

- NOTE: These General Terms and Conditions may be used for Low Value Works contracts (up to a value of £10,000) and Low Value and Minor Contracts (up to £50,000) for goods and services (where appropriate for those goods and services)
- NOTE: SCHEDULE 1 must be completed where the Contractor is processing Personal Data on behalf of the Council – see clause 29 below

SHROPSHIRE COUNCIL

GENERAL TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS, SERVICES AND WORKS

TABLE OF CONTENTS

1. AGREEMENT
2. APPLICATION OF THESE GENERAL TERMS AND CONDITIONS TO A PURCHASE ORDER
3. DEFINITIONS
4. GENERAL
5. WORKS
6. PURCHASE ORDERS
7. SPECIFICATION AND QUALITY OF THE GOODS, AND SERVICES
8. ALTERATIONS TO THE SPECIFICATION OF GOODS AND SERVICES
9. PRICE AND PAYMENT
10. DELIVERY
11. LOSS OR DAMAGE OF GOODS IN TRANSIT
12. INSPECTION OF GOODS
13. REJECTION OF GOODS AND SERVICES
14. TITLE - PASSING PROPERTY
15. THE COUNCIL'S OBLIGATIONS
16. WARRANTY
17. INDEMNITIES
18. TERMINATION AND CANCELLATION
19. PREVENTION OF BRIBERY
20. INTELLECTUAL PROPERTY RIGHTS
21. INDEPENDENT CONTRACTORS
22. SEVERABILITY
23. ASSIGNMENT, TRANSFER AND SUB-CONTRACTING
24. WAIVER
25. NOTICES
26. CONFIDENTIALITY
27. AGREEMENT STATUS AND TRANSPARENCY
28. COUNCIL DATA
29. PROTECTION OF PERSONAL DATA
30. COUNCIL DATA AND PERSONAL DATA AUDITS
31. PUBLIC INTEREST DISCLOSURE ('WHISTLE BLOWING')
32. INSURANCE
33. EQUALITIES
34. HUMAN RIGHTS, ANTI-SLAVERY AND HUMAN TRAFFICKING
35. HEALTH AND SAFETY AT WORK
36. FREEDOM OF INFORMATION ACT 2000 & ENVIRONMENTAL INFORMATION REGULATIONS 2004
37. SAFEGUARDING
38. SUSTAINABILITY
39. EXPIRY
40. AUDIT AND MONITORING
41. RIGHTS OF THIRD PARTIES

- 42. ENTIRE AGREEMENT
- 43. FORCE MAJEURE
- 44. GOVERNING LAW AND JURISDICTION
- 45. COMPLAINTS PROCEDURE
- 46. DISPUTES
- Schedule 1 – Data Protection Schedule
- Schedule 2 – Additional clauses for Works agreements

1. AGREEMENT

1.1. This Agreement is made between you (the “Contractor” as identified in the Purchase Order, Award Letter or Form of Agreement) and Shropshire Council (“ the Council”) in respect of the Goods and/or the supply of Services and/or the performance of Works as is described in this Agreement.

2. APPLICATION OF THESE GENERAL TERMS AND CONDITIONS TO A PURCHASE ORDER

2.1. These General Terms and Conditions shall apply to a Purchase Order, unless the Contractor has a separate contract with the Council in relation to the Goods or Services or Works (whether referred to in the Purchase Order or not) in which case the terms and conditions of that contract shall take priority over these terms and conditions. These terms and conditions or the terms and conditions of any specific contract included with the Purchase Order take precedence over any of the Contractor’s standard terms and conditions of business.

2.2. Any purchase by the Council of goods, works or services is conditional upon acceptance of these terms and conditions by the Contractor. If the Contractor does not accept these terms and conditions, then the Contractor should not accept the Purchase Order (where issued) and should inform the Council immediately.

3. DEFINITIONS

2.1 In this document the following words shall have the following meanings:

'Agreement'	means the Agreement between the Council and the Contractor consisting of either the Award Letter, Purchase Order or Form of Agreement together with these General Terms and Conditions and any other documents (or parts thereof) specified in the Award Letter, Purchase Order or Form of Agreement and incorporated as part of this Agreement
'Associated Person'	means in respect of the Council, a person, partnership, limited liability partnership or company (and company shall include a company which is a subsidiary, a holding company or a company that is a subsidiary of the ultimate holding company of that company) in which the Council has a shareholding or other ownership interest.
'Award Letter'	means the letter issued by the Council to the successful tenderer to award the contract and which includes the Council’s requirements;
'Bribery Act'	the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.
Commencement Date	the date set out in the Purchase Order, Award Letter or Form of Agreement or otherwise when the Contract is created pursuant Clause 3.1.
“Commercially Sensitive Information”	means information provided to the Council by the Contractor of a commercially sensitive nature relating to the Contractor, its Intellectual Property Rights or its business which the Contractor has indicated to the Council in writing that, if disclosed by the Council, would cause the Contractor significant commercial disadvantage or material financial loss;
“Confidential Information”	any information, which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential however it is conveyed, including information that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Council

	or the Contractor, including Intellectual Property Rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") ;
"Contractor Equipment"	the hardware, computer and telecoms devices and equipment supplied by the Contractor or its Sub contractors (but not hired, leased or loaned from the Council) for the provision of the Services;
"Contractor Software"	software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services;
"Contractor System"	the information and communications technology system used by the Contractor in performing the Services including the Software, the Contractor Equipment and related cabling (but excluding the Council System);
"Contractor Personnel"	all employees, agents, consultants and contractors of the Contractor and/or of any Sub-contractor;
"Council Data"	the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (a) supplied to the Contractor by or on behalf of the Council; or which the Contractor is required to generate, process, store or transmit pursuant to this Agreement; or (b) any Personal Data for which the Council is the Data Controller;
"Council Software"	software which is owned by or licensed to the Council, including software which is or will be used by the Contractor for the purposes of providing the Services but excluding the Contractor Software;
"Council System"	the Council's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Council or the Contractor in connection with this Agreement which is owned by or licensed to the Council by a third party and which interfaces with the Contractor System or which is necessary for the Council to receive the Services;
"Council Representative"	the representative appointed by the Council
"Data Controller"	as defined in the Data Protection Legislation
"Data Processor"	as defined in the Data Protection Legislation
"Data Protection Legislation"	all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party
"Data Subject"	as defined in the Data Protection Legislation
Delivery Date	the date specified for delivery of the Goods or Services or completion of the Works in the Purchase Order, in accordance with Clause 2.7.
"EIR"	means the Environmental Information Regulations 2004 (as may be amended from time to time.)
"Exempt Information"	means any information or class of information (including but not limited to any document, report, Agreement or other material containing information) relating to this Agreement or otherwise relating to the parties to this Agreement which potentially falls within an exemption to FOIA (as set out therein)
"FOIA"	means the Freedom of Information Act 2000 and all subsequent regulations made under this or any superseding or amending enactment and regulations; any words and expressions defined in the FOIA shall have the same meaning in this clause
"FOIA notice"	means a decision notice, enforcement notice and/or an information notice issued by the Information Commissioner
"Form of Agreement"	means the contract document (other than a Purchase Order or Award Letter) to which these General Terms and Conditions are attached or referred to
"Goods"	means all goods specified in the Agreement.

"Information"	has the meaning given under section 84 of the Freedom of Information Act 2000;
"Intellectual Property Rights"	means all patents, registered and unregistered designs, copyright, trade marks, know-how and all other forms of intellectual property wherever in the world enforceable
"Law"	any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;
"Malicious Software"	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
"Packages"	includes bags, cases, cylinders, drums, pallets and other containers
"Personal Data"	as defined in the Data Protection Legislation
"Personal Data Breach"	as defined in the Data Protection Legislation
"Price"	means the price of the Goods and/or charge for the Services or Works being provided by the Contractor
'Prohibited Act'	the following constitute Prohibited Acts: (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to: (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity; (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement; (c) committing any offence: (i) under the Bribery Act; (ii) under legislation creating offences concerning fraudulent acts; (iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Council; or (d) defrauding, attempting to defraud or conspiring to defraud the Council.
"Public body"	as defined in the FOIA 2000
'Purchase Order'	means the Council's official order which encompasses orders written or electronically generated via any of the Council's ordering systems and to which these General Terms and Conditions are attached or referred to
"Receiving Party"	means a party to this Agreement to whom a Request for Information is made under FOIA, and who thereafter has overall conduct of the request and any response
'Regulated Activity'	in relation to children, as defined in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006, and in relation to vulnerable adults, as defined in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.
'Regulated Provider'	as defined in section 6 of the Safeguarding Vulnerable Groups Act 2006
"Regulatory Bodies"	those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the Council and "Regulatory Body" shall be construed accordingly;
"Request for Information"	means a written request for information pursuant to the FOIA as defined by Section 8 of the FOIA
"Security Policy"	the Council's ICT security policy as updated from time to time;
"Services"	means any and all of the services to be provided by the Contractor under this Agreement including those set out in any schedules or service descriptions.

'Software"	Specially Written Software, Contractor Software and Third Party Software;
'Specially Written Software"	any software created by the Contractor (or by a third party on behalf of the Contractor) specifically for the purposes of this Agreement;
Specification	means the Council's requirements to which the Goods, Works and/or Services supplied shall conform as detailed in the Purchase Order/Award Letter or any of the Tender Documents, including any agreed amendments to the Council's requirements in the Tender Documents submitted by the Contractor
'Sub-Contract'	any contract or agreement, or proposed contract or agreement between the Contractor and any third party whereby that third party agrees to provide to the Contractor the Goods, Works or Services or any part thereof, or facilities or services necessary for the provision of the Goods, Works or Services or any part of the Goods, Works or Services, or necessary for the management, direction or control of the Goods, Works or Services or any part of thereof.
'Sub-Contractor'	the third parties that enter into a Sub-Contract with the Contractor.
'Tender'	Means the Contractor's offer (including a quote) to provide the goods, works or services further to the Council's request for tenders or quotes
'Tender Documents'	Means together the Contractor's Tender and the tender documents issued by the Council (including the Specification) requesting tenders or quotes for the provision of goods, works or services.
"Third Party Software"	software which is proprietary to any third party which is or will be used by the Contractor for the purposes of providing the Services
UK GDPR	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.
"Working Day"	any day other than a Saturday, Sunday or public holiday in England and Wales.
"Works"	means all civil engineering and building works of whatever nature to be provided by the Contractor to the Council
'Writing'	includes facsimile transmission and electronic mail, providing that the electronic mail is acknowledged and confirmed as being received.

