

## **General Terms and Conditions of Contract of East Hampshire District Council (“Council”) relating to small construction works projects**

For the avoidance of doubt, the Council will only enter into a legally binding contract with a Contractor for the Contractor to carry out works on the basis of these Conditions, which shall prevail absolutely and irrevocably over any terms and conditions (whether in writing or orally) of a Contractor.

If a Contractor accepts the Council's offer to carry out any works or otherwise proceeds to carry out any works on the instruction of the Council and it is at any time presented with a copy of these Conditions or sent or provided with a link to them, any Agreement which is made between the Council and the Contractor shall be on the basis of these Conditions.

### **1. Definitions and Interpretation**

1.1 The definitions and rules of interpretation set out in this Condition 1.1 shall apply:

**Agreement:** the agreement between the Council and the Contractor which is formed on the basis of the Conditions of this agreement.

**All Risks Insurance Policy:** an insurance policy providing all risks cover against the costs of full reinstatement of any physical loss or damage to work executed, site materials and removal, and the resulting disposal of debris, shoring and propping of works or other repair or reinstatements works;

**Applicable Law:** the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes prescribed by the Council acting reasonably which apply to the performance of this Agreement from time to time.

**Approval and Approved** means the written consent of the Contract Manager.

**Catastrophic Failure:** any action by the Contractor whether in relation to the Works and this Agreement or otherwise which in the reasonable opinion of the Contract Manager has or may cause significant harm to the reputation of the Council.

**CDM Principal Designer** means any responsible skilled and experienced person named by the Contractor to carry out the duties of the CDM principal designer or such like replacement as the Contractor at any time appoints to fulfil that role.

**CDM Regulations** means the Construction Design and Management Regulations 2015.

**Change Control Procedure:** the procedure for changing this Agreement as set out in Condition 25.

**Charges:** the charges which shall become due and payable by the Council to the Contractor in regard to the Works, to which the Council has given its express written agreement

**Commencement Date:** a date which has been prescribed by the Council and communicated to the Contractor

**Completion Date:** a date which has been prescribed by the Council and communicated to the Contractor

**Conditions:** these General Terms and Conditions of Contract

**Construction Phase Plan** means the plan prepared by the Contractor, where the Works are a notifiable project under the CDM Regulations, and in order to comply with regulations 12 and 15 of the CDM Regulations, including any updates and revisions.

**Contract Manager** means the person for the time being appointed by the Council as being authorised to administer the Contract on behalf of the Council or such person as may be nominated by the contract manager to act on its behalf.

**Contract Change:** a change to the Conditions pursuant to Condition 25.

**Contractor's Personnel:** all employees, staff, other workers, agents and consultants of the Contractor and of any Sub-Contractors who are engaged in the provision of the Works from time to time.

**Contract Standard:** means:

- (a) the standards, practices, methods and procedures (conforming to the 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; and
- (b) such standards as comply in each and every regard to all relevant provisions of the Agreement and the appropriate industry standards in place from time to time; and
- (c) where (or to the extent that) no criteria are stated in the Agreement, the standard is to be to the reasonable satisfaction of the Contract Manager.

**Contractor's Representative:** the person defined in condition 12

**Council's Premises:** the premises (if any) which are to be made available for use by the Contractor for the provision of the Works on the terms set out in the Conditions of this Agreement.

**Data Protection Legislation:** the Data Protection Act 2018 (DPA), United Kingdom General Data Protection Regulation (GDPR) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the United Kingdom and any successor legislation to the GDPR and the DPA; and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or successor body.

**Effective Date:** a date which has been prescribed by the Council and communicated to the Contractor or in the absence of such communication, the date on which the Contractor commences the Works

**Health and Safety Policy:** the health and safety policy submitted by the Contractor to the Council prior to the Effective Date.

**Insolvency Event:** where:

- (a) the Contractor suspends or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Contractor commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Contractor with one or more other companies or the solvent reconstruction of that other party;
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Contractor (being a company);
- (e) the holder of a qualifying floating charge over the assets of the Contractor (being a company) has become entitled to appoint or has appointed an administrative receiver; a person becomes entitled to appoint a receiver over the assets of the Contractor or a receiver is appointed over the assets of the Contractor;
- (f) the Contractor (being an individual) is the subject of a bankruptcy petition or order;
- (g) a creditor or encumbrancer of the Contractor attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within 14 days;
- (h) the Contractor suspends or ceases or threatens to suspend or cease, carrying on all or a substantial part of its business; or

- (i) the Contractor (being an individual) dies or, by reason of illness or incapacity (whether mental or physical) is incapable of managing his or her own affairs.
- (j) any event occurs, or proceeding is taken, with regard to the Contractor in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (i) inclusive);

**Necessary Consents:** all approvals, certificates, exemptions, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Works.

