

EXETER CITY COUNCIL TERMS AND CONDITIONS FOR THE PERFORMANCE OF MINOR WORKS FOR CONTRACTS OF A CONTRACT VALUE BELOW £75,000.00.

THESE CONDITIONS MUST BE USED IN COMBINATION WITH THE QUOTATION FORM.

WHERE PERSONAL DATA IS BEING PROCESSED SCHEDULE THREE DATA PROTECTION SCHEDULE MUST BE COMPLETED.

These terms and conditions govern the Contractor's performance of Works to the Council and are incorporated into the Contract Documents.

PARTIES:-

- (1) **EXETER CITY COUNCIL** of Civic Centre, Paris Street, Exeter, Devon, EX1 1JN ("the Council") of the one part; and
- (2) **THE CONTRACTOR** whose name, registered office or principal place of business as stated in the Purchase Order and the Quotation Form ("the Contractor");

1. INTERPRETATION

1.1 Definitions.

All Risks Insurance: means all risks insurance cover against the Insurance Events including any physical loss or damage to the Works and the Materials with a limit of indemnity of not less than the amount stated in the Quotation Form.

Application for Payment: means an application for payment made to the Council in the form of a valuation statement detailing all Schedule of Works numbers, item descriptions, rates and variations.

Approved Application for Payment: An Application for Payment that has been approved by the Council.

Completion Date: means the date the Works Period ends.

Conditions: means these terms and conditions including the Schedules.

Confidential Information: all information of a confidential nature disclosed or made available directly or indirectly to the Contractor or its Representatives, including any information which is marked confidential or private and any information relating to the Council's members, customers, clients, suppliers, business strategy, plans, intentions, market opportunities, operations, processes or intellectual property.

Contract: means the Purchase Order, the Quotation Form, Schedule One and Schedule Three and where specified in the Quotation Form Schedule Two and the Contract Documents including these Conditions.

Contract Administrator: means the appointed representative of the Council notified to the Contractor in writing.

Contract Documents: means all the documents listed in the Purchase Order or in the Quotation Form.

Contract Value: means the price set out in the Quotation Form or in the Purchase Order.

Council Materials: has the meaning set out in clause 3.3 (i).

Council's Acceptance: means the issue by the Council of a Purchase Order to the Contractor.

Data Protection Legislation: the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the GDPR and any other directly applicable European Union regulation relating to privacy.

Deliverables: all products and materials developed by the Contractor or its agents, contractors and employees as part of or in relation to the Works in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

Information: has the meaning given under section 84 of the Freedom of Information Act 2000.

FOIA: means the Freedom of Information Act 2000.

Insurances: Employer's liability insurance with a limit of indemnity of not less than £5,000,000.00 per claim, Public Liability insurance with a limit of indemnity of not less than £5,000,000.00 per claim and any other insurance as may be required by applicable laws including All Risks Insurance where required by the Quotation Form.

Insurance Events: means any or all of fire lightning explosion storm tempest flood bursting or overflowing water tanks apparatus or pipes earthquake aircraft or other aerial devices or articles dropped therefrom.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Liquidated Damages: means liquidated damages payable at the rate stated in the Quotation Form.

Materials: means the materials required to carry out the Works as set out in the Contract Documents.

Practical Completion: means the date on which the Works have been completed to the satisfaction of the Contract Administrator.

Purchase Order: means the written order issued to the Contractor by the Council for the Works incorporating these Conditions.

Quotation Form: means the quotation form issued by the Council to the Contractor, completed and signed by the Contractor and accepted by the Council for the provision of the Works.

Rectification Period: means the 12 months following Practical Completion.

Representatives: employees officers, agents, advisors, sub-contractors, suppliers or any other representatives of the Contractor.

Request for Information: a request for information or an apparent request under the Code of Practice on Access to Government Information, the Freedom of Information Act 2000 or the Environmental Information Regulations.

Service Media: means all media for the supply or removal of heat, smoke, electricity, gas, water, sewage, air-conditioning, energy, telecommunications, television, data and all other services and utilities and all structures, machinery and equipment ancillary to those media.

Site: means the location where the Works will be performed as set out in the Contact Documents and includes all Council owned land and/or buildings.

Schedules: means Schedule One and where applicable Schedule Two and Schedule Three attached hereto.

UK Data Protection Legislation: any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation.

Valuation Statement: means a statement issued by the Council to the Contractor confirming the value of Works completed at a specified date.

Working Day: means a day (other than a Saturday, Sunday or a public holiday) when the Council is open for business.

Works: means the works set out in the Contract Documents.

Works Period: means the duration of the Works stated in the Purchase Order or in the Quotation Form.

Works Variation means instructions in writing from the Council requiring a variation to the Works.

1.2 The following rules of interpretation apply:

a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

a references to a party includes its personal representatives, successors or permitted assigns;

a reference to laws in general is a reference to all local, national and directly applicable supra-national laws as amended, extended or re-enacted from time to time and shall include all subordinate laws made from time to time under them and all orders, notices, codes of practice and guidance made under them;

a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;

a reference to **writing** or **written** includes e-mails but not faxes.

any consent required from the Council under the Contract must be obtained in writing from the Contract Administrator

1.3 The following clause and Schedule do not apply to these Conditions unless it is stated they do apply in a Quotation Form.

1.3.1 Clause 17 Liquidated Damages Schedule One Special Conditions for the Performance of Works;

1.3.2 Schedule Two Defects and Retention Schedule.

2. BASIS OF CONTRACT

- 2.1 The Contractor has agreed to carry out the Works in return for the Contract Value subject to the terms of the Contract.
- 2.2 The Contract shall come into existence and take effect upon Council's Acceptance and shall continue until such time as either the parties have discharged all their obligations under it (at which point it shall expire); or it is terminated in accordance with these Conditions.
- 2.3 These conditions apply to the performance of the Works to the exclusion of any other terms that the Contractor may seek to impose or incorporate (including any standard trading terms of the contractor), or which are implied by trade, custom, practice or course of dealing.