- 2.2. Clause and paragraph headings shall not affect the interpretation of these terms and conditions.
- 2.3. A person includes an individual, firm, company, corporation, unincorporated body of persons, or any state or any agency of any person.
- 2.4. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 2.5. A reference to a holding company or subsidiary means a holding company or subsidiary as defined in section 1159 of the Companies Act 2006.
- 2.6. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that:
 - 2.6.1. references in sub-sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and
 - 2.6.2. the reference in sub-section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.
- 2.7. Words in the singular shall include the plural and vice versa.
- 2.8. A reference to one gender shall include a reference to the other genders.
- 2.9. A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

- 2.10. A reference to writing or written includes an e-mail addressed to any e-mail address for the relevant party stated in this Agreement.
- 2.11. Any obligation in these terms and conditions on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 2.12. References to clauses are to the clauses of these terms and conditions.
- 2.13. Where any statement is qualified by the expression so far as the Contractor is aware or to the Contractor's knowledge or any similar expression, that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.
- 2.14. Where there is any conflict or inconsistency between the provisions of these terms and conditions or any other document forming part of the agreement with the Council, such conflict or inconsistency shall be resolved in a manner at the Council's sole discretion.

3 GENERAL

- 3.1 This Agreement shall commence on the Commencement Date and shall continue until:
 - a) the date of any expiry or termination date specified in the Purchase Order, Award Letter or Form of Agreement; or where no such date is specified,
 - b) the obligations of the Contractor have been fulfilled.
- 3.2 If the Provider has already started work, (e.g., supplied goods or are providing the services) then the Provider agrees that this Contract applies retrospectively from the start of the Provider's work.
- 3.3 When requested, the Contractor shall specify the Goods, Services or Works to be provided at the price payable.
- 3.4 No variation of these General Terms and Conditions shall be binding unless agreed expressly in Writing by both the Council and the Contractor.
- 3.5 These General Terms and Conditions shall apply to the exclusion of any other terms or conditions submitted, proposed or stipulated by the Contractor, whether in Writing or orally, and any such other term or condition is hereby expressly excluded or waived.
- 3.6 The Council and the Contractor each acknowledge and agree that in entering into this Contract it has not relied upon, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than those statements expressly set out in this Contract provided that this clause shall not exclude any liability for, or remedy in respect of, fraud or fraudulent misrepresentation.
- 3.7 In the event of any conflict or inconsistency between the contract documents, the order of priority shall be: (a) the Purchase Order or Award Letter or Form of Agreement as appropriate, (b) these General Terms and Conditions, and (c) any documents referenced in or attached to this Agreement.
- 3.8 The Contractor agrees that where requested in writing during the term of any Agreement for the supply Goods Works or Services it will ensure that an appropriately authorised representative of the Contractor shall attend a Committee meeting of the Council upon being invited to do so by the Council upon reasonable notice.

4 WORKS

- 4.1 Where this Agreement relates to the performance of Works the clauses in Schedule 2 shall apply and clauses 5,6,7, 8,9 and 10 only of these General Terms and Conditions shall not apply to the performance of those Works

5 PURCHASE ORDERS

- 5.1 The Council may submit Purchase Orders for Goods, Works and/or Services by issuing a Purchase Order with a Purchase Order Number. The Contract is created by the acceptance of a Purchase Order by the Supplier. The Council shall have no obligation to make any payment unless the Purchase Order Number is stated on the Contractor's invoice.

- 5.2 The Contractor shall supply Goods, Works and/or Services in accordance with this Agreement and any Specification, by the Delivery Date.
- 5.3 Any purchase by the Council of Goods, Works or Services is conditional upon acceptance of these terms and conditions by the Contractor. If the Contractor does not accept these terms and conditions, then the Contractor should not accept the Purchase Order, and should inform the Council immediately.

6 SPECIFICATION AND QUALITY OF THE GOODS AND SERVICES

- 6.1 The quantity, quality and description of the Goods or Services shall comply in all respects with their description and any applicable Specification or British Standards or any modifications thereof that may be agreed by the Council in Writing.
- 6.2 All Goods will be of satisfactory quality, (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Contractor or made known to the Contractor by the Council expressly or by implication, and in this respect the Council relies on the Supplier's skill and judgement; and shall be free of defects in design, material and workmanship and remain so for at least 12 months after the Delivery Date, and shall comply with all applicable statutory and regulatory requirements relating to them including, without limitation, the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982, and as amended by any related statutes, and any statutory re-enactment(s) or modification(s) thereof.
- 6.3 The Contractor will ensure that the Services are provided with reasonable skill and care and ordinarily to be expected from a skilled and experienced supplier engaged in the provision of goods or services similar to those under this Agreement and in accordance with all applicable Laws.
- 6.4 The Contractor shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Agreement.

7 ALTERATIONS TO THE SPECIFICATION OF GOODS AND SERVICES

- 7.1 The parties may at any time mutually agree upon and execute alterations in the scope of Goods or Services to be provided under this Agreement
- 7.2 On receipt of a request from the Council for alterations the Contractor shall, within 5 working days or such other period as may be agreed between the parties, advise the Council by notice in Writing of the effect of such alterations, if any, on the price and any other terms already agreed between the parties
- 7.3 Where the Contractor gives written notice to the Council agreeing to perform any alterations on terms different to those already agreed between the parties, the Council shall, within 5 working days of receipt of such notice or such other period as may be agreed between the parties, advise the Contractor by notice in Writing whether or not it wishes the alterations to proceed thereafter the Contractor shall perform this Agreement upon the basis of such amended terms

8 PRICE AND PAYMENT

- 8.1 The price for the supply of Goods and Services are as set out in the Agreement.
- 8.2 The Price, which shall include all charges for delivery to the Council, packaging, insurance and carriage, shall be exclusive of VAT which shall be payable at the prevailing rate subject to receipt of a valid VAT invoice. The price shall be a fixed price for the duration of the Agreement and shall not be varied without prior written consent of the Council.

- 8.3 The Council reserves the right to set off against the price of the Goods or Services any sums owed or becoming due to the Council from the Contractor.
- 8.4 The Contractor may invoice the Council for price of: (a) Goods, on or at any time after the completion of delivery (signed for by a nominated Council employee or authorised signatory); and (b) Services, by way of agreed instalments monthly in arrears (as set out in the Purchase Order/Specification). The Contractor shall ensure that the invoice includes the date of the Purchase Order, the invoice number, the Purchase Order Number, the Contractor's VAT registration number, and any supporting documentation that the Council may reasonably require. The correct Purchase Order number must be quoted on all invoices, and the Council will accept no liability whatsoever for invoices, delivery notes or other communications which do not bear such Purchase Order numbers
- 8.5 The Council shall pay correctly rendered undisputed invoices within 30 days of receipt of the invoice. Payment shall be made by BACS (Bank Automated Clearing System) to the bank account details provided in writing by the Contractor. No other method of payment shall be acceptable and the Contractor shall ensure that their bank account details are provided to the Council at least 30 days prior to payment becoming due to enable the payment to be made. The Council shall not be liable for any late payment charges where the Contractor fails to provide the Council with their correct bank account details in accordance with this clause.
- 8.6 If the Council fails to make any payment due to the Contractor under this agreement by the due date for payment, then the Council shall pay interest on the overdue amount at the rate of 4% per annum above National Westminster Bank 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.
- 8.7 Unless otherwise agreed in writing by the Council, the Contractor will pay any of its appointed Sub-Contractors within the time period specified in the Sub-Contract but in any event no later than 30 days from receipt of an undisputed invoice.

9 DELIVERY

- 9.1 The Specification will specify the quantity of Goods and the nature of the Services required and the date or dates and place of delivery of the Goods or provision of the Service or Services.
- 9.2 If Goods or Services are provided by the Contractor otherwise than in accordance with the terms of the Agreement, the Contractor shall immediately affect correct provision of the Goods or Services and shall be responsible for any additional costs or expenses incurred by the Council or the Contractor in so doing.
- 9.3 The Council will allow the Contractor access to such premises as necessary for the performance of the Services or delivery of the Goods. The Council may refuse admission to the Contractor's personnel or require such personnel to leave its premises at any time and shall not be obliged to give the Contractor the reason(s) for its decision. The Council will not apply the provisions of this clause vexatiously.
- 9.4 The Contractor shall ensure that Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition. Each delivery or consignment shall have a packing note quoting the reference number of the Purchase Order (where applicable) prominently displayed, and the Council may reject quantities delivered in excess of those stated on the Agreement.
- 9.5 The Contractor shall not deliver Goods in instalments without the Council's prior written consent. Where it is agreed that Goods may be delivered by instalments, such instalments shall be invoiced separately. However, failure by the Contractor to deliver any one instalment on time or at all, or any defect in an instalment, shall entitle the Council to the remedies set out in Clause 13.

- 9.6 The Council may reject any Goods which are not in accordance with the Agreement and the Council shall not be treated as having accepted any Goods until the Council has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after a latent defect in the Goods has become apparent.
- 9.7 The Contractor shall comply with all applicable regulations or other legal requirements as regards the manufacture, packaging, labelling, and delivery of the Goods. Unless, otherwise agreed, in writing, the Contractor shall deliver the Goods during the Council's usual business hours (8:45 to 17:00 Monday to Thursday and 8:45 to 16:00 Friday) or in accordance with the instructions shown in the Specification.
- 9.8 If the Contractor requires the Council to return any packaging material to the Contractor, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Contractor at the cost of the Contractor.
- 9.9 Delivery of Goods is completed on the completion of unloading of those Goods at the specified delivery location and signature of a Goods receipt.

