

Invitation to Tender

Part A

Restricted procedure, (Services)

This Part A to be retained by the Tenderer

[Project Title]

Reference: BMDC/[No.]

Delete all references in blue throughout this document before distributing the document to suppliers (including this one!)

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INSTRUCTIONS AND CONDITIONS FOR TENDERERS

Contact Officer Details:

Name: []

Email: []@bradford.gov.uk

Tel No: 01274 43[]

Confidentiality

Tenderers shall treat the tender documents as private and confidential. Tenderers shall not disclose their tender in whole or in part to any third party prior to either the award of the contract by the City of Bradford Metropolitan District Council (“the Council”) or on receipt of notification that the tender has not been accepted.

Decline or Inability to Return

If for any reason you are unable to submit a tender or decline to tender, please inform the above named officer using the form in Part B of this Invitation to Tender (“ITT”).

Tender Queries

All queries regarding this ITT should be directed to the above named officer in writing or by e-mail.

If relevant, answers to queries will be circulated to all tenderers.

Completion of the Questionnaire

The Council is seeking concise and relevant information from suitably experienced and capable tenderers.

Tenderers should fully complete the ITT Parts B and C in black ink or typeface providing all the necessary information and ensure that all supporting documents requested are submitted. Where a section is not applicable this should be clearly stated by inserting ‘NONE’ or ‘NOT APPLICABLE’ clearly in the appropriate place.

Expand boxes as required and wherever supporting documents are enclosed they should be clearly marked on the top right hand corner with:

- the Tender Reference no. **BMDC/[No.]**
- the name of the organisation submitting the tender; and,
- the number of the question to which it relates.

Tenders should be completed in English or accompanied with an English translation and a certificate from an independent translator attesting the authenticity of the translation.

Tenderers should ensure there is no incomplete information, inappropriate references, unsubstantiated statements or information presented in a manner not reasonably obvious to the evaluation panel. It is the tenderer’s responsibility to provide all the answers and information requested in a clear, concise and logical manner and at the appropriate points within the document. Cross-referencing and reliance on enclosures (other than where specifically requested) should be avoided.

In particular please **do not**:

- include any promotional literature or cross-reference to any web-based material;
- provide any information other than that requested as the Council will not consider it as part of the evaluation process;
- make any alterations to the ITT or the questions asked; and
- use loose-leaf ring binders. If you are submitting a hard copy response, submissions should be double-sided and plastic comb-bound. The cover should be the first, fully completed page of ITT Part B (protected by a clear plastic sheet)

It is the responsibility of the tenderer to ensure that their responses are unambiguous and complete and to seek clarification if necessary of the Council's requirements.

Please note that if any of the information supplied in the tender changes at any point before the award of the contract, the tenderer is required to notify the Council accordingly.

Return of Tenders

To access the tender documentation and to be able to submit your response, you must first register your organisation on the Supplier Contract Management System ("SCMS") (unless you have done this previously). Please ensure when doing this that you add "**Bradford Metropolitan District Council**" onto the list of councils you wish to offer goods and services to. This is done in the "**Company Profile**" section of the system, in the "**Councils**" tab.

Then you can find this contract on the Bulletin Board, using the following search criteria:

Contract ID: BMDC/"[Insert Ref]"

Current / Awarded: Current

Display Tenders: All

Council: Bradford Metropolitan District

Matching Categories: All

Once you have registered your interest in a tender the profile for the tender will be moved to, and can be found on, the "**My Tenders**" page on the SCMS page once you are logged in.

The SCMS system is a very secure site and is simple to use. However, if this is the first time you will be using the system for submitting documents you should refer to the online user guide, available under the "**Help**" tab and spend some time familiarising yourself with the system and how it works.

There is a dedicated helpdesk to support users of the system, and this includes providing step by step instructions via the telephone as to how to use the system and, more importantly, submit your documents.

The contact details are:

Telephone: +44 (0) 113 247 4001

Email: scms@leeds.gov.uk.

All tender submissions will be formally logged upon receipt and any tender submission that is received at the designated point after the tender receipt deadline shall be rejected even if it is evident from the post mark on the envelope or from the delivery documentation that the tender could have been received by the due date and time.

It is the tenderer's responsibility to ensure that their tender submission is received by the Council before the tender return deadline below. **Late or partial tenders, for whatever reason, will not be accepted.**

The tender return deadline for tenders and any other documents which are to be submitted to the Council is:

14.00 Hrs on Wednesday [insert date]

The tender should be submitted using one of the following methods:

Preferred Method:

Electronically - using SCMS. The web address to access the system is <http://scms.alito.co.uk>.

All documents that will form your submission must be uploaded via the "**submit documentation**" facility on the tender profile from which you downloaded this tender document. Documents that are uploaded to any other tender profile(s) or sections of the SCMS website (i.e. your company profile) will not be considered.

You are able to submit documents from the day they are issued, therefore it may be worthwhile submitting those that you do not need to do any further work on (i.e. accounts or insurance

schedules) as soon as possible so you can practice the process straight away. On the tender return deadline date itself if you still have documents to submit it is recommended that you start submitting them at least three hours before the time shown above in case of any problems. This is to allow sufficient time for the Council to address any problems/queries you may have prior to the tender return deadline. The SCMS system will close down the tender upload facility at the stated tender return deadline preventing any uploads after this time.

All submitted documents should be named: 'company name' – 'title of document' (e.g. Joe Bloggs Suppliers Ltd – Financial Accounts 2006 - 2007). Please ensure that all documents are saved in a format that is compatible with MS Office 2003 (this is essential where Vista OS or MS Office 2007 is used) or submitted in PDF format. Extremely large files or submissions may be zipped for ease of uploading.

A limit of 10Mb per tender submission applies when lodging a tender submission via SCMS. Tenderers will be unable to lodge an electronic submission where the combined file size exceeds 10Mb. Please note, however, that tenderers may repeat the lodgement process as many times as is necessary to submit all the appropriate documents so long as the combined file size per lodgement does not exceed the stated 10Mb limit.

When returning submissions electronically, tenderers should take into consideration the method of internet connection used (e.g. dial-up modem, broadband etc). Under normal circumstances, broadband connection will provide a much quicker connection.

Electronic tender submissions are only acceptable via the SCMS website – **Email submissions are not acceptable under any circumstances** and will be deleted on receipt without being opened.

Alternative Method

Whilst the Council's preferred method is electronic submission, tenderers can make a submission by post or hand in suitable packaging, which shall be securely sealed with the official tender return label (found on the last page of ITT Part B) affixed to the package/envelope. **Failure to attach this label will invalidate the tender.** Tenderers must ensure that submissions are delivered the location indicated on the label prior to the tender closing time.

Tenders must be submitted in accordance with these instructions. **Tenders submitted which are not in accordance with these instructions will not be evaluated.**

Tenderers must retain a copy of their tender for their own information.

Tenders are submitted on the basis that the Council's authorised representatives may, after tender opening, seek to clarify with the tenderer either verbally or in writing details of the tender submitted without in any way committing the Council to accept the tender.

The Council is not bound to accept the lowest or any tender.

Signing of Tender Documents

Hard copy tenders must be signed where indicated, only by persons authorised to do so on the tenderer's behalf. Signatures are not required when submitting an electronic copy; however, you must print the authorised signatory's name in the signature area – the winning tender will be signed at a later date.

Failure to fully complete and sign the following sections in Tender Part B means the Council **must** treat you as ineligible for the Tender opportunity:

- Form of Tender
- Freedom of Information Act 2000 Contractors Obligations
- Declaration of Non-Collusive Tendering

Amendments to Tenders Prior to the Due Date

Should tenderers discover any discrepancies within their tender submission they should contact the above named officer.

At any time after the issue of the ITT and before the tender return deadline, the Council reserves the right to issue amendments detailing any changes to the tender documents or tender process. Tenderers must take these changes into account in the preparation of their submission.

Tenderers are not permitted to make alterations to any of the ITT documents.

Tender Period

Tenders shall remain open for acceptance for not less than ninety (90) days from the tender return deadline stated above. Tenders may be accepted at any time during such period.

Sufficiency and Accuracy of Tender

Tenderers will be deemed to have examined all the documents enclosed by their own independent observations and enquiries, and will be held to have fully informed themselves as to the nature and extent of the requirements of the proposed contract.

Tenderers are cautioned to check the accuracy of their tender prior to submission. The Council reserves the right to disqualify incomplete tenders.

Tenderers shall familiarise themselves with all regulations, byelaws, and all other factors which may affect their tender submission.

Right to Terminate/Disqualify/Reject

Tenderers should note that the information given at this stage might be subject to verification later in the procurement process. If any error, omission, false statement or misrepresentation is discovered, the Council reserves the right to disqualify the tenderer from selection, without regard to what stage the process has reached when the error, omission, false statement or misrepresentation is discovered.

The Council reserves the right to reject any tenderer that fails to comply fully with the requirements of the process set out in this ITT or which is guilty of a serious misrepresentation in supplying any information requested.

Tenderers may be required to clarify answers relating to the information supplied in the tender submission or to supply additional information if considered appropriate.

The Council reserves the right to require some or all of the tenderers to clarify their submissions in writing. Any such request shall be made in writing.

The Council reserves the right to amend the terms and conditions of the tender process and/or postpone, suspend or abort this procurement exercise at any time.

Tenderers should note that the Council reserves the right to terminate any ensuing contract with them at any time if it is discovered that they have made any false statement or material misrepresentation in this or any subsequent document.

Variants

Tenderers should submit on a separate sheet with their tender submission any variants on the Specification or Scope, Standard Conditions of Contract or any alternative proposals.

