



# **Derbyshire County Council Minor Works Terms and Conditions**

**(for use on simple works of less than £50k)**

## DERBYSHIRE COUNTY COUNCIL

### **MINOR WORKS TERMS AND CONDITIONS FOR USE ON SIMPLE WORKS LESS THAN £50K**

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## **1 Definitions**

- 1.1 The following words or phrases shall have the following meanings where they appear in capitalised form in the Contract, unless expressly stated otherwise:

**Award Letter:** means the letter issued by the Council to the successful tenderer to award the Contract and which includes the Council's requirements and, in particular, the Tender Documents and all other documents which are incorporated as part of the Contract;

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

**Best Value Duty:** means a general duty by a best value authority to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness, as set out in Section 3 of the Local Government Act 1999 (as amended by s137 of the Local Government & Public Involvement in Health Act 2007);

**CDM Regulations:** Construction (Design and Management) Regulations (2015);

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

**Commencement Date:** means the date of the Award Letter unless a specific commencement date is set out in the Award Letter in which case it shall mean that specific commencement date and Commencement Date indicates the start of the Contract;

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

**Confidential Information:** Means any information which is 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 which relates to the business, affairs, properties, assets, trading practices, developments, trade secrets, intellectual property rights, know-how, personnel, customers and contractors of either party, all Personal Data and sensitive Personal Data as defined in the Data Protection Legislation, and any information which the Council identifies as being commercially sensitive;

**Contractor:** means the person or firm who the Council instructs to provide the Works pursuant to the Award Letter;

**Contract:** means the Award Letter together with these Terms and Conditions and any other documentation set out in the Award Letter that the Council deems incorporated as part of the Contract as if such documents were set out here in full;

**Contractor's Persons:** means all employees, workers, staff, agents and consultants engaged by or on behalf of the Contractor in the provision of the Works at any time;

**Controller:** has the meaning given to 'Data Controller', or 'Controller' as appropriate, in the Data Protection Legislation;

**Council:** means Derbyshire County Council;

**Data Protection Impact Assessment:** means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

**Data Protection Legislation:** means any and all laws, statutes, enactments, orders or regulations or other similar instruments of general application and any other rules, instruments or provisions in force from time to time relating to the processing of personal data and privacy applicable to the performance of this Contract, including where applicable the Data Protection Act 2018, the Regulation of Investigatory Powers Act 2000, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) as amended or superseded and the GDPR (Regulation (EU) 2016/679);

**Data Protection Officer:** has the meaning provided in the Data Protection Legislation;

**Data Subject:** has the meaning provided in the Data Protection Legislation;

**Data Subject Access Request:** means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

**Data Loss Event:** means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;

**EIR:** means the Environmental Information Regulations 2004;

**FOIA:** means the Freedom of Information Act 2000;

**GDPR:** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation);

**GDPR Schedule:** means the schedule of processing, personal data and data subjects;

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

**LED:** means Law Enforcement Directive (*Directive (EU) 2016/680*);

**Losses:** means all liabilities, costs, expenses, damages and losses (including but not limited to any indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses);

**Material Breach:** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from a substantial portion of this Contract over the contract period. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding;

**Personal Data:** has the meaning provided in the Data Protection Legislation;

**Personal Data Breach:** has the meaning provided in the Data Protection Legislation;

**Policies:** means the policies, rules and procedures of the Council as notified to the Contractor in writing from time to time;

**Price:** the sum stated in the Award Letter, as may be adjusted in accordance with the Contract;

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

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

**Processor:** has the meaning provided in the Data Protection Legislation;

**Protective Measures:** means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;

**Rectification Period:** the period stated in the Award Letter in relation to the Works;

**Regulated Activity Provider:** means as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006;

**Regulated Activity:** means:

- i. in relation to children, as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006;
- ii. and in relation to vulnerable adults as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006;

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

**Request for Information:** means a request for information or an apparent request under the Code of Practice on Access to Government Information, EIR or FOIA;

**Site:** means the site where the Works are to be carried out;

**Sub-Contractor:** means any contract entered into by the Contractor with a third party for the provision of any of the Works;

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

**Sub-Processor:** means all employees, workers, staff, agents and consultants of a Sub-Contractor engaged in the provision of the Works at any time or any third party appointed to process Personal Data on behalf of the Contractor related to this Contract;

**Tender Documents:** means the documents that comprise the tender;

**Terms and Conditions:** means these terms and conditions;

**Variation:** except as otherwise provided in this Contract, means an instruction from the Council to alter, omit or modify the Works;

**VAT:** Value Added Tax;

**Working Day:** means a day that is not a Saturday or Sunday, Christmas Day, Good Friday or any day that is a bank holiday under the Banking and Financial Dealings Act 1971;

**Works:** means the works as described in the Award Letter, as more particularly shown, described or referred to in the documents forming part of the Contract, including any changes made to those works in accordance with this Contract.

## **2 Interpretation**

- 2.1 Clause headings shall not affect the interpretation of these Terms and Conditions.
- 2.2 A person includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 2.3 Words in the singular shall include the plural and vice versa.
- 2.4 A reference to legislation, a statute or statutory provision, is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 2.5 Any obligation in these Terms and Conditions not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.