11. LOSS OR DAMAGE OF GOODS IN TRANSIT

- 11.1 The Contractor shall promptly make good, free of charge to the Council, any loss in transit of the Goods if notified within 21 days of delivery or any damage to or defect in the Goods if notified within 10 days of delivery.

12. INSPECTION OF GOODS

- 12.1 The Contractor shall be responsible for the inspection and testing of the Goods and shall ensure that they comply with the Agreement prior to delivery to the Council. The Council shall have the right to inspect the Goods at the Contractor's works and those of its Sub-Contractors at all reasonable times and to reject any part thereof that does not comply with the terms of the Agreement. Notwithstanding any such inspection or testing by the Council, the Contractor shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Contractor's obligations under the Agreement, and the Council shall have the right to conduct further inspections and tests at any time.
- 12.2 Further to clause 12.1, the Contractor shall ensure that rights of access, inspection and rejection at premises of any sub-Contractor of the Contractor are given to the Council in sub-agreements between the Contractor and the Contractor's Sub-Contractors. Any inspection, checking, approval or acceptance given on behalf of the Council shall not relieve the Contractor or its Sub-Contractors from any obligations or liabilities set forth in this Agreement.

13. REJECTION OF GOODS AND SERVICES

- 13.1 The Council shall have the right to reject any Goods or Services which do not comply with the Agreement, and are, without limitation, not of a stipulated quality or quantity or measurement, unfit for the purpose for which they are required or non-compliant with a description or specification or sample, and the Council may return such rejected Goods to the Contractor at the Contractor's cost and expense.
- 13.2 If the Contractor is unable to supply acceptable replacement Goods or Services within the time specified in the Agreement, or within any extension of such time as the Council may grant, the Council will be entitled to purchase elsewhere other Goods or Services, as near as is practicable to the same Agreement specifications as circumstances shall permit, but without prejudice to any other right which the Council may have against the Contractor including, but not limited to, payment by the Contractor of any excess costs incurred by the Council in doing so.

13.3 The making of such payment shall not prejudice the Council's right of rejection and the Contractor shall immediately reimburse the Council with an amount equal to that paid by the Council in respect of the Goods or Services and any applicable taxes. Before exercising the said right elsewhere the Council shall give the Contractor reasonable opportunity to replace rejected Goods or Services with Goods or Services that conform to the Agreement.

13.4 The Council is under no obligation to test or inspect the Goods before or on delivery.

14 TITLE – PASSING OF PROPERTY

14.1 Property and risk in the Goods will remain with the Contractor until the Goods are delivered to the place specified in the Agreement and a nominated employee of the Council has signed a delivery note for them, whereupon title will pass to the Council, without any limitation, constraint or encumbrance.

14.2 If payment for the Goods is made prior to delivery, property in the Goods shall pass to the Council once payment has been made and the Goods have been unconditionally appropriated by the Council.

14.3 In these circumstances the Contractor will set aside the Goods and store them separately from similar Goods held at the Contractor's premises specified in the Agreement and ensure that they are securely, clearly and visibly marked with the wording "Property of Shropshire Council" so as to identify those Goods as having been unconditionally appropriated by the Council to whose order they are held

14.4 The Contractor will allow a named representative of the Council reasonable accompanied access to its premises specified in the Agreement to verify compliance with clause 10.3 herein and will immediately rectify any non-compliance as identified by the Council's named representative

14.5 The Contractor will indemnify the Council for any loss of or damage to the Goods until delivered .

14.6 Without prejudice to this indemnity the Contractor will have appropriate and adequate insurance cover against any such loss or damage with a reputable insurer from the time that title in the materials or Goods passes to the Council until they are delivered on-site and the Contractor shall provide the Council with certified copies of the relevant policy upon request.

14.7 The Contractor agrees that the Council has the right to enter the Contractor's premises specified in the Agreement where Goods are being held in order to recover the said materials or Goods in the event of the Contractor's insolvency

15 THE COUNCIL'S OBLIGATIONS

15.1 To enable the Contractor to perform its obligations under this Agreement the Council shall:

- a) co-operate with the Contractor;
- b) provide the Contractor with any information reasonably required by the Contractor to enable their proper performance of this Agreement;
- c) obtain all necessary permissions and consents which may be required before the commencement of the Services or the supply of Goods; and
- d) comply with such other requirements as may be otherwise agreed between the parties.

15.2 If the Contractor's performance of this Agreement is hampered, prevented or delayed by any act or omission of the Council, its agents, subcontractors, consultants or employees then, without prejudice to any other right or remedy it may have, the Contractor shall be allowed an extension of time to perform its obligations equal to the delay caused by the Council.

16. WARRANTIES

- 16.1 The Contractor warrants that as from the date of delivery for a minimum period of 12 months the Goods and all their component parts, where applicable, are free from any defects in design, workmanship, construction or materials. Where certain Goods carry warranties for longer periods the Contractor will notify the Council of these from time to time as appropriate.
- 16.2 The Contractor warrants that the Services performed under this Agreement shall be performed using reasonable skill and care, and of a quality conforming to generally accepted industry standards and practices.
- 16.3 The Contractor represents and warrants that:
- 16.3.1 it has full capacity and authority to enter into and to perform its obligations under the Agreement;
 - 16.3.2 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might adversely affect its ability to perform its obligations under the Agreement;
 - 16.3.3 it has obtained all approvals, certificates, authorisations, permissions, licences, permits and consents necessary from time to time for the performance of the Agreement;
 - 16.3.4 all information contained in any quotation provided by the Contractor's remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to the Commencement Date and separately warrants to inform the Council in the event there are any changes to such information during the Agreement term; and
 - 16.3.5 it shall promptly notify the Council in writing if it becomes aware during the performance of this Agreement of any inaccuracies in any information provided to it by the Council during such due diligence which materially and adversely affects its ability to perform the Agreement

17 INDEMNITIES

- 17.1 The Council shall indemnify the Contractor against all reasonable claims, costs and expenses which the Contractor may incur and which arise, directly from the Council's breach of any of its obligations under this Agreement.
- 17.2 The Contractor shall indemnify the Council against all reasonable damage, losses (including but not limited to any direct losses and legal costs and all other reasonable professional costs and expenses) liability, costs, claims, actions and proceedings arising out of the breach, negligent performance, defective or delay in performance or any other acts or omissions of the Contractor, its employees, servants or agents

18 TERMINATION AND CANCELLATION

- 18.1 The Council upon giving the Contractor notice in Writing may cancel any Agreement at any time. A fair and reasonable price will be paid for all work in progress at the time of the cancellation, providing all such work is delivered to, and/or performed for the Council and is accepted as described in this Agreement. The Council's liability is strictly limited to work in progress and no further loss or liability will accrue.
- 18.2 Either party may terminate this Agreement forthwith by notice in Writing to the other if:
- a). the other party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within 14 calendar days of being given notice in

Writing setting out the breach and indicating that failure to remedy the breach may result in termination of this Agreement.

- b). the other party commits a material breach of this Agreement which cannot be remedied under any circumstances;
- c). the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect;
- d). the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business;
- e) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy or
- f). the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.

19 PREVENTION OF BRIBERY

19.1 The Contractor:

- 19.1.1. shall not, and shall procure that all Contractor Personnel shall not, in connection with this Agreement commit a Prohibited Act;
- 19.1.2. warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Agreement.

19.2 The Contractor shall:

- a) if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
- b) the Contractor shall, within 10 Working Days of a request from the Council, certify to the Council in writing (such certification to be signed by an officer of the Contractor) the Contractor's compliance with this clause 19 and provide such supporting evidence of compliance with this clause 19 by the Contractor as the Council may reasonably request.

19.3 If any breach of clause 19.1 is suspected or known, the Contractor must notify the Council immediately.

19.4 If the Contractor notifies the Council that it suspects or knows that there may be a breach of clause 19.1, the Contractor must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation. This obligation shall continue for two years following the expiry or termination of this Agreement.

19.5 The Council may terminate this Agreement by written notice with immediate effect, and recover from the Contractor the amount of any loss directly resulting from the cancellation, if the Contractor or Contractor Personnel (in all cases whether or not acting with the Contractor's knowledge) breaches clause 19.1. At the Council's absolute discretion, in determining whether to exercise the right of termination under this clause 19.5, the Council shall give consideration, where appropriate, to action other than termination of this Agreement unless the Prohibited Act is committed by the Contractor or a senior officer of the Contractor or by an employee, Sub-Contractor or supplier not acting independently of the Contractor. The expression "not

acting independently of" (when used in relation to the Contractor or a Sub-Contractor) means and shall be construed as acting:

- a) with the authority; or,
- b) with the actual knowledge; of any one or more of the directors of the Contractor or the Sub-Contractor (as the case may be); or
- c) in circumstances where any one or more of the directors of the Contractor ought reasonably to have had knowledge.

19.6 Any notice of termination under clause 19.5 must specify:

- a) the nature of the Prohibited Act;
- b) the identity of the party whom the Council believes has committed the Prohibited Act; and
- c) the date on which this Agreement will terminate.

19.7 Despite clause 46 (Disputes), any dispute relating to:

- a) the interpretation of clause 19; or
 - b) the amount or value of any gift, consideration or commission,
- shall be determined by the Council and its decision shall be final and conclusive.

19.8 Any termination under clause 19.5 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

20 INTELLECTUAL PROPERTY RIGHTS

20.1 Any specification, drawing, sample and pattern supplied by the Council to the Contractor, or specifically produced by the Contractor for the Council in connection with this Agreement, together with the copyright, design rights or any other intellectual property rights thereto shall be the exclusive property of the Council. On payment of the price and for no further consideration the Contractor assigns to the Council with full title guarantee all such copyright, design and other intellectual property rights.