**Personal Data:** shall have the meaning given to it under the Data Protection Legislation.

**Practical Completion:** takes place when the Works are complete for all practical purposes and, in particular:

- (a) the relevant statutory requirements have been met with compliance and any Necessary Consents and approvals obtained;
- (b) neither the existence nor the execution of any minor outstanding works would affect its use without undue interference or disturbance;
- (c) the obligations of the Contractor under Condition 6 have been satisfied;
- (d) operating and maintenance information required to be delivered at or before Practical Completion has been so delivered to the Contract Manager;
- (e) the Contractor has provided the safety, inspection and testing certificates required to conform to the relevant appropriate standards in effect in England and Wales from time to time; and
- (f) the Contract Manager has agreed either (i) a snagging list provided by the Contractor of minor outstanding works or (ii) that there are no outstanding minor works.

**Prohibited Act:** the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:
  - (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) committing any offence:
  - (i) under the Bribery Act 2010;
  - (ii) under legislation or common law concerning fraudulent acts;
  - (iii) of defrauding, attempting to defraud or conspiring to defraud the Council.
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c)(i) to (iii) above if such activity, practice or conduct had been carried out outside of the United Kingdom.

**Remediation Notice:** a notice served by the Council in accordance with Condition 30.1.1.

**Site:** any site prescribed by the Council relating to the Works

**Sub-Contractors:** any person engaged by the Contractor from time to time as may be permitted by this Agreement to procure the provision of the Works. References to Sub-Contractors means Sub-Contractors (of any tier) of the Contractor.

**Term:** the period from and including the Effective Date until and including the date on which the Works are fully and absolutely completed to the reasonable satisfaction of the Council, but save as may be varied by:

- (a) the earlier termination of this Agreement according to its terms

**Termination Date:** the date of expiry or earlier termination of this Agreement, as is described in Term;

**VAT** means Value Added Tax;

**Working Day:** Monday to Friday and if required by the Council Saturday and Sunday but excluding any public holidays in England and Wales.

**Works:** All those works which have been agreed in writing between the Council and the Contractor and in the absence of any written document to that effect then those works specified by the Council (whether in writing or orally) to the Contractor

- 1.1.1 In this Agreement, references to conditions are references to the Conditions of this Agreement unless otherwise indicated or the context otherwise requires.
- 1.1.2 References to Acts of Parliament and other statutory provisions shall be deemed to include references to any amendment, replacement or re-enactment of the same.
- 1.1.3 In this Agreement, words denoting the singular include the plural and vice versa, words denoting one gender include the other genders and words denoting persons include firms, corporations and unincorporated associations.
- 1.1.4 Headings are included for ease of reference only and shall not affect the construction or interpretation of the Agreement.

## **2. Term**

This Agreement shall take effect on the Effective Date and shall continue for the Term.

## **3. Language**

This Agreement is drafted in the English language and any notice or other communication to be given under or in connection with this Agreement shall be in English.

## **4. Due Diligence and Contractor's Warranty**

- 4.1 The Contractor acknowledges and provides confirmation that:
  - 4.1.1 it has had an opportunity to carry out a thorough due diligence exercise in relation to the Works and has asked the Council all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Works according to the terms of this Agreement;
  - 4.1.2 it has received all information requested by it from the Council to enable it to determine whether it is able to provide the Works according to the terms of this Agreement;
  - 4.1.3 it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council;
  - 4.1.4 it has (or will have) raised all relevant due diligence questions with the Council before the Commencement Date; and
  - 4.1.5 it has entered into this Agreement in reliance on its own due diligence.
- 4.2 Save as provided in this Agreement, no representations, warranties or conditions are given or assumed by the Council in regard to any information which is provided to the Contractor by or on behalf of the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.
- 4.3 The Contractor:
  - 4.3.1 shall promptly notify the Council in writing if it becomes aware during the performance of this Agreement of any inaccuracies in any information provided to it by the Council during such due diligence which materially and adversely affects its ability to perform the Works.

- 4.4 The Contractor shall not be entitled to recover any additional costs from the Council which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified by the Council to the Contractor save where such additional costs or adverse effect on performance have been caused by the Contractor having been provided with fundamentally misleading information by or on behalf of the Council and the Contractor could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Contractor shall be entitled to recover such reasonable additional costs from the Council or shall be relieved from performance of certain obligations as shall be determined by the change control procedure set out in Condition 25.
- 4.5 Nothing in this Condition 4 shall limit or exclude the liability of the Council for fraud or fraudulent misrepresentation.

## **5. Entire Agreement**

The Agreement forms the sole and entire contract between the parties for the provision of the Works and, save as may be expressly referred to in this Agreement, supersedes all prior representations, writings, negotiations or understandings.