## **3 General**

- 3.1 The Council wishes to have the Works carried out at the Site. The Council has provided the Contractor with documents which show and describe the work to be done. The Contractor shall carry out and complete the Works in accordance with this Contract.
- 3.2 The Contractor's tender constitutes an offer to perform the Works in accordance with these Terms and Conditions. The tender shall only be deemed to be accepted if the Council issues an Award Letter to the Contractor confirming acceptance of the tender.
- 3.3 Any work, services or supplies performed or provided by or on behalf of the Contractor in connection with the Works before the date of an Award Letter shall:
  - 3.3.1 if an Award Letter is subsequently issued, be treated as having been performed or provided under this Contract; or
  - 3.3.2 if no Award Letter is subsequently issued, be carried out at the Contractor's time and cost.

- 3.4 The Council and the Contractor each acknowledge and agree that in entering into this Contract it has not relied upon, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than those statements expressly set out in this Contract provided that this clause shall not exclude any liability for, or remedy in respect of, fraud or fraudulent misrepresentation.
- 3.5 If any term, condition or provision of the Contract shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in the Contract.
- 3.6 In the event of any conflict or inconsistency between the contract documents, the order of priority shall be: (a) the Award Letter, (b) the Terms and Conditions, and (c) any documents referenced in or attached to the Award Letter or the Terms and Conditions.
- 3.7 The Contractor shall ensure that at all reasonable times he has on the Site a competent person in charge.

#### **4 Contractor's Obligations**

- 4.1 The Contractor shall carry out and complete the Works:
  - 4.1.1 in a good, proper and workmanlike manner;
  - 4.1.2 in accordance with the Contract,
  - 4.1.3 in compliance with the Council's requirements, all applicable Policies, Statutory Requirements, Site rules and all applicable laws;
  - 4.1.4 in accordance with any instructions from the Council; and
  - 4.1.5 using appropriately experienced, qualified and trained personnel.
- 4.2 All materials and goods for the Works shall be:
  - 4.2.1 new (except as otherwise agreed in writing by the Council);
  - 4.2.2 free from defects;
  - 4.2.3 compatible with any Council equipment with which the goods and/or materials will interact;
  - 4.2.4 in accordance with the Contract, or to the extent that the quality of materials and goods are not described in the Contract then they shall be of a standard appropriate to the Works; and
  - 4.2.5 of satisfactory quality and fit for the purpose for which they will be used.

- 4.3 The Contractor shall without further charge and in accordance with the programme obligations under the Contract, provide the Council with copies of all documents, information, design documents, approvals, consents and permissions that are required from the Contractor to carry out and complete the Works.

## **5 Design**

- 5.1 If the Contract requires the Contractor to carry out and complete any design, the Contractor shall:

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

## **6 Time and Completion**

- 6.1 The Works shall be commenced on the date notified by the Council to the Contractor in writing and shall be carried out and completed:
- 6.1.1 within the period for completion stated in the Award Letter; and
  - 6.1.2 reasonably in accordance with the progress of any other works on Site that are notified by the Council to the Contractor from time to time.
- 6.2 The Council shall notify the Contractor in writing if the Works are CDM notifiable. Where required by the Council, the Contractor shall fulfil the role of Principal Designer and/or Principal Contractor for the purpose of the CDM Regulations. Where the Contractor is not required to exercise the role of Principal Contractor, the Contractor shall comply with the health and safety requirements of the Principal Contractor at all times.

- 6.3 If, at any time, the Contractor becomes aware of any circumstance or occurrence which may lead to a delay in the period for completion of the Works or otherwise adversely affect the Contractor's performance of its obligations under the Contract, it shall immediately notify the Council in writing, providing details of the potential or actual delay and the Contractor's proposals for mitigating that delay.
- 6.4 Except as otherwise provided in the Contract, and subject always to clause 6.7, the Contractor shall be entitled to an extension of time in the event that there is a delay to the period for completion of the Works that arises as a result of an event that is beyond the Contractor's control. Any extension of time, or in the event of an omission of Works any reduction of the period for completion of the Works, will be assessed by the Council who shall confirm its decision in writing to the Contractor.
- 6.5 The Contractor shall provide the Council with not less than 7 days written notice of the date when the Contractor expects that the Works will achieve Completion. The Council shall inspect the Works and provide written notice to the Contractor of the date when the Council reasonably considers that the Works have achieved Completion.
- 6.6 If the Contractor fails to achieve Completion within the period for completion of the Works as specified in the Award Letter (or as may otherwise be adjusted by the Council under this Contract), the Contractor shall pay or allow to the Council the amount of any direct loss and/or expense suffered or incurred or likely to be incurred by the Council that is caused by that failure.
- 6.7 The Contractor shall not be entitled to any extension of time on account of any circumstance arising by reason of any error, omission, negligence or default of the Contractor or the Contractor's Persons.

## **7 The Site**

- 7.1 Subject to any restrictions noted in the Award Letter, the Council shall permit the Contractor to access so much of the Site as is reasonably required for the execution of the Works, but such access shall not be exclusive and the Contractor shall ensure that the Works are carried out so as not to delay or disrupt any other works or activities occurring on Site.
- 7.2 The Council may issue instructions refusing admission or requiring the removal of any persons (including any of the Contractor's Persons) if the Council considers that their standard of workmanship, performance and/or conduct is unsatisfactory and the Contractor shall make immediate arrangements for an alternative employee, or member of the Contractor's Persons to replace them without any adjustment to the Price or the period for completion.

