract monitoring meeting but shall only be implemented by the Contractor subject to receipt of written instructions issued by the Supervising Officer.
- 46.3 The Contractor shall undertake or refrain from undertaking such actions as the Council shall reasonably request to enable the Council to comply with Part 1 of the Local Government Act 1999.

**47. Conflicts of Interest**

- 47.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff is placed in a position where in the reasonable opinion of the Council there is or may be a conflict between the pecuniary or personal interests of the Contractor and the duties owed to the Council under the provisions of the Contract. The Contractor will disclose promptly to the Council full particulars of any such conflict of interest which may arise.
- 47.2 The Council reserves the right to terminate the Contract immediately by notice in writing and/or take other steps it deems necessary where in the reasonable opinion of the Council there is or may be a conflict between the pecuniary or personal interests of the Contractor and the duties owed to the Council under the Contract. The actions of the Council pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

**48. Good Faith/Publicity**

- 48.1 The Contractor shall act in good faith at all times and shall neither bring the Council into disrepute nor, without the prior written consent of the Council, make any reference to the Council or the Contract in any advertising, promotional or published material, nor speak in public about the Council, their affairs, or the Contract.

**49. General**

- 49.1 The unenforceability of any single provision of the Contract shall not affect any other provision. Where such a provision is held to be unenforceable, it shall be severed and the remaining provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the unenforceable provision eliminated.
- 49.2 Without prejudice to the rights of either party in respect of actions relating to fraudulent misrepresentation, the Contract and any appendices and any documents referred to therein constitutes the entire understanding between the parties with respect to the subject matter thereof and supersedes all prior agreements, negotiations and discussions between the parties relating thereto.
- 49.3 This Contract does not create or infer any rights under the Contracts (Rights of Third Parties) Act 1999 which are enforceable by any person who is not a party to the Contract.

**50. Intellectual Property Rights**

- 50.1 All Intellectual Property Rights in any instructions, software, plans, data, drawings, databases, patterns, models, and designs and in all other material (the "IP Materials")
  - (a) supplied to the Contractor by or on behalf of the Council shall remain the property of the Council; and
  - (b) prepared by or for the Contractor for use or intended use in relation to the performance by the Contractor of its obligations under the Contract shall belong to the Council

and the Contractor shall not and shall ensure that the Staff shall not (except where necessary for the performance of the Contract) without prior Approval use or disclose any Intellectual Property Rights in the IP Materials.
- 50.2 The Contractor hereby assigns and shall procure that any third party assigns to the Council, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause 50.1(b). This assignment shall take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights. The Contractor shall execute and shall procure that any third party executes all documentation necessary to give effect to this assignment.
- 50.3 The Contractor shall waive or procure a waiver of any moral rights subsisting in any copyright.
- 50.4 The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are used to perform the Contract grants to the Council a non-exclusive licence to use the Intellectual Property Rights.

- 50.5 The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Services and shall during and after the Contract Term indemnify and keep indemnified and hold the Council harmless from and against all actions, claims losses damages costs and expenses and other liabilities which the Council may suffer as a result of breach of this clause.
- 50.6 The Council shall notify the Contractor in writing of any claim or demand brought against the Council for infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor.
- 50.7 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor provided always that the Contractor:
- (a) shall consult the Council on all substantive issues which arise during the conduct of such litigation and negotiations;
  - (b) shall take due and proper account of the interests of the Council; and
  - (c) shall not settle or compromise any claim without the Council's prior written consent (not to be unreasonably withheld or delayed).
- 50.8 The Contractor grants to the Council a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights that the Contractor owned or developed prior to commencement of the Contract Term and which the Council reasonably requires in order to exercise their rights and take the benefit of the Contract including the Services provided.