## **6. The Works**

- 6.1 The Contractor shall ensure that all work that it provides as part of the Works complies with the descriptions and specifications contained in this Agreement and that it operates within the Applicable Law. In particular, the Contractor shall (and shall procure that its Sub-Contractors and/or consultants) shall:
- 6.1.1 carry out and complete the Works in a proper workmanlike manner; and
  - 6.1.2 prepare and complete the design of the Works (including the preparation of design drawings) and carry out any consultation services which comprise a part of the Works with all reasonable skill, care and diligence;
- and, in each case, to the appropriate Contract Standard.
- 6.2 The Contractor shall carry out the construction, completion, commissioning and testing of the Works so that:
- 6.2.1 new materials only will be used in carrying out the Works (unless the Council agrees otherwise in writing) and all goods used or included in the Works will be of satisfactory quality, and
  - 6.2.2 products and materials are not included in the Works:
    - (i) unless they conform to the relevant British standards and applicable industry codes of practice;
    - (ii) if, at the time of use, they are widely known to building contractors or members of the relevant design profession within the United Kingdom to be deleterious to health or safety or to the durability of buildings and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which they are used;
  - 6.2.3 all persons employed in connection with the performance of the Works will be skilled and experienced in their several professions, trades and callings and adequately supervised;
  - 6.2.4 all aspects of the Works will be supervised by sufficient numbers of persons having adequate knowledge of such matters for the satisfactory and safe performance of the Works according to this Agreement and having regard to the activities which are carried on at the Site and to the nature of persons occupying the Site;
  - 6.2.5 the Works are maintained in good order, kept in a safe condition and protected from damage, and working areas of the Site are secure against trespassers and clean and tidy so far as practicable having regard to the nature of the Works;

- 6.2.6 (where relevant) adequate retaining and supporting walls are provided to support any adjoining property and, where appropriate, the existing facilities during the carrying out of the Works;
- 6.3 Any failure by any Sub-Contractor appointed by the Contractor to perform the Works to the Contract Standard shall be treated as a failure by the Contractor.
- 6.4 The Contractor shall comply with all instructions of the Contract Manager in connection with the provision of the Works.
- 6.5 Should the Contractor require any further instruction or information in connection with the provision of the Works, the Contractor's Representative shall make a request to the Contract Manager in sufficient time to allow the Contract Manager to make a proper response.
- 6.6 The Contractor shall co-operate with any other contractor engaged by the Council to provide services related to or connected with the Works.
- 6.7 The Contractor shall commence the Works on the Commencement Date and shall complete them by the Completion Date.
- 6.8 The Contractor shall periodically make arrangements to enable the Contract Manager to inspect and monitor progress of the Works at mutually convenient times. Both parties shall co-operate to ensure that such an inspection occurs prior the dates on which the Contractor is to issue an invoice.
- 6.9 The Contract Manager shall certify the date when, in his opinion, the Works have reached Practical Completion.
- 6.10 The Contractor may provide and agree with the Contract Manager a snagging list of outstanding minor works (if any) in order to enable the Contract Manager to certify that Works have reached Practical Completion. The Contractor shall expeditiously complete performance of any part of the Works listed on any snagging list. Such performance shall be completed as soon as practicable and no later than fourteen days (14) days after Practical Completion. Any minor works remaining incomplete shall be considered to be a defect.
- 6.11 The Contractor shall, at his own cost, complete any part of the Works which remain uncompleted at Practical Completion and, if first agreed by the Council, make good any defects identified during an agreed defects liability period. Such performance shall be completed expeditiously and as soon as practicable. Any minor works remaining incomplete at or after a time determined by the Contract Manager shall be considered to be a defect.
- 7. CDM Regulations**
- 7.1 **Responsibility for Design:** As between the Contractor and the Council, the Contractor shall be responsible for the safety of any design which forms part of the Works and for the adequacy, stability and safety of all site operations and methods of construction.
- 7.2 **The Contractor as Client:** Pursuant to the CDM Regulations, the Council and the Contractor have elected that the Contractor shall be, and shall be treated as the only client in regard to the Works pursuant to Regulation 8 of the CDM Regulations. The Contractor shall not, prior to the completion of the Works, seek in any way to withdraw, terminate or derogate from such election.
- 7.3 **Duties under the CDM Regulations:** The Contractor shall observe, perform and discharge and/or shall procure the observance, performance and discharge of the obligations, requirements and duties arising under the CDM Regulations in connection with the Works (other than those that remain with the Council pursuant to Regulation 8 of the CDM Regulations).
- 7.4 **Council to Co-operate and Provide Information:** Notwithstanding the election made under condition 7.2, the Council shall observe and continue to observe the duties that are, pursuant to Regulation 8 of the CDM Regulations, to remain with the Council.
- 8. Compliance**