Tenderers proposing variants must, as a minimum, complete this tender document on the basis stipulated.

Incurred Expenses

Tenderers are solely responsible for their costs and expenses incurred in connection with the preparation and submission of this tender and any future stages of the procurement process. Under no circumstances will the Council, or any of its advisers, be responsible for, or pay for, any losses or expenses which may be incurred by the tenderer in the preparation and submission of their tender, including the attendance at any pre or post tender meetings, site visits or negotiations.

The Council will not accept claims for additional costs incurred by the tenderer for materials or work not allowed for in the final tender price which should have been established by proper inspection of the tender documentation prior to submission.

Appointment of Third Parties

It is the responsibility of tenderers to provide potential third parties appointed to assist with the tender submission, with all the technical and commercial information necessary to allow those potential third parties to quote to the tenderers. The Council will not respond to any direct approach from such potential third parties for details about a particular ITT.

Tenderers must declare the share of any contract they intend to sub-contract and list the proposed third parties in their tender submission.

Pricing

Tenderers should complete and return the pricing schedule in ITT Part C.

The Council's standard payment terms are 30 days from receipt of a valid invoice. If tenderers are able to offer a discount for different payment terms, please detail in the space provided on the appropriate enclosed Schedule.

The currency in which all prices and rates must be tendered and in which payments under any ensuing Contract will be made, shall be Pounds Sterling. All prices quoted should be exclusive of VAT.

Ethics

Tenderers should be aware that the Council's officers are not permitted to:

Have contact with tenderers outside of formal meetings or business arrangements, including any social contact. Formal meetings with tenderers will be attended by at least two officers of the Council and will be minuted.

Accept hospitality from tenderers.

Provide support to tenderers in the preparation of bid documents, presentations or similar, other than the clarification of issues through a formal process.

The Transfer of Undertakings Regulations 2006 (TUPE)

The terms of TUPE may apply in the event of this contract being awarded to persons other than those currently providing all or part of the Services. CBMDC makes no representations about the applications of TUPE.

Tenderers are advised to seek independent professional advice on the consequences for them if they are the successful tenderer and the TUPE regulations apply

STANDARD CONDITIONS OF CONTRACT

CITY OF BRADFORD METROPOLITAN DISTRICT COUNCIL

STANDARD CONDITIONS OF CONTRACT - SUPPLY OF SERVICES

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INTRODUCTION

These Conditions may only be varied with the written permission of the Council. No terms or conditions put forward at any time by the Contractor shall form part of the Contract unless previously agreed in writing by the Council.

1. Definition & Interpretation

1.1 For the purposes of the Contract except where expressly stated to the contrary, the following words shall have the following meaning:

“Authorised Officer” means the person appointed by the Council and notified in writing to the Contractor to act as the representative of the Council for all purposes connected with the Contract, or the authorised representative of such a person pursuant to **Condition 30 (Designated Representatives)**.

“Best Value Duty” means a duty placed upon the Council by Part 1 of the Local Government Act 1999 under which the Council is under a statutory duty to make arrangements to continuously improve the way its functions are exercised having agreed to a combination of economy, efficiency and effectiveness.

“Commencement Date” means the date specified in the Contract Documents on which the Contractor shall begin performance of the Services.

“Conditions” means these Conditions of Contract for the Supply of Services.

“Confidential Information” means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA.

“Contract” means the agreement between the Council and the Contractor for the provision of the Services comprising the Contract Documents.

“Contract Documents” means the Conditions, the Specification, the Invitation to Tender, the Contractor’s Tender, guarantees (if any), the letter of acceptance of the Tender, Purchase Orders and any documents referred to or incorporated therein.

“Contract Manager” means the person appointed by the Contractor to act as its representative for all purposes connected with the Contract pursuant to **Condition 30 (Designated Representatives)**.

“Contract Period” means the duration of the Contract specified in the Contract Documents starting on the Commencement Date.

“Contract Price” means the amount (exclusive of VAT) payable to the Contractor by the Council under the Contract, as set in the Pricing Schedule for the full and proper performance by the Contractor of its obligations under the Contract.

“Contracting Authority” means a contracting authority as defined by Part 1 (General) of The Public Contracts Regulations 2006.

“Contractor” means the person, firm or company awarded the Contract or is otherwise appointed to provide the Services by the Council and includes the Contractor’s employees, servants, agents, sub-contractors, legal personal representatives, successors and permitted assignees.

“Controlled Activity” means in relation to children as defined in Section 21 of the SVGA 2006 and in relation to vulnerable adults as defined in Section 22 of the SVGA 2006.

“Council” means City of Bradford Metropolitan District Council

“DPA” means the Data Protection Act 1998.

“Equipment” means all goods, materials, plant, machinery, equipment and any other items supplied to the Contractor by the Council in connection with the Contract.

“Environmental Information Regulations” means the Environmental Information Regulations 2004 No. 3391.

“Financial Regulations” means the Council's internal financial regulations made in accordance with section 151 of the Local Government Act 1972 and the Accounts and Audit Regulations 2003.

“FOIA” means the Freedom of Information Act 2000.

“Intellectual Property Rights” means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“Invitation to Tender” means the Council's invitation to tender supplied to the Contractor pursuant to which the Tender was submitted.

“Parties” means the Council and the Contractor; and **“Party”** shall be construed accordingly.

“Pricing Schedule” means the document submitted by the Contractor as part of its Tender specifying and/or providing the mechanism for ascertaining payments due or owing to the Contractor in respect of the provision of Services during the Contract Period.

“Prohibited Employment Grounds” means the grounds of:

- (a) colour, race, nationality, or ethnic or national origins contrary to Part II (Discrimination in the field of Employment) of the Race Relations Act 1976;
- (b) sex or marital status contrary to Part II (Discrimination in the employment field) of the Sex Discrimination Act 1975;
- (c) disability contrary to Part II (Employment) of the Disability Discrimination Act 1995;
- (d) religion or belief contrary to Part II (Discrimination in employment and vocational training) of the Employment Equality (Religion or Belief) Regulations 2003;
- (e) sexual orientation contrary to Part II (Discrimination in employment and vocational training) of the Employment Equality (Sexual Orientation) Regulations 2003; and/or
- (f) age contrary to Part II (Discrimination in employment and vocational training) of the Employment Equality (Age) Regulations 2006;

“Prohibited Grounds” means the grounds of:

- (a) colour, race, nationality, or ethnic or national origins contrary to Part III (Discrimination in other fields) of the Race Relations Act 1976;
- (b) sex or marital status contrary to Part III (Discrimination in other fields) of the Sex Discrimination Act 1975;
- (c) disability contrary to Part III (Discrimination in other Areas) of the Disability Discrimination Act 1995;
- (d) religion or belief contrary to Part III (Other Unlawful Acts) of the Employment Equality (Religion or Belief) Regulations 2003;
- (e) sexual orientation contrary to Part III (Other Unlawful Acts) of the Employment Equality (Sexual Orientation) Regulations 2003; and/or
- (f) age contrary to Part III (Other Unlawful Acts) of the Employment Equality (Age) Regulations 2006;

“Purchase Order(s)” means the Council's official numbered purchase order(s) issued from time to time by the Council to the Contractor together with all the documents attached or referred to therein and any amendment thereto by means of an order amendment to provide the Services or any part of item.

“Request for Information” shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term **“request”** shall apply).

"Regulated Activity" means in relation to children as defined in Part 1 of Schedule 4 to the SVGA 2006 and in relation to vulnerable adults as defined in Part 2 of Schedule 4 to the SVGA 2006.

"Regulated Activity Provider" means as defined in Section 6 of the SVGA 2006.

"Services" means the whole of the services or any of them to be performed as required by and in accordance with the Contract and any modification thereof as may from time to time be agreed in writing between the Council and the Contractor.

"Staff" means employee(s), agent(s), supplier(s) or sub contractor(s).

"SVGA 2006" means the Safeguarding Vulnerable Groups Act 2006.

"Tender" means the Contractor's offer to provide the Services, including the Pricing Schedule, submitted by the Contractor in response to the Council's Invitation to Tender.

"TUPE" means the Transfer of Undertaking (Protection of Employment) Regulations 2006.

- 1.2 Unless the context otherwise requires it, reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended or re-enacted by any subsequent enactment, order, regulation or instrument whether made before or after the date of this Contract.
- 1.3 The headings to Conditions are included for ease of reference only and shall not affect the interpretation or construction of the Contract or be construed as forming part of the Contract.
- 1.4 References to Conditions, schedules, paragraphs or sections are references to Conditions, schedules, paragraphs or sections to these Conditions or the Invitation to Tender (as the context may require).
- 1.5 Words imparting the singular only, also include plural and vice versa where the context so requires.
- 1.6 Where words are used in the masculine form then that use shall be read so as to include the feminine and vice versa.
- 1.7 Words referring to "persons" shall be read, where appropriate, to include bodies corporate, unincorporated associations and partnerships.

2. General

- 2.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any fraud or fraudulent misrepresentation.
- 2.2 At all times during the Contract Period the Contractor shall be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly the Contractor shall not be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.
- 2.3 Save as otherwise expressly provided, the obligations of the Council under the Contract are obligations of the Council in its capacity as a Contracting Authority and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Council to the Contractor.
- 2.4 Where the Invitation to Tender specifies a framework agreement, no guarantee or warranty as to the volume and/or quantity of Services is given by the Council.
- 2.5 The Contractor agrees that although the Contracting Authority for the purpose of this Contract is the Council and where the Contract Documents make provision to do so other

organisations may choose to access the Contract and participate in the Contract on these Conditions without creating any obligations on behalf of any of them to do so.

