Nuneaton & Bedworth
United to Achieve

Nuneaton and Bedworth Borough Council Standard Contract Terms and Conditions

Amendments in this Version

VERSION NUMBER	DATE	AMENDMENTS
V1	20th November 2019	New format
V2	11th March 2020	Update to Clause 8.7. – Legalisation update
V3	30th October 2020	Updated: - 4.2.2 - 4.2.3 - 4.3.2 - 4.3.3 - 4.11 - 10.1
V4	27th April 2021	New sub-clause: 3.3.1 Updated: 4.2.4. and 4.3.6. (Client to Council)
V5	14th May 2021	Updated definition: Data Protection Legislation
V6	1st November 2021	Updated list of contacts in clause 5.3.Confidentiality
V7	30th May 2023	New clause: 10.1 VIII.
V8	30th January 2024	New clause: 8.8
V9	8th March 2024	Update to clause 5.3 and Officers contained in 5.3
V10	13th August 2026	LGR Clause Health and Safety updates Procurement Act 2023 updates Clause 5.3 – contact details

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Definitions and Interpretations

1.1. Definitions

The following terms shall have the following meanings:

“Approval” and *“Approved”* means the written consent of the Council.

"Council" means Nuneaton and Bedworth Borough Council and public or other bodies designated by the Secretary of State under the Local Government legislation.

“Council Property” means any property, other than real property, issued or made available to the Supplier in connection with the Contract.

“Condition” means the terms and conditions within this Contract.

“Confidential Information” means all information designated as such by either Party in writing and all other information which relates to the business, affairs, properties, assets, trading practices, goods, services, developments, trade secrets, know-how, personnel, customers and suppliers of either Party which may reasonably be regarded as the confidential information of the disclosing Party.

"Contract" means this deed between the Council and the Supplier consisting of these terms and conditions including the Contract Documents, all of which have been signed by or on behalf of the Supplier.

"Contract Documents" shall mean all those documents referred to in the Contract Document Schedule including the Specification, Invitation to Quote or Tender and the Supplier’s Quote/Tender, Order, and any other documents (or parts thereof) if any specified by the Council and which shall be annexed to and incorporated with and form part of and will be read as one with these terms and conditions so that the Supplier shall comply with the requirements of all those documents.

“Contract Pricing” means the schedule of rates and/or pricing submitted by the Supplier.

"Contract Term" means the contract period which shall be from the agreed commencement date until the agreed termination date referred to in the Contract subject to any termination for breach or otherwise.

"Contract Value" is what the contract is worth over its lifetime exclusive of any applicable Tax.

“Data Protection Legislation” means all applicable data protection and privacy legalisation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (DPA 2018) (and regulations made thereafter) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a Party.

"Default" means any breach of the obligations of either party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either party and its Staff in connection with or in relation to the subject matter of the Contract and in respect of which such party is liable to the other.

"Equipment" means the Supplier's equipment, plant, materials, etc. used in the performance of its obligations under the Contract.

"Contract Value" means the estimated value of the contract between the Parties under clause 2.2.

"Goods" means any such goods as are to be provided by the Supplier (or by the Supplier's sub-contractor) under the Contract as specified in the Contract Document Schedule.

"*HSE*" means the Health and Safety Executive.

"Invitation to Quote" means an invitation for Supplier to bid for the goods and/or services and related works required by the Council.

"Intellectual Property Rights" means patents, registered designs, trademarks and service marks (whether registered or not), domain names, copyright, design right, trade secrets and all similar property rights including those subsisting in any part of the world in inventions, computer programs, semiconductor topographies, confidential information, and in applications for protection of any of the above rights;

"Invitation to Tender" means an invitation for Supplier to bid for the Goods/Services/Works and Related Works required by the Council.

"Order" means the order issued by the Council under clause 3.2

"Payment" means the amount paid to the Supplier by the Council in consideration for the provision of the Goods/Services/Works and Related Works and calculated in accordance with the Contract Pricing, Quote and/or Tender.

"Party" means a party to this Contract and **"**Parties**"** shall be construed accordingly.

"Premises" means the location where the Goods/Services/Works and Related Works are to be delivered and/or performed, as specified in the Contract.

"*Principal Contract Officer*" means the Officer authorised to act on behalf of the Council for the purposes of the Contract..

"Provisional Sum" means a sum included and so designated in the Contract as a specific contingency for the execution of work or the supply of goods materials or services which may be used in whole or in part or not at all at the direction and discretion of the Council.

"Related Works" means any installation, commissioning, maintenance or service related to the provision of Goods/Services/Works under the Contract.

"*RIDDOR"* means The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013.

"Service(s)" means the provision of repair, maintenance, technical support, design or service other than goods and related works, as qualified in the Appendixes to the EU Procurement Directives performed in connection with this Contract.

"SME" as defined by the European Commission means the category of micro, small and medium-sized enterprises (SMEs) is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.

"Specification" means the description of the Goods/Services/Works and Related Works to be provided under the Contract and annexed to and incorporated with and form part of the Contract Documents.

"*Staff*" means all persons employed by the Supplier to perform the Contract together with the Supplier's employees, agents and sub-contractors used in the performance of the Contract.

"*Sub Contract*" employment of a firm or person outside one's company to do (work) as part of a larger project.

"Supplier" means the person or personnel, firm or company, with whom the Council enters into this Contract.

"*Supplier's Representative*" means the individual authorised, including their subcontractor or any agent, to act on behalf of the Supplier for the purposes of the Contract.

"*Quote*" means the Supplier's quote response to the invitation to quote.

"*Tax*" means value added tax, customs duties and any other taxes or duties.

"*Tender*" means the Suppliers tender response to the invitation to tender.

"Work(s)" means any installation, construction, building, maintenance, engineering, design and execution or execution works provided by the Supplier in connection with this Contract.

1.2. Interpretation

The Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract.

This Contract shall supersede any prior agreement with the Supplier, whether written or oral, and shall have precedence over any printed terms and conditions appearing on any acceptance form, delivery form or other documents or letters emanating from the Supplier. The Supplier's terms and conditions shall have no effect whatsoever, except insofar as they confirm the terms and conditions of this Contract.

Headings contained in this Contract are for reference purposes only and should not be incorporated into the Contract and shall not be deemed to be any indication of the meaning of the clauses to which they relate.

Reference to any legalisation, statute or statutory provision includes a reference to:

(a) that statute or statutory provision as from time to time amended, extended, re-enacted or consolidated and

(b) all statutory instruments or orders made pursuant to it.

Words denoting the singular number only shall include the plural and vice versa. Words denoting any gender include all genders and words denoting persons shall include firms and corporations and vice versa.

1.3. Scope

Nothing in the Contract shall be construed as creating a partnership, a Contract of employment or a relationship of principal and agent between the Council and the Supplier.

1.4. Terms of Appointment

The Council appoints the Supplier to provide the Goods/Services/Works and Related Works for the Contract Term in return for the Payment. The Contract does not confer any exclusivity upon the Supplier and will not warrant or guarantee any level of business. The Council reserves the right to use other Suppliers for similar work in the contract area at its discretion.