3. CARRYING OUT THE WORKS

- 3.1 The Contractor shall for the duration of the Contract carry out the Works for the Council in accordance with the terms of the Contract.
- 3.2 The Contractor shall meet any performance dates for the Works specified in the Contract Documents or notified to the Contractor by the Council.
- 3.3 In carrying out the Works, the Contractor shall:
 - (a) co-operate with the Council in all matters relating to the Works, and comply with all instructions of the Council;
 - (b) perform the Works with the best care, skill and diligence in accordance with best practice in the Contractor's industry, profession or trade;
 - (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Contractor's obligations are fulfilled in accordance with the Contract;
 - (d) ensure that the Works the Materials and the Deliverables shall conform with all descriptions and specifications set out in the Contract Documents and that the Materials and the Deliverables shall be fit for any purpose expressly or impliedly made known to the Contractor by the Council;
 - (e) provide all equipment, tools and vehicles and such other items as are required to provide the Works;
 - (f) use the best quality goods, materials, standards and techniques, and ensure that the Materials the Deliverables, and all goods and materials supplied and used in the Works or transferred to the Council, will be free from defects in workmanship, installation and design;
 - (g) obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
 - (h) observe all health and safety rules and regulations and any security requirements that apply at any part of the Site and notify the Council immediately of any breach;
 - (i) hold all materials, equipment and tools, drawings, specifications and data supplied by the Council to the Contractor ('Council Materials') in safe custody at its own risk, maintain the Council Materials in good condition until returned to the Council, and not dispose or use

the Council Materials other than in accordance with the Council's written instructions or authorisation;

- (j) not do or omit to do anything which may cause the Council to lose any licence, authority, consent or permission upon which it relies for the purposes of carrying out its functions as a local authority, and the Contractor acknowledges that the Council may rely or act on the Works and the Deliverables; and
- (k) comply with all of the Council's policies and procedure signs notices and other instructions either displayed at the Site or notified to the Contractor (or its Representatives) from time to time and relating to the use of the Site or any part of them or any equipment or facilities at the Site and ensure that its Representatives also comply with this clause.
- (l) provide the Council with all manufacturers warranties and guarantees for all Materials.

4. CONTRACTORS PERSONNEL & CONDUCT

4.1 The Council reserves the right:

- (a) to refuse to admit any Representative into the Site whose admission is in the reasonable opinion of the Council undesirable.
- (b) to request a replacement Representative for a Representative who in the reasonable opinion of the Council is undesirable or not suitably qualified or experienced to perform the Works.

4.2 The Contractor shall:

- (a) ensure that a Representative fulfilling a specific role in performing the Works will do so unless otherwise agreed with the Council.
- (b) take all reasonable steps to prevent unauthorised persons entering the Site.
- (c) promptly provide the Council with a detailed list of Representatives taking part in the Works specifying the capacities in which they are connected with the Works and any other details the Council may reasonably require.
- (d) arrange the Works so as to minimise any inconvenience or interference to the duties and functions of the Council.

5. COUNCILS REMEDIES

5.1 If the Contractor fails to perform the Works in accordance with the Contract, the Council shall, without limiting its other rights or remedies, have one or more of the following rights:

- (a) to terminate the Contract with immediate effect by giving written notice to the Contractor;
- (b) to refuse to accept any subsequent performance of the Works which the Contractor attempts to make;
- (c) to recover from the Contractor any costs incurred by the Council in instructing a third party to carry out the Works;
- (d) where the Council has paid in advance for Works that have not been carried out by the Contractor to have such sums refunded by the Contractor; and

(e) to claim damages for any additional costs, loss or expenses incurred by the Council which are in any way attributable to the Contractor's failure.

5.2 The terms of the Contract shall extend to any substituted or remedial works carried out by the Contractor.

5.3 The Council's rights under these Conditions are in addition to its rights and remedies implied by statute and common law.

6. COUNCIL'S OBLIGATIONS

6.1 The Council shall:

(a) provide the Contractor with reasonable access at reasonable times to the Site for the purpose of carrying out the Works and delivering Deliverables; and

(b) provide such information as the Contractor may reasonably request (in a format determined by the Council acting reasonably) in connection with the Works that the Council considers reasonably necessary for the purpose of carrying out the Works.

7. CHARGES AND PAYMENT AND INVOICES

7.1 The Contract Value shall be the full and exclusive remuneration of the Contractor in respect of the performance of the Works. Unless otherwise agreed in writing by the Council, the Contract Value shall include every cost and expense of the Contractor directly or indirectly incurred in connection with the performance of the Works.

7.2 The Contractor shall once every 20 Working Days from the commencement of the Works Period and on Practical Completion submit an Application for Payment to the Council unless the Works Period does not exceed 40 Working Days in which case a single Application for Payment will be submitted on Practical Completion.

7.3 The Council shall confirm to the Contractor within 5 Working Days of receipt of an Application for Payment whether any amendments are required to the Application for Payment.

7.4 Once the Application for Payment has been approved by the Council the Council will issue a Valuation Statement.

7.5 Once a Valuation Statement has been issued by the Council the Contractor shall submit an invoice to the Council for the amount set out in the Valuation Statement.

7.6 If requested by the Council the Contractor shall within 20 Working Days of Practical Completion supply to the Council with all documentation reasonably required for calculation of the final account.

7.7 The Council shall pay the invoiced amounts issued in accordance with the procedure set out in clauses 7.2 to 7.6 within 30 days of the date of a correctly rendered invoice and to a bank account nominated in writing by the Contractor.