20.2 The Contractor shall not disclose to any third party (except sub-contractors accepting a like obligation of secrecy, and then only to the extent necessary for the performance of the sub-agreement) or provide any such specification, drawing, sample or pattern to any third party or use the same except to the extent that it is or becomes public knowledge through no fault of the Contractor, or as is required for the purposes of the Agreement.

20.3 This provision shall survive the expiration or termination of the Agreement.

21 INDEPENDENT CONTRACTORS

21.1 The Contractor and the Council are independent of each other, and neither has the authority to bind the other to any third party or act in any way as the representative of the other, unless otherwise expressly agreed to in Writing by both parties.

22 SEVERABILITY

22.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions herein shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or unenforceable provision eliminated.

23 ASSIGNMENT, TRANSFER AND SUB-CONTRACTING

23.1 The Council shall be entitled to novate the Agreement to any other body which substantially performs any of the functions that previously had been performed by the Council.

- 23.2 Except as specified in clause 23.1, the consent of the Contractor is required for an assignment or transfer by the Council unless:
- (a) the assignment or transfer is to an Associated Person of the Council; or
 - (b) either the Council or the Contractor have committed a breach of this Agreement which gives the other party the right under the terms of this Agreement to terminate the Agreement. Any such consent must not be unreasonably withheld or delayed and if not expressly refused within five Working Days shall be deemed given.
- 23.3 The Contractor may not assign or subcontract any or all of its rights or obligations under this Contract without the prior written consent of the Council. If the Council consents to any subcontracting by the Contractor, the Contractor shall remain responsible for all acts and omissions of its subcontractors as if they were its own

24 WAIVER

- 24.1 The failure by either party to enforce at any time or for any period any one or more of these General Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all the terms and conditions of this Agreement.

25 NOTICES

- 25.1 Unless otherwise communicated to the party in Writing any notice to be given by either party to the other may be served by email, personal service or by post to the address of the other party that is the registered office or main place of business of the Contractor or if the Council, the Shirehall, Abbey Foregate, Shrewsbury. SY2 6ND
- 25.2 A Notice sent by email shall be deemed to be received, at the time of successful transmission, except that, an email sent after 5.00 pm on any Working Day, shall be deemed to be received at 9.00 am on the next Working Day after transmission, Notice given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by second class post shall be deemed to have been delivered in the ordinary course of post and if by first class post shall be deemed to have been delivered 48 hours after posting and acknowledged

26 CONFIDENTIALITY

- 26.1 All plans, drawings, designs or specifications supplied by the Council to the Contractor shall remain the exclusive property of, and shall be returned to the Council on completion of the Agreement and shall not be copied, and no information relating to the Goods or the Services shall be disclosed to any third party, except as required for the purpose of this Agreement.
- 26.2 No photographs of any of the Council's equipment, installations or property shall be taken without the Council's prior consent in Writing. The Contractor shall keep secret and shall not divulge to any third party (except sub-contractors accepting a like obligation of secrecy, and then only to the extent necessary for the performance of the sub-agreement) all information given by the Council in connection with the Agreement or which becomes known to the Contractor through his performance of the Agreement or use the same other than for the purpose of executing the Agreement.
- 26.3 The Contractor shall not mention the Council's name in connection with the Agreement or disclose the existence of the Agreement in any publicity material or other similar communication to third parties without the Council's prior consent in Writing.
- 26.4 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Agreement, each party shall:
- 26.4.1 treat the other party's Confidential Information as confidential; and
 - 26.4.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent

- 26.5 Clause 26.4 shall not apply to the extent that:
- 26.5.1 such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the Local Audit and Accountability Act 2014 or under the FOIA or the Environmental Information Regulations pursuant to the above clause regarding Freedom of Information;
 - 26.5.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 26.5.3 such information was obtained from a third party without obligation of confidentiality;
 - 26.5.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or
 - 26.5.5 it is independently developed without access to the other party's Confidential Information.
- 26.6 The Contractor may only disclose the Council's Confidential Information to the Contractor Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Contractor Personnel are aware of and shall comply with these obligations as to confidentiality.
- 26.7 The Contractor shall not, and shall procure that the Contractor Personnel do not, use any of the Council's Confidential Information received otherwise than for the purposes of this Agreement
- 26.8 Nothing in this Agreement shall prevent the Council from disclosing the Contractor's Confidential Information:
- 26.8.1 to any consultant, contractor or other person engaged by the Council;
 - 26.8.2 for the purpose of the examination and certification of the Council's accounts or any other form of audit of the Council;
- 26.9 The Council shall use all reasonable endeavours to ensure that any government department, employee, third party or Sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to this Agreement is made aware of the Council's obligations of confidentiality.
- 26.10 Nothing in this clause shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.
- 26.11 The provisions of this Clause shall survive the expiration or termination of this Agreement.

27 AGREEMENT STATUS AND TRANSPARENCY

- 27.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement and any associated tender documentation provided by the Contractor (the Tender Submission) is not Confidential Information. The Council shall be responsible for determining in its absolute discretion whether any of the content of the Agreement or the Tender Submission is exempt from disclosure in accordance with the provisions of the FOIA.
- 27.2 Notwithstanding any other term of this Agreement, the Contractor hereby gives his consent for the Council to publish this Agreement and the Tender Submission in its entirety, including from time to time agreed changes to the Agreement, to the general public.
- 27.3 The Council may consult with the Contractor to inform its decision regarding any exemptions but the Council shall have the final decision in its absolute discretion.

27.4 The Contractor shall assist and cooperate with the Council to enable the Council to publish this Agreement and the Tender Submission.

28 COUNCIL DATA

28.1 The Contractor shall not delete or remove any copyright or proprietary notices contained within or relating to the Council Data.

28.2 The Contractor shall not store, copy, disclose, or use the Council Data except as necessary for the performance by the Contractor of its obligations under this Agreement or as otherwise expressly authorised in writing by the Council and in particular the Contractor shall not store any Council Data, which the Council has notified the Contractor requires storage in an encrypted format, on any portable device or media unless that device is encrypted.

28.3 To the extent that Council Data is held and/or processed by the Contractor, the Contractor shall supply that Council Data to the Council as requested by the Council in any format specified in this Agreement or if none specified in any format reasonably requested by the Council.

28.4 The Contractor shall take responsibility for preserving the integrity of Council Data and preventing the corruption or loss of Council Data and shall take such back up copies of the Council Data at regular intervals appropriate to the frequency of the revision of the Council Data.

28.5 The Contractor shall ensure that any system on which the Contractor holds any Council Data, including back-up data, is a secure system that complies with the Security Policy to include, but not limited to, the following requirements in the Security Policy:

24.3.1 Access to the system is restricted to Contractor Personnel with a legitimate need to access the Council Data; and

24.3.2 The system is kept up to date with the latest versions of operating system and anti-virus updates; and

24.3.3 Transfer of data to and from the system is conducted in a secure manner.

28.6 If the Council Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Council may:

24.6.1 require the Contractor (at the Contractor's expense) to restore or procure the restoration of Council Data as soon as practicable; and/or

24.6.2 itself restore or procure the restoration of Council Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so including the restoration of the Council Data.

28.7 If at any time the Contractor suspects or has reason to believe that Council Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Council via the Council's ICT Helpdesk immediately and inform the Council of the remedial action the Contractor proposes to take.

28.8 The Contractor shall check for and delete Malicious Software and if Malicious Software is found, the parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Council Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.

28.9 Any cost arising out of the actions of the parties taken in compliance with the provisions of sub-clause 24.8 above shall be borne by the parties as follows:

28.9.1 by the Contractor where the Malicious Software originates from the Contractor Software, the Third Party Software or the Council Data (whilst the Council Data was under the control of the Contractor); and

28.9.2 by the Council if the Malicious Software originates from the Council Software or the Council Data (whilst the Council Data was under the control of the Council).

29 PROTECTION OF PERSONAL DATA

Where the Specification indicates that the Contractor will be processing personal data on behalf of the Council for the purposes of this Agreement, clauses 29.2 to 29.6 shall apply in place of clause 29.1 and the parties shall complete Schedule 1

29.1 The Contractor shall comply in all respects with the provision of the Data Protection Legislation and will indemnify the Council against all actions, costs, expenses, claims, proceedings and demands which may be brought against the Council for any breach of the Data Protection Legislation attributable to the Contractor.

29.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This [Clause 29](#) is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

29.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Contractor is the Processor. [Schedule 1](#) sets out the scope, nature and purpose of processing by the Contractor, the duration of the processing and the types of Personal Data and categories of Data Subject.

29.4 Without prejudice to the generality of [Clause 29.2](#), the Council will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Contractor for the duration and purposes of this agreement.

29.5 Without prejudice to the generality of [Clause 29.2](#), the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this agreement:

- 29.5.1 process that Personal Data only on the documented written instructions of the Council which are set out in [Schedule 1](#), unless the Contractor is required by Law to otherwise process that Personal Data. Where the Contractor is relying on Law as the basis for processing Personal Data, the Contractor shall promptly notify the Council of this before performing the processing required by Law unless the Law prohibits the Contractor from so notifying the Council;
- 29.5.2 ensure that it has in place appropriate technical and organisational measures (as defined in the Data Protection Legislation), reviewed and approved by the Council, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 29.5.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- 29.5.4 not transfer any Personal Data outside of the UK unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
 - (i) the Council or the Contractor has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective remedies;
 - (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

- (iv) the Contractor complies with the reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
- 29.5.5 notify the Council immediately if it receives:
 - (i) a request from a Data Subject to have access to that person's Personal Data;
 - (ii) a request to rectify, block or erase any Personal Data;
 - (iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
- 29.5.6 assist the Council in responding to any request from a Data Subject and in ensuring compliance with the Council's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 29.5.7 notify the Council without undue delay on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this agreement;
- 29.5.8 at the written direction of the Council, delete or return Personal Data and copies thereof to the Customer on termination or expiry of the agreement unless required by Domestic Law to store the Personal Data;
- 29.5.9 maintain complete and accurate records and information to demonstrate its compliance with this [Clause 29](#) and allow for audits by the Council or the Council's designated auditor pursuant to [Clause 30](#) and immediately inform the Customer if, in the opinion of the Contractor, an instruction infringes the Data Protection Legislation.
- 29.6 The Contractor shall indemnify the Council against all actions, costs, expenses, claims, proceedings and demands which may be brought against the Council for any breach of the Data Protection Legislation attributable to the Contractor.