Standard Conditions of Contract

2. General Provisions

2.1. Contract Period and Extension Options

(a) The Supplier shall deliver the Goods/Services/Works and Related Works under this contract from the agreed commencement date until the agreed termination date subject to any termination for breach or otherwise.

(b) The Contract Extension(s) will be subject to budget, cost and performance reviews. The Contract Extension(s) will be mutually agreed and formally communicated in writing by the Principal Contract Officer.

2.2. Contract Value

This Lifetime Contract Value is a fixed price in line with the Official Purchase Order Raised and cannot be adjusted unless conducted in accordance with clause 2.5. (Variation Conditions and Change Control Procedure).

2.2.1. Provisional Sum

The Provisional Sum if included in the Purchase Order is fixed and only for use in whole or in part or not at all at the sole discretion of the Principal Contract Officer.

2.3. Principal Contract Officer

The functions, rights and powers conferred by this Contract upon the Council shall be exercised by the Principal Contract Officer. The Supplier shall under no circumstance question the existence or extent of the authority of any person authorised by the Principal Contract Officer to act on their behalf. The duties and extent of such authority will be given in writing to the Supplier.

2.4. Quality Assurance

a) The Supplier shall operate a system of quality assurance that will ensure that all Goods/Services/Works and Related Works fully comply with the Contract.

b) The Supplier shall on request provide the Council with a copy of their quality assurance manual and any results of quality performance measurements appropriate to the Contract.

2.5. Variation Conditions and Change Control Procedure

Without prejudice to any other conditions hereof, no deletion, omission or exception from, addition to or variation of the Contract shall be valid or of any effect unless it is agreed in writing and signed by the Principal Contract Officer and a duly authorised representative of the Supplier. Any variations to the contract shall be undertaken in compliance with the Change Control mechanism.

2.5.1. Change Control Mechanism

No deletion from, addition to, or variation of the Contract shall be valid or of any effect unless agreed in writing by the parties.

(a) The Supplier shall not alter or substitute any of the Goods/Services/Works and Related Works unless approved in writing by the Council. The Supplier shall notify the Council in writing, quoting an appropriate index or price formulae of any proposed price variation, and/or provide supporting evidence of the rise or fall in materials, labour or any other factors. Any rise or fall, resulting from the submission of a claim for price variation, shall not be paid in respect of any period before the expiration of 90 days from the date the claim is notified to the Council. Acceptance of any price variation is at the discretion of the Council and subject to the provisions of Clause 2.5 (Variation Conditions and Change Control Procedure).

(b) The Council shall have the right from time to time by written notice to change the specification of requirement, add to or omit, or otherwise vary the Goods/Services/Works and Related Works. Any variation by the Council shall not relieve the Supplier of any of their obligations in the Contract. Any price variation shall be subject to the provisions in this Clause 2.5.1 (a).

2.5.2. Legislation Change

2.5.2.1. The Supplier shall neither be relieved of its obligations under this contract nor be entitled to an increase in the Contract Pricing as the result of:

(a) General Change in Law;

(b) Specific Change in Law where the effect of that Specific Change in Law on the Goods and/or Services is reasonably foreseeable at the contract Commencement Date.

2.5.2.2. If a Specific Change in Law occurs or will occur during the Contract Period or Contract Extension(s) Period (other than as referred to in (a) and (b) above, the Supplier shall notify the Council as soon as reasonably practicable of the likely effects of that change including:

I. whether any Variation is required to the provision of the Goods/Services/Works and Related Works, the Contract Pricing; and

II. whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Service Level Performance Measures; and

provide to the Council with evidence:

III. that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its SubContractors;
IV. as to how the Specific Change in Law has affected the cost of providing the Goods and/or Services; and
V. demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 4.6 (Continuous Improvement), has been taken into account in amending the Contract Pricing.

2.5.2.3. Any change in the Contract Pricing or relief from the Suppliers obligations resulting from a Specific Change in Law (other than as referred to in Clause 2.5.2. (a) and (b) Shall be implemented in accordance with Clause 2.5 (Variation Conditions and Change Control Procedure).

2.5.3. Local Government Reorganisation

2.5.3.1. The Parties acknowledge that during the Term of this Contract the local government structure in the Council's administrative areas may be subject to change to reflect the new geographical, financial and contract scope. These administrative changes may give rise to the need for the Council seek its potential variation with any successor or assignee of the Council and/or terminate this Contract. A variation to the Contract may include but not limited to novation, changes to the contract value, scope and term.

2.5.3.2. The Supplier shall co-operate fully with the Council and any successor to facilitate any transfer, novation or variation required as a result of such reorganisation.

2.5.3.3. The Supplier shall not unreasonably withhold or delay agreement to any such transfer or novation, provided that the successor assumes the rights and obligations of the Council under this Contract.

2.5.3.4. The Council shall not be liable for any loss of any kind including, but not limited to, any loss of profit, lost opportunity or indirect loss that may arise as a consequence of local government reorganisation or any action taken in accordance with this clause.

2.5.3.5. The Supplier shall continue to perform the Services/Works and/or provide the Goods and comply with its obligations under this Contract pending the implementation of any variation, novation or termination under this clause.

3. Orders and Payments

3.1. Payment

The Council's standard terms of payment are 30 days from the date the invoice is received after delivery of the Goods/Services/Works and Related Works.

3.2. Orders

An Order shall be an official instruction in writing or recordable electronic form and the Supplier shall ensure that Goods/Services/Works and Related Works are provided on the terms and conditions set out in the Contract. No payment for Goods/Services/Works and Related Works will be made unless the Supplier provides a relevant official order number/reference that corresponds with a Council Order.

3.3. Value Added Tax and Construction Industry Scheme

All sums payable under this agreement unless otherwise stated are exclusive of VAT and other duties or taxes. The Supplier will produce for the Council a valid VAT invoice.

3.3.1. Construction Industry Scheme

3.3.1.1. If the scope of the Goods/Services/Works and Related Works fall within the construction industry as defined by the Income & Corporation Taxes Act 1988 and the Income Tax (Subcontractors in the Construction Industry) (Amendment) Regulations 1998 the Contractor must produce a valid UTR number to allow the Council to verify the status of the Supplier for CIS purposes (Net or Gross).

3.3.1.2. Where the Supplier is listed as Gross, no deductions will be made from the invoice however the Council will report to HMRC on the overall Labour cost.

3.3.1.3. Where the Supplier is listed as Net, a deduction of 20% off the labour element will be made and paid directly to HMRC. If no breakdown is supplied, the Council will make a deduction of 20% off the whole invoice value (Net).

3.3.1.4. If the Supplier is unverified for CIS with HMRC the Council will deduct 30% off the labour element will be made and paid directly to HMRC. If no breakdown is supplied, the Council will make a deduction of 30% off the whole invoice value (Net) until the Council has confirmed the CIS status of the Supplier.

3.3.1.5. If the Supplier is not CIS registered, the Supplier must be CIS registered through HMRC prior to the Contract Commencement Date.

3.3.1.6. The Council for the purpose of the CIS Domestic Reverse Charge is the End User.

3.4. Interest on Late Payment

In the event of failure by the Council to make any payment of any charges for the Goods/Services/Works for undisputed claims within 30 days, then the Supplier shall be entitled to interest on any payment overdue under the Late Payment of Commercial Debts (Interest) Act 1998 (As amended).