## **8 Error, inadequacy or discrepancies in the Contract**

- 8.1 The Contractor shall provide written notice to the Council in the event that it becomes aware of any error, inadequacy, discrepancy or divergence within or between the documents forming the Contractor between the Contract and any

Statutory Requirements. Not later than 7 days after receipt of that notice, the Contractor shall provide a written statement setting out his proposed amendment to remove the error, inadequacy, discrepancy or divergence. The Council shall decide between the discrepant items or issue a direction to deal with the error, inadequacy, discrepancy or divergence within or between the documents forming the Contract or any Statutory Requirements and the Contractor shall comply with that direction. Subject to clause 8.2, any instruction issued under this clause 8.1 to deal with a correction, modification or alteration of the Contract Documents shall be treated as a Variation.

- 8.2 To the extent that an instruction issued under clause 8.1 to correct, modify or alter the Contract Documents arises as a result of:
- 8.2.1 any error, omission, negligence or default by or on behalf of the Contractor or the Contractor's Persons or any risk that is borne by the Contractor under this Contract;
  - 8.2.2 any error, inadequacy, discrepancy or divergence between the Works and any design carried out by the Contractor; or
  - 8.2.3 any changes in the Statutory Requirements that occur after the Commencement Date,

the Contractor shall not be entitled to an extension of time to the period for completion or increase in the Price in complying with that instruction.

## **9 Attendance and Health and Safety**

- 9.1 Unless otherwise stated in the Award Letter or otherwise agreed between the parties in writing, the Contractor shall provide at its own expense all material, labour, plant, equipment, storage, offload and transport necessary for the carrying out of the Works. The Contractor shall keep the Site clear of all debris arising out of its work and remove such debris from the Site at its own expense and in all respects leave the whole of the Site perfect on Completion, to the satisfaction of the Council.
- 9.2 The Contractor warrants that he will use well-maintained plant and equipment in carrying out the Works.
- 9.3 Upon request, the Contractor must provide evidence that it and its staff are sufficiently qualified and trained to comply with the obligations in the Contract. That evidence must be provided to the Council within 3 Working Days of a written request. If the Contractor fails to provide that evidence then the Council may request that any staff of the Contractor be removed from Site (at the Contractor's cost), until the Council is satisfied that that member of staff is sufficiently qualified and trained to comply with the obligations in this Contract.
- 9.4 The Contractor shall on reasonable request provide to the Council such information, explanations and documentation as the Council may reasonably require in relation to any health and safety related matters including but not limited to any matters which have been or are to be reported to and/or

investigated by the Health and Safety Executive or such other supervisory or regulatory body, organisation or agency having the statutory power to do so.

## **10 Fees and Payment**

- 10.1 In consideration of the Contractor's compliance with its obligations under this Contract, the Council shall pay to the Contractor the Price.
- 10.2 The Price shall be a fixed amount as detailed in the Award Letter and shall not be increased in any way other than in accordance with the express provisions of these Terms and Conditions.
- 10.3 The Price shall exclude any amount in respect of VAT and the Council shall, upon receipt of a valid and undisputed VAT invoice, pay such additional amounts in respect of VAT as are chargeable. If the Council is or at any time up to the final payment becomes a 'contractor' for the purposes of the CIS, its obligation to make any payment under this Contract is subject to the provisions of the CIS.
- 10.4 Unless otherwise agreed in the Award Letter, the Price shall be paid:
  - 10.4.1 on Completion, where Completion is achieved less than 45 days after commencement of the Works, or
  - 10.4.2 where the works are expected to last more than 45 days, at intervals of not less than one month, beginning one month after the Contractor begins performing the Works.
- 10.5 The Contractor shall submit an application for payment for each instalment of the Price (the "**Payment Application**"). The Payment Application must state as a minimum:
  - 10.5.1 the sum that the Contractor considers to be due to him at the due date and the basis upon which that sum is calculated;
  - 10.5.2 the Contractor's name, invoice number/reference and address; and
  - 10.5.3 the VAT number and split of VAT for each VAT rate (where applicable).
- 10.6 Payment Applications must be sent to the agreed contact point as stated in the Award Letter (or otherwise notified by the Council to the Contractor in writing) and in the electronic or paper format as stated in the Award Letter (or otherwise notified by the Council to the Contractor in writing).
- 10.7 Payment shall be due on either the relevant instalment date provided by this Contract or the date on which the Council receives each Payment Application, whichever is the later. Not later than 5 days after the due date the Council shall give a notice to the Contractor which shall specify the sum that it considers to be or have been due at the due date and the basis upon which that sum has been calculated (the "**Payment Notice**").