- 2.6 The Council shall be permitted to assign, transfer or novate the benefit and the burden of this Contract to any other body.

3. Contract Period

- 3.1 This Contract shall continue for the Contract Period as specified in the Contract Documents unless:

3.1.1 Terminated in accordance with **Condition 13 (Contract Termination)**;

3.1.2 Contract suspension in accordance with **Condition 6 (Contract Suspension, Interruption & Delay)** applies; or

3.1.3 it is extended in accordance with **Condition 3.2**.

- 3.2 Prior to the end of the Contract Period, the Council may at its absolute discretion serve a written Contract notice of change (pursuant to **Condition 16 (Contract Notice of Change)**) to the Contractor extending the Contract Period. In the event of a Contract notice of change being served, the terms and conditions of this Contract shall continue to remain in force in all respects except that the end shall be the length of the Term as specified in the Contract Notice of Change.

- 3.3 The Council shall be permitted to assign, transfer or novate the benefit and the burden of this Contract to any other body.

SERVICES

4. Supply of Services

- 4.1 The Contractor shall supply the Services during the Contract Period in accordance with the Council's requirements as set out in the Contract in consideration of the payment of the Contract Price. The Council may inspect and examine the manner in which the Contractor supplies the Services at the premises during normal business hours on reasonable notice.

- 4.2 The Contractor warrants that it shall perform its obligations under this Contract and shall provide the Services at all times:

4.2.1 in a professional and efficient manner, using an appropriate and reasonable level of skill, care, and diligence commensurate with the provision of services to a local authority; and shall,

4.2.2 work diligently to protect and promote the Council's interests; and

4.2.3 act loyally and faithfully to the Council in all matters.

- 4.3 In carrying out the Services continuously throughout the Contract Period, the Contractor shall:

4.3.1 comply at all times with the Contract;

4.3.2 fully co-operate with the Council or any other agency appointed by the Council in enquiries or investigations carried out in connection with the provision of the Services; and

4.3.4 agree to support and co-operate with the Council in complying with its Best Value Duty; and

4.3.5 notwithstanding the provision of **Condition 29 (Carbon Reduction)** agrees to support and co-operate with the Council towards the Council's commitment to reduce CO2 emissions and shall comply with the Council's environmental policy, which is to conserve energy and natural resources, reduce waste and phase out the use of substances that are damaging to health and the environment.

- 4.4 The Contractor shall make itself and its staff aware of the nature, scope and requirements necessary for the performance of the Contract and shall obtain a full understanding and

knowledge of the prevailing conditions relevant thereto under which the Contract shall operate.

- 4.5 The Contractor shall satisfy itself that the information, including documentation, provided by the Council is adequate and will not prejudice the performance of any of the Contractor's obligations under the Contract. The Contractor shall inform the Council immediately of any inadequacy.
- 4.6 In no circumstances during the Contract Period shall the Contractor or its sub-contractors use any premises or equipment of the Council to perform, either on its own behalf, or on behalf of any person other than the Council, any Service other than provided for in this Contract.
- 4.7 The introduction of new methods or systems which affect the provision of the Service shall be subject to prior approval by the Council.

5. Quality

- 5.1 The Contractor shall provide the Services in accordance with the Contract, any applicable regulations, and to the satisfaction of the Council.
- 5.2 In the event of apparent conflict between the terms of this Contract and any applicable regulations, the matter shall be referred to the Council for its decision.
- 5.3 The Council may inspect and examine the work being carried out on the Council's premises without notice at any time. Where any part of the work is being carried out on premises other than the Council's premises, 7 working days notice shall be given to the Contractor. The Contractor shall give all such facilities as the Council may require for such inspection and examination.
- 5.4 Notwithstanding that the Services or any part thereof have been the subject of any instruction, review, approval, acknowledgement or inspection, the Contractor shall not be relieved from any liability or obligation under the Contract.
- 5.5 If the Council serves notice, written or otherwise, advising the Contractor of any deficiency in the Services, which, in the opinion of the Council is attributable to the Contractor, the Contractor shall, without prejudice to the Contractor's other rights, promptly remedy the deficiency in the Services as required by the Council. All costs of such remedy shall be borne by the Contractor and all amounts previously paid to the Contractor in respect of the Services shall be repaid to the Council. If the Contractor fails to remedy the deficiency promptly in accordance with the Council's notice, the Council may remedy or cause to be remedied any deficiency at the Contractor's cost. Further to this any costs associated with any audit that the Council is required to carry out as a result of the Contractor failing to carry out the service in accordance with the Contract shall be borne by the Contractor.
- 5.6 The Contractor agrees to take appropriate steps to inform itself sufficiently on the principles of the Best Value Duty and to provide the Services in accordance with such principles.
- 5.7 The Contractor shall throughout the Contract Period make arrangements to secure continuous improvement in the way in which the Services are provided having regard to a combination of general economy, efficiency and effectiveness.
- 5.8 The Contractor shall undertake or refrain from undertaking such action as the Council shall reasonably request to enable the Council to comply with its Best Value Duty and under the provision of the Local Government Act 1999.
- 5.9 The Council shall inform the Contractor of any policies, rules, codes of practice, procedures and standards with which the Contractor is required to comply. The Council shall throughout the Contract Period ensure that any changes to any policies, rules, codes of practice, procedures and standards are brought promptly to the attention of the Contractor.
- 5.10 Where appropriate British, European, International or equivalent standards or Codes of Practice exist, all materials and goods used or supplied and all workmanship shall, as a minimum requirement be in accordance with that standard but without prejudice to any higher standard required by the Contract.

6. Contract Suspension, Interruption & Delay

- 6.1 If the Council or the Contractor becomes aware of any event, interruption, delay or other reason which may be detrimental to the performance of the whole of the Services or any part thereof, then they shall notify the other Party immediately so that the situation can be rectified without detriment to the Services. To comply with the requirements of the Contract, the Council and the Contractor shall mitigate the effects of any event, interruption, delay or other reason.
- 6.2 The Council reserves the right to give one (1) month's written Notice to suspend the Contract should operational reasons require it. If the Contract is suspended the Contractor shall promptly recommence the performance of the Services on receipt of written Notice from the Council ending the suspension.

FINANCIAL

7. Terms of Payment

- 7.1 The Contractor shall submit to the Council a detailed invoice or invoices in accordance with the Contract on a monthly basis. The invoice shall show or have attached all information necessary to support the invoiced amount therein including all relevant time sheets or schedules. The invoice must include the Council's purchase order number.
- 7.2 Unless otherwise specified in the Contract, payment thereof shall be made within thirty (30) days of receipt by the Council of the Contractor's invoice in respect of the Services properly carried out. Payment shall not operate as a waiver of any of the Council's rights under the Contract.
- 7.3 All sums payable under the Contract shall be exclusive of Value Added Tax which may be added to the invoice where appropriate. The Council shall pay to the Contractor any UK Value Added Tax properly chargeable in respect of the Services, provided that the Contractor gives the Council a valid invoice in accordance with relevant legislation. The Contractor shall pay all other taxes arising under the Contract.
- 7.4 The Council shall, unless otherwise specified in the Contract, make payment in Pounds Sterling. Any legislative requirement to account for the service in Euro, (or to prepare for such accounting) instead of and/or in addition to sterling shall be implemented by the Contractor at nil charge to the Council. The Council shall provide all reasonable assistance to facilitate such charges.
- 7.5 The Council may offset part or all of the payments due to the Contractor under the Contract against amounts due from the Contractor to the Council under the Contract or any other Contract.
- 7.6 The Council uses an electronic purchasing system and wherever possible requires Contractors to receive purchase orders electronically, submit invoices by email and receive payment by BACS. If the Contractor does not have the capacity to trade electronically then he agrees to take all necessary steps such that he will be in a position to implement the new arrangements within a time period agreed between the Council and the Contractor.

8. Pricing

- 8.1 The Contract Price for the Services shall be as stated in the pricing structure in the Contract and unless otherwise so stated, shall be exclusive of any applicable value added tax (which shall be payable by the Council subject to receipt of a VAT invoice) or other sales tax which will be applied in accordance with the law.
- 8.2 The Contract Price for the Services shall include all royalties, licence fees or similar expenses in respect of making, use or exercise by the Contractor of any invention or design for the purposes of performing the Services under the Contract.
- 8.3 The Council shall be entitled to any discount for prompt payment or other discounts customarily granted by the Contractor.

9. Parent Company Guarantee

If, at any time during the Contract Period, if not already obtained, the Council, acting at its absolute discretion, requests, the Contractor at its own cost shall provide a parent company guarantee in a form acceptable to the Council.