3.5. Supply Chain Rights and Chain Matters

3.5.1. The Supplier shall:

(a) exercise due skill and care in the selection and appointment of any sub-contractor to ensure that the Supplier is able to:

i. manage any Sub-contractors in accordance with Good Industry Practice;
ii. comply with its obligations under this Contract; and
iii. assign, novate or otherwise transfer to the Council or any replacement supplier any of its rights and/or obligations under each Sub-contract that relates exclusively to this Contract; and

(b) ensure that it does not any time during the Contract Period including any Contract Extension enter into a Sub-Contract with:

i. any supplier that is on the debarment list on the basis of a mandatory exclusion ground within the meaning of the Procurement Act 2023 and Procurement Regulations 2024 as amended; or
ii. any supplier that is on the debarment list on the basis of a discretionary exclusion ground within the meaning of the Procurement Act 2023 and Procurement Regulations 2024 as amended, unless the Supplier has obtained the Council's prior written consent to the appointment of the relevant proposed Sub-contractor.

(c) Ensure the Council has approved the selection of a sub-contractor before the Supplier enters into a Sub-Contract.

3.5.2. The Supplier shall ensure that all Sub-Contracts contain a provision:

I. requiring the Supplier to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a Valid Invoice;
II. requiring that any invoices submitted by a Sub-Contractor shall be considered and verified by the Supplier in a timely fashion and that undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed;
III. requiring the Sub-Contractor to include in any Sub-Contract which it in turn awards suitable provisions to impose, as between the parties to that Sub-Contract, requirements to the same effect as those required by sub-clauses 3.5.2. and 3.5.3.; and
IV. conferring a right to the Council to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period.

3.5.3. The Supplier shall:

I. pay any undisputed sums which are due from it to a Sub-Contractor within thirty (30) days from the receipt of a Valid Invoice;
II. include within the Performance Monitoring Reports (if applicable) a summary of its compliance with this Clause 3.5.3 b I, such data to be certified each quarter by a Director of the Supplier as being accurate and not misleading.

3.5.4. Any invoices submitted by a Sub-Contractor to the Supplier shall be considered and verified by the Supplier in a timely fashion. Undue delay in doing so shall not be sufficient justification for the Supplier failing to regard an invoice as valid and undisputed.

3.5.5. Notwithstanding any provision of Clauses 5.3 (Confidentiality) and Clause 5.6 (Publicity) if the Sub-Contractor notifies the Council that the Supplier has failed to pay an undisputed Sub-Contractor's invoice within thirty (30) days of receipt, or the Council otherwise discovers the same, the Council shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

4. Supplier Obligations

4.1. Goods

Clause 4.1 and all sub-clauses relate to the supply of any Goods (even under a Work(s) or Service(s) based Contract) provided by the Supplier or by the Supplier's sub-contractor under the Contract as specified in the Contract Documents.

4.1.1. Samples

If required by the Council, the Supplier will provide, free of charge, samples of goods for evaluation and approval. All subsequent deliveries shall be equal in quality to the approved samples and conform in all respects to the specification and the conditions detailed in the Contract.

4.1.2. Standards

All Goods and Related Work shall comply with any statutory, British, International and European Standards and other requirements from time to time in force.

4.1.3. Rejection of Goods

a) The Council may reject any Goods wholly or in part if the Goods do not comply with the standards. In this situation the Council is not liable to pay any additional charges for collection or delivery of Goods or inconvenience caused.

b) The Council may also request that the Supplier remove the Goods (perishable or non-perishable) within an agreed time period and provide Goods to the approved standard. The Supplier shall be responsible for any and all costs reasonably incurred.

4.1.4. Delivery

a) Goods shall be delivered at the times dates and places specified in the Contract, Invitation to Tender, Quote or purchase order. A delivery note shall be included with each consignment, and an invoice shall be submitted to the Council. Receipt or delivery of the Goods does not constitute any acknowledgement of the condition or nature of Goods delivered.

b) The Council shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity confirmed and the Supplier shall be responsible for any and all reasonable costs incurred. Goods shall be delivered in accordance with the Conditions of the contract to ensure compliance and to ensure they reach their destination in good condition. Delivery shall be free of charge to the Council unless specified as a cost in the Contract.

c) Unless specified otherwise, delivery of Goods and Related Works shall include unloading and stacking by the Supplier and the Supplier's Representative and/or Staff at such a place as the Council shall reasonably direct.

4.1.5. Risk/Title of Goods

The Goods shall remain the property and risk of the Supplier until delivered to; accepted by and signed for by the Council or an authorised third party acting on behalf of the Council, without prejudice to the Councils right to reject the Goods, wholly or in part, at which time the title to the Goods shall pass from the Supplier to the Council. The risk of any over-delivered Goods that do not comply with the Order or Contract shall remain with the Supplier.

4.1.6. Guarantee

a) Goods and Related Works shall be free of defects in design, materials and workmanship and shall be fit and sufficient for all purposes for which they are ordinarily used and for any particular purpose made known to the Supplier by the Council.

b) The Supplier shall guarantee the goods from implementation for 12 months, or 18 months from initial delivery and shall (without prejudice to any other rights and remedies) remedy such defects immediately without cost to the Council. The Supplier shall notify the Council and receive agreement in writing to any deviation from the above time periods.

4.1.7. Inspection of Premises

The Supplier, upon being given reasonable notice by the Council, shall allow free access to any premises where Goods and Related Work are carried out, by the Supplier or the Supplier's representative or Staff. The Supplier shall give assistance to the Council as necessary to enable inspection of this work. Any inspection or approval by the Council shall not relieve the Supplier of any of the obligations under this Contract.

4.2. Services

Clause 4.2 and all sub-clauses relate to the provision of repair, maintenance, technical support, design or service other than goods and related works, as qualified in the Appendixes to the EU Procurement Directives performed by the Supplier or by the Supplier's sub-contractor under the Contract as specified in the Contract Documents.

4.2.1. Provision of Service(s)

The Supplier shall provide the Service(s) during the Contract Term and the Contract Extension Period within the time agreed and on a specified date(s), in accordance with the requirements of the Contract.

4.2.2. Standards and Performance

a) To the extent that the standard of Service(s) has not been specified in the Contract; the Supplier shall exercise and continue to exercise in the performance of the Service(s) all reasonable skill care and diligence expected of a properly qualified and competent person(s) experienced in carrying out Service(s) of a similar size; timescale and degree of complexity.

b) The Supplier shall consult fully with the Council and keep the Council properly informed of all matters arising in the performance of the Service(s). The introduction of new methods or systems, which impinge on, the provision of the Service(s) shall be subject to prior approval. The signing by the Principal

Contract Officer of time sheets or other similar documents shall not be construed as implying the Supplier's compliance with the Contract.

c) Where a complaint is received about the standard of Service(s) or about the way any Service(s) have been delivered or about the materials or procedures used; or about any other matter connected with the performance of this Contract, then the Council shall take all reasonable steps to ascertain whether the complaint is valid. If the Council so decides, the complaint may be upheld and further action taken in accordance with this Contract.

d) In the event that the Supplier does not comply with the provisions of this Contract in any way as a result of its own negligence, the Council may serve the Supplier with a Default Notice in writing setting out the details of the Supplier's Default.