- 8.1 The Contractor shall ensure that all Necessary Consents are in place to provide the Works and the Council shall not (unless otherwise agreed in writing) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 8.2 Where there is any conflict or inconsistency between the provisions of the Agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Contractor has made all reasonable attempts to obtain a Necessary Consent according to the requirements of the Agreement.
- 8.3 8.3.1 The Contractor shall perform its obligations under the Agreement (including those in relation to the Works) according to:
- 8.3.1.1 all laws regarding health and safety; and
  - 8.3.1.2 the Health and Safety Policy whilst at the Site.
- 8.3.2 The Contractor shall notify the Contractor's Personnel and the Council of any health and safety hazards that exist or that may arise in connection with the performance of the Works.
- 8.4 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Site of which it becomes aware and which relate to or arise in connection with the performance of the Agreement. The Contractor shall instruct the Contractor's Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.
- 8.5 The Contractor shall use all reasonable endeavours to comply with the Council's environmental policies from time to time and any instructions from the Council regarding abatement of noise pollution, nuisance and inconvenience.
- 8.6 The Contractor undertakes to ensure that all the Contractor's Personnel comply with all of the Council's policies and standards that are relevant to the performance of the Works, including without limitation those relating to health and safety, security, business ethics, work place harassment and any other on-site regulations specified by the Council for the Contractor's Personnel working at the Site. The Council shall provide the Contractor with copies of or hyperlinks to such policies on request.
- 8.7 The Contractor shall provide the Works in compliance with all the requirements of any Act of Parliament, statutory instrument or order or any other regulation having the force of law or bye-law and all regulatory requirements relevant to the Contractor's business and/or the Council's business from time to time in force, which are or may become applicable to the Works. In all cases, the costs of compliance shall be borne by the Contractor and the Contractor shall fully indemnify the Council from and against all losses, costs, expenses, damages, liabilities, demands, claims, actions and proceedings which the Council may incur bear or be imposed on it arising out of any breach by the Contractor of the provisions of this Condition 8.7.
- 9. Council's Site and Assets**
- 9.1 From the Commencement Date until the date when the Works are completed (or, if earlier, the Termination Date), the Council will afford the access to the Site (by way of licence only) to the Contractor for the purpose of implementing the Works.
- 9.2 In the event of the expiry or early termination of the Agreement, the Council shall on reasonable notice provide the Contractor with such access as the Contractor reasonably requires to the Site to remove any of the Contractor's equipment. All such equipment shall be promptly removed by the Contractor and any damage caused to the Site thereby shall be remedied by the Contractor promptly.
- 9.3 The Contractor shall abide by the Contract Manager's instructions from time to time relating to use of the Site.
- 9.4 The Council shall maintain and repair the Site in whatever way it sees fit; however, where such maintenance or repair arises directly from the act, omission, default or negligence of the Contractor or its representatives (fair wear and tear excluded) the costs incurred by the

Council in maintaining and repairing the same shall be recoverable from the Contractor as a debt.

- 9.5 The Contractor shall notify the Council immediately on becoming aware of any damage caused by the Contractor, its agents, employees or Sub-Contractors to any property of the Council or the Site or to any property of any third party in the course of performing the Works.

## **10. Charges and Payment**

- 10.1 In consideration of the Contractor diligently performing the Works according to the Conditions of this Agreement, the Council shall pay the Charges to the Contractor.
- 10.2 Prior to submission of an invoice or invoices, the Contractor shall arrange with the Contract Manager an inspection of the Works performed and a valuation of the Works.
- 10.3 Each invoice shall:
- 10.3.1 contain all appropriate references and a detailed accurate and proper breakdown of the Works carried out;
  - 10.3.2 be supported by any other documentation required by the Contract Manager to substantiate the invoice; and
  - 10.3.3 be addressed to the Contract Manager.
- 10.4 The Council will consider and verify an invoice which complies with this Condition 10 within fourteen (14) days of receipt.
- 10.5 The Council may reduce payment in regard to any Works which the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Council.
- 10.6 The Council shall pay the Contractor any sums due under such an invoice no later than a period of thirty (30) Working Days from the date on which the Council has determined that the invoice is valid and undisputed.
- 10.7 Where the Council fails to comply with Condition 10.4, the invoice shall be regarded as valid and undisputed fifteen (15) days after the date on which it is received by the Council.
- 10.8 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Council following delivery of a valid VAT invoice. The Contractor shall fully indemnify the Council from and against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Council at any time in regard to the Contractor's failure to account for, or to pay, any VAT relating to payments made to the Contractor under this Agreement.
- 10.9 The Contractor shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Council pursuant to this Agreement. Such records shall be retained for inspection by the Council for six (6) years from the Termination Date.

## **11. Contract Manager**

- 11.1 The Contract Manager shall be the Council's officer who shall be authorised to give instructions to, and to receive enquiries from, the Contractor in regard to this Agreement and the Works. The Contractor shall comply with all instructions of the Contract Manager.

## **12. Contractor's Representative and Contractor's Personnel**

- 12.1 The Contractor shall appoint a competent person to manage the performance of the Works (the "**Contractor's Representative**"), who shall be authorised to act on behalf of the Contractor for all purposes concerned with the Agreement. The name and contact details will be provided to the Contract Manager as promptly as possible. Any statement or instruction made or given to the Contractor's Representative shall be deemed to have been given to the Contractor and the Contractor shall act on such instructions as soon as reasonably possible. The Contract Manager may but shall not be obliged to follow up oral instructions with written instructions.