- 10.8 The final date for payment shall be 30 days after the due date for payment.
- 10.9 Subject to any Pay Less Notice given by the paying party under clause 10.10, the paying party shall pay the sum specified in the Payment Notice, or if no Payment Notice is provided the sum specified in the Payment Application, on or before the final date for payment.
- 10.10 Where the paying party intends to pay less than the sum stated as due in the Payment Notice, or if no Payment Notice is provided the sum specified in the Payment Application, the paying party may not later than 1 day prior to the final date for payment give notice to the other party that it intends to pay less (a "**Pay Less Notice**"). Any Pay Less Notice shall specify the sum that the paying party considers to be due on the date that the notice is served, and the basis on which that sum is calculated.
- 10.11 In the event that the sum specified in a Payment Notice is a negative figure showing a balance due to the Council, the Contractor shall, subject to any Pay Less Notice given under clause 10.10, pay the sum specified in the Payment Notice to the Council by the final date for payment. Where a Pay Less Notice is given by the Contractor to the Council, the payment to be made to the Council on or before the final date for payment shall not be less than the amount stated as due in the Pay Less Notice.
- 10.12 If the payer fails to pay an amount due to the other party by the final date for payment and fails to give a pay less notice under clause 10.10, simple interest shall be added to the unpaid amount from the final date for payment until the actual date of payment. This shall be calculated on a daily basis at the annual rate of 2% above the Base Rate. The parties acknowledge that the payer's liability under this clause 10.12 is a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.
- 10.13 Unless otherwise agreed in the Award Letter, the amount of each payment shall be the gross value of the Works calculated at the relevant due date for payment less:
  - 10.13.1 deduction of the sums previously paid under the Contract;
  - 10.13.2 any Loss, claim or proceedings incurred or likely to be incurred by the Council as a result of the Contractor's breach of this Contract; and
  - 10.13.3 (for all payments prior to the Council issuing notice that all defects, shrinkages or other faults have been notified to the Contractor prior to the expiry of the Rectification Period have been made good) Retention.
- 10.14 Notwithstanding any other term in the Contract:
  - 10.14.1 the Council shall be entitled to deduct from or off-set against any monies due from the Council to the Contractor any sum or sums for

which the Contractor is liable to the Council under this Contract or any other contract between the parties; and

- 10.14.2 if the Contractor becomes insolvent within the meaning contained within section 113 of the Housing Grants Construction and Regeneration Act 1996 after the date by which the Contractor's notice may be served in accordance with clause 10.7, the Council shall not be obliged to pay the sum that it would otherwise be obliged to pay.

## **11 Variations**

- 11.1 The Council may instruct a Variation to the Works and the Contractor shall comply with that Variation. If the Contractor fails to comply with an instruction then the Council may engage another contractor to carry out that instruction and to recover any additional costs incurred by the Council in connection with such employment as a debt from the Contractor.
- 11.2 The Price shall be adjusted to take account of the Variation, except to the extent that the Variation results in an increase in the Price arising from any error, omission, negligence or default of the Contractor, which for the avoidance of doubt shall be carried out at the Contractor's cost. The parties shall:
- 11.2.1 agree the cost of the Variation; or
  - 11.2.2 if the parties cannot agree to the cost of the Variation, the Variation shall be valued in accordance with the rates included in the Award Letter; or
  - 11.2.3 if a valuation using the rates in the Award Letter is not possible, value the Variation on a fair and reasonable basis
- 11.3 The Variation mechanism, instructed by the Council in accordance with clause 11.2, shall be the Contractor's exclusive remedy for seeking an increase to the Price under this Contract.
- 11.4 Without prejudice to the above, the Council may at its discretion issue an instruction to the Contractor to omit all or part of the Works and a fair and reasonable assessment shall be made by the Council of the impact of that instruction on the period for completion of the Works and the Price.

## **12 Defects**

- 12.1 The Contractor shall make good at its own cost and in accordance with the timetable set out in any instruction from the Council, all defects, shrinkages and other faults in the Works or in any part of them (whether before or after Completion) which arise due to the Contractor's failure to comply with this Contract.
- 12.2 Without prejudice to clause 12.1, if the Council informs the Contractor in writing that the Council reasonably believes that any part of the Works do not meet the requirements of the Contract the Contractor shall, at its own time and expense,

re-perform those parts of the Works in accordance with the Contract in such reasonable time as may be specified by the Council.

- 12.3 Where the Council reasonably considers that all defects, shrinkages and other faults that have been notified to the Contractor in writing prior to the expiry of the Rectification Period have been made good to the Council's satisfaction, the Council shall notify the Contractor of the same and the Retention shall be released in the next payment that arises thereafter.
- 12.4 If the Contractor fails to make good, or fails to make good within the timetable required from the Council, the defects, shrinkages or other faults, the Council shall be entitled to make an appropriate deduction from the Price or to recover as a debt from the Contractor the costs for the Council to procure making good of such defects, shrinkages or other faults.

## **13 Sub-Contracting**

- 13.1 The Contractor shall not, without the prior written consent of the Council, sub-contract, whether in whole or in part, any one or more of its obligations under the Contract.
- 13.2 In relation to any sub-contracting pursuant to clause 13.1:
  - 13.2.1 the Contractor shall remain responsible to the Council for all such sub-contracted Works and such sub-contracting shall not modify, diminish, reduce or in any other way affect the liability and/or obligations of the Contractor under the Contract;
  - 13.2.2 the Contractor's remuneration shall not be increased by the amounts payable by the Contractor to its sub-contractors;
  - 13.2.3 the Contractor shall be liable to the Council for any tortious acts and/or omissions of the person performing any sub-contracted Works;
  - 13.2.4 the Contractor shall ensure that its subcontract includes payment terms that oblige the Contractor to make payment to any subcontractor within 30 days of the due date for payment; and
  - 13.2.5 any failure by the Contractor to pay a subcontractor by the final date for payment may be published by the Council (including on government websites and the press).

## **14 Intellectual Property and Copyright**

- 14.1 Whilst the Contractor shall own all intellectual property rights (including copyright) relating to any material that it produces in the provision of the Works, the Contractor grants to the Council, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of that material for any purpose. This licence carries the right to grant sub-licences.