4.2.3. Supplier Staff

(a) If the Council gives the Supplier notice that any person is not to become involved in or is to be removed from involvement in the performance of the Contract due to:

I. persistent failure to comply with Default Notices issued by the Council, or;
II. any other reason which the Council reasonably considers will be detrimental to the relationship of the parties or the performance of the contract

then the Supplier shall take all reasonable steps to comply with such notice and if required by the Council the Supplier shall replace any person removed under this Condition with another suitably qualified person and procure that any pass issued to the person removed is surrendered.

(b) If and when instructed by the Council, the Supplier shall give to the Council a list of names of all persons who are or who may be at any time concerned with the Services(s) or any part of them, specifying the capacities in which they are so concerned, and giving such other particulars and evidence of identity and other supporting evidence as the Council may reasonably require. The decision of the Council as to whether any person is not to become involved in or is to be removed from involvement in the performance of the Contract and as to whether the Supplier has furnished the information or taken the steps required by this Condition shall be final and conclusive.

(c) The Supplier shall bear the cost of any notice, instruction or decision of the Council under this Condition.

4.2.4. Variants of goods (price)

If the Supplier is providing any individual items, goods, materials or consumables under the Contract can be procured at a cheaper rate by the Council as listed in any specifications and product guides, The Council reserves the right to purchase the item separate to the Contract and provide to the Supplier to carry out the service. The Council will then remove the material cost from the payment and only pay for the Services and Goods provided by the Supplier.

4.3. Works

Clause 4.3 and all sub-clauses relate to the supply of any Works provided by the Supplier or by the Supplier's sub-contractor under the Contract as specified in the Contract Documents.

4.3.1. Provision of Work(s)

The Supplier shall provide the Work(s) during the Contract Term and the Contract Extension Period within the time agreed and on a specified date(s), in accordance with the requirements of the Contract.

4.3.2. Standards and Performance

a) To the extent that the standard of Work(s) has not been specified in the Contract; the Supplier shall exercise and continue to exercise in the performance of the Work(s) all reasonable skill care and diligence expected of a properly qualified and competent person(s) experienced in carrying out Work(s) of a similar size; timescale and degree of complexity.

b) The Supplier shall consult fully with the Council and keep the Council properly informed of all matters arising in the performance of the Work(s). The introduction of new methods or systems, which impinge on, the provision of the Work(s) shall be subject to prior approval. The signing by the Principal Contract Officer of time sheets or other similar documents shall not be construed as implying the Supplier's compliance with the Contract.

c) Where a complaint is received about the standard of Work(s) or about the way any Work(s) have been delivered or about the materials or procedures used; or about any other matter connected with the performance of this Contract, then the Council shall take all reasonable steps to ascertain whether the complaint is valid. If the Council so decides, the complaint may be upheld and further action taken in accordance with this Contract.

d) In the event that the Supplier does not comply with the provisions of this Contract in any way as a result of its own negligence, the Council may serve the Supplier with a Default Notice in writing setting out the details of the Supplier's Default.

4.3.3. Supplier Staff

(a) If the Council gives the Supplier notice that any person is not to become involved in or is to be removed from involvement in the performance of the Contract due to:

I. persistent failure to comply with Default Notices issued by the Council, or;
II. any other reason which the Council reasonably considers will be detrimental to the relationship of the parties or the performance of the contract

then the Supplier shall take all reasonable steps to comply with such notice and if required by the Council the Supplier shall replace any person removed under this Condition with another suitably qualified person and procure that any pass issued to the person removed is surrendered.

(b) If and when instructed by the Council, the Supplier shall give to the Council a list of names of all persons who are or who may be at any time concerned with the Work(s) or any part of them, specifying the capacities in which they are so concerned, and giving such other particulars and evidence of identity and other supporting evidence as the Council may reasonably require. The decision of the Council as to whether any person is not to become involved in or is to be removed from involvement in the performance of the Contract and as to whether the Supplier has furnished the information or taken the steps required by this Condition shall be final and conclusive.

(c) The Supplier shall bear the cost of any notice, instruction or decision of the Council under this Condition.

4.3.4. Guarantee

The Supplier shall guarantee all workmanship related to the Work(s) from date sign off for 12 months and shall (without prejudice to any other rights and remedies) remedy such defects immediately without cost to the Council. The Supplier shall notify the Council and receive agreement in writing to any deviation from the above time periods.

4.3.5. CDM Regulations (if applicable)

a) Both Parties will comply with the CDM Regulations 2015 (As amended).

b) The Council shall ensure the Principal Designer undertakes its duties and where the Supplier is not the Principal Contractor, shall ensure the Principal Contractor undertakes its duties under the CDM Regulations 2015 (As amended).

c) The Supplier regardless of status under the CDM Regulations 2015 (As amended) shall comply with its duties under the CDM Regulations 2015 (As amended) at no extra cost to the Council. All costs associated with complying with the CDM Regulations 2015 (As amended) and any documentation provided by the Council is deemed to be included in the Lifetime Contract Value and Contract Pricing.

4.3.6. Variants of goods (price)

If the Supplier is providing any individual items, goods, materials or consumables under the Contract can be procured at a cheaper rate by the Council as listed in any specifications and product guides, The Council reserves the right to purchase the item separate to the Contract and provide to the Supplier to carry out the service. The Council will then remove the material cost from the payment and only pay for the Services and Goods provided by the Supplier.

4.4. Best Value and Benchmarking

a) In the performance of the Contract the Supplier shall assist the Council in achieving the performance of its duty to secure the continuous improvement under Local Government legislation.

b) Without prejudice to the generality of the above the Supplier shall identify ways in which the Goods/Services/Works and Related Works may be carried out more efficiently or effectively and shall advise the Council accordingly; for example: -

I. By being undertaken in a different manner to achieve the Council's objectives;
II. By assisting the Council to develop quality standards for the provision of the Goods/Services/Works and Related Works;
III. By assisting the Council to develop and implement production methodology including the application of information technology to systemise, monitor and supervise its performance and to ensure consistency of quality method and performance.

c) If so requested by the Council the Supplier shall provide a detailed breakdown of the activities required for the completion of the Goods/Services/Works and Related Works.

d) Where so requested by the Council, in order to assess the competitiveness of the Goods/Services/Works and Related Works which are provided or procured by the Council; the Supplier shall provide the Council with comparative costing information in terms of the price which the Supplier would charge, to the Council, for undertaking specified Goods/Services/Works and Related Works.

4.5. Performance Monitoring

a) The Council shall inspect or examine the performance of the Goods/Services/Works and Related Works at any reasonable time, and with reasonable notice, at any other premises where part of the Goods/Services/Works and Related Works is being performed. The Council reserves the right to record that which it considers to be relevant to the performance and monitoring of this Contract.

b) Where so requested by the Council, the Supplier shall provide the Council with performance records in terms of the Contract in respect of any Goods/Services/Works and Related Works undertaken on behalf of the Council. These records shall take the form of monitoring reports, the content and regularity of which will be specified in the Contracts. The Supplier shall attend contract management meetings as agreed between the parties.