- 7.8 All amounts payable by the Council under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Contractor to the Council, the Council shall, on receipt of a valid VAT invoice from the Contractor, pay to the Contractor such additional amounts in respect of VAT as are chargeable on the performance of the Works at the same time as payment is due for the performance of the Works.
- 7.9 Invoices shall be in a form approved by the Council and any invoices that have to be resubmitted due to the inaccuracy will become due 30 days from the date the resubmitted invoice is issued.
- 7.10 The Contractor shall maintain complete and accurate records of the time spent and materials used by the Contractor in carrying out the Works, and the Contractor shall allow the Council to inspect such records at all reasonable times on request.
- 7.11 The Council may, without limiting its other rights or remedies, set off any amount owing to it by the Contractor against any amount payable by the Council to the Contractor under the Contract.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 In the absence of any prior written agreement between the parties all Intellectual Property Rights created by the Contractor or its Representatives in the course of performing the Works or exclusively for the purpose of performing the Works, shall vest in the Council on creation.
- 8.2 The Contractor shall, promptly at the Council's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Council may from time to time require for the purpose of securing for the Council the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights vested in the Council in accordance with clause 8.1.
- 8.3 All Council Materials are the exclusive property of the Council.

9. INDEMNITY & INSURANCE

- 9.1 The Contractor shall keep the Council indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Council as a result of or in connection with:
- (a) any claim made against the Council by a third party for death, personal injury or damage to property arising out of, or in connection with, the Works; and
 - (b) any claim made against the Council by a third party arising out of, or in connection with, the Works, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Works by the Contractor and its Representatives; and
 - (c) any claim made against the Council in connection with the negligence of the Contractor or its Representatives whilst on, entering or leaving the Site or any damage to Council's property or the Site; and

(d) any claim made against the Council for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with the Works, the Materials and/or the Deliverables; and

(e) any breach of the DPL arising out of any unauthorised and unlawful processing, accidental loss or destruction of, or damage or theft to Council Data: and arising out of any action or inaction of the Contractor resulting in the Council being in breach of any of its obligations or duties under the DPL or equivalent applicable legislation in any other country.

9.2 Without prejudice to its liability to indemnify the Council, the Contractor shall maintain in force the Insurances with reputable insurers lawfully carrying on such insurance business in the United Kingdom during the term of the Contract and for a period of three years thereafter. The Contractor shall ensure that each of the Insurances is effective no later than the date on which the relevant risk commences.

9.3 The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.

9.4 The Contractor shall produce such evidence of insurance as the Council may reasonably require in relation to the insurances demanded as detailed above. Such evidence shall show that the insurances referred to and required by the Contract have been taken out, paid for and shall remain in force at all material times throughout the duration of the Contract.

10. LIABILITY

10.1 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to the Contract.

10.2 Subject to clause 10.3 the Council's total liability shall be limited to the Contract Value due for the Works.

10.3 Subject to clause 10.4, the Council shall not have any liability for any:

(a) indirect or consequential loss or damage; and

(b) loss of business, rent profit or anticipated savings whether direct or indirect unless it has expressly assumed such liability; and

(c) damage to goodwill or reputation; and

(d) loss, theft, damage or destruction to any equipment, tools, machinery, vehicles or other equipment brought onto the Site by the Contractor or its Representatives; or

(e) loss, damage, costs or expenses suffered or incurred by any third party.

10.4 Notwithstanding any other provision of the Contract the Council does not limit or exclude its liability for:

(a) fraud or fraudulent misrepresentation;

(b) death or personal injury caused by its negligence; or

(c) any other act or omission, liability for which may not be limited under any applicable law.

10.5 For the avoidance of doubt the Council will have no liability for claims for loss of profit due to variations in the type, scope or amount of work, the Quantities or work changes during the course of the Contract.

11. CONFIDENTIALITY

11.1 Subject to clause 11.2 the Contractor shall not acquire any rights of ownership or use in any Confidential Information originating or provided by the Council.

11.2 The Contractor undertakes:

(a) To restrict the disclosure of Confidential Information to such of its Representatives as need to know it for the purpose of discharging the Contractor's obligations under the Contract, and shall ensure that all such Representatives are subject to obligations of confidentiality corresponding to those set out in this clause 11; and

(b) That the Contractor and its Representatives shall use the Confidential Information only for the purposes of performing their respective obligations under the Contract; and

(c) That any person employed or engaged by the Contractor in connection with the Contract shall not, in the course of such employment or engagement, disclose any Confidential Information to any third party without the prior written consent of the Council; and

(d) To take all necessary precautions to ensure that all Confidential Information is treated as confidential and not disclosed (save as aforesaid) or used other than as permitted by this clause 11; and

(e) That, without prejudice to the generality of the foregoing, neither the Contractor nor any of its Representatives shall use the Confidential Information for the solicitation of business from the other or from any third party.

11.3 The provisions of this clause 11 shall not apply to any information which:

(a) Is or becomes public other than by breach of this clause 11; or

(b) Is in the possession of the Contractor without restriction on disclosure before the date of receipt from the disclosing person; or

(c) Is independently developed by the Contractor without access to the Confidential Information; or

(d) Must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure including any requirements for disclosure under the FOIA or the Environmental Information Regulations.

12. AUDIT

12.1 The Contractor shall keep and maintain until six years after the Contract has come to an end, or such longer period as specified by the Council (in writing) all Information relating to the Contract and full and accurate records of the following:

(a) the Works provided under the Contract; and

(b) the monies paid by the Council; and

(c) any other information requested by the Council.

13. DATA PROTECTION

13.1 The parties shall comply with the provisions of the Data Protection Schedule set out in Schedule Three.

14. ANTI-BRIBERY

14.1 The Contractor shall:

- (a) Comply with all applicable laws statutes regulations and Council policies relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ('Relevant Requirements');
- (b) Not to engage in any activity practise or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity practise or conduct had been carried out in the UK;
- (c) Comply with the Council's policies on anti-bribery as the Council may update the Contractor from time to time ('Relevant Policies');
- (d) Have and shall maintain in place throughout the term of the Contract its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and clause 14.1(b) and will enforce them where appropriate;
- (e) 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 the Contract;
- (f) Immediately notify the Council if a foreign public official becomes an officer or employee of the Contractor or acquires a direct or indirect interest in the Contractor, and the Contractor warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the date of the Contract.

14.2 The Contractor shall ensure that any person associated with the Contractor who is performing Works in connection with the 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 clause 14.1 ('the Relevant Terms'). The Contractor shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Council for any breach by such persons of any of the Relevant Terms.