10. Records & Monitoring

- 10.1 Without prejudice to the remainder of this **Condition 10** the Contractor shall maintain and provide to the Council those records required in accordance with the Contract.
- 10.2 The Council is required by both statute and its internal Financial Regulations to ensure that sufficient statistical, financial and other information is available in order for it to:
 - 10.2.1 determine the legitimacy of any payment requests submitted for payment;
 - 10.2.2 manage its performance.
- 10.3 The Council shall, during the Contract Period, carry out monitoring/inspection of the Services including without prejudice to the generality of this **Condition 10**:
 - 10.3.1 quality of Service provision as detailed within the Specification;
 - 10.3.2 compliance with Tender;
 - 10.3.3 general compliance with this Contract and all associated areas of legislation;
 - 10.3.4 complaints received relating to the Contract;
 - 10.3.5 verification of claims for Contract Price.
- 10.4 The Contractor shall also allow access to all locations used by the Contractor for provision of the Service including those outside the direct control of the Council; such access shall be made available for the purpose of carrying out such checks as the Council thinks necessary for the monitoring of the Services.
- 10.5 The Council shall require the Contractor to provide statistical data free of charge at regular intervals, determined by the Council, to enable performance to be monitored. The Contractor shall comply with all reasonable requirements of the Council in this respect.
- 10.7 The Contract Manager and the Authorised Officer shall meet to review and discuss any issues relating to the performance of the Contract. Such meetings shall be held at an appropriate venue and at a time and date agreeable to both Parties.
- 10.8 The Authorised Officer may at any time interview any Staff member of the Contractor in connection with the monitoring programme and/or any other regular service reviews and/or investigations arising from complaints or concerns.
- 10.9 The Contractor must maintain all the records required for the efficient running of the Service for the requisite length of time which in this instance shall be for the Contract Period and any subsequent extensions. Records must be kept secure, in accordance with the Data Protection Act 1998, up to date and in good order.
- 10.10 The Contractor shall be able to demonstrate that it has office systems, which can accommodate the requirements of the Council of this **Condition 10**.
- 10.11 Electronic records must be backed up by an 'off site' system to ensure that the Contractor can maintain delivery of the Services at all times as required under the Contract.

WARRANTIES, INDEMNITIES & INSURANCE

11. Warranties

11.1 The Contractor warrants and represents that:

- 11.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative(s) of the Contractor;
- 11.1.2 as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the Contract; and
- 11.1.3 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue.

12. Indemnity & Insurance

12.1 Neither Party excludes or limits liability to the other Party for:

- 12.1.1 death or personal injury caused by its negligence;
- 12.1.2 fraud;
- 12.1.3 fraudulent misrepresentation; and
- 12.1.4 any other matter which cannot be excluded at law.

12.2 Subject to always to **Condition 12.1** in addition to all other express indemnities contained in the Contract (and without limitation to such indemnities) the Contractor shall be liable for and shall indemnify the Council from all losses, costs, damages and expenses of every kind arising out of any claim arising out of the Contract in respect of:

- 12.2.1 any injury, sickness, disease or death of any person; or loss of or damage to any property except insofar as such loss, costs, damages or expenses shall have been caused by or contributed to by the negligence of the Council;
- 12.2.2 any costs, damages and expenses of any kind arising out of any claim in respect of any infringement or alleged infringement of any Intellectual Property Rights arising from the use, manufacture, supply or delivery of any process, article or matter under the Contract; and/or
- 12.2.3 breach of statutory duty.

12.3 Without prejudice to the Contractor's obligations, the Contractor shall take out and maintain insurance policies which are necessary to cover its liability under **Conditions 12.1** and **12.2** and shall include, but not be limited to, the following insurances and limits of indemnity for any one occurrence or series of occurrences arising out of any one event:

- 12.3.1 Employers' Liability Insurance for an amount of not less than £10 million;
- 12.3.2 Public Liability Insurance for an amount not less than £5 million; and
- 12.3.3 Professional Indemnity Insurance for an amount not less than £2 million this should be maintained for a period of at least three years after the Contract end date.

12.4 All insurances shall be with a well-established insurance office or underwriter of repute and as and when required to do so by the Council, the Contractor shall produce for inspection documentary evidence that the insurances required under **Condition 12.3** are properly maintained.

- 12.5 If for any period any such insurances are not available at reasonable commercial rates the Contractor shall forthwith inform the Council and shall obtain in respect of such period such reduced level of insurance as is available and as agreed by the Council.
- 12.6 The Contractor shall immediately notify each insurer or underwriter of the insurances referred to in **Condition 12.3** of any claim made against it under this agreement and shall not without the prior written consent of the Council settle, waiver or otherwise compromise any actual potential or anticipated claim it may from time to time have against each such insurer or underwriter.
- 12.7 The provisions of this **Condition 12** shall survive any termination of this Contract.

TERMINATION

13. Contract Termination

- 13.1 In the following circumstances, the Council may at any time, without prejudice to any other rights which it may possess, forthwith, terminate the Contract and recover from the Contractor the amount of any loss resulting from such termination if:
- 13.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- 13.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- 13.1.3 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
- 13.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- 13.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- 13.1.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- 13.1.7 any event similar to those listed in **Condition 13.1.1** to **13.1.6** occurs under the law of any other jurisdiction.
- 13.2 The Council may terminate the Contract with immediate effect by notice in writing where the Contractor is an individual and:
- 13.2.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors; or
- 13.2.2 a petition is presented and not dismissed within 14 days or order made for the Contractor's bankruptcy; or
- 13.2.3 a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- 13.2.4 the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or

- 13.2.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within 14 days; or
 - 13.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or
 - 13.2.7 he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.
- 13.3 The Council shall be entitled to terminate the Contract forthwith by notice in writing to the Contractor in the event that at any time control (within the meaning of section 416 of the Income and Corporation Taxes Act 1988 (“**ICTA**”)) of the Contractor is acquired by any person or group of connected persons (as defined by section 839 of ICTA) not having control of the Contractor as at the date of the Contract.
- 13.4 In respect of a termination under this **Condition 13** or pursuant to any other provision of the Conditions:
- 13.4.1 the Council may itself provide or procure the provision of the Services until it is satisfied that the Contractor is able to carry out the Services in accordance with these conditions provided always that if the cost to the Council of executing or procuring such services exceeds the amount that would have been payable to the Contractor for executing or procuring such services, such excess shall be paid by the Contractor to the Council in addition to any other sums payable by the Contractor to the Council in respect of the breach of Contract;
 - 13.4.2 the Contractor shall upon termination immediately deliver up to the Council all correspondence documents, specifications, papers and property belonging to the Council which may be in its possession or under its control and which the Council may require for the completion of the Services; and
 - 13.4.3 upon termination the Council shall pay to the Contractor only those sums due for the Services provided prior to termination but not after.

14. TUPE

- 14.1 Both the Contractor and the Council recognise that the award of the Contract and/or where the identity of the provider of the Contract changes for whatever reason (whether to the Council, the Contractor or a third party), this may constitute a Relevant Transfer for the purposes of TUPE.
- 14.2 Within 14 days of being requested by the Council, the Contractor shall fully and accurately disclose to the Council, for the purposes of TUPE, all information relating to its employees engaged with the Contractor under the Contract in particular, but not necessarily restricted to, the following:
- 14.2.1 the identity (gender) and age of the employee (the specific name of the employee does not have to be provided); and
 - 14.2.2 the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996); and
 - 14.2.3 information about any disciplinary action taken against the employee and any grievances raised by the employee, within the previous two years; and
 - 14.2.4 information about any court or tribunal case, claim or action either brought by the employee against the Contractor within the previous two years or where the Contractor has reasonable grounds to believe that such action may be brought against the Contractor and/or the Council; and
 - 14.2.5 Information about any pay settlements covering the employee which relates to future dates but which have already been agreed; and

- 14.2.6 The total number of staff (including employees and non-employees) whose employment with the Contractor is liable to be terminated at the expiry of the Contract but for any operation of law.
- 14.3 The Contractor shall permit the Council to use the information referred to in **Condition 14.2** for the purposes of re-tendering the Contract.
- 14.4 The Contractor will use its best endeavours to co-operate with the Council and any other third party regarding the re-tendering of the Contract, for example, but not necessarily restricted to, agreeing to the following:
- 14.4.1 Providing any additional information requested by the Council which is not specified in **Condition 14.2**;
- 14.4.2 Allowing a potential contractor to communicate with and meet the employees and/or their representatives who may be affected by TUPE.
- 14.5 The Contractor agrees to indemnify the Council fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities or losses whatsoever in any way connected with or arising from or relating to the provision of information under **Condition 14.2**.
- 14.6 In the event that the information provided by the Contractor in accordance with **Condition 14.2** above becomes inaccurate between the date of submission and the end of the Contract, whether due to changes to the employment and personnel details of the affected employees made subsequent to the original provision of such information or by reason of the Contractor becoming aware that the information given was inaccurate, the Contractor shall notify the Council of the inaccuracies and provide the amended information as soon as it becomes aware of any change.
- 14.7 The Contractor undertakes not to dismiss employees other than for bona fide or economic or operational reasons related to delivery of service under the Contract. The Contractor agrees not to preclude or promote the application of TUPE upon termination or expiry of the Contract, for example by changing the personnel or service delivery structures or unreasonably allocating employees into particular contracts without organisational or economic justification with a view to discouraging potential bidders.
- 14.8 The provisions of this **Condition 14** shall apply during the continuance of the Contract and indefinitely after its termination.

15. Handover

- 15.1 The Contractor shall co-operate fully with the Council during the handover arising from the completion or earlier termination of the Contract. This co-operation, during the setting-up operations period of the new provider, shall include (without limitation) allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements. The Contractor acknowledges that on termination or expiry of this Contract, the continuity of the Services is of paramount importance.
- 15.2 The provisions of this **Condition 15** shall survive any termination of this Contract.

CHANGE

16. Contract Notice of Change

- 16.1 The Council and the Contractor acknowledge that the scope and detail of the Services required by the Council shall vary from time to time throughout the Contract Period for a variety of reasons unforeseen at the date of signing of this Contract including, without limitation, as a result of new policies of Government, new legislation and judgments of any court of law creating a binding precedent.

16.2 When a situation requiring a change has been identified, the Council's Authorised Officer shall determine how such a change shall be dealt with. If the proposed changes are of a minor nature these shall be dealt with by written correspondence and shall not be deemed to require a Change Notice. All other changes shall be dealt with in accordance with the Council's notice of change procedure.