- 12.2 The Contractor's Representative shall be available during working hours to communicate with and receive instructions from the Contract Manager and shall be contactable both during working hours and outside of them in case of emergency.
- 12.3 If the Contractor's Representative is, for any reason, unavailable, he shall nominate a deputy to perform the duties of the Contractor's Representative.
- 12.4 The Contractor shall give notice of any change of the Contractor's Representative or his deputy to the Contract Manager immediately.
- 12.5 The Contractor shall be responsible for the acts and omissions of the Contractor's Personnel.
- 12.6 The Contractor shall engage sufficient competent, qualified and experienced persons to ensure that the Works are provided at all times and in all ways which accord to the Agreement.
- 12.7 The Contractor warrants to the Council that the Works shall be rendered by appropriately experienced, qualified and trained personnel and other persons.
- 12.8 The Contractor warrants that all members of the Contractor's Personnel will be suitable persons to be employed in the provision of the Works.
- 12.9 The Contract Manager may, if he considers it reasonable to do so because of the nature of the Works or the locations at which they are to be provided or the behaviour of any of the Contractor's Personnel, require such personnel to be removed from the provision of the Works and the Contractor will comply with that instruction.
- 12.10 The Contractor shall ensure that, in providing the Works, the Contractor's Personnel do not trespass on any premises of the Council or of any third party.

### **13. Health and Safety**

- 13.1 The Contractor shall at all times comply with and shall ensure that all Contractor's Personnel comply with the requirements of the Health and Safety at Work etc. Act 1974, the Management of Health and Safety at Work Regulations 1999 and of all other Acts, Regulations, Orders or rules of law relating to health and safety.
- 13.2 Without prejudice to the generality of Condition 13.1, the Contractor shall comply with all generally recognised good working practices and codes applicable to the Works.

### **14. Observance of Statutory Requirements**

- 14.1 The Contractor warrants, represents and undertakes on an on-going basis that it will perform and procure the performance of its obligations under this Agreement in compliance with all Applicable Law and that it has, and will continue to hold, all consents and regulatory approvals necessary to provide the Works.
- 14.2 Without prejudice to any other Conditions, the Contractor shall comply with all statutory requirements to be observed and performed in connection with the Works and shall fully indemnify the Council from and against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in regard to any breach by the Contractor of this Condition 14.

### **15. Equal Opportunities and Harassment**

- 15.1 The Contractor will comply with the Council's equality policy, prevention of bullying and harassment at work policy and safeguarding and modern slavery policies as well as any other policies which the Contract Manager may notify to the Contractor from time to time.

### **16. Risk Assessment**

- 16.1 The Contractor shall submit to the Council for approval a risk assessment in regard to the provision of the Works no less than two weeks before the Commencement Date.

### **17. Complaints**

- 17.1 The Contractor's Representative shall deal with any complaints about its provision of the Works, received from whatever source, in a prompt, courteous and efficient manner.

- 17.2 The Contractor shall set up an internal process for dealing with complaints and shall keep a written record of all complaints received and of the action taken in relation to such complaints.
- 17.3 The Contractor shall promptly inform the Contract Manager in writing of all complaints received and of all steps taken, and shall permit its record of complaints to be inspected at all reasonable times by the Contract Manager and any other person nominated by him.
- 18. Gratuities**
- 18.1 The Contractor shall not, whether itself or by any of its Personnel engaged in the provision of the Works, solicit or accept any gratuity, tip or any other form of money-taking or reward, or collection, or charge for any part of the Works, other than Charges properly made according to the terms of the Agreement.
- 19. Publicity and Reporting**
- 19.1 The Contractor shall not speak to the press or broadcasting media about any matters unless it holds the prior consent of the Council.
- 19.2 From time to time, the Council may require the Contractor to provide reports to, or be involved in discussions with, elected Council members, in particular, the Scrutiny Committee of the Council. The Contractor shall, at its own cost, comply with the Council's reasonable requirements.
- 20. Freedom of Information**
- 20.1 The Contractor acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIRs"). The Contractor shall:
- 20.1.1 provide all necessary assistance and co-operation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and EIRs;
  - 20.1.2 transfer to the Council all requests for information relating to the Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
  - 20.1.3 provide the Council with a copy of all information belonging to the Council requested in the request for information which is in its possession or control in the form that the Council requires within 5 Working Days (or such other period as the Council may reasonably specify) of the Council's request for such Information; and
  - 20.1.4 not respond directly to a request for information unless authorised in writing to do so by the Council.
- 21. Data Protection**
- 21.1 Both Parties shall comply with all applicable requirements of the Data Protection Legislation (and the Contractor shall procure that the Contractor's Personnel involved in the provision of the Works shall comply with the same) which are related to this Agreement.
- 21.2 The Contractor shall comply, and shall procure that the Contractor's Personnel shall comply, with the Council's data protection policy and its relevant obligations under the Data Protection Legislation as well as with the lawful commands of the Council's Data Protection Officer if the Contractor ever receives or views Personal Data or is asked by the Council to process Personal Data.
- 22. Confidentiality**
- 22.1 Subject to Condition 22.2 the parties shall keep confidential all matters relating to this Agreement and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any matters relating to this Agreement.
- 22.2 Condition 22.1 shall not apply to any disclosure of information:
- (a) required by any Applicable Law or a Court or Tribunal