15. TERMINATION

15.1 Without limiting its other rights or remedies, the Council may terminate the Contract with immediate effect by giving written notice to the Contractor if:

- (a) the Contractor commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of receipt of notice in writing of the breach;
- (b) 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) 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;

- (c) 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;
- (d) 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 the Contractor (being a company) other than 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 the Contractor;
- (e) the Contractor (being an individual) is the subject of a bankruptcy petition order;
- (f) 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 its assets and such attachment or process is not discharged within 14 days;
- (g) 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);
- (h) a floating charge holder over the assets of the Contractor (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) 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;
- (j) any event occurs, or proceeding is taken, with respect 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 clause 15.1(b) to clause 15.1(i) (inclusive);
- (k) the Contractor suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business;
- (l) the Contractor (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

15.2 Without limiting its other rights or remedies, the Council may terminate the Contract with immediate effect by giving written notice to the Contractor and recover from the Contractor the amount of any loss resulting from such termination, if:

- (a) the Contractor shall have offered, or given or agreed to give, to any person employed by, or in the service of, the any gift, consideration or reward of any kind as an inducement for doing, or promising to do or for having done or promising to do, any action in relation to the obtaining or the execution of the Contract or any other contract with the Council, or for showing or promising to show favour or disfavour to any person, in relation to the Contract or any other contract with the Council, or if the like acts shall have been done by it, or person employed by it or acting on its behalf (whether with or without the Contractor's knowledge) or if in relation to any contract with the Council the Contractor or any person employed by it or acting on its behalf shall have committed an offence under the Bribery Act 2010, or shall have given any

fee or reward the receipt of which is an offence under Section 117 (2) and (3) of the Local Government Act 1972.

(b) the Contractor or any person on its behalf is found to have canvassed prior to the submission of a tender or quotation.

15.3 Without limiting its other rights or remedies, the Council may terminate the Contract at any time by giving the Contractor one months' written notice.

16. CONSEQUENCES OF TERMINATION

16.1 On termination of the Contract or any part of it for any reason:

(a) where the Works are terminated, the Contractor shall immediately deliver to the Council all Deliverables, whether or not then complete, and return all Council Materials. If the Contractor fails to do so, then the Council may without limiting its other rights or remedies enter the Contractor's premises and take possession of them. Until they have been returned or delivered, the Contractor shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract;

(b) notwithstanding the obligations under clause 12 the Contractor shall procure that all Council Data shall be delivered to the Council forthwith and the Contractor shall certify full compliance with this clause;

(c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and

(d) Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this contract including but not limited to clauses 9, 11, 12 and 14 shall remain in full force and effect.

(e) Any Materials already paid for by the Council at termination of the Contract shall be given to the Council or the cost refunded to the Council.

17. PUBLICITY

17.1 The Contractor shall not make any press announcements or publicise the existence or terms of the Contract or use the Council's name or brand in any promotion or marketing or announcement of orders without the Council's prior written consent and shall ensure these provisions are observed by its Representatives;

17.2 The Council shall be entitled to publicise the Contract for any reason without notice.

18. DISPUTE RESOLUTION

18.1 Where there is a dispute, the aggrieved party shall notify the other party in writing of the nature of the dispute with as much detail as possible about the deficient performance of the other party. A senior representative of each of the parties shall meet in person or communicate by telephone within 5 Working Days of the date of the written notification in order to reach an agreement about the nature of the deficiency and the corrective action to be taken by the respective parties. If the

dispute cannot be resolved, or if the agreed upon completion dates in any written plan of corrective action are exceeded, either party may seek its remedies as provided below.

18.2 If the parties cannot resolve the dispute by the procedure set out above, the parties shall irrevocably submit to the exclusive jurisdiction of the courts of England and Wales for the purposes of hearing and determining any dispute arising out of the Contract.

19. EQUALITIES AND DIVERSITY

19.1 The Contractor shall:

(a) perform its obligations under the Contract (including those in relation to the Works) in accordance with:

(i) all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise); and

(ii) any other requirements and instructions which the Council reasonably imposes in connection with any equality obligations imposed on the Council at any time under applicable equality law; and

(b) take all necessary steps, and inform the Council of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

(c) take all reasonable steps to secure the observance of this clause by all Representatives of the Contractor and all suppliers and sub-contractors employed in performance of the Contract.

20. HUMAN RIGHTS

20.1 Insofar as it the Human Rights Act applies the Contractor shall (and shall use reasonable endeavours to ensure that its Representatives shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of the Contract.

20.2 The Contractor shall undertake or refrain from undertaking such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998.

21. FREEDOM OF INFORMATION

21.1 The Contractor acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Council (at the Contractor's expense) to enable the Council to comply with these information disclosure requirements.

21.2 The Contractor shall and shall procure that its Representatives shall:

(a) transfer the Request for Information to the Council as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;

- (b) provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council requesting that Information; and
- (c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

- 21.3 The Council shall be responsible for determining at its absolute discretion whether the Information:
- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations; and/or
 - (b) 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 Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:
- (a) without consulting with the Contractor; or
 - (b) following consultation with the Contractor and having taken its views into account,

provided always that where clause 21.5(b) applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor 's attention after any such disclosure.

- 21.6 The Contractor shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

- 21.7 The Contractor acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with clause 21.5.

22. HEALTH AND SAFETY

- 22.1 The Contractor shall promptly notify the Council of any health and safety hazards, which may arise in connection with the performance of the Contract. The Council shall promptly notify the Contractor of any health and safety hazards that may exist or arise at the Site and that may affect the Contractor in the performance of the Contract.

- 22.2 While at the Site, the Contractor shall comply with any health and safety measures implemented by the Council or owners of the Site in respect of staff and other persons working on the Site.

- 22.3 The Contractor shall notify the Council immediately in the event of any incident occurring in the performance of the Contract on the Site where that incident causes any personal injury or damage to property that could give rise to personal injury.
- 22.4 The Contractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to staff and other persons working on the Site in the performance of the Contract.
- 22.5 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Council on request.
- 22.6 The Contractor shall comply with the Council's Health and Safety Policy in operation from time to time and available on request.