4.6. Continuous Improvement

a) The Supplier shall at all times during the Contract comply with its obligations to continually improve the Goods/Services/Works and Related Works and the manner in which it provides the Goods/Services/Works and Related Works as set out in the Contract.

b) The Supplier shall at all times during the Contract comply with the targets set in Key Performance Indicators to the best of its ability and strive to continuously improve on the previous Key Performance Data.

4.7. Access to Premises

a) Access to the Council’s premises shall not be exclusive to the Supplier but shall be limited to such Staff and the Suppliers sub-contractors as are necessary to the Contract concurrently with the execution of service and/or related work by others.

The Supplier shall co-operate free of charge with such others as the Council may reasonably require.

b) The Supplier shall make no delivery of Equipment or Goods nor commence any Service(s) or Work(s) on the Council's premises without obtaining approval from the Principal Contract Officer.

4.8. Equipment

a) The Supplier shall provide all the Equipment necessary for the provision of the Goods/Services/Works and Related Works.

b) The Supplier shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its own cost. The Supplier shall ensure that the Council's Premises are appropriate to contain and operate the Equipment. The Supplier shall maintain all items of Equipment within the Council's Premises in a safe, serviceable and clean condition.

c) All Equipment brought onto the Council's Premises shall be at the Supplier's own risk and the Council shall have no liability for any loss of or damage to any Equipment unless the Supplier is able to demonstrate that such loss or damage was caused or contributed to by the negligence or default of the Council.

d) The Council may at its option purchase any item of Equipment from the Supplier at any time, if the Council considers that the item is likely to be required in the provision of the Goods/Services/Works and Related Works following the expiry or termination of the Contract. The purchase price to be paid by the Council shall be the fair market value.

4.9. Removal of Equipment, Rubbish and Unused Materials

a) On completion or delivery of the Goods/Services/Works and Related Works, the Supplier shall remove the Equipment and unused materials and shall clear away from the Council's Premises all rubbish arising out of the Goods/Services/Works and Related Works, make good any damage caused to the Council's Premises by the removal of the Equipment and leave the Council's Premises in a neat and tidy condition.

b) The Council shall have the power at any time during the delivery of the Goods/Services/Works and Related Works to order in writing:

I. The removal from the Council's Premises of any Equipment which in the opinion of the Council are either hazardous, noxious or not in accordance with the Contract; and/or
II. The substitution of proper and suitable materials, plant, equipment; and/or
III. The removal and proper re-execution notwithstanding any previous test thereof or interim payment therefore of any service and/or work which, in respect of material or workmanship, is not in the opinion of the Council in accordance with the Contract.

4.10. Purchasing on behalf of the Council

In the event that the Supplier procures Goods/Services/Works and Related Works including equipment from third parties on behalf of the Council then they shall at all times do so in accordance with the provisions of The Public Contracts Regulations 2015 (As amended).

4.11. Remedies in the event of Inadequate Performance

4.11.1. Default Notice

a) If the Council serves a Default Notice on the Supplier due to inadequate performance as a result of the Suppliers negligence, the Supplier shall:

I. provided that the breach is capable of remedy, at its own expense reschedule and provide the Goods/Services/Works and Related Works correctly within such reasonable time as may be specified by the Council within the Default Notice; or

II. Without prejudice to any other rights and remedies the Council may have pursuant to the Contract, off-set or reimburse the Council a mutually agreeable cost for all reasonable costs incurred by the Council to rectify the Supplier's inadequate performance.

a) Should the Supplier fail to provide the Goods/Services/Works and Related Works at the times, dates, and places specified or agreed, the Council, shall without prejudice to any other remedy for breach of Contract, determine the Contract either wholly or in part and purchase replacement Goods/Services/Works and Related Works of the same or similar description at the Suppliers cost.

b) The Council may charge to the Supplier any cost reasonably incurred by the Council and any reasonable administration costs in respect of the provision of any part of the Goods/Services/Works and Related Works by the Council or by a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Goods/Services/Works and Related Works.

4.11.2. In the event that the Supplier persistently fails to comply with such requests to rectify non-performance or inadequate performance, and such failures, taken as a whole, materially affect the commercial interests of the Council, the Council reserves the right to terminate the Contract in accordance with Clause 10 (Termination).

4.12. Exclusions

4.12.1. During the Contract Period and any Contract Extension, the Supplier shall notify the Council as soon as reasonably practicable if:

4.12.1.1. the Supplier considers that an exclusion ground within the Procurement Act 2023 and any Procurement Regulation 2024 as amended, applies to the Supplier, including where the Supplier is put on the debarment list or becomes an excluded or excludable supplier by virtue of any associated persons or subcontractors where information relating to such was provided under Section 28 of the Procurement Act 2023; and/or

4.12.1.2. there are any changes to the Supplier's associated persons within the meaning of the Procurement Act 2023.

4.12.2. If the Supplier notifies the Buyer in accordance with Clause 4.12.1 then the Supplier must promptly provide any information the Council reasonably requests in relation to the notification, including information to support an assessment of whether the circumstances giving rise to the exclusion ground are continuing or likely to occur again.

4.12.3. If the Supplier notifies the Council in accordance with Clause 4.12.1.2 above then the Supplier must promptly provide any information requested by the Council in relation to the change to the Supplier's associated persons, including any information set out in the Procurement Regulations 2024.

4.12.4. The Council may terminate this Contract in accordance with Clause 10.1.1 if:

4.12.4.1. the Supplier has failed to provide notification under Clause 4.12.1.1. as soon as reasonably practicable after the Supplier becoming aware that an exclusion ground within the Procurement Act 2023 and Procurement Regulations 2024 does or may apply to the Supplier;

4.12.4.2. the Supplier has failed to provide notification under Clause 4.12.1.2. as soon as reasonably practicable after the Supplier becoming aware of any changes to the Supplier's "associated persons" within the meaning of the Procurement Act 2023; and/or

4.12.4.3. any notification or information provided by the Supplier under Clause 4.12.1, 4.12.2 and/or 4.12.3 is incomplete, inaccurate or misleading.

4.12.5. Clause 4.12.4 is without prejudice to the Council's rights to terminate the Contract in accordance with Clause 10.1.1.

5. Protection of Information

5.1. Data Protection

5.1.1. Both parties will comply with all applicable requirements of the Data Protection Legislation (As amended).

5.1.2. The parties acknowledge that for the purposes of the Data Protection Legislation, where the Council is the data controller and the Supplier is the data processor (where **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation) the provisions set out in this clause 5.1.2 and clauses 5.1.3 to 5.1.5 will apply. The Specification or description of Services sets out the subject matter, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data (**Personal Data**, as defined in the Data Protection Legislation) and categories of data subject (**Data Subject**, as defined in the Data Protection Legislation).