## **15 Insurance and indemnities**

- 15.1 From the date of commencement of the Works and for a period of 6 years from Completion, the Contractor shall ensure that it maintains all insurances necessary to discharge its obligations under this Contract including, without limitation, those specifically required by the Award Letter (the “**Insurances**”).
- 15.2 If requested by the Council, the Contractor shall within 7 days of such request produce evidence that the Insurances that it is required to maintain by the Contract are in force.
- 15.3 The Contractor shall be liable for and shall indemnify the Council against any Loss, claim or proceedings of whatever nature:
  - 15.3.1 to the extent that the same is due to any act, default or negligence on the part of the Contractor or those engaged by the Contractor;
  - 15.3.2 in respect of injuries or death to any person whatsoever (including a person employed by the Contractor, by the Council or by any Sub-Contractors) caused by or arising out of the execution of the Works;
  - 15.3.3 relating to loss, injuries or damage to any property or things (including the property or things of the Contractor) caused by or arising out of the execution of the Works,
  - 15.3.4 in respect of any claim made against the Council by a third party caused by or arising out of the performance of the Works,

except to the extent that the same is due to any act, neglect, omission or default of the Council.

## **16 Suspension and Termination**

- 16.1 Without affecting any other right or remedy available to it, the Council may suspend or terminate this Contract:
  - 16.1.1 immediately, if the Contractor commits any act of bankruptcy (including insolvency) or makes or enters into any deed of arrangement or composition with creditors or suffers or allows any execution whether legal or equitable to be levied on the Contractors property or obtained against the Contractor or if being a company, the Contractor enters into liquidation whether compulsory or voluntary (except liquidation for the purpose of amalgamation or reconstruction) or has an administrative receiver appointed;
  - 16.1.2 immediately, if the Contractor commits a Material Breach of any term of the Contract, which breach is irremediable, or if such breach is remediable, where the Contractor fails to remedy that breach within 14 days written notice to do so;
  - 16.1.3 immediately, if:

- (a) the Contract has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure;
  - (b) the Council becomes aware that the Contractor should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Contract; or
  - (c) any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.
- 16.1.4 on the expiry of 14 days written notice to the Contractor, for any other reason, within the Council's discretion.
- 16.2 The Contractor shall be paid for all reasonable costs arising from suspension, except to the extent that the suspension is caused by any circumstances or by reason of any error, omission, negligence or default of the Contractor or persons engaged by the Contractor.
- 16.3 In the event that the Contract is terminated in accordance with clause 16.1.1, 16.1.2 or 16.1.3, the Council shall be entitled to recover any Losses from the Contractor that it suffers as a result of the circumstances giving rise to the Council's ability to terminate the Contract.
- 16.4 Immediately upon termination, the Contractor shall:
- 16.4.1 provide to the Council all documents, materials, correspondence, papers, specifications, information contained within databases, manuals, guidance and any other information in its control or possession which the Council may require or requests in writing in order to assist in the timely and efficient transfer of the Works to any third party;
  - 16.4.2 deliver up to the Council or destroy (as directed by the Council) any Council property provided pursuant to this Contract; and
  - 16.4.3 with all reasonable dispatch remove or procure the removal from Site or any temporary buildings, plant, tools and equipment belonging to the Contractor.

## **17 Best Value**

- 17.1 The Contractor acknowledges that the Council is subject to the Best Value Duty. The Contractor shall, throughout the duration of the Contract, but only to the extent of its obligations in this Contract, make arrangements to secure continuous improvement in the way in which the Works are provided, having regard to a combination of economy, efficiency and effectiveness.

## **18 Contractor warranties and undertakings**

- 18.1 The Contractor warrants, represents and undertakes to the Council that on the Commencement Date and until completion of all of the Contractor's obligations under this Contract:
- 18.1.1 if it is a company, it is properly constituted and incorporated under the laws of England and has the corporate power to own its assets and to carry on its business as it is now being conducted;
  - 18.1.2 the information contained in the Award Letter remains true and accurate unless and to the extent that any changes have been notified to the Council and the Council has agreed to the provision of the Works on the basis of those changes and no others;
  - 18.1.3 it has the corporate power to enter into and to exercise its rights and perform its obligations under this Contract;
  - 18.1.4 all action necessary on the part of the Contractor to authorise the execution of and the performance of its obligations under this Contract has been taken;
  - 18.1.5 the obligations expressed to be assumed by the Contractor under this Contract are legal, valid, binding and enforceable to the extent permitted by law and are in the proper form for enforcement in England;
  - 18.1.6 the execution, delivery and performance by the Contractor of this Contract does not contravene any provision of:
    - (a) any existing law either in force, or enacted but not yet in force binding the Contractor;
    - (b) the Memorandum and Articles of Association of the Contractor;
    - (c) any order or decree of any court or arbitrator which is binding on the Contractor; or
    - (d) any obligation which is binding upon the Contractor or upon any of its assets or revenues;
  - 18.1.7 no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Contractor, pending or threatened against it or any of its assets which will or might have a material adverse effect on the ability of the Contractor to perform its obligations under this Contract;
  - 18.1.8 it is not the subject of any other obligation, compliance with which will, or is likely to have, a material adverse effect on the ability of the Contractor to perform its obligations under this Contract;

18.1.9 no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, threatened) for its winding up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;

18.1.10 it has not paid commission or agreed to pay any commission to any employee, agent, sub-contractor, officer or member of the Council either directly or through another on its behalf,

and the Council relies upon such warranties and representations.