30 COUNCIL DATA AND PERSONAL INFORMATION AUDITS

- 30.1 Except where an audit is imposed on the Council by a Regulatory body, the Council may, acting reasonably, conduct an audit of any Services provided by the Contractor for the following purposes:
 - 30.1.1 to review the integrity, confidentiality and security of the Council Data;
 - 30.1.2 to review the Contractor's compliance with the Data Protection Legislation and the Freedom of Information Act 2000 in accordance with the Protection of Personal Data and Freedom of Information clauses and any other legislation applicable to the Services;
- 30.2 The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services.
- 30.3 Subject to the Council's obligations of confidentiality, the Contractor shall on demand provide the Council (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
 - 30.3.1 all information requested by the Council within the permitted scope of the audit;
 - 30.3.2 reasonable access to any Sites controlled by the Contractor and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
 - 30.3.3 access to Contractor Personnel
- 30.4 The Contractor shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Contractor's performance of the Services.
- 30.5 The Council shall endeavour to (but is not obliged to) provide at least 5 Working Days notice of its intention to conduct an audit.
- 30.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause.

- 30.7 This clause shall not apply to any audit or inspection regarding the provision of the Services specified in the Service Specification or elsewhere in this Agreement which may be conducted as specified in this Agreement.
31. PUBLIC INTEREST DISCLOSURE ('WHISTLE BLOWING')
- 31.1 The Contractor will ensure that his employees and agents are made aware of the Council's policy "Public Whistleblowing: Speaking Up About Wrongdoing" and that the details of this policy are fully explained to them and shall provide the Council with evidence of doing so upon request
32. INSURANCE
- 32.1 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover, or in accordance with any legal requirement for the time being in force, in respect of all legal liability which may be incurred by the Contractor, arising out of the Contractor's performance of this Agreement, including death or personal injury, loss of or damage to property or any other loss, and unless otherwise agreed with the Council such policy or policies of Public Liability and Employers Liability insurance shall provide for a minimum indemnity limit of £5,000,000 (FIVE MILLION POUNDS).
- 28.2 If appropriate and requested in Writing, the Contractor may also be required to provide Product Liability insurance of at least £2,000,000 (TWO MILLION POUNDS) cover for any one claim.
- 32.2 Where the Contractor is providing Services of a professional nature, or the Council otherwise specifies that professional indemnity insurance is required, the Contractor shall hold and maintain professional indemnity insurance cover and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain policy cover which indemnifies the contractor for negligent acts arising out of the performance of this Agreement. To comply with its obligations under this clause, and as a minimum, the Contractor shall ensure professional indemnity insurance held by the Contractor and by any agent, Sub-Contractor or consultant involved in the performance of Services has a limit of indemnity of not less than £2,000,000 (TWO MILLION POUNDS) in respect of each and every claim.
- 32.3 The Contractor shall hold and maintain the insurances required under this Agreement for a minimum of 6 years following the expiration or earlier termination of this Agreement
- 32.4 The Contractor warrants that it has complied with this clause 32 and warrants that any insurance policy or policies effected and maintained in accordance with this clause do not contain any endorsements or exclusions which have the effect of voiding, reducing or limiting the cover required in respect of the Services.
- 32.5 The Contractor shall prior to commencement of this Agreement provide the Council and thereafter upon request, or at least annually during the Term, with:
- (a) copies of the relevant insurance policy documents (including details of any warranties or exclusions); and
 - (b) receipts or other evidence of payment of the latest premiums due under those policies; and
 - (c) any other evidence reasonably requested by the Council to confirm that the required insurances are in force and effect and meet in full the requirements of this Clause 32.
- Receipt of such evidence by the Council shall not in itself constitute acceptance by the Council or relieve the Contractor of any of its liabilities and obligations under this Agreement.

- 32.6 The Contractor shall:
- (a) ensure nothing is done to invalidate any insurance policy or cause the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part, including ensuring that any warranties under the policy are complied with;
 - (b) notify the Council as soon as reasonably practicable when it becomes aware of any relevant fact, circumstance or matter which, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.
- 32.7 For the avoidance of doubt, the terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under this Agreement.
- 32.8 Where the minimum limit of indemnity required in relation to any of the insurances is specified as being "in the aggregate":
- 32.8.1 if a claim or claims which do not relate to this Agreement are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the Contractor shall immediately submit to the Council:
 - (i) details of the policy concerned; and
 - (ii) its proposed solution for maintaining the minimum limit of indemnity specified; and
 - 32.8.2 if and to the extent that the level of insurance cover available falls below that minimum because a claim or claims which do not relate to this Agreement are paid by insurers, the Contractor shall:
 - (i) ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this Agreement; or
 - (ii) if the Contractor is or has reason to believe that it will be unable to ensure that insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified, immediately submit to the Council full details of the policy concerned and its proposed solution for maintaining the minimum limit of indemnity specified.

33. EQUALITIES

- 33.1 The Contractor and any Sub-Contractor employed by the Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as race or ethnic origin, disability, gender, sexual orientation, religion or belief, or age in the supply and provision of Goods, Services or Works under this Agreement, or in its employment practices.
- 33.2 Without prejudice to the generality of the foregoing, the Contractor and any Sub-Contractor employed by the Contractor shall not unlawfully discriminate within the meaning and scope of the Equalities Act 2010 or other relevant legislation, or any statutory modification or re-enactment thereof.
- 33.3 In addition, the Contractor and any Sub-Contractor employed by the Contractor in providing services to the Council will comply with the general duty imposed on local authorities by Section 149 of the Equality Act 2010 to eliminate discrimination, harassment and victimisation and promote equality of opportunity between persons who share a protected characteristic and those who do not share it and to foster good relations between persons who share a protected characteristic and those who do not share it .
- 33.4 The Contractor and any Sub-Contractor employed by the Contractor will take all reasonable steps to observe as far as possible the Codes of Practice produced by the Equalities and Human Rights Commission, which give practical guidance to employers on the elimination of discrimination.

33.5 In the event of any finding of unlawful discrimination being made against the Contractor or any Sub-Contractor employed by the Contractor during the contract period, by any court or employment tribunal, or any adverse finding or formal investigation by the Equalities and Human Rights Commission over the same period, the Contractor shall inform the Council of this finding and shall take appropriate steps to prevent repetition of the unlawful discrimination.

33.6 The Contractor and any Sub-Contractor employed by the Contractor will provide a copy of its policies to the Council at any time upon request. In addition, the Council may reasonably request other information from time to time for the purpose of assessing the Contractor's compliance with the above conditions.

34 HUMAN RIGHTS, ANTI-SLAVERY AND HUMAN TRAFFICKING

34.1 The Contractor shall where appropriate take account of the Human Rights Act 1998 and shall not do anything in breach of it.

34.2 In performing its obligations under this Agreement, the Contractor shall:

34.2.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force (Anti-Slavery Laws) including the Modern Slavery Act 2015;

34.2.2 include in contracts with its subcontractors anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 34.2 and 34.3; and

34.2.3 notify the Council as soon as it becomes aware of any actual or suspected breach of clause 34.2.1, or such actual or suspected breach of Anti-Slavery Laws by its sub-contractors and other participants in its supply chain and shall provide reasonable assistance to the Council, including access to the Contractor's premises and staff, to allow the Council to carry out an audit of the Contractor's anti-slavery and human trafficking procedures or those of its sub-contractors or participants in its supply chain.

34.3 The Contractor represents and warrants that neither it, nor any of its officers, employees or agents have been convicted of any offence involving slavery and human trafficking or been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

34.4 Breach of this clause 34 shall be deemed a material breach under clause 18.2.

35 HEALTH AND SAFETY AT WORK

35.1 The Contractor will at all times in providing Goods, Services or Works to the Council comply with the provisions of the Health and Safety at work Act 1974 and provide evidence of doing so to the Council at any time upon request.

36 FREEDOM OF INFORMATION ACT 2000 (FOIA) AND ENVIRONMENTAL INFORMATION REGULATIONS 2004 (EIR)

36.1 The Contractor acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.

36.2 The Contractor shall notify the Council of any Commercially Sensitive Information provided to the Council together with details of the reasons for its sensitivity and the Contractor acknowledges that any lists or schedules of Commercially Sensitive Information so provided are of indicative value only and that the Council may be obliged to disclose such information.