5.1.3. Without prejudice to the generality of clause 5.1.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this Agreement:

a) process that Personal Data only on the written instructions of the Council unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier to process Personal Data (**Applicable Laws**). Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify the Council of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Council;

b) ensure that it has in place appropriate technical and organisational measures, , to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:

I. the Council or the Supplier has provided appropriate safeguards in relation to the transfer;

II. the Data Subject has enforceable rights and effective legal remedies;

III. the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

IV. the Supplier complies with reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;

e) assist the Council in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

f) notify the Council immediately on becoming aware of a Personal Data breach. Such notification shall be to the Council's data protection officer as required to be appointed under the Data Protection Legislation and whose contact details will appear on the Council's website;

g) at the written direction of the Council, delete or return Personal Data and copies thereof to the Council on termination of the Agreement unless required by Applicable Law to store the Personal Data; and

h) maintain complete and accurate records and information to demonstrate its compliance with this clause 5.1.3 and allow for audits by the Council or the Council's designated auditor.

5.1.4. The Council does not consent to the Supplier appointing any third party processor of Personal Data under this Agreement without our prior written consent.

5.1.5. The provisions of this Variation Schedule shall apply during the continuance of this Agreement and indefinitely after its expiry or termination.

5.2. Security of Confidential Information

a) In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the performance of the Contract, the Supplier undertakes to maintain security systems approved by the Council or as stated in the Contract.

b) The Supplier will immediately notify the Council of any breach of security in relation to Confidential Information and all data obtained in the performance of the Contract and will keep a record of such breaches. The Supplier will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Supplier's obligations under clause 5.4 in this Contract. The Supplier will co-operate with the Council in any investigation that the Council considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data. The Council may require the Supplier to alter any security systems at any time during the Contract Period and the Contract Extension(s).

5.3. Confidentiality

a) The Supplier shall hold as confidential information all matters relating to the Goods/Services/Works and Related Works to be supplied in any way whatsoever and shall not disclose the same or any of the same to any other person except such of his staff and permitting subcontractors and Supplier as may be necessary for the performance of his obligations under this Contract or as required by law or by court order. All documents and drawings containing such information and any copies thereof shall upon completion of the Contract, or its termination for any reason, be returned to the Council. The provisions of this Clause shall survive any termination of this Contract for a period of 5 years from termination or unless and until such information comes into the public domain through no fault of the Supplier.

b) The Council is committed to the highest possible standards of openness, probity and accountability. We expect anyone who we deal with, who has serious concerns about any aspect of the Council's activities, to come forward and voice them and the Confidential Reporting Policy to provide a means to do so. Full details of the Policy are available on the Councils website but the key points are:

Concerns can be made orally or in writing to:

Chief Executive	02476 376004
Assistant Director – Democracy & Governance	02476 376258
Solicitor to the Council	02476 376538

c) All concerns will be treated in confidence and every effort will be made not to reveal your identity if you so wish. At the appropriate time, however, you may need to come forward as a witness. This policy encourages you to put your name to your allegation whenever possible as concerns expressed anonymously are much more difficult to investigate, and it may therefore be difficult to pursue such an investigation to a reliable conclusion.

d) If the Supplier makes an allegation in good faith, but it is not confirmed by the investigation, no action will be taken against the Supplier. If, however, the Supplier makes an allegation frivolously, maliciously or for personal gain, this may affect the Contract and further work opportunities with the Council.

5.4. Copyright and Ownership of Documents

a) Copyright in all the material including but not limited to drawings, reports, specifications, bills of quantity, calculations and other similar documents prepared for the Contract shall remain vested in the Supplier but the Supplier shall grant to the Council and its nominees an irrevocable royalty-free non-exclusive licence to copy and use the material and to reproduce the information contained in it for any purpose whatsoever relating to the Contract. Such licence shall enable the Council to copy and use the material for any extension of the Contract. Such licence shall be capable of sub-licence and transfer by the Council the Supplier shall not be liable to the Council for any sub-licensee or transferee for any use of the material for any purpose other than that for which the same was prepared or provided by the Supplier.

b) Nothing in the above shall give to such interested third party any right to direct or control the Supplier in the delivery of the Goods/Services/Works and Related Works. The Council shall on written request be entitled to be supplied by the Supplier with copies of the items referred to above

5.5. Intellectual Property Rights

c) The Supplier warrants that the performance of the Contract does not in any way infringe the patent, design, copyright or trademark rights of any person or company and indemnifies the Council against any costs, damages, proceedings, claims and demands of whatever nature in respect of any alleged infringement.

5.6. Publicity

d) The Supplier shall not advertise the fact that it is supplying the Goods/Services/Works and Related Works to the Council under this Contract other than with the written permission of the Council. The Supplier shall not use the logo of the Council or any representation thereof, nor cause it to be used without the written consent of the Council.

5.7. Transparency

a) The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement is not Confidential Information. The Council shall determine whether any of the content of this agreement is exempt from disclosure in accordance with the provisions of the FOIA. The Council may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

b) Notwithstanding any other provision of this Contract, the Supplier hereby gives its consent for the Council to publish to the general public this Contract in its entirely (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), Including any changes to this Contract agreed from time to time.

c) The Supplier shall assist and co-operate with the Council to enable the Council to publish this Contract.

d) The Supplier should be aware that, in compliance with its Local government transparency code obligations, the Council routinely publishes details of its contracts, including the contract values and the identities of its suppliers on its website.

6. Control of the Contract

6.1. Assignment

a) The Supplier shall not assign or sub-contract any of its rights or duties under the Contract without the consent in writing of the Council such consent not to be unreasonably withheld.

b) Should such consent be given to the Supplier by the Council, the Supplier shall continue to remain liable for all acts, defaults or negligence howsoever caused by any sub-contractor. The Supplier may require a direct warrantee and undertaking from the subcontractor concerning the requirements and compliance with the Contract in which event the Supplier shall be released from that part of the Contract for which the Council has received a direct warranty.

6.2. Waiver

The forbearance, indulgence or failure by the Council, or Officer at any time or for any period to enforce the provisions of the Contract or to require performance by the Supplier or any of the provisions of the Contract shall not be construed as a permanent waiver of or as creating an estoppel in connection with any such provision and shall not affect the validity of the Contract or any part thereof or the right of the Council to enforce any provision in accordance with all terms and conditions of this Contract.

6.3. Severability

If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if

the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

7. Liabilities

7.1. Insurance

(a) The Supplier shall maintain at its own cost employers liability insurance and shall be liable for, and shall indemnify the Council against any expense, liability, loss, claim or proceedings in the minimum of £5 million for any one claim or series of claims in respect of any personal injury to or death of any person or any damage whatsoever to any real or personal property arising out of the performance of the Contract.

(b) The Supplier shall maintain at its own cost public and product liability insurance and shall be liable for, and shall indemnify the Council against any expense, liability, loss, claim or proceedings in the minimum of £5 million for any one claim or series of claims in respect of any personal injury to or death of any person or any damage whatsoever to any real or personal property arising out of the performance of the Contract.

(c) The Supplier shall maintain professional indemnity insurance of £2 million, to cover the liability of the Supplier or their Staff in respect of any claim for damages for breach of professional duty as a result of any negligent act error or omission committed by the Supplier or their Staff arising out of the performance of the Contract. The Supplier shall maintain such professional indemnity insurance for a period of six years.