- (b) that is reasonably required by persons engaged by a party in the performance of such party's obligations under the Agreement;
  - (c) where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of Condition 22.1;
  - (d) by the Council of any document to which it is a party and which the parties to the Agreement have agreed contains no commercially sensitive information;
  - (e) to enable a determination to be made under Condition 33;
  - (f) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
  - (g) by the Council to any other department, office or agency of the United Kingdom's Government; and
  - (h) by the Council relating to the Agreement and in regard to which the Contractor has given its prior written consent to disclosure.
- 22.3 On or before the Termination Date the Contractor shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the Council's employees, rate-payers or service users, are delivered up to the Council or securely destroyed.

### **23. Intellectual Property Rights**

- 23.1 Copyright in documents provided or prepared by the Contractor in connection with the Agreement shall vest in the Council but the Contractor shall have an unrestricted licence to use, reproduce and copy such documents for all purposes arising under the Agreement.
- 23.2 The Contractor shall not, in connection with the Works or the Agreement, use, create, supply or deliver any process, article, matter or thing in infringement of any intellectual property right.
- 23.3 Subject to the Council's proper observance of its obligations under this Agreement, the Contractor shall fully indemnify the Council from and against all actions, claims, demands, costs, charges or expenses (including legal costs) that arise from or are incurred by reason of any infringement or alleged infringement of any intellectual property rights and against all costs and damages of any kind which the Council may incur in or in connection with any actual or threatened proceedings before any Court Tribunal or arbitrator.
- 23.4 Ownership in information provided by the Council to the Contractor for use in connection with the Works shall remain in the Council at all times and the Contractor shall ensure that all information is readily identifiable as belonging to the Council.

### **24. Monitoring the Agreement**

- 24.1 The Contractor shall, during the Term and for a period of six years subsequently, keep current and accurate records of all work carried out and all information required to be kept (whether by law or by the Council) relating to its provision of the Works.
- 24.2 The Contractor shall allow the Contract Manager or his nominees access at all reasonable times to:
  - 24.2.1 all documents, records, data and information in the Contractor's possession, custody or control that relates to the Works;
  - 24.2.2 any of the Contractor's Personnel for the purpose of interviewing them about the provision of the Works; and
  - 24.2.3 all technology, resources, systems and procedures used by the Contractor in connection with the provision of the Works.

### **25. Changes to the Agreement**

- 25.1 This Agreement may only be changed by a deed in writing and executed by each of the Council and the Contractor.

### **26. Indemnities**

- 26.1 Neither party excludes or limits liability to the other party for death or personal injury caused by its negligence or for any breach of any obligations implied by section 2 of the Supply of Goods and Services Act 1982.
- 26.2 The Contractor shall be liable for and shall fully indemnify and keep fully indemnified the Council, its employees and agents from and against all liabilities, actions, damages, costs, losses, claims, expenses, demands and proceedings whatsoever and howsoever arising and whether arising directly or indirectly out of or in the course of or in connection with any one or more of the following:
- 26.2.1 the performance of or failure to carry out or perform all or part of the Works;
  - 26.2.2 the use or occupation by the Contractor or its Personnel of any premises or land;
  - 26.2.3 any breach by the Contractor of any provision of the Agreement;
  - 26.2.4 any claim relating to the wrongful execution of any work done by the Contractor in the performance of the Agreement;
  - 26.2.5 any loss or failure to account for all sums received or receivable by the Contractor;
  - 26.2.6 information wrongly or incompletely held, used or supplied to the Council in breach of the Data Protection Legislation;
  - 26.2.7 the Contractor's failure to comply with the instructions of the Contract Manager;
- but this Condition shall not apply to the extent that the Contractor is able to demonstrate that such death or personal injury, or loss or damage was caused by the Council.
- 26.3 Subject always to Condition 26.1, in no event whatsoever shall the Council be liable to the Contractor for any one or more of the following:
- 26.3.1 loss of profits, business, revenue or goodwill;
  - 26.3.2 loss of savings, whether anticipated or otherwise;
  - 26.3.3 indirect or consequential loss or damage;
  - 26.3.4 any loss or damage, whether direct, indirect or consequential, arising out of termination of the Agreement by the Council under Condition 30.

## **27. Insurances**

- 27.1 The Contractor shall, throughout the Term, take out and maintain with a reputable insurer a policy of insurance in regard to professional indemnity risks for not less than two million Pounds in regard to any one claim or series of claims.
- 27.2 The Contractor shall, throughout the Term, take out and maintain with a reputable insurer a policy of insurance in regard to employer's liability risks for not less than five million Pounds in regard to any one claim or series of claims.
- 27.3 The Contractor shall, throughout the Term, take out and maintain with a reputable insurer a policy of insurance in regard to public liability risks for not less than ten million Pounds in regard to any one claim or series of claims.
- 27.4 The Contractor shall arrange and maintain in effect an All Risks Insurance Policy with a reputable insurer in joint names for the full reinstatement value of the Works up to and including the date of Practical Completion as evidenced by a practical completion certificate.
- 27.5 The Contractor shall supply to the Council forthwith and upon each renewal date of any relevant policy, copies of each policy and evidence of payment of all premiums.