23. SUSTAINABILITY

Unless the Council specifies otherwise the Contractor in carrying out the Works shall wherever practicable by design or supply to conserve energy, reduce waste, use durable and upgradeable goods, use more sustainable products (i.e. those that minimise environmental, social and economic impacts) and influence their suppliers to develop same and contribute to the establishment of better sustainable supply chains.

24. BEST VALUE

The Contractor shall use reasonable endeavours to ensure that the provision of the Works complies with the Council's statutory duty to provide best value and must make arrangements to secure continuous improvement in the way in which the Works are exercised, having regard to a combination of economy, efficiency and effectiveness.

25. WHISTLE BLOWING POLICY

The Contractor shall comply with the Council's Whistle Blowing Policy a copy of which is available on request.

26. SCHEDULES

- 26.1 The parties hereby acknowledge that Schedule Two only applies when stated on the Quotation Form.
- 26.2 Where Schedule Two does apply paragraph A) of Schedule Two adds additional provisions and paragraph B) of Schedule Two replaces clause 18 (Defects) from Schedule One.

27. GENERAL

- 27.1 **Force majeure:** Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Contract if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable.

If such event or circumstances prevent the Contractor from carrying out the Works for more than two weeks, the Council shall have the right, without limiting its other rights or remedies, to terminate the Contract with immediate effect by giving written notice to the Contractor.

27.2 **Assignment, novation and subcontracting:**

- (a) The Contractor shall not, except where Clause 27.2 (b) of the Contract applies, assign, subcontract, novate, create a trust in, or in any other way dispose of the whole or any part of the Contract without the prior consent in writing of the Council such consent not to be unreasonably withheld or delayed. If the Contractor subcontracts any of its obligations under the Contract, every act or omission of the subcontractor shall for the purposes of the Contract be deemed to be the act or omission of the Contractor and the Contractor shall be liable to the Council as if such act or omission had been committed or omitted by the Contractor itself.
- (b) Notwithstanding Clause 26.2 (a) of these Conditions, the Contractor may assign to a third party ("**Assignee**") the right to receive payment of any sums due and owing to the Contractor under the Contract for which an invoice has been issued. Any assignment under this Clause 26.2 (b) of these Conditions shall be subject to:
- (i) the deduction of any sums in respect of which the Council exercises its right of recovery under Clause 7.11 of these Conditions;
 - (ii) all related rights of the Council in relation to the recovery of sums due but unpaid;
 - (iii) the Council receiving notification of the assignment and the date upon which the assignment becomes effective together with the Assignee's contact information and bank account details to which the Council shall make payment;
 - (iv) the provisions of Clause 7 of these Conditions continuing to apply in all other respects after the assignment which shall not be amended without the prior written approval of the Council; and
 - (v) payment to the Assignee being full and complete satisfaction of the Council's obligation to pay the relevant sums in accordance with the Contract.
- (c) Any authority given by the Council for the Contractor to subcontract any of its obligations under the Contract shall not impose any duty on the Council to enquire as to the competency of any authorised subcontractor. The Contractor shall ensure that any authorised subcontractor has the appropriate capability and capacity to perform the relevant obligations and that the obligations carried out by such subcontractor are fully in accordance with the Contract.
- (d) Where the Contractor enters into a subcontract in respect of any of its obligations under the Contract relating to the provision of the Works, the Contractor shall include provisions in each such subcontract, unless otherwise agreed with the Council in writing, which:
- (i) contain at least equivalent obligations as set out in the Contract in relation to the performance of the Works to the extent relevant to such subcontracting;
 - (ii) contain at least equivalent obligations as set out in the Contract in respect of confidentiality, information security, data protection, Intellectual Property Rights, compliance with law and guidance and record keeping;
 - (iii) contain a prohibition on the subcontractor subcontracting, assigning or novating any of its rights or obligations under such subcontract without the prior written approval of the Council (such approval not to be unreasonably withheld or delayed);
 - (iv) contain a right for the Council to take an assignment or novation of the subcontract (or part of it) upon expiry or earlier termination of the Contract; and

- (e) The Council shall upon written request have the right to review any subcontract entered into by the Contractor in respect of the provision of the Works and the Contractor shall provide a certified copy of any subcontract within five (5) Working Days of the date of a written request from the Council. For the avoidance of doubt, the Contractor shall have the right to redact any confidential pricing information in relation to such copies of subcontracts.
- (f) Where the Contractor enters into a subcontract in respect of any of its obligations under the Contract relating to the provision of the Works, the Contractor shall include provisions in each such subcontract, unless otherwise agreed with the Council in writing, which require payment to be made of all sums due to the subcontractor from the Contractor within a specified period not exceeding thirty (30) days from receipt by the Contractor of a valid invoice.
- (g) Where the Council pays the Contractor's undisputed invoices earlier than thirty (30) days from receipt in accordance with any applicable government prompt payment targets, the Contractor shall use its reasonable endeavours to pay its relevant subcontractors within a comparable timeframe from receipt by the Contractor of such undisputed invoices from its subcontractors.
- (h) The Council may at any time assign, transfer, charge, subcontract, or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

27.3 Notices:

- (a) Any notice or other communication required to be given to a party under or in connection with the Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business or by e-mail to the address of the relevant party as detailed in the Contract or such other address as notified to the other party from time to time.
- (b) This clause 26.3 shall not apply to the service of any proceedings or other documents in any legal action.

27.4 Waiver and cumulative remedies:

- (a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

27.5 Severance:

- (a) If a court or any other competent authority finds that any provision (or part of any provision) of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the

extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

(b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

- 27.6 **No partnership:** Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 27.7 **Third parties:** A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 27.8 **Variation:** Any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Council.
- 27.9 **Governing law and jurisdiction:** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.
- 27.10 **Entire agreement:** This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.
- 27.11 **Electronic Signature:** The Parties agree to sign this Contract by electronic signature (whatever form the electronic signature takes) and that this method of signature is as conclusive of the Parties intention to be bound by this Contract as if signed by each Party's manuscript signature.