17. Assignment

17.1 The Contract is personal to the Contractor. The Contractor shall not assign, transfer, delegate or otherwise dispose of the Contract in whole or in part, or any benefits and obligations arising from the Contract, without prior written consent from the Council.

17.2 In the event of any change or transfer of the management and control of any parts of the Council relevant to the performance of this Contract, to some other party or successor body having the legal capacity, power and authority to become a party to and to perform the obligations under this Contract, the Council shall be at liberty to assign, transfer, delegate or otherwise the Contract in whole or in part or any benefits and obligations arising from the Contract.

18. Sub-contracting

18.1 The Contractor shall not appoint any sub-contractor to assist with the whole or any part of the Services without the prior consent of the Council and such consent shall not be unreasonably withheld.

18.2 If consent is granted by the Council under **Condition 18.1** then the Contractor shall ensure that all rights, duties and obligations that the Contractor has under this Contract shall be included in any contract that the Contractor has with any sub-contractor.

18.3 Notwithstanding any sub-contracting permitted hereunder, the Contractor shall remain primarily responsible for the acts and omissions of its sub-contractors as though they were its own and shall not relieve the Contractor of its obligations under the Contract.

18.4 Where the Contractor enters into a sub-contract for the purpose of performing this Contract or any part of it, the Contractor shall ensure that a term is included in such sub-contract which requires payment to be made by the Contractor to the sub-contractor within a specified period, not exceeding 30 days from the date of receipt by the Contractor of a valid invoice as defined by the sub-contract requirements.

18.5 Any appointment made by the Contractor pursuant to this **Condition 18** shall be at no extra cost to the Council.

INFORMATION AND PROPRIETY

19. Confidentiality

19.1 Except to the extent set out in this **Condition 19** or where disclosure is expressly permitted elsewhere in the Contract, the Contractor shall keep confidential, all information connected with the Council or which comes to the Contractor's knowledge under or as a result of the Contract.

19.2 The Contractor and the Council shall respect confidentiality at all times including:

19.2.1 any Confidential Information obtained from or relating to the Council, its Staff is the property of the Council, and

19.2.2 only such information as the Contractor has identified to the Council as confidential (either in this Contract or from time to time in writing) shall be treated as confidential for the purposes of this **Condition 19** and that the Council shall not be held liable for any purported breach of this **Condition 19** if it relates to information that has not been so identified by the Contractor.

- 19.3 Both parties hereby warrant that:
- 19.3.1 any Staff, person employed or otherwise engaged by the Parties (in connection with the Contract in the course of such employment or engagement) shall only use Confidential Information for the purposes of the Contract;
 - 19.3.2 any person employed or engaged by either the Contractor or the Council (in connection with the Contract in the course of such employment or engagement) shall not disclose any Confidential Information to any third party without the prior written consent of the other Party;
 - 19.3.3 both parties shall take all necessary precautions to ensure that all Confidential Information is treated as confidential and not disclosed (save as aforesaid) or used other than for the purposes of the Contract by their Staff;
- 19.4 Without prejudice to the generality of the foregoing neither Party nor any member of their Staff shall use the Confidential Information for the solicitation of business from the other or by their Staff or by any third party.
- 19.5 The provisions of **Condition 19** shall not apply to information in any of the following circumstances:
- 19.5.1 is or becomes public knowledge other than by breach of this **Condition 19**;
 - 19.5.2 is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party;
 - 19.5.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
 - 19.5.4 is independently developed without access to the Confidential Information; or
 - 19.5.5 is disclosed for the purpose of:
 - 19.5.5.1 the examination and certification of the Council's or the Contractor's accounts;
 - 19.5.5.2 any examination pursuant to the Local Government Act 1999 of the economy, efficiency and effectiveness with which the Council has performed its functions; or
 - 19.5.5.3 which is required to be disclosed by any law (including any order of a court of competent jurisdiction, the FOIA and the Environmental Information Regulations), any Parliamentary obligation or the rules of any stock exchange or governmental or regulatory body having the force of law.
- 19.6 Nothing in this **Condition 19** shall be deemed or construed to prevent the Council from disclosing any Confidential Information obtained from the Contractor to any consultant, contractor or other person engaged by the Council in connection herewith, provided that the Council shall have obtained from the consultant, contractor or other person a signed confidentiality undertaking on substantially the same terms as are contained in this **Condition 19** and the Council shall, on request by the Contractor, notify the Contractor of the identity of such consultant, contractor or other person as soon as practicable.
- 19.7 Nothing in the Contract shall prevent the Contractor or the Council from using data processing techniques, ideas and know-how gained during the performance of the Services in the furtherance of its normal business or operations, to the extent that this does not relate to a disclosure of Confidential Information or an infringement by the Council or the Contractor of any Intellectual Property Right.
- 19.8 The provisions of this **Condition 19** shall survive any termination of this Contract.

20. Conflict of Interest

- 20.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff is placed in a position where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Council under the provisions of the Contract. The Contractor will disclose to the Council full particulars of any such conflict of interest which may arise.
- 20.2 The Council reserves the right to terminate the Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Council under the provisions of the Contract. The actions of the Council pursuant to this **Condition 20** clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

21. Prevention of Misconduct, Fraud & Corruption

- 21.1 The Contractor shall comply with the Council's procedure which ensures that employees of the Contractor are able to bring to the attention of a relevant authority misconduct, fraud and breaches of Law without fear of disciplinary and other retribution or discriminatory action.
- 21.2 The Contractor shall safeguard the Council against misconduct on the part of the Contractor's staff and/or its suppliers and/or Council Officers. The Contractor shall notify the Council immediately if it has reason to suspect that any misconduct has occurred, or is occurring or is likely to occur.
- 21.3 The Contractor shall safeguard the Council's funding of the Contract against fraud generally and, in particular, fraud on the part of the Contractor's staff and/or its suppliers and/or Council Officers. The Contractor shall notify the Council immediately if it has reason to suspect that any fraud has occurred, or is occurring or is likely to occur.
- 21.4 If the Contractor, its Staff or anyone acting on behalf of the Contractor (with or without the Contractor's knowledge):
- 21.4.1 makes a loan, fee, reward, gift or advantage whatsoever to any person with the intention of obtaining some benefit in relation to this Contract;
 - 21.4.2 puts pressure on any person with the intent of obtaining some benefit in relation to this Contract;
 - 21.4.3 commits any offence under the Prevention of Corruption Act 1889 to 1916;
 - 21.4.4 makes any payments, which are an offence under section 117 (2) of the Local Government Act 1972 or any subsequent modification or enactment under that statute; and/or
 - 21.4.5 commits any other similar offence under any subsequent legislation,
- then in any of the above circumstances, the Council shall have the right to terminate this Contract immediately and recover from the Contractor any losses resulting from the termination of this Contract.

22. Legal Proceedings & Investigations

- 22.1 The Contractor shall provide information, including written documents, relevant to the provision of the Services to the Council free of charge in connection with any actual or prospective legal inquiry, or court proceedings in which the Council is or may be involved, or any relevant disciplinary hearing internal to the Council and shall ensure that its Staff are available to be interviewed in connection with and to give evidence in such inquiries or proceedings or hearings arising out of the provision of the Service.

- 22.2 In any event where:
- 22.2.1 a report that injustice has been caused to a person aggrieved in consequence of maladministration;
 - 22.2.2 such maladministration having been caused or contributed to by the act or omission of the Contractor; and
 - 22.2.3 the Council deciding on having such a report laid before it to make a payment or provide some other benefit to such person; or
 - 22.2.4 the Council reasonably deciding to make a payment in a local settlement of any complaint in circumstances where the injustice complained of is attributable to, or in part to, the act or omission of the Contractor;

then the Contractor shall reimburse the Council the amount of such payment or pay to the Council the reasonable cost of such benefit as the case may be (or in either such proportion thereof as the Council may reasonably determine is attributable to the act or omission of the Contractor) and the Council may deduct any such sums from any payment otherwise due to the Contractor under the Contract.

23. Publicity & Media

- 23.1 The Contractor shall obtain written approval from the Council prior to taking photographs or making publicity releases or announcements (including advertisements) regarding either the Contract or the activities of the Contractor relating to its participation in the Contract. Such approval shall not be unreasonably withheld.
- 23.2 The Contractor shall take all reasonable steps to ensure the observance of the provisions of **Condition 23.1** by all its Staff.
- 23.3 The provisions of this **Condition 23** shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

LEGISLATIVE COMPLIANCE

24. Equality & Diversity

- 24.1 The Contractor (including its agents and employees) shall not, and shall procure that any sub-contractor shall not:
 - 24.1.1 discriminate directly or indirectly, or by way of victimisation or harassment, against any person on Prohibited Employment Grounds; and/or
 - 24.1.2 discriminate directly or indirectly or by way of victimisation or harassment against any person on Prohibited Grounds; and/or
 - 24.1.3 contravene Part IV of the Race Relations Act 1976 (Other Unlawful Acts) and/or Part IV of the Sex Discrimination Act 1975 (Other Unlawful Acts),
 where appropriate.
- 24.2 The Contractor (including its agents and employees) shall, and shall procure that any sub-contractor shall, for purposes of ensuring compliance with the clauses below, in relation to staff engaged in connection with the Contract observe as far as possible the provisions of:
 - 24.2.1 the Equality and Human Rights Commission's Code of Practice in Employment;
 - 24.2.2 the Equality and Human Rights Commission's Statutory Code of Practice on Employment and Occupation and the Code of Practice on the Disability Equality Duty; and
 - 24.2.3 any other relevant code of practice introduced by a commission or other body set up by Parliament to promote, monitor and enforce Equalities Legislation,
 including, but not limited to, those provisions recommending the adoption, implementation and monitoring of an equal opportunities policy.