18.2 The Contractor warrants and undertakes to the Council that for so long as this Contract remains in full force:

18.2.1 the Works shall be carried out by appropriately experienced, qualified and trained personnel with all due skill, care and diligence;

18.2.2 it shall discharge its obligations hereunder (including the provision of the Works) with all due skill, care and diligence including in accordance with Good Industry Practice and its own established internal procedures;

18.2.3 the Works are, and will continue to be:

(a) of satisfactory quality; and

(b) in conformance with the relevant specifications set out in the Award Letter and (if applicable) the manufacturers specifications and documentation;

18.2.4 should a problem in the provision of the Works arise the Contractor shall use best endeavours to remedy the problem at no cost to the Council;

18.2.5 it will upon becoming aware that any litigation, arbitration, administrative or adjudication or mediation proceedings before or of any court or arbitrator may be threatened or pending and immediately after the commencement thereof (or within ten (10) Working Days of becoming aware the same may be threatened or pending or within (10) Working Days after the commencement thereof where the litigation or arbitration or administrative or adjudication or mediation proceedings is against a Sub-Contractor) give the Council notice of all such litigation, arbitration, administrative or adjudication or mediation proceedings which would adversely affect, to an extent which is material in the context of the delivery of the Works, the Contractor's ability to perform its obligations under this Contract;

18.2.6 it will not without the prior written consent of the Council (and whether by a single transaction or by a series of transactions whether related or not) sell, transfer, lend or otherwise dispose of (other than by way of security) the whole or any part of its business or assets which

- would materially affect the ability of the Contractor to perform its obligations under this Contract;
- 18.2.7 it will not cease to be resident in the United Kingdom or transfer in whole or in part its undertaking, business or trade outside the United Kingdom;
  - 18.2.8 it will not undertake the performance of its obligations under this Contract for the provision of the Works otherwise than through itself or a Sub-Contractor; and
  - 18.2.9 it shall not without the written consent of the Council (such consent not to be unreasonably withheld or delayed) make any loans or grant any credit or give any guarantee or indemnity to or for the benefit of any person or otherwise voluntarily or for consideration assume any liability (whether actual or contingent) in respect of any obligation of any other person except in the ordinary course of business.
- 18.3 All warranties, representations, undertakings, indemnities and other obligations made, given or undertaken by the Contractor in these Terms and Conditions are cumulative and none shall be given a limited construction by reference to any other.
- ## **19 Data Protection**
- 19.1 The Contractor shall comply with any notification requirements under the Data Protection Act 2018 (the 'DPA') and both Parties shall duly observe all their obligations under the Data Protection Legislation, which arise in connection with this Contract.
  - 19.2 Notwithstanding the general obligation in 19.1, where, for the purposes of the Data Protection Legislation the Contractor is processing Personal Data as a Data Processor for the Council, clauses 19.2 to 19.17 shall apply.
  - 19.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Contractor is the Processor and the only processing that the Contractor is authorised to do is listed in the GDPR Schedule by the Council and may not be determined by the Contractor.
  - 19.4 The Contractor shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.
  - 19.5 The Contractor shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:
    - 19.5.1 a systematic description of the envisaged processing operations and the purpose of the processing;
    - 19.5.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;

- 19.5.3 an assessment of the risks to the rights and freedoms of Data Subjects;
- 19.5.4 and the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 19.6 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
- 19.6.1 process that Personal Data only in accordance with the GDPR Schedule, unless the Contractor is required to do otherwise by law. If it is so required, the Contractor shall promptly notify the Council before processing the Personal Data, unless prohibited bylaw;
- 19.6.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Council as appropriate to protect against a Data Loss Event having taken account of the:
- (a) nature of the data to be protected;
  - (b) harm that might result from a Data Loss Event;
  - (c) state of technological development; and
  - (d) cost of implementing any measures;
- 19.6.3 ensure that:
- (a) the Contractor Personnel do not process Personal Data except in accordance with this Contract (and in particular, the GDPR Schedule);
  - (b) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
    - (i) are aware of and comply with the Contractor's duties under this clause;
    - (ii) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-Processor;
    - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council or as otherwise permitted by this Contract; and
    - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data.

- 19.6.4 not transfer Personal Data outside of the EU unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
- (a) the Council or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR article 46 or LED Article 37) as determined by the Council;
  - (b) the Data Subject has enforceable rights and effective legal remedies;
  - (c) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Council in meeting its obligations); and
  - (d) the Contractor complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
- 19.6.5 at the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the Contract unless the Contractor is required by law to retain the PersonalData.
- 19.7 The Contractor shall notify the Council immediately if it:
- 19.7.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
  - 19.7.2 receives a request to rectify, block or erase any Personal Data;
  - 19.7.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - 19.7.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
  - 19.7.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by law; or
  - 19.7.6 becomes aware of a Data Loss Event.
- 19.8 The Contractor's obligation to notify under clause 19.7 shall include the provision of further information to the Council in phases, as details become available.
- 19.9 Taking into account the nature of the processing, the Contractor shall provide the Council with full assistance in relation to either party's obligations under

Data Protection Legislation and any complaint, communication or request made under clause 19.7 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:

- 19.9.1 the Council with full details and copies of the complaint, communication or request;
  - 19.9.2 such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - 19.9.3 the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 19.9.4 assistance, as requested by the Council, following any Data Loss Event;
  - 19.9.5 assistance, as requested by the Council, with respect to any request from the Information Commissioner's Office, or any consultation by the Council with the Information Commissioner's Office.
- 19.10 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
- 19.10.1 the Council determines that the processing is not occasional;
  - 19.10.2 the Council determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR, or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
  - 19.10.3 the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 19.11 The Contractor shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor.
- 19.12 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 19.13 Before allowing any Sub-Processor to process any Personal Data related to this Contract, the Contractor must:
- 19.13.1 notify the Council in writing of the intended Sub-Processor and processing;
  - 19.13.2 obtain the written consent of the Council;
  - 19.13.3 enter into a written agreement with the Sub-Processor which give effect to the terms set out in this clause, such that they apply to the Sub-Processor; and