## **28. Non-availability**

- 28.1 The Contractor shall inform the Contract Manager promptly in writing if:
- 28.1.1 the Contractor is unable or fails to perform or provide the Works or any part of them;  
or

28.1.2 the Contractor is aware of anything which prevents or hinders, or which might prevent or hinder the Contractor from complying with this Agreement PROVIDED THAT the provision of information under this Condition shall not in any way release or excuse the Contractor from any of its obligations under the Agreement.

**29. Failure in provision of the Works**

29.1 If at any time during the Term the Contractor fails to perform or provide the Works or any part of them to the Contract Standard, the Council may:

29.1.1 charge to the Contractor any additional costs incurred by the Council;

29.1.2 (acting reasonably) suspend the provision of the Works by the Contractor in whole or in part until such time as the Contract Manager is satisfied that the Contractor can properly provide the Works, or such part of the Works as has been suspended;

29.1.3 determine the Agreement in regard to the whole or any part of the Works and subsequently provide or procure a third party to provide such part of the Works; and

29.1.4 determine the Agreement in accordance with Condition 30.

**30. Termination**

**30.1 Termination for Breach:**

The Council may terminate this Agreement in whole or in part with immediate effect by the service of written notice on the Contractor in any one or more of the following circumstances:

30.1.1 if the Contractor is in breach of any material obligation under this Agreement unless the breach is capable of remedy, in which case, the Council may only terminate this Agreement pursuant to this Condition 30.1.1 if the Contractor has failed to remedy such breach within 28 days of receipt of notice from the Council or such shorter period as is necessary due to the circumstances (a "**Remediation Notice**");

30.1.2 if a Catastrophic Failure has occurred;

30.1.3 if there is an Insolvency Event;

30.1.4 if there is a change of control of the Contractor within the meaning of section 1124 of the Corporation Tax Act 2010;

30.1.5 if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.

30.1.6 pursuant to Condition 29.1

30.2 The Council may terminate this Agreement according to the provisions of Condition 31 and Condition 32.

30.3 If this Agreement is terminated by the Council for breach, the Contractor will fully indemnify the Council from and against any losses expenses damages claims and costs which the Council may suffer as a result of any such termination for breach.

**30.4 Termination on Notice:**

Without affecting any other right or remedy available to it, the Council may terminate this Agreement at any time by giving one months' written notice to the Contractor or such shorter written notice as the Council acting reasonably deems suitable.

**31. Force Majeure**

31.1 Subject to the remaining provisions of this Condition 31, neither party to this Agreement shall be liable to the other for any delay or non-performance of its obligations under this Agreement to the extent that such delay or non-performance is due to:

31.1.1 events, circumstances or causes beyond its reasonable control ("**Force Majeure Event**").

31.2 In the event that either party is delayed or prevented from performing its obligations under this Agreement by a Force Majeure Event, such party shall:

- 31.2.1 give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
- 31.2.2 use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Agreement; and
- 31.2.3 resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 31.3 A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 31.4 The Contractor cannot claim relief if the Force Majeure Event is one where a reasonable contractor should have foreseen and provided for the cause in question.
- 32. Prevention of Bribery**
- 32.1 The Contractor represents and warrants that neither it, nor to the best of its knowledge any Contractor's Personnel, have at any time prior to the Commencement Date:
  - 32.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and
  - 32.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 32.2 The Contractor shall not during the Term:
  - 32.2.1 commit a Prohibited Act; and
  - 32.2.2 do or suffer anything to be done which would cause the Council or any of the Council's employees, consultants, contractors, sub-contractors or agents to infringe any part of the Bribery Act 2010 or otherwise incur any liability in relation to the Bribery Act 2010.
- 32.3 The Contractor shall during the Term of this Agreement:
  - 32.3.1 establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act 2010 and prevent the occurrence of a Prohibited Act; and
  - 32.3.2 keep appropriate records of its compliance with its obligations and make such records available to the Council on request.
- 32.4 The Contractor shall immediately notify the Council in writing if it becomes aware of any breach of this Condition 32, or has reason to believe that it has or any of the Contractor's Personnel have:
  - 32.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - 32.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and
  - 32.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.
- 32.5 If the Contractor makes a notification to the Council, the Contractor shall respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit any books, records and any other relevant documentation.
- 32.6 If the Contractor is in default under this Condition 32, the Council may by notice:

- 32.6.1 require the Contractor to remove from performance of this Agreement any Contractor's Personnel whose acts or omissions have caused the default; or
  - 32.6.2 immediately terminate this Agreement.
- 32.7 Any notice served by the Council under this Condition 32 shall specify the nature of the Prohibited Act, the identity of the party who the Council believes has committed the Prohibited Act and the action that the Council has elected to take (including, where relevant, the date on which this Agreement shall terminate).