- 24.3 The Contractor shall, and shall procure that any sub-contractor shall comply (to the extent permitted by law) with the provisions of:
- 24.3.1 Section 71(1) of the Race Relations Act 1976, as if they were a body within the meaning of Schedule 1A to the Race Relations Act 1976;
 - 24.3.2 Section 52(1) of the Equality Act 2006 as if they were a body within the meaning of Section 52(2) of the Equality Act 2006; and
 - 24.3.3 Sections 21B and 49A of the Disability Discrimination Act 1995, as if they were a body within the meaning of Section 49B of the Disability Discrimination Act 1995, if applicable where the Contractor (including its agents and employees) or any subcontractor are required to carry out work on the Council's premises or alongside the Council's employees on any other premises, they shall comply with the Council's own employment policy and codes of practice relating to discrimination and equal opportunities.
- 24.4 The Contractor shall take all reasonable steps to secure the observance of this **Condition 24** by its Staff engaged in the execution of the Contract.
- 25. Data Protection**
- 25.1 For the purposes of the Contract, the terms "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Process", "Processing", "Personal Data" and "Sensitive Personal Data" shall have the meaning prescribed to these terms under DPA.
- 25.2 The Contractor shall (and shall ensure that all of its Staff shall) comply with any notification requirements under the DPA and both Parties will duly observe all other obligations under the DPA which arise in connection with the Contract.
- 25.3 Both Parties warrant that they will duly observe all their obligations under the DPA which arise in connection with this Contract. In particular the Contractor must protect Personal Data and Sensitive Personal Data in accordance with the provisions and principles of the DPA and must ensure the reliability of its Staff who have access to such data.
- 25.4 All information which has been supplied to the Contractor by the Council is for the purposes of this Contract and for no other reason. The Contractor shall upon request from the Council, at the Council's absolute discretion, either destroy all such information or return all such information, at the termination of the Contract.
- 25.5 Notwithstanding the general obligation as referred to in **Condition 25.2**, where the Contractor is processing Personal Data or Sensitive Personal Data as a Data Processor for the Council as Data Controller the Contractor shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data and Sensitive Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and Sensitive Personal Data and against accidental loss or destruction of, or damage to, the Personal Data and Sensitive Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and
- 25.5.1 provide the Council with such information as the Council may reasonably require to satisfy itself that the Contractor is complying with its obligations under the DPA;
 - 25.5.2 promptly notify the Council of any breach of the security measures required to be put in place pursuant to **Condition 25.5**; and
 - 25.5.3 ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the DPA
- 25.4 The Contractor shall indemnify the Council against any claims for loss or damage or otherwise brought against the Council in relation to a breach of the DPA caused as a result of the misuse by the Contractor or the Contractor's Staff, whether negligently or otherwise, of information obtained under this Contract.

26. Freedom of Information & Environmental Information

- 26.1 The Contractor acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Council to enable the Council to comply with its information disclosure obligations.
- 26.2 The Contractor shall and shall procure that any of its Staff shall:
- 26.2.1 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;
 - 26.2.2 provide the Council 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
 - 26.2.3 provide 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.
- 26.3 The Council shall be responsible for determining in its absolute discretion which information is:
- 26.3.1 exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations; or is
 - 26.3.2 is to be disclosed in response to a Request for Information, and in no event shall the Contractor respond directly to a request for information unless expressly authorised to do so by the Council.
- 26.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 26.5 The Contractor acknowledges that (notwithstanding the provisions of this **Condition 26**) the Council may, acting in accordance with the Secretary of State for Constitutional Affairs 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 in certain circumstances:
- 26.5.1 without consulting the Contractor; or
 - 26.5.2 following consultation with the Contractor and having taken their views into account.
- 26.6 The Contractor shall ensure that all information is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.
- 26.7 The Contractor acknowledges that the commercially sensitive information listed in any commercially sensitive information schedule is of indicative value only and that the Council may be obliged to disclose it in accordance with this **Condition 26**.

27. Human Rights

- 27.1 The Contractor shall not do or permit or allow anything to be done which is incompatible or which may result in the Council acting incompatibly with the rights contained within the Human Rights Act 1998.
- 27.2 The Contractor shall indemnify the Council against any loss claims and expenditure resulting from the Contractor's breach of **Condition 27.1**.

28. Health & Safety and Environmental Obligations

- 28.1 The Contractor recognises that the Council has various health & safety and environmental obligations.

- 28.2 To assist the Council with its obligations mentioned in **Condition 28.1** the Contractor shall:
- 28.2.1 promptly notify the Council of any health and safety or environmental and/or CO2 hazards which may arise in connection with, or pursuant to the performance of its obligations under the Contract;
 - 28.2.2 not treat, keep or dispose of any waste produced and/or carried by the Contractor as a result of executing the Contract in a manner likely to cause harm to the health and safety of any person or to the environment and shall comply with all statutory duties which are applicable;
 - 28.2.3 notify the Council of any health & safety and environmental hazards of which it is aware (having made all reasonable enquiries) in connection with the performance of this Contract; and
 - 28.2.4 during the execution of the Contract, take such steps as are reasonably practicable to avoid (or, where avoidance is not possible, to minimise) harm to the environment in accordance with the Council's environmental policy.
- 28.3 The Contractor shall at all times comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety and with the Council's health and safety policies and procedures (which shall be made available to the Contractor) in respect of the Council's Staff and others who may be affected by the provision of the Services.
- 28.4 The Contractor shall comply with its own health & safety policy and safe working systems and will produce to the Council, if requested, its detailed safe working system for carrying out duties under the Contract.

29. Carbon Reduction

- 29.1 In light of the requirements of the Climate Change Act 2008 and the Council's Sustainable Community Strategy which includes the Council's commitment towards reducing its CO2 emission, and in line with the Environment Agency's national strategy 'Creating a Better Place", the Contractor shall, as applicable, demonstrate their measured progress on climate change adaptation, mitigation and sustainable development, including performance against carbon reduction management plans.
- 29.2 At the reasonable written request of the Council and by no later than 10 working days following receipt of such request, the Contractor shall if applicable provide evidence to the Council that it is meeting carbon reduction objectives identified in agreed carbon reduction management plans and is supporting the work of the Council or the Environment Agency in the implementation of their strategies as identified in **Condition 29.1** above.
- 29.3 If requested by the Council, the Contractor shall if applicable participate in the development of any local or regional multi-agency climate change quality indicators and carbon reduction plans.

STAFF

30. Designated Representatives

- 30.1 The Council shall appoint an Authorised Officer who shall have the authority to act on behalf of the Council for all purposes connected with the Contract. The Council shall also appoint a deputy to act should the Authorised Officer not be available.
- 30.2 The Authorised Officer shall be entitled to give directions to the Contract Manager from time to time with regard to the provision of the Services or any other matters relating there to.

- 30.3 The Contractor shall nominate a Contract Manager prior to the Commencement Date who shall be empowered to act on behalf of the Contractor for all purposes connected with the Contract which will include but not be limited to:
- 30.3.1 managing the provision of the Services;
 - 30.3.2 attending meetings with the Authorised Officer to review the provision of the Services; and with
 - 30.3.3 providing all information and documentation reasonably required by the Council in respect of the Services for the performance of its duties.
- 30.4 The Council reserves the right to reject the appointment of any person as Contract Manager who does not in the opinion of the Council have appropriate experience in the management of services similar to the Services or who is otherwise unsuitable for such appointment.

31. Contractor's Staff

- 31.1 The Contractor shall provide to the satisfaction of the Council such appropriately qualified and experienced Staff as shall be necessary for the proper execution of the Services with all due skill, care and diligence and shall not remove or replace such persons without the prior written approval of the Council.
- 31.2 The Contractor shall ensure that all staff whilst performing the Services;
- 31.2.1 behave in an orderly and as quiet manner as may be reasonably practicable having regard to the nature of the duties being performed and the needs of the Services users;
 - 31.2.2 shall maintain a high standard of personal hygiene, demeanour and cleanliness, and are issued and wear identification badges as agreed by the Council and Contractor; and
 - 31.2.3 shall not cause any unreasonable or unnecessary disruption to the routines and procedures of the Council.
- 31.3 The Contractor acknowledges that each member of its Staff engaged in the performance of the Services shall have full authority to act on behalf of the Contractor for all purposes in connection with this Contract provided always that if the Council shall at any time be dissatisfied for any reason with the performance of any person engaged in the carrying out of the Services, the Contractor shall, if the Council so requires, cease to engage such person in the execution of the Services and provide a competent substitute at no additional cost to the Council.
- 31.4 The Council shall in no circumstances be liable either to the Contractor or to the employee in respect of any liability, loss or damage occasioned by such removal pursuant to **Condition 31.3** and the Contractor shall fully indemnify the Council against any claim made by such Staff member.
- 31.5 The Contractor shall ensure that all persons involved in delivering the Services are sufficiently instructed with regard to the Services on all relevant provisions of the Contract and comply with the Council's policies.

32. Safeguarding Children & Vulnerable Adults

- 32.1 The Council and Contractor recognise that performance of its obligations under the Contract may require the Contractor to work on duties involving access to children and vulnerable adults and which will require compliance with the SVGA 2006.
- 32.2 The Council and the Contractor acknowledge the Contractor is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity and Controlled Activity (as applicable) provided under the Contract and for the purposes of complying with the SVGA 2006.