- 19.13.4 provide the Council with such information regarding the Sub-Processor as the Council may reasonably require.
- 19.14 The Contractor shall remain fully liable for all acts or omissions of any Sub-Processor.
- 19.15 The Council may, at any time on not less than 30 Working Days' notice, revise this clause 19 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 19.16 The parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may, on not less than 30 Working Days' notice to the Contractor, amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 19.17 Notwithstanding clause 19.2 the parties agree that any term or condition of the Contract that attempts to limit the liability of the Contractor under this Contract with respect to any claims it may receive from the Council following any fine, damages, costs or any other claim imposed on the Council from the Information Commissioner's Office (the "ICO") (or such successor organisation or regulator thereof) (the "ICO Losses") or arising from any claim made against the Council by a third party arising out of or in connection with the Contractor's breach of this clause 19 shall have no effect, and, accordingly, notwithstanding any other terms or conditions of the Contract, the Contractor shall indemnify the Council in full for any Losses incurred by the Council as a result of the Contractor's breach of its obligations under this clause 19.

## **20 Anti-bribery**

- 20.1 The Contractor shall:
  - 20.1.1 comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (the "**Relevant Requirements**");
  - 20.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
  - 20.1.3 have and shall maintain in place throughout the term of this Contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and clause 20.1.2, and will enforce them where appropriate;
  - 20.1.4 promptly report to the Council any request or demand for any undue financial or other advantage of any kind received by the Contractor in connection with the performance of this Contract;
  - 20.1.5 immediately notify the Council (in writing) if a foreign public official acquires a direct or indirect interest in the Contractor (and the

- Contractor warrants that it has no foreign public officials as officers or employees at the date of this Contract); and
- 20.1.6 within one month of the Commencement Date and annually thereafter, certify to the Council in writing signed by an officer of the Contractor, compliance with this clause 20 by the Contractor and all persons associated with it. The Contractor shall provide such supporting evidence of compliance as the Council may reasonably request.
- 20.2 Without prejudice to clause 20.1, the Contractor shall ensure that any person associated with the Contractor who is performing services in connection with this Contract, does so only on the basis of a written contract which imposes on, and secures from such person, terms equivalent to those imposed on the Contractor in this clause 20 (the “**Relevant Terms**”). The Contractor shall, in any circumstances, be responsible for the observance and performance by such persons of the Relevant Terms, and shall, in any circumstances, be directly liable to the Council for any breach by such persons of any of the Relevant Terms howsoever arising.
- 20.3 Breach of this clause 20 shall be deemed to be an irremediable breach, pursuant to clause 16.1.2.
- 20.4 For the purpose of this clause 20, the meaning of ‘adequate procedures’, ‘foreign public official’, and whether a person is ‘associated’ with another person, shall be determined in accordance with:
- 20.4.1 section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act);
- 20.4.2 sections 6(5) and 6(6) of that Act; and
- 20.4.3 section 8 of that Act respectively.
- 20.5 For the purposes of this clause 20, a person associated with the Contractor includes, but is not limited to, any Sub-Contractor of the Contractor.
- 20.6 The Council shall be entitled to terminate this Contract with immediate effect and to recover from the Contractor the amount of any Loss resulting from such termination, if:
- 20.6.1 the Contractor shall have offered or given to any person any gift or consideration of any kind as inducement for reward for doing or forbearing to do or having done or forborne to do any action in relation to this Contract or any other agreement with the Council;
- 20.6.2 any like act shall have been done by any person employed by him or acting on his behalf (whether with or without the knowledge of the Contractor); or
- 20.6.3 in relation to any agreement with the Council, the Contractor or any person employed by him or acting on his behalf shall have committed

any offence under the Bribery Act 2010 or have given any fee or reward, the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

## **21 Freedom of information**

- 21.1 The Contractor acknowledges that the Council is subject to the requirements of the Code of Practice on Government Information, FOIA and the EIR and shall assist and co-operate with the Council to enable the Council to comply with its information disclosure obligations.
- 21.2 The Contractor shall:
  - 21.2.1 transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
  - 21.2.2 provide the Council with a copy of all information in its possession or power (being information held by the Contractor on behalf of the Council) in the form that the Council requires within five (5) Working Days of the Council's request (or such other period as the Council may specify); and
  - 21.2.3 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 EIR.
- 21.3 The Council shall be responsible for determining at its absolute discretion whether the commercially sensitive information and/or any other information:
  - 21.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the EIR; and/or
  - 21.3.2 is to be disclosed in response to a Request for Information.
- 21.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 21.5 The Contractor acknowledges that the Council may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of FOIA, be obliged in certain circumstances and/or following consultation with the Contractor to disclose information without consulting or obtaining consent from the Contractor, or despite having taken the Contractors' views into account, provided that the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate:
  - 21.5.1 to give the Contractor advanced notice; or failing that
  - 21.5.2 to draw the disclosure to the Contractor's attention after any such disclosure.