36.3 The Contractor shall and shall procure that its Sub-contractors shall:

36.3.1 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;

- 36.3.2 provide the Council, at the Contractor's expense, with a copy of all Information in its possession, or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council's request; and
- 36.3.3 provide, at the Contractor's expense, all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 36.4 The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations and in considering any response to a Request for Information the Council may consult with the Contractor prior to making any decision or considering any exemption.
- 36.5 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 36.6 The Contractor acknowledges that (notwithstanding the provisions of this Freedom of Information clause) the Council may, acting in accordance with the Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services:
- 36.6.1 in certain circumstances without consulting the Contractor; or
- 36.6.2 following consultation with the Contractor and having taken their views into account;
- provided always that where sub-clause 32.6.1 above applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.
- 36.7 The Contractor shall ensure that all Information required to be produced or maintained under the terms of this Agreement, or by Law or professional practice or in relation to the Agreement is retained for disclosure for at least the duration of the Agreement plus one year together with such other time period as required by the Agreement, law or practice and shall permit the Council to inspect such records as requested from time to time.
- 36.8 The Council shall in no event be liable for any loss, damage, harm, or detriment, howsoever caused, arising from or in connection with the reasonable disclosure under FOIA, or any other Law, of any information (including Exempt Information) whether relating to this Agreement or otherwise relating to any other party.
- 36.9 Where the Contractor is a Public Body the parties acknowledges that such obligations and duties of the Council as set out above are reciprocal to the Contractor. The Council and the Contractor acknowledge and agree that:
- 36.9.1 as Public Bodies they are subject to legal duties under the FOIA and EIR which may require either party to disclose on request information relating to this Agreement or otherwise relating to the other party;
- 36.9.2 they are required by law to consider each and every Request for Information made under FOIA;
- 36.9.3 that all decisions made by the other pursuant to a request under the FOIA are solely a matter for the Receiving Party and at the discretion of the Receiving Party.
- 36.9.4 Notwithstanding anything in this Agreement to the contrary (including but without limitation any obligations or confidentiality), the Receiving Party shall be entitled to disclose information in whatever form pursuant to a request made under FOIA, save that in relation to any information that is Exempt Information the Receiving Party shall consult the other party before making any such decision and shall not:

(a) confirm or deny that information is held by the other party, or
(b) disclose information required
to the extent that in the Receiving Party's opinion the information is eligible in the circumstances for an exemption and therefore the Receiving Party may lawfully refrain from doing either of the things described in part (a) and (b) of this clause.

36.9.5 each party shall bear its own costs of:

a) assessing the application of any exemption under FOIA and/or
b) responding to any FOIA notice and/or
c) lodging any appeal against a decision of the Information Commissioner in relation to disclosure

36.9.6 the Receiving Party shall in no circumstances be liable for any loss, damage, harm, or detriment, howsoever caused, arising from or in connection with the reasonable disclosure under FOIA of any Exempt Information or other information whether relating to this Agreement or otherwise relating to the other party.

36.9.7 the other party shall assist the Receiving Party with the request as reasonably necessary to enable the Receiving Party to comply with its obligations under FOIA.

37 SAFEGUARDING

37.1 Where the Service or activity being undertaken in this Agreement is a Regulated Activity the Contractor shall :

(a) ensure that all individuals engaged in the provision of the Service or activity, and prior to commencing the provision of the service or activity, are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service including a check against the adults' barred list or the children's barred list, as appropriate; and

(b) monitor the level and validity of the checks under this clause 37.1 for each member of the Contractor's Personnel.

37.2 The Contractor warrants that at all times for the purposes of this Agreement it has no reason to believe that any person who is or will be employed or engaged by the Contractor in the provision of a Service or activity that is a Regulated Activity is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

37.3 The Contractor shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 37 have been met.

37.4 The Contractor shall refer information about any person carrying out the Services or the activity to the Disclosure and Barring Service where it removes permission for such person to carry out the Services or activity (or would have, if such person had not otherwise ceased to carry out the Services or the activity) because, in its opinion, such person has harmed or poses a risk of harm to the Service users, children or vulnerable adults.

37.5 The Contractor shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Service users.

37.6 Where the service requirement or Specification indicates that the Service or activity to be provided under this Agreement involves a Regulated Activity, or the Council otherwise notifies the Contractor, acting reasonably, that the Contractor's Personnel are required to be subject to a Disclosure and Barring Service check, the Contractor shall comply with clause 37.1 above..

38 SUSTAINABILITY

38.1 The Contractor will at all times use its best endeavours to assist the Council and operate themselves in a manner which meets the aims and objectives set out in the sustainability strategy and policies of the Council, details of which are available on the Council's website

39 EXPIRY

39.1 The Contractor will promptly, following the expiry or termination of the Agreement and, at its own cost, return (or at the request of the Council destroy) all all such documents and materials disclosed to it for the purposes of the performance of the Agreement.

40 AUDIT AND MONITORING

40.1 The Contractor will shall during normal business hours allow access for the Council's officers to all relevant information for the purposes of audit and the monitoring of the Agreement.

40.2 The Council shall use all reasonable endeavours to ensure that in exercising its rights under clause 40.1 that it does not unreasonably disrupt the Contractor or delay the provision of the Services.

41 RIGHTS OF THIRD PARTIES

41.1 The parties to this Agreement do not intend that any of its terms will be enforceable by any person not a party to it by virtue of the Contracts (Rights of Third Parties) Act 1999.

42 ENTIRE AGREEMENT

42.1 This Agreement contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written.

43 FORCE MAJEURE

43.1 Neither the Council nor the Contractor shall be in breach of this Agreement nor liable for any failure or delay in performing their obligations under this Agreement where it is directly caused, arising from or attributable to acts, events, omissions or accidents beyond its reasonable control ("Force Majeure Event"), provided that:-

43.1.1 any delay by a sub-contractor or supplier of the Party who is delayed will not relieve that Party from liability for delay except where the delay is beyond the reasonable control of the sub-contractor or supplier concerned; and

43.1.2 staff or material shortages or strikes or industrial action affecting only the Party who is delayed will not relieve that Party from liability for delay.

43.2 If the Party is subject to a Force Majeure Event it shall not be in breach of this Agreement provided that:-

43.2.1 it promptly notified the other party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance; and

43.2.2 it has used its reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under this Agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible

in which case the performance of that Party's obligations will be suspended during the period that those circumstances persist and that Party will be granted a reasonable extension of time for performance up to a maximum equivalent to the period of the delay.

43.3 Save where that delay is caused by the act or failure to act of the other Party (in which event the rights, remedies and liabilities of the Parties will be those conferred by the other terms of this Agreement and by law):-

43.3.1 any costs arising from that delay will be borne by the Party incurring the same;
and

43.3.2 either Party may, if that delay continues for more than 5 weeks, terminate this Agreement immediately on giving notice in writing to the other. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this Agreement occurring prior to such termination.

44 GOVERNING LAW AND JURISDICTION

44.1 It is the responsibility of the Contractor to comply with all relevant laws of England and Wales which apply to the provision of the Goods, Works or Services or with which the Contractor is bound to comply. This Agreement shall be governed by and construed in accordance with English Law and the parties agree to submit to the exclusive jurisdiction of the English and Welsh Courts

45 COMPLAINTS PROCEDURE (for service contracts only)

45.1 Where the Contractor is providing services on behalf of the Council, the Contractor shall:

45.1.1 inform complainants that they may refer their complaint in respect of the services provided under this Agreement direct to the Council;

45.1.2 promptly (and in any event within two Working Days of receipt) refer all Formal Complaints (i.e. where the complainant finds that their issues have not been resolved informally and wishes to progress their issues as a formal complaint under either the Council's or the Contractor's complaints procedure) received by the Service Provider in respect of the services provided under this Agreement and the Council will deal with the Formal Complaint under its own complaint procedure. The Service Provider will inform the Council where the complainant has requested that the Service Provider deal with the Formal Complaint through its own complaint procedure; and

45.1.3 co-operate fully in any Council investigation into a complaint referred to the Council and provide any documents or information reasonably requested by the Council in relation to the complaint within the timescales specified by the Council.

45.2 The Contractor shall operate a complaints procedure in respect of the services provided under this Agreement, to the entire satisfaction of the Council, and comply with the requirements of any regulatory body to which the Contractor is subject (including any change in such requirements) and ensure that its complaints procedure meets the following minimum standards:

45.2.1 is easy to access and understand;

45.2.2 informs complainants that they may refer their complaint in respect of the services provided under this Agreement direct to the Council;

41.2.2 clearly sets out time limits for the Contractor to respond to Formal complaints made to it and for keeping the complainant and the Council informed of progress with such complaints;

41.2.3 provides confidential record keeping to protect employees under this contract and the complainant

41.2.4 provides information to management so that services can be improved

41.2.5 provides effective and suitable remedies

41.2.6 is regularly monitored and audited and which takes account of complainant and Council feedback.

45.3 The Contractor shall make its complaints procedure available upon request.

- 45.4 The Contractor shall ensure that all its employees and persons employed in the performance of this Agreement are made aware of its complaints procedure.
- 45.5 Where the Contractor is undertaking an investigation into a complaint, the Contractor shall ensure that, under no circumstances, is the complaint investigated by a member of its staff who may be part of the complaint and that the investigation is carried out by someone who is independent of the matter complained of.
- 45.6 The Contractor shall keep accurate and complete written records of all Formal Complaints complaints received and the responses to them and shall make these records available to the Council within 20 Working Days of request or at 12 monthly intervals in any event.
- 45.7 The Contractor should note that if a complaint is made to the Council by a third party relating to the goods, services or works provided on behalf of the Council under this Agreement, the Local Government Ombudsman has the power to investigate such a complaint and the Council requires the Contractor to fully to co-operate in any such investigation. If the Council is found guilty of maladministration or injustice by the Local Government Ombudsman because of the act or default of the Contractor the Contractor shall indemnify the Council in respect of the costs arising from such maladministration or injustice.