### **33. Dispute Resolution**

- 33.1 The Parties shall attempt, in good faith, to resolve any dispute promptly by negotiation which shall be conducted as follows:
  - 33.1.1 the dispute shall be referred, by either party, first to the Contractor's Representative and the Contract Manager for resolution; and
  - 33.1.2 if the dispute cannot be resolved by the Contractor's Representative and the Contract Manager within 20 Working Days after the dispute has been referred to them, it shall then be referred for resolution to the Chief Executive of the Council and a senior director or officer of the Contractor.
- 33.2 If the Chief Executive and senior director or officer referred to in condition 33.1.2 are unable to resolve the dispute within a further 20 Working Days of the referral, then either party may give notice to the other party in writing referring the matter to mediation to be conducted according to Condition 33.3.
- 33.3 The following provisions shall apply to any such reference to mediation:
  - 33.3.1 the reference shall be a reference under the model mediation procedure of the Centre for Effective Dispute Resolution ("**CEDR**") for the time being in force; and
  - 33.3.2 both parties shall, immediately on such referral, co-operate fully, promptly and in good faith with CEDR and the mediator

### **34. Assignment and Sub-letting**

- 34.1 Neither party shall assign, novate or otherwise dispose of any or all of its rights and obligations under this Agreement without the prior written consent of the other party and neither may the Contractor sub-contract the whole or any part of its obligations under this Agreement except with the express prior written consent of the Council.

### **35. Waiver**

Failure by the Council at any time to enforce any or all of the provisions of this Agreement or to require performance by the Contractor of any of its obligations shall not be construed as a waiver.

### **36. Right of set-off**

Wherever under this Agreement any sum of money shall be recoverable from or payable by the Contractor to the Council, the same may be deducted from any sum then due or which at any time subsequently may become due to the Contractor under this Agreement or any other contract with the Council.

### **37. No Agency or Partnership**

- 37.1 Nothing in the Agreement shall be construed as establishing or implying any agency, partnership or joint venture between the Council and the Contractor.

- 37.2 The Contractor shall not, and shall ensure that the Contractor's Personnel do not, hold itself or themselves out as an agent of the Council otherwise than in circumstances expressly permitted by this Agreement.

**38. Third Party Rights**

Nothing in the Contracts (Rights of Third Parties) Act 1999 shall operate to give any person or body or corporation or authority not party to this Agreement the right to enforce any term of this Agreement.

**39. Notices**

- 39.1 Any formal demand, notice or other communication required to be given pursuant to this Agreement shall be sufficiently served if sent by recorded delivery post or special delivery post or by electronic mail followed by recorded delivery post or special delivery post to the Council's main office from time to time and to any official or last known address of the Contractor and, if so sent, shall (subject to proof to the contrary) be deemed to have been received by the addressee (in the case of transmission by post) on the second Working Day after the date of posting.

**40. Law of the Contract and Jurisdiction**

- 40.1 This Agreement shall be governed and construed according to the laws of England and Wales and subject to condition 33 the parties acknowledge and submit to the exclusive jurisdiction of the Courts of England and Wales.

**41. Financial Systems and Audit Arrangements**

- 41.1 The Contractor shall at all times during the provision of the Works allow the Council and the internal and external auditors of the Council access to all its offices, places, information and persons connected with the Contractor as are necessary for the Council and its internal and external auditors to carry out any audits or investigations which are required pursuant to any Applicable Law.
- 41.2 Without prejudice to the generality of condition 41.1, the Contractor shall allow and procure for the Council and/or its internal and external auditors if so required full access to the Contractor's auditors both through the Contractor and directly for the purposes of certifying all information relating to the financial systems used by the Contractor for the ascertainment of the sums payable to or by the Council under this Agreement.
- 41.3 The Contractor shall keep detailed records of all costs and expenses it has incurred, and of payments made and received in providing the Works on an "open book" basis, i.e. on the basis that records of all such costs and expenses are maintained in a fully auditable manner and are made available to the Council (and/or any person or persons authorised by the Council) whenever reasonably required for the purposes of verification and audit in connection with the Works. The Contractor shall keep such records for a period of 12 years after the Term.
- 41.4 For the avoidance of doubt the Council shall not be liable or responsible for the costs of the Contractor incurred in its compliance with this Condition 41.

**42. The Council's Functions as a Local Authority**

Nothing in this Agreement shall prejudice or affect the Council's rights, powers, duties and obligations in relation to the exercise of its functions as a local authority.

**43. Severability**

- 43.1 If one or more of the provisions of this Agreement are or become to any extent invalid or unenforceable under any Applicable Law then the remainder of this Agreement shall continue in full force and effect.
- 43.2 If this happens then both parties shall enter into good faith negotiations to amend the provision concerned in such a way that as amended, it is valid and enforceable and to the maximum extent possible, carries out both parties' original intent.