## **22 Confidentiality**

- 22.1 In respect of any Confidential Information it may receive from the other party (the “**Discloser**”) and subject always to the remainder of this clause 22, each party (the “**Recipient**”) undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party, without the Discloser’s prior written consent provided that:
- 22.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of this Contract;
  - 22.1.2 the provisions of this clause 22 shall not apply to any Confidential Information which:
    - (a) is in or enters the public domain other than by breach of this Contract or other act or omissions of the Recipient;
    - (b) is obtained by a third party who is lawfully authorised to disclose such information;
    - (c) is authorised for release by the prior written consent of the Discloser; or
    - (d) the disclosure of which is required to ensure the compliance of the Council with FOIA, EIR, or the Local Government Transparency Code 2015,

the Council may, in its sole discretion, elect to publish this Contract (including any variations to this Contract) in its entirety.

- 22.2 Nothing in this clause 22 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law or, provided that the information is subject to confidentiality undertakings equivalent to those set out in clause 22.1, to its professional advisors or insurers.

## **23 Social value**

- 23.1 The Contractor shall fulfil any social value requirements as set out in the Award Letter.

## **24 Safeguarding**

- 24.1 The parties acknowledge that the Contractor is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006.

- 24.2 The Contractor shall:

- 24.2.1 ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service ("DBS"); and
  - 24.2.2 monitor the level and validity of the checks under this clause 24 for each member of staff; and
  - 24.2.3 not employ, or use the services of, any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity, or who may otherwise present a risk to service users.
- 24.3 The Contractor warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is, or will be employed, or engaged by the Contractor in the provision of the Works is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 24.4 The Contractor shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 24 have been met.
- 24.5 In the event that:
- 24.5.1 a valid enhanced disclosure check has not been completed in respect of a person engaged by the Contractor in the provision of the Works; and/or
  - 24.5.2 the Council is of the reasonable belief that a person engaged by the Contractor in the provision of the Works has harmed or poses a risk of harm to service users,
- the Council may demand that the Contractor removes that person from the provision of Works under this Agreement at no cost to the Council.
- 24.6 The Contractor shall refer information about any person carrying out the Works to the DBS where it removes permission for such person to carry out the Works (or would have, if such person had not otherwise ceased to carry out the Works) because, in its opinion, such person has harmed or poses a risk of harm to the service users.

## **25 Conflict of interest**

- 25.1 The Contractor acknowledges and agrees that no conflict of interest exists between the Contractor and or any Sub-Contractor and the Council at the Commencement Date. In the event that the Contractor becomes aware of a conflict of interest between its own interests or those of a Sub-Contractor and the Council, it shall notify the Council of the full details of any such conflict of interest immediately.
- 25.2 The Council reserves the right to terminate this Contract immediately by notice in writing and/or take such steps as it shall deem necessary should it become

aware of a conflict of interest between itself and the Contractor or Sub-Contractor.

## **26 Audit**

- 26.1 The Council shall be entitled to carry out audits to determine whether the Contractor has performed its obligations under this Contract. For this purpose, the Contractor grants to the Council, its statutory auditors or any authorised agents of the Council, a right of reasonable access to any premises of the Contractor which are used in connection with the performance of the Contractor's responsibilities and obligations under this Contract. Such access shall include a right to access to all computer systems, personnel and financial records, minute books and any other relevant evidence (including obtaining relevant copies).
- 26.2 The Contractor shall afford the Council, its auditors or agents all co-operation and assistance reasonably required for the purposes of carrying out an audit of the Contractor's compliance with this Contract.

## **27 Assignment and novation**

- 27.1 The Contractor shall not assign, novate, or otherwise transfer its rights and obligations under the Contract in whole or in part, except with the prior written consent of the Council.
- 27.2 The Council may assign, novate or otherwise transfer its rights and obligations under this Contract in whole or part at its sole discretion.

## **28 Notices**

- 28.1 Any notice from one party to the other under or in connection with the Contract shall be:
- 28.1.1 in writing;
- 28.1.2 signed on behalf of the party giving it, marked for the attention of the representative of the receiving party as set out in the Award Letter, or as otherwise notified by either party to the other party from time to time;
- 28.1.3 sent by a delivery method listed below, or as otherwise agreed between the parties in writing:

### **Delivery method:**

- By hand registered address to the office or other Last party's known
- By pre-paid first-class post, recorded delivery or other next Working Day delivery service to the other party's registered office or last known address

### **Deemed delivery:**

- On signature of a delivery receipt
- At 09:00 on the second Working Day after posting

## **29 Third Party Rights**

- 29.1 The parties agree that no term of the Contract is enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to the Contract.

## **30 Dispute**

- 30.1 Where a dispute arises in connection with the Contract, a senior representative of each of the parties shall meet as soon as practicable after such dispute arises or a dispute is anticipated, and each party shall use its reasonable endeavours to resolve that dispute or anticipated dispute as soon as possible and in any event within ten (10) Working Days.
- 30.2 In the event that the senior representatives fail to settle the dispute, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution Model Mediation Procedure.
- 30.3 Unless agreed otherwise, each party shall bear its own costs in relation to the reference to the mediator and the mediator's fees and any costs properly incurred by him shall be borne by the parties equally.
- 30.4 Notwithstanding any other provision of this agreement either party may refer a dispute arising under this agreement to adjudication at any time under Part I of the Scheme for Construction Contracts (England and Wales) Regulations.

## **31 Governing Law**

- 31.1 The Contract shall be governed by and interpreted in accordance with the law of England in the Courts of England and Wales.