7.1.1. The Supplier shall produce for inspection when requested by the Council documentary evidence that the insurance cover is being properly maintained. In addition, the Supplier is required to send renewal certificates to the Principal Contract Officer throughout the Contract Term and Contract Extension(s) Period once the Insurance listed above has been renewed.

7.1.2. Such insurance shall at all times be affected with insurers of repute carrying on business in the United Kingdom and the policies will not contain any unusual or unduly onerous conditions.

7.1.3. The Council reserves the right to use a different Supplier to deliver the Goods/Services/Works and Related Works should the Supplier fail to maintain the insurance provisions stated in 7.1. (a), (b) and (c) at the Suppliers cost. Once the Supplier has provided the certification to verify the Insurance Provisions, the Council will begin to reuse the Supplier. If the supplier continuously fails to maintain the Insurance provisions stated in 7.1. (a), (b) and (c), the Council reserves the right to terminate the Contract in accordance with Clause 10.1 (Termination Rights) as a fundamental breach of the Contract.

7.2. Indemnity

It is acknowledged by the Supplier that it will indemnify and keep indemnified the Council from and against any and all loss damage or liability (whether criminal or civil) suffered together with legal fees and costs incurred by the Council resulting from a breach of this Contract by the Supplier against any act neglect or default of the

Supplier its Staff and any breaches in respect of any matter arising out of the performance of this Contract.

7.3. Warranty and Representations

Each of the parties warrants that it has power to enter into the Contract and has obtained all necessary approvals to do so.

8. Statutory Obligations and Regulations

8.1. Statutory Requirements

The Supplier shall comply with all statutory and other requirements (including but not exclusive to those relating to race relations, equal opportunities, employment, modern slavery, environmental, safeguarding and health and safety) in relation to the Contract.

8.2. Health & Safety

8.2.1. The Supplier shall, and shall procure that all of its employees, agents, contractors and subcontractors ("Supplier Personnel") shall, perform the Services in full compliance with:

a) All applicable law relating to health and safety, including the Health and Safety at Work Act 1974 (as amended);
b) The Council's Health and Safety policies and its Code of Practice for Suppliers, as notified to the Supplier from time to time;
c) The Supplier shall take all necessary measures to ensure the health, safety and welfare of;
d) Supplier Personnel;
e) The Council's employees; and
f) Any other persons who may be affected by the performance of the Services.

8.2.2. Policies, Risk Assessments and Method Statements

8.2.2.1. The Supplier shall maintain an up to date written Health and Safety Policy and shall make it available to the Council upon request.

8.2.2.2. Prior to commencing the Services, and throughout the term of the Contract, the Supplier shall prepare, implement and keep under review suitable and sufficient risk assessments and method statements relating to the Services.

8.2.2.3. The Supplier shall ensure that all Supplier Personnel are adequately trained, competent and supervised to carry out the Service safely.

8.2.3. Access, Monitoring and Compliance

8.2.3.1. The Council and its authorised representatives shall have the right to immediate, scheduled and unannounced access to any site or premises used in connection with the Services for the purposes of inspections, audits, interviews, surveillance, competence verification and compliance checks relating to health and safety.

8.2.3.2. The Supplier shall fully cooperate with the Council in relation to all health and safety inspections, audits and investigations.

8.2.3.3. Where any audit, inspection or investigation identifies non-compliance, the supplier shall:

a) Immediately take corrective action; and
b) Provide the Council with a written remedial action plan within the timescale specified by the Council.

8.2.4. Stop Work Notices (if applicable)

8.2.4.1. The Council may serve an immediate Stop Work Notice where it reasonably considers that any activity presents an imminent and serious risk of injury, ill-health or significant damage.

8.2.4.2. Upon receipt of a Stop Work Notice, the Supplier shall immediately cease the relevant activities and shall not recommence them until authorised to do so in writing by the Council.

8.2.4.3. All costs, delays, losses and liabilities arising from a Stop Work Notice shall be borne entirely by the Supplier, and the Supplier shall have no entitlement to an extension of time or additional payment.

8.2.4.4. Where the Supplier fails to act immediately on a Stop Work Notice and the Council deploys its own staff or third parties to make the site safe, the Supplier shall be liable for all associated costs, together with a reasonable administration fee.

8.2.5. Incidents, Reporting and Notifications

8.2.5.1. The Supplier shall promptly notify the Council of any accident, incident, near miss or dangerous occurrence arising out of or in connection with the Services.

8.2.5.2. The Supplier shall provide the Council with copies of al RIDDOR, HSE or other statutory notifications with twenty four (24) hours of submission to the relevant authority.

8.2.6. Waste and Environmental Safety

8.2.6.1. The Supplier shall manage, store, transport and dispose of all waste arising from the Services in accordance with the waste hierarchy and all applicable environmental legislation.

8.2.6.2. The Supplier shall provide Duty of Care waste transfer notes or other evidence of lawful disposal to the Council upon request.

8.2.6.3. The Supplier shall comply with the provision of clause 4.3.5. (Construction (Design and Management) Regulations).

8.3. Equalities and Human Rights

The Supplier and the Supplier's Representative shall comply with:

(a) The Human Rights Act 1998 (As amended) as if the Supplier were a public body as defined in the Human Rights Act 1998 (As amended);

(b) All legislation, official guidance and codes of practice relating to equal opportunities, including but without limitation relating to disability discrimination, sex discrimination and race relations;

(c) The Supplier shall inform the Council as soon as the Supplier becomes aware of any legal proceedings or complaint brought or likely to be brought against the Supplier under the legislation in sub clauses 8.3 (a) and 8.3 (b) above.

Where any investigation is conducted or proceedings are brought arising directly or indirectly out of this Contract or any other action by the Supplier or its Staff, agents or sub-contractors, the Council shall be entitled to recover from the Supplier the full cost it may have incurred in such investigation or proceedings and such other financial redress to cover any payment the Council may have been ordered or required to pay to a third party. The Supplier shall provide such information as the Council may reasonably request for the purpose of assessing the Supplier's compliance with this clause.

8.4. Environment

The Supplier shall be aware of the Councils Environmental Policy as listed in the Councils Publication Scheme.

8.5. Contract Third Parties Act

The Contracts (Rights of Third Parties) Act 1999 (As amended) is expressly excluded from this Contract unless otherwise agreed.

8.6. Freedom of Information

a) The Supplier acknowledges that the Council has legal responsibilities to make information available under the Freedom of Information Act 2000 ("the FOIA") (As amended).

b) The Supplier shall give reasonable assistance to the Council to comply with the FOIA.

c) In particular, the Supplier shall supply all such information and records produced in the course of the contract or relating to the contract retained by Supplier (together with reasonable assistance to locate the same) which are needed by the Council to comply with its obligations under the FOIA.

d) The Supplier will respond to any such request for assistance from the Council at its own cost, promptly and within 5 days of receiving the Council's request.

e) Notwithstanding the provisions of clause 5.3 the Council shall have the sole right to disclose any information which is the subject to this Contract to any person who makes a request under the FOIA and which in the opinion of the Council it has to disclose to discharge its responsibilities under the FOIA .

f) When exercising its right under this clause the Council shall consult the Supplier and may take account of any reasonably suggestions made by it.

g) The Council shall not be responsible for any loss, damage, harm or detriment however caused arising from disclosure of information relating to this contract under the FOIA.