## **51. TUPE**

- 51.1 The Parties hereby acknowledge that the entry into the Contract may constitute a relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"). If so, the contracts of employment of those employees who are wholly or mainly assigned in the Services immediately before contract commencement ("the Transferring Employees") will take effect as if originally made between the Contractor and the employees (save for those who object pursuant to Regulation 4(7) of TUPE) and the Contractor shall be responsible for all emoluments and outgoings in respect of the Transferring Employees which are attributable in whole or in part to the period after contract commencement and will indemnify and hold the Council harmless against all actions, suits, claims, damages, costs and expenses and other liabilities which the Council may incur as a result of the same.
- 51.2 The Contractor shall provide the Council with all the information that they may require within fourteen days of receipt of a written request for the purpose of assessing any costs which may fall upon the Council or the new contractor as a result of the transfer of the undertaking following expiry or termination of the Contract. The Contractor hereby warrants to the Council and the new Contractor that all the information disclosed pursuant to a request shall be true and accurate to the best of its knowledge and belief and agrees to indemnify the Council and the new contractor against all claims, costs, demands, losses and liabilities ("Losses") arising however out of a breach of this warranty.

- 51.3 At intervals to be stipulated by the Council (which shall not be more frequent than every thirty days) and immediately prior to the end of the Contract Term the Contractor shall deliver to the Council a complete update of all the information required under clause 51.2.
- 51.4 The Contractor undertakes that for a period of six months before the end of the Contract Term or upon the giving of notice to terminate the Contract (if earlier) no new person shall be employed in the undertaking without the prior written consent of the Council (not to be unreasonably withheld or delayed) and every reasonable endeavour shall be used to retain the services of all persons so employed and no variation shall be made to their contracts of employment without the prior written consent of the Council (not to be unreasonably withheld or delayed).
- 51.5 If on termination of the Contract or otherwise, the contract of employment of any employee of the Contractor working in the undertaking transfers to the Council or to a new contractor pursuant to TUPE or any superseding or amending legislation, the Contractor shall indemnify the Council and the new contractor against all Losses which the Council or the new contractor incurs which relate to or arise out of any act or omission by the Contractor prior to the date of transfer in relation to such contract of employment.
- 51.6 The Contractor shall indemnify the Council and the new contractor against any Losses which the Council or the new contractor incurs pursuant to TUPE which relate to or arise out of the dismissal on or before the end of the Contract Term of any employee who has worked in the undertaking.

**52. Counter-Terrorism**

- 52.1 The Contractor acknowledges that the Council is subject to the requirements of Section 26 of the Counter Terrorism and Security Act 2015 (the "Prevent Duty") and shall assist and co-operate with the Council (at the Contractor's expense) to enable the Council to comply with its duties.
- 52.2 The Contractor represents and warrants that neither it nor to the best of its knowledge any Staff have at any time prior to the date of commencement of the Contract Term:
- (a) been engaged in vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs ("Extremist Activity") or been subject to an investigation or prosecution which relates to alleged Extremist Activity;
  - (b) disseminated extremist views or been subject to an investigation or prosecution which relates to alleged dissemination of extremist viewpoints;
  - (c) allowed its funds or funds under its control to be used to support Extremist Activity or disseminate extremist viewpoints.
- 52.3 The Contractor shall not, and shall procure that any of its sub-contractors shall not:
- (a) allow its resources, or the resources of the Council, to the extent that they are available for the Contractor's use, to provide a platform for Extremist Activity or to disseminate extremist viewpoints;
  - (b) allow its funds or funds under its control to be used to support Extremist Activity or disseminate extremist viewpoints;
  - (c) do or suffer to be done anything which may cause the Council to be in breach of its obligations under the Prevent Duty.
- 52.4 The Contractor shall immediately notify the Council (in writing if appropriate), if it becomes aware of any breach of clauses 52.2 or 52.3 above.
- 52.5 If the Contractor makes a notification to the Council pursuant to clause 52.4 above, the Contractor shall respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to access the documents which led the Contractor to make the notification.
- 52.6 If the Contractor is in default under Clauses 52.2 and/or 52.3, the Council may:
- (a) require the Contractor to remove from performance of this agreement any Staff whose acts or omissions have caused the default;
  - (b) immediately terminate this agreement;
  - (c) refer the matter to the police and/or other relevant agencies, authorities and bodies;
- (

(d) take all or a combination of actions listed at (a),(b), and (c).

- 52.7 If the Council takes action under clause 52.6 above it may (if appropriate) specify to the Contractor the nature of the breach, the identity of the person(s) who the Council believes has engaged in the Extremist Activity and the action that the Council has elected to take (including, where relevant, the date on which this agreement shall terminate).