- 32.3 The Contractor shall ensure that all individuals engaged in the provision of the Services are:
- 32.3.1 registered with the Independent Safeguarding Authority (“ISA”) in accordance with the SVGA 2006 and regulations or orders made thereunder; and
 - 32.3.2 are subject to a valid enhanced disclosure check undertaken through the Criminal Records Bureau (“CRB”) including a check against the adults' barred list or the children's barred list, as appropriate; and
 - 32.3.3 the Contractor shall monitor the level and validity of the checks under this **Condition 32.3** for each member of Staff.
- 32.4 The Contractor warrants that at all times for the purposes of the Contract:
- 32.4.1 it is appropriately registered in relation to all persons who are or will be employed or engaged by the Contractor in the provision of the Services, and
 - 32.4.2 it has no reason to believe that any such person:
 - 32.4.2.1 is barred from the activity; or
 - 32.4.2.2 is not registered with the ISA,
 in accordance with the provisions of the SVGA 2006 and any regulations made thereunder, as amended from time to time.
- 32.5 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 **Condition 32** have been met.
- 32.6 The Contractor shall refer information about any person carrying out the Services to the ISA where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to any children, vulnerable adults or any other service user or person.
- 32.7 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 any children, vulnerable adults or any other service user or person.
- 32.8 The Contractor shall not, without the prior written consent of the Council, 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 Controlled Activity or may present a risk to children, vulnerable adults or any other service user or person.
- 32.9 The Council's consent under **Condition 32.8** shall be conditional on appropriate safeguards being put in place as the Council in its absolute discretion, and in accordance with any directions made under the SVGA 2006, may determine.

COUNCIL PROPERTY

33. Access to Council Premises

- 33.1 The Contractor shall ensure that all reasonable requests and instructions of the Council whilst on Council owned land or premises (or if applicable any other land or premises upon which the Contractor is required to provide the Services) are adhered to.
- 33.2 The Contractor and its Staff shall cause as little interference as possible with other activities on the Council's premises or other premises upon which the Services are performed.
- 33.3 The Contractor shall ensure that all its Staff have been instructed about fire risks and health and safety.

- 33.4 Whilst on the Council's premises or other premises as the case may be, the Contractor's Staff shall comply with all security measures implemented by the Council in respect of personnel and other persons attending those premises. The Council shall provide copies of its written security procedures to the Contractor on request.
- 33.5 The Contractor shall at its own cost, provide its Staff with a form of identification that is acceptable to the Council and which Staff shall display on their clothing at all times when they are on the Council's premises or other premises
- 33.6 The Council shall have the right to carry out any search of Staff or vehicles used by the Contractor at the Council's premises or other premises.
- 33.7 The Contractor shall immediately remove from the Council's premises or other premises any of its staff where the Council requests this on grounds of efficiency and public interest.
- 33.8 Save as the Council may otherwise direct, the Contractor is deemed to have inspected any premises the Council has mentioned before tendering so as to have understood the nature and extent of the Contract to be carried out and be satisfied in relation to all matters connected with the performance and requirements of the Contract.
- 33.9 The Council shall, at the request of the Contractor, grant such access as may be reasonable for the purpose referred to in **Condition 33.8**.

34. Occupying Council Premises

- 34.1 Any land or premises (including temporary buildings) made available to the Contractor by the Council in connection with the Contract, shall be made available to the Contractor on a licence basis only (unless agreed otherwise in writing between the Council and the Contractor) and shall be used by the Contractor solely for the purpose of performing the Contract and shall remain the property of the Council. The Contractor shall have the use of such land or premises and shall vacate the same on completion, termination or abandonment of the Contract.
- 34.2 The Contractor and Contractor's Staff shall observe and comply with such policies, rules and regulations, insurances as may be in force at any time for the use of such premises as determined by the Council, and pay for the cost of making good any damage caused by the Contractor or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- 34.3 The Parties agree that there is no intention on the part of the Council to create a tenancy of whatsoever nature in favour of the Contractor or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Contract, the Council retains the right at any time to use in any manner as the Council sees fit any premises owned or occupied by it.
- 34.4 To the extent is it permissible by law the Council's will not accept liability for any equipment or materials left or stored at the Council land or property or other premises where the Services have been or are to be performed.

35. Security

- 35.1 The Contractor shall comply with the Council's security policy and other site specific policy or rules in respect of any land or property and shall ensure that all its Staff comply with such requirements.
- 35.2 The Contractor shall take all measures necessary to comply with the provisions of any enactment relating to security that may be applicable to the Contractor in the performance of the Services.
- 35.3 The Contractor shall take all reasonable measures, by the display of notices or other appropriate means, to ensure that Staff have notice that all policies referred to in **Condition 35.1** will apply to them and will continue to apply to them, if so applicable, after the expiry or earlier termination of the Contract.

- 35.4 The Contractor shall co-operate with any investigation relating to security which is carried out by the Council or by any person who is responsible to the Council for security matters and when required by the Authorised Officer:
- 35.4.1 shall use all reasonable endeavours to make any Staff identified by the Authorised Officer available to be interviewed by the Authorised Officer, or by a person who is responsible to the Council for security matters, for the purposes of the investigation. Staff shall have the right to be accompanied by the Contract Manager and to be advised or represented by any other person whose attendance at the interview is acceptable to both the Authorised Officer and the Contract Manager; and
- 35.4.2 shall, subject to any legal restriction on their disclosure, provide all documents, records or other material of any kind which may reasonably be required by the Council or by a person who is responsible to the Council for security matters, for the purposes of the investigation, so long as the provision of that material does not prevent the Contractor from performing the Services. The Council shall have the right to retain any such material for use in connection with the investigation and, so far as possible, shall provide the Contractor with a copy of any material retained.

36. Issue of Equipment

- 36.1 All Equipment issued by the Council shall remain the property of the Council and shall be used in the execution of the Contract and for no other purpose whatsoever without the prior approval in writing of the Council.
- 36.2 The Contractor shall not in any circumstances have a lien or any other interest on the Equipment and the Contractor shall at all times possess the Equipment as fiduciary agent and bailee of the Council. The Contractor shall take all reasonable steps to ensure that the title of the Council to the Equipment and the exclusion of any such lien or other interest are brought to the notice of all its Staff and other appropriate persons and shall, at the Council's request, store the Equipment separately and ensure that it is clearly identifiable as belonging to the Council.
- 36.3 Such Equipment and materials shall be deemed to be in good condition when received by or on behalf of the Contractor unless it notifies the Council to the contrary within fourteen (14) days or such other time as specified in the Contract.
- 36.4 The Contractor shall keep all such Equipment used in the performance of the Services in good, clean and serviceable repair for the proper performance of the Services and the Council shall be under no liability in respect thereof.
- 36.5 The Contractor shall return such Equipment and materials on demand and shall be responsible for all loss thereof or damage and the costs of repair or replacement thereto, howsoever caused, prior to their re-delivery to the Council.
- 36.6 The Contractor shall, following completion of the Services or in response to an earlier request by the Council, return the Equipment in good condition, fair wear and tear excepted.

37. Intellectual Property

- 37.1 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "**IP Materials**"):
- 37.1.1 furnished to or made available to the Contractor by or on behalf of the Council shall remain the property of the Council; and/or

37.1.2 prepared by or for the Contractor on behalf of the Council for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall belong to the Council,

and the Contractor shall not, and shall ensure that its Staff shall not, (except when necessary for the performance of the Contract) without prior approval, use or disclose any Intellectual Property Rights in the IP Materials.

- 37.2 The Contractor hereby assigns to the Council, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with **Condition 37.1**. This assignment shall take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor shall execute all documentation necessary to execute this assignment.
- 37.3 The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Contract or the performance of the Contract.
- 37.4 The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Contract grants to the Council a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Council an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Council to sub-license, transfer, novate or assign to other Contracting Authorities, the replacement contractor or to any other third party supplying services to the Council.

DISPUTE RESOLUTION

38. Default

- 38.1 If, in the reasonable opinion of the Council, the Contractor fails to provide the Service in accordance with the Contract, the Council shall issue a notice of default to the Contractor. If a notice of default is issued the Council may (without prejudice to any other remedy available to it):
- 38.1.1 require the Contractor to remedy the default (where the default is capable of such) within such reasonable period as the Council may specify without any additional charge to the Council; or
- 38.1.2 itself provide the Service, (or have provided) in whole or in part, until such time as the Contractor can demonstrate to the Council that the Contractor is able to provide the Service in accordance with the Contract.
- 38.2 Where the Council has concerns about any aspect of the Contractor operational or Services provision the Council and Contractor shall use reasonable endeavours to resolve by agreement any concern, disagreement or point of discord between them. The Council can, at its absolute discretion, suspend purchasing and review the Contract until a resolution has been reached.

39. Dispute Resolution Procedure

- 39.1 The Parties shall in the first instance attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract.
- 39.2 If the dispute cannot be resolved by the parties representatives nominated under **Condition 39.1** the dispute may be referred to effective dispute resolution (“**EDR**”) under the supervision of the Chartered Institute of Arbitrators (“**CIOA**”). EDR shall commence by either party serving on the other written notice (“**EDR Notice**”) setting out in summary the issues in dispute and calling upon that other party to join in an approach to CEDR for the appointment of the Neutral.

- 39.3 The parties agree to co-operate fully and promptly and in good faith with CIOA or the Neutral in the performance of their obligation under this **Condition 39**. Both parties will afford the Neutral all necessary assistance which the Neutral requires to consider the dispute.
- 39.4 Unless agreed otherwise in the course of the procedure each party shall bear its own costs of EDR.
- 39.5 Work and activity to be carried out under the Contract shall not cease or be delayed by this dispute resolution procedure and both parties shall comply fully with requirements of the Contract at all times.