SCHEDULE ONE

Special Conditions for the Performance of Works

1. **The following Definitions and Interpretations apply to the Contract.**
 - 1.1 the words, "Supply and fix" or "Provide and fix" (and the like), may have been omitted from the item description, however, the words are always implied.
 - 1.2 The term "fix only" includes for taking delivery handling loading and unloading storing protecting transporting to the Site of the work hoisting and lowering and assembling and fixing complete and sending back returnable packing's or the Disposal of non returnable packing.

- 1.3 The term “setting aside for re-use or for Council” includes carefully removing fixings cleaning hoisting lowering transporting handling loading and unloading storing and protecting.
- 1.4 The following words have the following meanings:

CDM Regulations means the Construction (Design and Management) Regulations 2015.

Demolishing includes the removal of existing work so described and all associated accessories fastenings, linings and bedding materials, without damaging adjacent work to be retained and disposal off site.

Disposal means disposal of waste by recycling where practicable and by using a Licensed Waste Centre when required including the provision of all relevant transfer of waste records.

Finishing's means **finishing's** applied to the structure e.g. render, tiles and the like and the finishing's integral with the structure e.g. faced brickwork, dressed stonework and the like. The term also includes painting and decorating.

Identity Card means an identity card that include a passport sized photograph and signature of the bearer, the date from which the card commences and shall have an expiry date of not more than 24 months from the date of its commencement. The card shall also indicate the telephone number of the Contractors local office should a member of the public wish to check with the office that the operative is a legitimate worker for the Council.

Making good and extending finishes and structures disturbed means local remedial work to all finishes and structures which the Contract Administrator decides have been disturbed during the completion of any work to the same condition as before the work was commenced; including what is appropriate and necessary to leave the work continuous, neat, sound and structurally safe to approval such as: removing defective parts of existing finishes and components and around any stated features, fill, dress down, piece in, patch, extend existing finishes, make minor repairs and adjustments, re-fix or re-stick, redecorate.

Match Existing means use products, materials and methods closely to match all visual characteristics and features of the existing and new work, with joints between existing and new work as inconspicuous as possible, all to approval and to any additional specified requirements.

Manufacturer's recommendation means the recommendations or instructions printed or in writing and current at the date of Practical Completion.

Programme means a programme produced by the Contractor prior to commencement of the Works and subject to the approval of the Contract Administrator that shall detail how the Works will be completed in accordance with the Contract Documents.

Re-fixing means: carefully remove existing work required to be re-fixed, remove fastenings and bedding material from products / materials and clean and repair as necessary, set aside and adequately protect until required, relocate accurately and fix securely using fixing and jointing materials and methods to match existing, or approved alternatives, and make good, comply with additional specified requirements.

Reinstating means replacing existing work with materials / products identical to those removed or approved substitutes, using methods similar to those used in constructing the removed work or approved alternatives, to meet additional specified requirements

Removing means remove existing work so described and all associated accessories, fastenings, linings and bedding materials, without damaging adjacent finishes and structures which are to be retained and disposal off site.

Setting Out means the measurements of lines and levels on the Site at ground level to establish the outline of excavations and the centre line of walls to buildings to ensure the plans relating to the Works are accurate.

2. PRELIMIARIES

2.1 Before commencing the Works the Contractor shall:

- 2.1.1 ensure that they are in possession of the necessary instructions and/or drawings in sufficient time before any portion of the Works is to be commenced.
- 2.1.2 check all schedules and drawings supplied by the Contract Administrator and in the event of any discrepancy being found between such schedules and drawings or if the Contractor considers that clarification or additional detail drawings are required, then in either case the Contractor shall report such discrepancy to the Contract Administrator for instructions or apply in writing for such detail drawings at least 28 days before the Works concerned are to be executed.
- 2.1.3 permit the Contract Administrator on Site with equipment for checking the setting out and levels without charge.
- 2.1.4 check all dimensions and quantities both on drawings and on Site and agree all dimensions with the Contract Administrator.
- 2.1.5 notify the Contract Administrator immediately of any error in setting out (including removing and re-executing work already constructed) and correct, reinstate and make good any defects arising from errors in setting out and levels at Contractor's own expense.
- 2.1.6 ascertain from the drawings or otherwise any holes, recesses, chases, plugs or similar provisions that may be required to carry out the Works.
- 2.1.7 so far as is reasonable ascertain location of any Service Media in the vicinity of the Site.
- 2.1.8 notify, where appropriate, all service authorities of proposed Works before commencing the Works.
- 2.1.9 ensure all consents are obtained in good time for the performance of the Works within the Works Period.

3. QUANTITIES

- 3.1 All quantities set out in the Schedule of Works ('the Quantities') are subject to re-measure by the Contract Administrator.
- 3.2 The Quantities may require re-measurement on Site as work proceeds and the final Contract Value shall be adjusted accordingly if any changes are applicable.

4. MATERIALS

4.1 The Contractor shall:

- 4.1.1 ensure early attention to the ordering of Materials and immediately report to the Contract Administrator any likely delays which may have an impact on the completion of the Works by the Completion Date.
- 4.1.2 obtain the Contract Administrators prior consent to use any materials considered by industry good practise to be of equal quality and type to those set out in the Contract Documents.
- 4.1.3 the Contract Administrator may insist on the use of materials as specified in the Contract Documents.

5. VARIATIONS

5.1 The Contract Administrator may at any time issue a Works Variation.

- 5.2 The Contractor shall notify the Contract Administrator immediately in the event that additional works are considered necessary beyond those set out in the Contract Documents.
- 5.3 Any works carried out by the Contractor that are not specified in the Contract Documents must have prior written approval by the Contract Administrator and be dealt with by a Works Variation.
- 5.4 The Contractor shall complete all works set out in a Works Variation in accordance with the terms of the Contract.
- 5.5 The Contractor shall comply with a Works Variation even where the pricing has not yet been agreed.
- 5.6 Any Works Variation shall be priced to include all associated costs.