46 DISPUTES

- 46.1 If any dispute or difference shall arise between the parties as to the construction of this Agreement or any matter or thing of whatever nature arising under this Agreement or in connection with it then the same shall be dealt with as follows:-
- 46.1.1 In the first instance a special meeting of both the Parties shall be arranged on 14 days written notice to the other party and the matter shall be discussed and the representatives shall use their reasonable endeavours to resolve the dispute
- 46.1.2 If the dispute cannot be resolved in accordance with the preceding sub-clause then either one of the Parties may serve the Council's Chief Executive or the Contractor's senior officer or such other authorised officer of either party whose details have been notified to the other party, with notice of the dispute and those officers shall then appoint their representative to adjudicate and use their reasonable endeavours to resolve the dispute within 21 days of receipt of such notice

SCHEDULE 1

Description	Details
Subject matter of the processing	[This should be a high level, short description of what the processing is about i.e. its subject matter]
Duration of the processing	[Clearly set out the duration of the processing including dates]
Nature and purposes of the processing	<p>[Please be as specific as possible, but make sure that you cover all intended purposes.</p> <p>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</p> <p>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</p> <p>The lawful basis for processing this information is:</p> <p>[this should be specified by the service area-Guidance on what is lawful processing issued from IGA is at: https://digital.nhs.uk/media/37157/GDPR-guidance-on-lawful-processing/pdf/IGAGDPRProcessing]</p>
Type of Personal Data	<p>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.</p> <p>Specify both Personal Data and any Special Category Data]</p>
Categories of Data Subject	[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	[Describe how long the data will be retained for, how it be returned or destroyed]

SCHEDULE 2 – Additional Clauses applicable to Works agreement

1. DEFINITIONS APPLICABLE TO SCHEDULE 2

Any terms not defined below are as previously defined in these General Terms and Conditions and any references to clauses in this Schedule 2 are references to the clauses within this Schedule

Base Rate: the base rate as set by the Bank of England from time to time;

CDM Regulations: Construction (Design and Management) Regulations (2015) (as amended or superseded);

CIS: means the Construction Industry Scheme under the Finance Act 2004;

Completion: a state in which the Council reasonably considers that the Works are complete in all respects and free from any apparent defects, save for any minor items of any incomplete works or minor defects the existence, completion, rectification of which will not prevent or interfere with the use and enjoyment (or the fitting out for use) of the Works, provided that where it is expressly stated in any provisions of the Agreement that the testing, commissioning, regulation or adjustment of any mechanical or electrical services is to be completed before completion of the Works, the Works shall not be considered completed until the same is done as the Agreement requires;

Completion Date: the date on which the Council requires the Works to be completed as stated in the Specification;

Good Industry Practice: means standards, practices, methods and procedures conforming to any applicable law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances;

Price: the sum stated in the Award Letter or Purchase Order, as may be adjusted in accordance with the Agreement;

Principal Contractor: has the meaning provided in the CDM Regulations;

Principal Designer: has the meaning provided in the CDM Regulations;

Rectification Period: the period stated in the Tender Documents in relation to the Works;

Retention: the percentage stated in the Award Letter or Purchase Order or Specification to be deducted from the Price in accordance with these Terms and Conditions;

Site: means the site where the Works are to be carried out as identified in the Specification;

Statutory Requirements: any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the Works or performance of any obligations under this Agreement and any regulation or bye-law or any local authority or statutory undertaker which has any jurisdiction with regard to the Works or with whose systems they are, or are to be, connected;

Works Commencement Date: the date for the commencement of the Works as stated in the Specification.

2. GENERAL

2.1. The Council wishes to have the Works carried out at the Site. The Council has provided the Contractor with the Specification describing the work to be done. The Contractor shall carry out and complete the Works in accordance with the Specification and the terms of this Agreement.

- 2.2. The Contractor's Tender constitutes an offer to perform the Works in accordance with these Terms and Conditions. The Tender shall only be deemed to be accepted if the Council issues an Award Letter or Purchase Order to the Contractor confirming acceptance of the Tender.
 - 2.3. Any work, services or supplies performed or provided by or on behalf of the Contractor in connection with the Works before the date of an Award Letter or Purchase Order shall:
 - 2.3.1.1 if an Award Letter or Purchase Order is subsequently issued, be treated as having been performed or provided under this Agreement; or
 - 2.3.2. if no Award Letter or Purchase Order is subsequently issued, be carried out at the Contractor's time and cost.
 - 2.4. The Contractor shall ensure that at all reasonable times he has on the Site a competent person in charge.
3. CONTRACTOR'S OBLIGATIONS
- 3.1. The Contractor shall carry out and complete the Works:
 - 3.1.1. in a good, proper and workmanlike manner;
 - 3.1.2. in accordance with the Tender Documents and this Agreement,
 - 3.1.3. in compliance with the Council's requirements, all applicable Policies, Statutory Requirements, Site rules and all applicable laws;
 - 3.1.4. In accordance with the Works Commencement Date and Completion Date, unless otherwise agreed with the Council in writing;
 - 3.1.5. in accordance with any instructions from the Council;
 - 3.1.6. ensuring that it is carried out with the least possible inconvenience to occupants of any Sites or neighbouring dwellings, premises and tenants; and
 - 3.1.7. using appropriately experienced, qualified and trained personnel.
 - 3.2. All materials and goods for the Works shall be:
 - 3.2.1. new (except as otherwise agreed in writing by the Council);
 - 3.2.2. free from defects;
 - 3.2.3. compatible with any Council equipment with which the goods and/or materials will interact;
 - 3.2.4. in accordance with the Specification, or to the extent that the quality of materials and goods are not described in the Specification then they shall be of a standard appropriate to the Works; and
 - 3.2.5. of satisfactory quality and fit for the purpose for which they will be used.
 - 3.3. Unless otherwise stated in the Specification or otherwise agreed between the parties in writing, the Contractor shall provide at its own expense all material, labour, plant, equipment, storage, offload and transport necessary for the carrying out of the Works.
 - 3.4. Unless the Employer instructs the Contractor to the contrary, the Employer shall make all applications, give all notices, pay all fees required, in order to obtain all consents and permissions necessary for the performance of the Works. The Contractor shall without further charge and in accordance with the programme obligations under the Agreement, provide the Council with copies of all documents, information, design documents, approvals, consents and permissions that are required from the Contractor to carry out and complete the Works.
 - 3.5. The Contractor shall fully comply with the CDM Regulations applicable to the Works. Where required by the Council, the Contractor shall fulfil the role of Principal Designer and/or Principal Contractor for the purpose of the CDM Regulations. Where the Contractor is not required to exercise the role of Principal Contractor, the Contractor

shall comply with the health and safety requirements of the Principal Contractor at all times.

4. DESIGN

- 4.1. If the Agreement requires the Contractor to carry out and complete any design, the Contractor shall:
 - 4.1.1. carry out and complete that design using all the reasonable skill, care and diligence to be expected of a designer of the appropriate professional discipline who is experienced in undertaking such design work in relation to works of a similar size, scope and nature to the design required by this Agreement;
 - 4.1.2. comply with regulations 8 to 10 of the CDM Regulations and comply with any instructions from the Council regarding the integration of the Contractor's design with any other design;
 - 4.1.3. be solely responsible in all respects for the Contractor's design;
 - 4.1.4. as and when necessary without charge, provide the Council with details of the Contractor's design for the Council's approval; and
 - 4.1.5. not specify or use in the Works any materials that, in accordance with Good Industry Practice, are generally considered in the construction industry at the relevant time to pose a threat to the health and safety of any person, or the structural stability, performance or physical integrity of the Works, or possibly reduce the life expectancy of the Works, or not be in accordance with relevant British standards.

5. TIME AND COMPLETION

- 5.1. The Works shall be commenced on the Works Commencement Date and shall be carried out and completed:
 - 5.1.1. By the Completion Date, unless otherwise agreed in accordance with this Agreement; and
 - 5.1.2. in accordance with the progress of any other works on Site that are notified by the Council to the Contractor from time to time.
- 5.2. If, at any time, the Contractor becomes aware of any circumstance or occurrence which may lead to the Works not being completed by the Completion Date (or any later date fixed in accordance with the provisions of this clause 5) or otherwise adversely affect the Contractor's performance of its obligations under the Agreement, it shall immediately notify the Council in writing, providing details of the potential or actual delay and the Contractor's proposals for mitigating that delay.
- 5.3. Except as otherwise provided in the Agreement, and subject always to clause 5.4, the Contractor shall be entitled to a reasonable extension of time in the event that there is a delay to the completion of the Works that arises as a result of an event that is beyond the Contractor's control. Any extension of time, or in the event of an omission of Works any reduction of the period for completion of the Works, will be assessed and determined by the Council who shall confirm its decision in writing to the Contractor.
- 5.4. The Contractor shall not be entitled to any extension of time on account of any circumstance arising by reason of any error, omission, negligence or default of the Contractor or the Contractor's Persons
- 5.5. The Contractor shall provide the Council with not less than 7 days written notice of the date when the Contractor expects that the Works will achieve Completion. The Council shall inspect the Works and provide written notice to the Contractor of the date when the Council reasonably considers that the Works have achieved Completion.
- 5.6. If the Contractor fails to achieve Completion by the Completion Date (as may be adjusted by the Council under this Agreement), the Contractor shall pay or allow to the Council the amount of any direct loss and/or expense suffered or incurred or likely to be incurred by the Council that is caused by that failure between the Date for Completion

and the date of actual Completion, and such sums may be deducted in accordance with clause 9.14 below.

6. THE SITE

- 6.1. Subject to any restrictions identified in the Specification or this Agreement, the Council shall permit the Contractor to access so much of the Site as is reasonably required for the execution of the Works, but such access shall not be exclusive, and the Contractor shall ensure that the Works are carried out so as not to delay or disrupt any other works or activities occurring on Site.
- 6.2. The Contractor has had an opportunity of inspecting the physical conditions (including the sub-surface conditions) and other conditions of or affecting the Site and shall be deemed to be fully acquainted with the same before the date of this Contract and to have obtained all necessary information as to risks, contingencies and all other circumstances which may influence or affect the execution of the Works. Notwithstanding any other provision of this Contract, no failure on the part of the Contractor to discover or foresee any such condition, risk, contingency or circumstance shall entitle the Contractor to any additional payment (whether by way of an addition to the Price or otherwise). As between the Contractor and the Council, the Contractor shall not and shall not be entitled to rely upon any survey, report or other document prepared by or on behalf of the Council regarding any such matter as is referred to in this clause 6.2 and the Council makes no representation or warranty as to the accuracy or completeness of any such survey, report or document. The Council shall have no liability arising out of or in relation to any such survey, report or document or from any representation or statement, whether negligently or otherwise made, contained in such survey, report or other document.
- 6.3. The Council may (but shall not unreasonably or vexatiously) issue instructions refusing admission or requiring the exclusion from the Site of any person(s) employed thereon. The Contractor shall promptly make arrangements for an alternative person to replace them as necessary and there shall be no adjustment to the Price or the Completion Date.
- 6.4. The Contractor shall keep the Site reasonably clear of all debris arising out of its work and remove such debris from the Site at its own expense and in all respects make good the Site on Completion, to the reasonable satisfaction of the Council.