40. Governing Law

- 40.1 The Contract shall be governed by and construed in accordance with English Law. In respect of any dispute under or arising out of the Contract, the Council and the Contractor thereby agree to submit to the jurisdiction of the English Courts.
- 40.2 Both Parties shall in all matters relating to the performance of the Contract comply with all relevant statutes, rules, regulations and bye laws.

MISCELLANEOUS

41. Force Majeure

- 41.1 For the purposes of the Contract, "**Force Majeure**" shall mean any cause affecting performance by a Party of its obligations arising from:
- 41.1.1 war and other hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilisation, acts of terrorism, requisition or embargo;
 - 41.1.2 rebellion, revolution, insurrection, military or usurped power or civil war;
 - 41.1.3 riot, commotion or disorder except where solely restricted to employees of the Contractor or any third parties employed to assist the Contractor;
 - 41.1.4 earthquake, fire or other natural physical disasters except to the extent that any such disaster is caused by, or its effects contributed to, by the Party claiming Force Majeure;
 - 41.1.5 official strike or similar official industrial dispute not limited to the employees of the Contractor or the employees of any third parties employed to assist with the Contract. Except as specifically detailed above, shortage of labour, materials or other resources shall not constitute Force Majeure unless caused by circumstances which are themselves Force Majeure.
- 41.2 If either Party considers that any circumstance of Force Majeure has occurred which may affect materially the performance of its obligations then they shall forthwith notify the other in writing to that effect giving full details of the circumstances giving rise to the Force Majeure event and shall use all reasonable endeavours to prevent, avoid, overcome or mitigate the effects of such occurrence.
- 41.3 Each Party shall be liable for and shall bear all its own costs, expenses, losses and charges suffered and incurred as a result of an occurrence of Force Majeure.
- 41.4 If Force Majeure causes a delay in the performance of the Contract, then the Contractor may apply to the Council for an extension to the delivery date or dates.
- 41.5 If the performance of the obligations of either Party under the Contract is so prevented by circumstances of Force Majeure and shall continue to be so prevented for a period less than 30 (thirty) days then during that period the Contract shall be considered as suspended. Upon ending of the Force Majeure event the Contractual obligations of the Parties shall be reinstated with such reasonable modifications to take account of the consequences of the Force Majeure event as may be agreed between the Parties.

41.6 If the performance of the obligations of either Party under the Contract is so prevented by circumstances of Force Majeure and shall continue to be so prevented for a period in excess of 30 (thirty) days then the Council may by notice to the other Party terminate the Contract upon the expiration period of not less than 7 (seven) days from receipt of such notice.

41.7 It is expressly declared that the only events which shall afford relief from liability for failure or delay shall be any event qualifying for Force Majeure hereunder.

42. Waiver

42.1 No failure or delay by either Party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right.

42.2 No waiver by the Council of any breach of the Contract by the Contractor shall be considered as a waiver of any subsequent breach of the same or any other provision.

42.3 No waiver by either Party of any provision of this Contract shall be binding unless made expressly and confirmed in writing. Further, any such waiver shall relate only to such matter, non-compliance or breach as it expressly relates to and shall not apply to any subsequent or other matter, non-compliance or breach.

43. Severability

If any of these terms and conditions of this Contract is held by any competent authority to be invalid, illegal or unenforceable in whole or in part, the validity, legality or enforceability of any of the other terms and conditions of this Contract shall not be affected.

44. Contract Notices

44.1 All notices shall be given in writing and be delivered by hand or sent by First Class Post to the address of the relevant party as stated herein or to any subsequently notified address. Any notice sent by post shall be deemed to have been served four (4) days after posting.

44.2 If the address of either relevant party changes then the party whose details have changed shall inform the other party in writing and any notice shall be delivered to that new address

45. Rights of Third Parties

No third party shall have any rights under the Contracts (Rights of Third Parties) Act 1999 in connection with this Contract. This **Condition 45** does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act, and does not apply to the Crown.

BACKGROUND INFORMATION

Insert detailed background information on the contract requirements, for example from where the requirement developed; its strategic importance and how it links to the Council's corporate priorities, other policy initiatives and/or wider programmes, key stakeholders and any other partner organisations involved. This is a key section. This information should build on the information previously included in the Pre Qualification Questionnaire, OJEU Contract Notice (if applicable) and advertisement. Care should be taken to ensure that new information does not contradict information already contained in these documents.

Information included in this section should be sufficient to ensure tenderers understand the requirement at the earliest stage in the process and discourage tenderers who have neither the capability nor capacity from applying.

If the contract is to be made available to other contracting authorities or, for example, it is a framework agreement this should be inserted here. This is only an option if this information was previously included in the OJEU Contract Notice (if applicable) and advertisement.

NATURE OF CONTRACT

Insert broad details of the requirement. This information should be taken from project documentation such as the source plan and build on the information within the Pre Qualification Questionnaire, OJEU Contract Notice (if applicable) and advertisement. You should go into enough detail to ensure that only tenderers capable of providing the type of goods or services you require respond. It is crucial that details relating to the requirement should build on and is consistent with the information published in the Pre Qualification Questionnaire, OJEU Contract Notice (if applicable) and advertisement.

Information should include approximate contract value, length of contract, and indications of volumes.

SPECIFICATION

Specification Template

This template is for guidance only; it does not mandate the contents or layout of a specification. Please amend as required.

Scope

The scope of the Contract encompasses []

There will be the option for []

The Contractor will []

Background

The project is aligned to the Council's Corporate Plan []

The statement of purpose for the Service is []

The key objectives of the Service are []

The aim of this Contract is to []

Service conditions and environmental factors

[Service specific]

Design, works and installation

The Contractor will provide []

The requirement includes []

The maintenance requirement is []

The Contractor must demonstrate compliance with the following quality criteria

Equipment

The Contractor will provide []

The requirement includes []

The maintenance requirement is []

The Contractor must demonstrate compliance with the following quality criteria []

Support services

The Contractor will provide []

The requirement includes []

The Contractor must demonstrate compliance with the following quality criteria []

Technology and systems

The Contractor will provide []

The requirement includes []

The maintenance requirement is []

The Contractor must demonstrate compliance with the following quality criteria []

Funding

The Council is seeking []

Charging

The policy of the Council is []

The Contractor will []

Contractors employee duties

The Contractor will provide []

The duties of employees are []

Monitoring and control

The Contractor will exercise control []

Monitor []

Randomly check []

Report []

Rectify []

Operational requirements

The Contractor is required to conduct the delivery elements of the contract in such a way as to []

Documentation

The Contractor will provide, for the duration of the Contract: []

Implementation

It is intended that the Contract will be implemented []

Appendices

[Information and data about existing operations and any new conditions that will impact upon the contract]

AWARD CRITERIA

The award of this contract will be on the basis of the tender submission which includes any findings at the subsequent interview/site visit (if applicable).

Tender evaluation will be conducted against pre-determined Contract Award Criteria with the award being on the basis of the 'most economically advantageous' tender.

There are a number of sections in the ITT Part B which are detailed as follows.

General

<u>Criteria</u>	<u>Questions it relates to</u>	<u>Percentage</u>
Standard Documents	Freedom of Information Act Disclosure Declaration of non-collusive Tendering PQQ Declaration Form of Tender	Pass / Fail based on the evaluation team being satisfied or not – a fail for any of these items (after clarification if applicable) = automatic rejection

Quality

<u>Section Title</u>	<u>Question Numbers</u>	<u>Marks out of 175</u>
Operation *	1 - 4	100
Complaints Handling *	5	10
Packaging *	6	20
Delivery *	7-8	30
Social/Economic & Environmental Well-being *	9	15

* wording/figures in blue for example only and should be replaced where necessary.

Price

Value for money including Price 40%

The quality / price split for this tender is 60% / 40%

ITT SCORING METHODOLOGY

All questions that are scored have been given a weighting. The table below explains these weightings:

Weighting	Weighting Definition
5	High importance to the contract
4	Medium - High importance to the contract
3	Medium importance to the contract
2	Low - Medium importance to the contract
1	Low importance to the contract

The evaluation team will score the response to each question using a mark from 0-5 against the standards shown in the table below.

Score	Score Standards	
5	Excellent Answer	Shows a comprehensive understanding of the contract & the ability to apply and deliver all the required standards to a high level
4	Good Answer	Shows an above basic – reasonable understanding of the contract and the ability to apply and deliver all the required standards to an above basic level
3	Acceptable Answer	Shows a basic - reasonable understanding of the contract and the ability to apply and deliver all the required standards to a basic level
2	Poor Answer	Shows a less than basic understanding of the contract & that only some of the required standards could be applied & delivered
1	Very Poor Answer	Shows little understanding of the contract and that none of the required standards could be applied and delivered
0	No answer Given	

The score (from 0-5) will be multiplied by the weighting (1-5) to calculate the final score per question.

TIMETABLE

These dates are estimates and should be used as a guide only. The Council reserves the right to amend any dates without prior warning.

Action	Date(s)
Tender Submission <ul style="list-style-type: none"> • Invitation to Tender letters distributed and tender documents available for download. • Closing date and time for receipt of tender's. 	
Tender Evaluation <ul style="list-style-type: none"> • Tender evaluation period <i>(determine whether you will conduct interviews/ presentations/site visits and/or clarification sessions and state here)</i>. 	
Contract Award Period <ul style="list-style-type: none"> • Intent to award contract and unsuccessful letters sent out. • 10 day stand still period. <i>(remove if N/A)</i> • Feedback to unsuccessful tenderers. • Official Contract award. 	
Implementation Period <i>(remove if N/A)</i>	
Start of Contract	