6. SITE MANAGEMENT

- 6.1 The Contractor shall and procure that its Representatives shall:
 - 6.1.1 only be on Site to carry out the Works during the hours of 8 am to 6 pm Monday to Friday (except Bank Holidays).
 - 6.1.2 remove flammable rubbish from the Site as soon as possible.
 - 6.1.3 remove all rubbish, arising from all trades, all plant, superfluous materials from the Site on a daily basis and not use skips without the prior written consent of the Contract Administrator.
 - 6.1.4 leave the Site clean and tidy and to the satisfaction of the Contract Administrator.
 - 6.1.5 ensure that at all times a competent person is in charge on Site and that the Works are supervised.
 - 6.1.6 permit the Council and the Representatives full access to the Site and use the facilities on Site.
 - 6.1.7 throughout the Works Period safeguard and protect the Site including any building, works, materials and plant on the Site against damage, theft and squatters.
 - 6.1.8 provide all necessary welfare and storage facilities' on Site.
 - 6.1.8 provide all necessary temporary weather proofing, screens etc and ensure that the retained Works are adequately protected from water penetration.
 - 6.1.9 not interfere with the operation of any utilities without consent of the service authorities, or private owners, or the Contract Administrator as appropriate.

7. CONDUCT

- 7.1 The Contractor shall and procure that its Representatives shall:
 - 7.1.1 not trespass upon any adjoining property;
 - 7.1.2 when on Site and/or engaged in the provision of the Works wear a visible and well presented means of clothing identifying the Contractor's name and endeavour to be clean and presentable at all times and carry an Identity Card;
 - 7.1.3 be co-operative, courteous, polite, helpful, patient and understanding to members of the public but not express personal opinions to members of the public in respect of the Works, the Council or the Contractor;

- 7.1.4 not use foul, racist, sexist or other offensive language;
- 7.1.5 not cause a nuisance;
- 7.1.6 not smoke, or play radios or other musical equipment whilst on Site;
- 7.1.7 not use explosives.

8. INFORMING SERVICE AUTHORITIES & THE COUNCIL

- 8.1 The Contractor shall and procure that its Representatives shall at its own expense:
 - 8.1.1 where any damage results from the execution of the Works, immediately notify the Contract Administrator and any appropriate service authority and make arrangements for the damage to be made good to the satisfaction of the Contract Administrator;
 - 8.1.2 report any obvious Health and Safety issues whilst on Site to the Contract Administrator;
 - 8.1.3 inform the Contract Administrator immediately of any enquiries or complaints received by the Contractor from members of the public and use best endeavours to work with the Contract Administrator and resolve any complaints from the public as soon as reasonably practicable.

9. EQUIPMENT/SCAFFOLDING

- 9.1 The Contractor shall and procure that its Representatives shall:
 - 9.1.1 provide all scaffolding and access equipment required for the carrying out of the Works;
 - 9.1.2 ensure all scaffolding shall be completed a minimum of 3 working days prior to using it for access to carry out Works and in accordance with all applicable laws;
 - 9.1.3 ensure scaffolding is not removed before the Contract Administrator has carried out a final inspection;
 - 9.1.4 remove scaffolding once the Contract Administrator has accepted the Works or part of the Works, within 5 working days unless otherwise agreed in writing with the Contract Administrator;
 - 9.1.5 if the Contractor fails to remove the scaffolding when requested by the Contract Administrator pay the Council at cost plus 15% administration fee to remove scaffolding and place it in storage;

10. PROTECTION OF THE WORKS

- 10.1 The Contractor shall and procure that its Representatives shall:
 - 10.1.1 adequately protect parts of existing work to be retained and ensure that the existing structures and existing finishing's to be retained are not unnecessarily disturbed;
 - 10.1.2 provide all necessary temporary Works and ensure that the retained Works are adequately supported and shored against collapse;
 - 10.1.3 handle, store, and fix commodities with care to ensure that they are in perfect condition when incorporated into the Work;
 - 10.1.4 adhere to Manufacturer's written instructions and recommendations in relation to any Materials or equipment used in connection with the Works and inform the Contract Administrator if these conflict with any requirement specified in the Contract Documents;

10.1.5 keep the Works dry and free of surface water where it would be detrimental to the Works. (Ground water seepage into excavations over one and a half meters in depth is not deemed to be included in this item, but rain or surface water ingress shall be);

10.1.6 provide everything necessary for drying and controlling the humidity of the Works.

11. SERVICES

11.1 The Contractor shall:

11.1.1 be responsible for arranging and paying for the use of water, electricity, gas, washing and sanitary facilities on Site;

11.1.2 make necessary arrangements for, and provide, all utilities and services required for the Works, including that required by sub-contractors, paying all fees and charges in connection therewith and making good all work disturbed;

11.1.3 comply with all laws when making temporary installations and arrangements in relation to Service Media.

12. CDM REGULATIONS

12.1 The Works will be carried out in accordance with the CDM Regulations and the Contractor shall comply with all its obligations under the CDM Regulations 2015.

13. CONTROLLED WASTE & ASBESTOS

13.1 The Contractor shall and shall procure that its Representatives shall:

13.1.1 comply with all laws in respect of the disposal and transport of controlled waste;

13.1.2 have carried out asbestos awareness training in accordance with current laws and provide the Council with evidence of such training, in the form of certification prior to commencement of the Works;

13.1.3 not disturb any materials thought or known to contain asbestos;

13.1.4 notify the Contract Administrator of any materials found which are not identified in an Asbestos Survey that may contain Asbestos.

14. INSPECTION OF WORKS

14.1 The Contractor shall permit the Contract Administrator to inspect all works materials and goods throughout the duration of the Contract to ensure compliance with the requirements as set out in the Contract Documents.

14.2 The Contractor shall remove any work, materials or goods which in the opinion of the Contract Administrator (acting reasonably) are not in accordance with the Contract Documents and at its own cost replace with work, materials or goods set out in the Contract Documents.

15. COMMISSIONING AND DEMONSTRATING ENGINEERING SERVICES

15.1 The Contractor shall carry out full commissioning and client demonstration of all mechanical and electrical installations and shall provide full acceptance tests, commissioning documentation and operation and maintenance manuals to the Contract Administrator prior to Practical Completion.