7. ERROR, INADEQUACY OR DISCREPANCIES IN THE AGREEMENT

- 7.1. The Contractor shall immediately provide written notice to the Council in the event that it becomes aware of any error, inadequacy, discrepancy or divergence within or between the Tender Documents forming the Agreement or between the Agreement and any Statutory Requirements.
- 7.2. Not later than 5 Working Days after receipt of that notice, the Contractor shall provide a written statement setting out their proposed amendment to remove the error, inadequacy, discrepancy or divergence. The Council shall issue an instruction to deal with the error, inadequacy, discrepancy or divergence within or between the Tender Documents forming the Agreement or any Statutory Requirements and the Contractor shall comply with that instruction.
- 7.3. Subject to clause 7.2, any instruction issued under this clause 7.1 to deal with a correction, modification or alteration of the Contract Documents shall be treated as a Variation.
- 7.4. To the extent that an instruction issued under clause 7.1 to correct, modify or alter the Contract Documents arises as a result of:
 - 7.4.1.1 any error, omission, negligence or default by or on behalf of the Contractor or the Contractor's Personnel or any risk that is borne by the Contractor under this Agreement;

7.4.2.any error, inadequacy, discrepancy or divergence between the Works and any design carried out by the Contractor; or
7.4.3. any changes in the Statutory Requirements that occur after the Commencement Date,
the Contractor shall not be entitled to an extension of time to the period for completion or increase in the Price in complying with that instruction.

8. HEALTH AND SAFETY

- 8.1. The Contractor warrants that he will use well-maintained plant and equipment in carrying out the Works.
- 8.2. Upon request, the Contractor must provide evidence that it and the Contractor Personnel are sufficiently qualified and trained to carry out the Works and comply with the obligations in the Agreement. That evidence must be provided to the Council within 3 Working Days of a written request. If the Contractor fails to provide that evidence then the Council may request that any Contractor Personnel be removed from Site (at the Contractor's cost), until the Council is satisfied that the Contractor Personnel performing the Works are sufficiently qualified and trained to comply with the obligations in this Agreement.
- 8.3. The Contractor shall on reasonable request provide to the Council such information, explanations and documentation as the Council may reasonably require in relation to any health and safety related matters including but not limited to any matters which have been or are to be reported to and/or investigated by the Health and Safety Executive or such other supervisory or regulatory body, organisation or agency having the statutory power to do so.

9. FEES AND PAYMENT

- 9.1. In consideration of the Contractor's compliance with its obligations under this Agreement, the Council shall pay to the Contractor the Price.
- 9.2. The Price shall be a fixed amount and shall not be increased in any way other than in accordance with the express provisions of these Terms and Conditions. No account shall be taken in any payment to the Contractor of any change in the cost to the Contractor of the labour, materials, plant and other resources employed in carrying out the Works.
- 9.3. The Price shall exclude any amount in respect of VAT and the Council shall, upon receipt of a valid and undisputed VAT invoice bearing the Council's Purchase Order number, pay such additional amounts in respect of VAT as are properly chargeable in respect of it.
- 9.4. If the Council is or at any time up to the final payment becomes a 'contractor' for the purposes of the CIS, its obligation to make any payment under this Agreement is subject to the provisions of the CIS.
- 9.5. Unless otherwise agreed in this Agreement, the Price (or payments up to value of the Price further to clause 9.5.2) shall be paid:
 - 9.5.1.on Completion, where Completion is achieved less than 30 days after the Works Commencement Date, or
 - 9.5.2.where the works are expected to last more than 30 days, in instalments until the date of Completion further to an application for payment at intervals of not less than 4 weeks, beginning 4 weeks after the Works Commencement Date.
- 9.6. Where payment is to be made in intervals under clause 9.5.2 above, the Contractor shall make applications for payment in accordance with clause 9.7.
- 9.7. On the first Working Day after each 4-week period following the Works Commencement Date until the Completion Date the Contractor shall present to the Council an application for payment for each instalment of the Price (the "Payment Application"). The Payment Application must state as a minimum:

- 9.7.1.1 the sum that the Contractor considers to be due to him at the due date for work completed in the previous 4-week period and the basis upon which that sum is calculated in accordance with clause 9.17;
- 9.7.2.the Contractor's name, invoice number/reference and address; and
- 9.7.3.the VAT number and split of VAT for each VAT rate (where applicable).
- 9.8. Payment Applications must be sent to the Council Representative (unless as otherwise notified by the Council to the Contractor in writing) and in the electronic or paper format as stated in the Award Letter or Purchase Order (or otherwise notified by the Council to the Contractor in writing).
- 9.9. Payment shall be due on the date on which the Council receives each Payment Application, unless otherwise stated in the Award Letter or Purchase Order, whichever is the later ('the Due Date'). Following receipt of the Payment Application the Contractor shall provide such further supporting documents as the Council may reasonably require for the purposes of verifying the Payment Application.
- 9.10. Not later than 5 days after the Due Date the Council shall give a notice to the Contractor which shall specify the sum that it considers to be or have been due at the Due Date and the basis upon which that sum has been calculated (the "Payment Notice").
- 9.11. The Contractor shall submit an invoice dated and issued to the Council no earlier than the date of the Payment Notice and which agrees in all respects with the Payment Notice.
- 9.12. The final date for payment shall be 30 days after the date of issue of the invoice in accordance with clause 9.11 (the "Final Date for Payment")
- 9.13. Subject to any Pay Less Notice given by the Council under clause 9.14, the Council shall pay the sum specified in the Payment Notice, or if no Payment Notice is provided the sum specified in the Payment Application, on or before the Final Date for Payment.
- 9.14. Where the Council intends to pay less than the sum stated in any invoice issued by the Contractor, or if no Payment Notice is provided the sum specified in the Payment Application, the Council shall issue a written notice no later than 5 Working Days prior to the final date for payment that it intends to pay less (a "Pay Less Notice"). Any Pay Less Notice shall specify the sum that the Council considers to be due on the date that the Pay Less Notice is served, and the basis on which that sum is calculated.
- 9.15. The Council may set off against the Price any sums owed to it by the Contractor, in connection with the Agreement or any other agreement entered into by the Parties.
- 9.16. If the Council fails to pay an amount due to the Contractor by the Final Date for Payment and fails to give a Pay Less Notice under clause 9.15, simple interest shall be added to the unpaid amount from the Final Date for Payment until the actual date of payment. This shall be calculated on a daily basis at the annual rate of 2% above the Base Rate. The parties acknowledge that the Council's liability under this clause 9.16 is a substantial contractual remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998. The provisions of this clause 9.16 are in lieu of statutory interest, which shall not accrue accordingly.
- 9.17. If the Contractor becomes insolvent within the meaning contained within section 113 of the Housing Grants Construction and Regeneration Act 1996 after the date by which the Payment Notice may be served in accordance with clause 9.10, the Council shall not be obliged to pay the sum that it would otherwise be obliged to pay.
- 9.18. Unless otherwise stated in this Agreement, the amount of each payment shall be the gross value of the Works calculated at the relevant Due Date less:
 - 9.18.1. deduction of the sums previously paid under the Agreement;
 - 9.18.2. any Loss, claim or proceedings incurred or likely to be incurred by the Council as a result of the Contractor's breach of this Agreement; and
 - 9.18.3. (for all payments prior to the Council issuing notice that all defects, shrinkages or other faults have been notified to the Contractor prior to the expiry of the Rectification Period have been made good) Retention.

10. If the Council wants to modify/vary the Works it will:
 - 10.1. If the Council wants any significant change in the Works, it must give to the Contractor a written variation notice, which will set out what change the Council wants to be made. Matters that are likely to be a significant change may include any substantial addition or amendment to the Works;
 - 10.2. Within fourteen (14) days of receipt of the variation notice, the Contractor must then give the Council a written quotation of the increase or reduction in price for providing the varied Works or indicate that there would be no increase or reduction in price.
 - 10.3. The Contractor must provide to the Employer such information as the Employer may reasonably request concerning the costs of the varied Works.
 - 10.4. The Council's Representative may then either:
 - (a) instruct the Contractor to implement the varied Works at the price in the quotation or as otherwise agreed ("the Variation"). The Contractor will then be bound by the Variation and must implement it within such reasonable time as the Council's Representative instructs and the Price must be decreased or increased by the agreed price (if applicable); or
 - (b) decide not to proceed with the varied Works.
 - 10.5. Without prejudice to the above, the Council may at its discretion issue an instruction to the Contractor to omit all or part of the Works and a fair and reasonable assessment shall be made by the Council of the impact of that instruction on the period for completion of the Works and the Price.

11. DEFECTS

- 11.1. The Contractor shall make good at its own cost and in accordance with the timetable set out in any instruction from the Council, all defects, shrinkages and other faults in the Works or in any part of them (whether before or after Completion) which arise due to the Contractor's failure to comply with this Agreement.
- 11.2. Without prejudice to clause 11.1, if the Council informs the Contractor in writing that the Council reasonably believes that any part of the Works does not meet the requirements of the Agreement the Contractor shall, at its own time and expense, re-perform those parts of the Works in accordance with the Agreement in such reasonable time as may be specified by the Council.
- 11.3. Where the Council reasonably considers that all defects, shrinkages and other faults that have been notified to the Contractor in writing prior to the expiry of the Rectification Period have been made good to the Council's satisfaction, the Council shall notify the Contractor of the same and the Retention shall be released in the next payment that arises thereafter.
- 11.4. If the Contractor fails to make good or fails to make good within the timetable required from the Council, the defects, shrinkages or other faults, the Council shall be entitled to make an appropriate deduction from the Price or to recover as a debt from the Contractor the costs for the Council to procure making good of such defects, shrinkages or other faults.