8.7. Children Act 2004/Care Act 2004 (As amended)

The Supplier or any sub-contractor to them may have direct contact with children during any delivery or attendance at the premises. It is the responsibility of any Supplier to ensure that those engaged in undertaking the duties under that contract, Staff, agents (and others) are of suitable standing and good character.

8.8. Damp and Mould

The Supplier or any sub-contractor to them to report to the Council any signs of damp and mould or obvious structural defects in any Council Property within a reasonable amount of time.

9. Bribery, Corruption, Collusion and Bankruptcy

9.1. Bribery, Corruption and Collusion

The Supplier warrants and undertakes to the Council that:

(a) It will comply with all applicable laws, regulations and sanctions relating to antibribery and anti-corruption including, but not limited to, the Bribery Act 2010 (As amended);

(b) It will comply with all of the Council's anti-bribery and anti-corruption policies as may be amended from time to time, a copy of which may be provided upon written request;

(c) It will ensure that any person associated with the Supplier who performs or has performed services on its behalf in connection with this agreement complies with the whole of this Clause (9.1);

(d) It shall have and maintain in place throughout the Contract Term and the Contract Extension(s) Period its own policies and procedures, including adequate procedures under the Bribery Act 2010 (As amended);

(e) It shall, at the reasonable request of the Council, certify in writing that it has complied with its undertakings under this Clause (9.1), and shall provide such supporting evidence of compliance as the Council may reasonably request;

Breach of this Clause (9.1) shall be deemed a material breach under the Contract for the purpose of Clause 10. (Termination).

9.2. Bankruptcy

If the Supplier in accordance with the Insolvency Act 1986, 1994 and 2000 (As amended):-

(a) Becomes bankrupt, or makes a composition or arrangement with its creditors, or has a proposal in Respect of its company for the voluntary arrangements for a composition of debts, or scheme or arrangements, approved in accordance with the Insolvency Act;

(b) Has an application made under the Insolvency Act in respect of its company to the Court for the appointment of an administrative receiver;

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

(d) Has a provisional liquidator, receiver or manager of its business or undertaking duly appointed;

(e) Has an administrative receiver, as defined in the Insolvency Act 1986 (As amended) appointed;

(f) Has possession taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in, or subject to, the floating charge;

(g) Is in circumstances which entitle the court or a creditor to appoint, or have appointed, a receiver, a manager, or an administrative receiver, or which entitle the Court to make a winding-up order;

then the Council shall be at liberty to determine this Contract by notice in writing with immediate effect in accordance with Clause 10 (Termination), and to employ some other person to perform the same and any additional expense incurred in so doing shall be recoverable from the Supplier.

10. Termination

10.1. Termination Rights

a) If any of the following events happen, the Council has the right to immediately terminate the Contract by issuing a termination notice in writing to the Supplier if:

I. there has been a fundamental breach of this Contract by the Supplier, or;
II. The Supplier's performance of its duties under the Contract has failed to meet the requirements, or;
III. The Supplier persistently fails to comply with such requests, and such failures, taken as a whole, materially affect the commercial interests of the Council, or;
IV. there's a change of control (within the meaning of section 450 of the Corporation Tax Act 2010) of the Supplier which isn't pre-approved by the Council in writing, or;
V. there's a Supplier Insolvency Event, or;
VI. the Supplier or its affiliates embarrass or bring the Council into disrepute or diminish the public trust in them, or;
VII. the Supplier was in one of the situations in 57 (1) or 57(2) of the Regulations at the time the Contract was awarded;

VIII. Regulation 73 (1) of the Public Contract Regulations applies and the circumstances set out in regulation 73 (1) (a), 73 (1) (b) or 73 (1) (c) of those regulations apply, the Council shall be entitled by notice to the Supplier to terminate the Supplier's engagement;

IX. in accordance with section 78, and/or section 79 (where applicable), of the Procurement Act 2023, and provided that the requirements of section 78(7) of the Procurement Act 2023 have been met, where:

(a) the Council considers that the Contract was awarded or modified in material breach of the Procurement Act 2023 or regulations made under it;

(b) the Supplier has, since the award of the Contract become an excluded supplier or excludable supplier (including by reference to an associated person) as set out in section 57 of the Procurement Act 2023 and provided that the conditions in section 78(8) (where applicable) of the Procurement Act 2023 have been met.

I. where any Sub-Contractor has, since the award of the Contract, become an excluded supplier or excludable supplier as defined in section 57 of the Procurement Act 2023, provided that prior to exercising its right of termination under this Clause the Council:

(a) has notified the Supplier of its intention to terminate under this Clause, and why the Council has decided to terminate the Contract;

(b) has given the Supplier reasonable opportunity to make representations about whether this Clause applies and the Council's decision to terminate; and

(c) has given the Supplier a reasonable opportunity to end its Sub-Contract with the excluded or excludable supplier, and if necessary, find an alternative Sub-Contractor.

then the Council may, without prejudice to its rights Terminate the whole Contract or Without terminating the Contract, itself provide or procure the provision of part of the Goods/Services/Works and Related Works until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Council that the Supplier will once more be able to perform such part of the Goods/Services/Works and Related Works in accordance with the Contract.

b) The Council may charge to the Supplier any cost reasonably incurred by the Council and any reasonable administration costs in respect of the provision of any part of the Goods/Services/Works and Related Works by the Council or by a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Goods/Services/Works and Related Works.

c) In the event that the Council enforces any of its rights under the Termination Clause in this Contract, the Supplier shall forthwith deliver up to the Council all Council Property (including, but not limited to, access to keys and equipment provided by the Council) relating to the Goods/Services/Works and Related Works. The remedies of the Council under this Condition may be exercised successively in respect of any one or more failures by the Supplier.

d) In the event the Council wishes to terminate the Contract, the Council shall send the Supplier a Notice in accordance with clause 10.3 (Notices).

10.2. Termination without Cause

The Council shall have the right to terminate the Contract at any time by issuing a Notice in accordance with Clause 10.3 (Notices) to the Supplier giving at least ninety (90) calendar day's written notice.

10.3. Notices

Any notice to be served on the Supplier or the Council shall be deemed to be duly served if sent in a prepaid letter addressed to the Supplier at the registered office, principal place of business or other such address as may have furnished, or to the Principal Contract Officer at the Council. The Council reserves the right to instruct the Supplier to fulfil outstanding orders and/or recover from the Supplier any additional expense incurred during the period of notice as a result of non-fulfilment of orders.

10.4. Force Majeure

The Council shall have the right to defer the date of delivery, cancel any Order or determine the Contract in the event of its business being interrupted or restricted by Force Majeure, lockouts, strikes, industrial disputes, accidents, civil commotion, riot, war, fire, or any other cause whatsoever, with the exception of Brexit, beyond the control of the Council.

11. Law

11.1. Applicable Law

This Agreement shall be governed by and construed in all aspects in accordance with English Law and the parties agree to submit to the exclusive jurisdiction of the English Courts.