16. TESTING INSTALLATIONS

16.1 The Contractor shall carry out testing of all completed electrical works as per the requirements of the current edition of the IEE Wiring Regulations (BC 7671:2008 as amendment 3: 2015) and provide full certification documentation to the Contract Administrator prior to Practical Completion.

17. PRACTICAL COMPLETION

17.1 The Contract Administrator shall provide the Contractor with a certificate of practical completion when in its opinion the Works have reached Practical Completion.

17.2 Any minor omissions and/or defects found to exist at that time will be listed by the Contract Administrator and remedied by the Contractor within seven days.

18. DEFECTS

18.1 If any defects in the Works appear within the Rectification Period due to materials, goods or workmanship not being in accordance with the Contract Documents the Contract Administrator shall notify the Contractor in writing who shall make good such defects entirely at its own cost and within a reasonable time.

18.2 If the Contractor fails to comply within a reasonable time or within 14 days of receiving a written instruction advising them that a reasonable time has elapsed since their receipt of the notice under clause 18.1 then the Contract Administrator may employ another Contractor or Contractors to make good any items contained within the written notice under clause 18.1 and may deduct the cost from any monies due to the Contractor together with a 15% charge to cover administration costs.

19. DAMAGES FOR NON-COMPLETION

19.1 If the Works are not completed by the Completion Date or by any later date agreed by the Contract Administrator in writing the Contractor shall pay to the Council the Liquidated Damages.

19.2 The Council may either deduct the Liquidated Damages from any monies due to the Contractor under the Contract or recover the Liquidated Damages from the Contractor as a debt.

SCHEDULE TWO

Defects and Retention Schedule

A) The following clauses shall deemed to be inserted in to the Contract:

1.1 Definitions:

Schedule of Defects: means a list of defects shrinkages or other faults in the Works to be rectified by the Contractor.

Certificate of Making Good: means all defects in accordance with the Schedule of Defects have been rectified and the Works have been completed to the satisfaction of the Council.

Retention: means 5% of the value of the Works completed up to Practical Completion and 2.5% up to end of Rectification Period.

7. CHARGES AND PAYMENT AND INVOICES

7.12 Where Schedule Two applies the Retention shall become payable by the Council when the Council confirms that the Contractors obligations under the Contract have been discharged upon which a Certificate of Making Good will be issued. The Contractor must then issue an invoice for the Retention.

B) The following clause will replace clause 18 Defects from SCHEDULE ONE Special conditions for the Performance of Works:

18. DEFECTS

18.1 If any defects in the Works appear within the Rectification Period due to materials, goods or workmanship not being in accordance with the Contract Documents the Contract Administrator shall not later than 14 days after the expiry of the Rectification Period issue a Schedule of Defects to the Contractor who shall make good such defects entirely at its own cost.

18.2 Following receipt of the Schedule of Defects the Contractor shall within a reasonable time make good all defects set out therein.

18.3 If the Contractor fails to comply within a reasonable time or within 14 days of receiving a written instruction advising them that a reasonable time has elapsed since their receipt of the Schedule of Defects then the Contract Administrator may employ another Contractor or Contractors to make good any items contained within the Schedule of Defects and may deduct the cost from any monies due to the Contractor together with a 15% charge to cover administration costs.

18.4 Upon completion of works set out in the Schedule of Defects the Council will issue the Contractor a Certificate of Making Good.

SCHEDULE THREE

Data Protection Schedule

DEFINITIONS

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer take the meaning given in the GDPR.

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

Data Loss Event: 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.

Data Subject Access Request: 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 Protection Legislation: the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the GDPR and any other directly applicable European Union regulation relating to privacy.

DPA 2018: Data Protection Act 2018

GDPR: the General Data Protection Regulation (Regulation (EU) 2016/679)

Law: means any law, subordinate legislation within the meaning of Section 12(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply;

LED: Law Enforcement Directive (Directive (EU) 2016/680)

Party: a Party to this Contract

Protective Measures: 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.

Sub-processor: any third Party appointed to process Personal Data on behalf of the Contractor related to this Contract.

UK Data Protection Legislation: any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation.

1. DATA PROTECTION

- 1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in Annex 1 by the Council and may not be determined by the Contractor.
- 1.2 The Contractor shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.
- 1.3 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:
 - (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 1.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

- (a) process that Personal Data only in accordance with Annex 1, 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 by Law;
- (b) 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:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that :

- (i) the Representatives do not process Personal Data except in accordance with this Contract (and in particular Annex 1);
- (ii) it takes all reasonable steps to ensure the reliability and integrity of any Representatives who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Contractor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Council or any Sub-processor;
 - (C) 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
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) 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:
 - (i) 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;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Council in meeting its obligations); and
 - (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
- (e) 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 Personal Data.

1.5 Subject to clause 1.6, the Contractor shall notify the Council immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;

- (e) 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
 - (f) becomes aware of a Data Loss Event.
- 1.6 The Contractor's obligation to notify under clause 1.5 shall include the provision of further information to the Council in phases, as details become available.
- 1.7 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 1.5 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:
 - (a) the Council with full details and copies of the complaint, communication or request;
 - (b) 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;
 - (c) the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Council following any Data Loss Event;
 - (e) 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.
- 1.8 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:
 - (a) the Council determines that the processing is not occasional;
 - (b) 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
 - (c) the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 1.9 The Contractor shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor.
- 1.10 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 1.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:
 - (a) notify the Council in writing of the intended Sub-processor and processing;

- (b) obtain the written consent of the Council;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Schedule such that they apply to the Sub-processor; and
- (d) provide the Council with such information regarding the Sub-processor as the Council may reasonably require.

1.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.

1.13 The Council may, at any time on not less than 30 Working Days' notice, revise this clause 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).

1.14 The Contractor shall keep the Council indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Council as a result of or in connection with any breach of the Data Protection Legislation arising out of any unauthorised and unlawful processing, accidental loss or destruction of, or damage or theft to Personal Data: and arising out of any action or inaction of the Contractor resulting in the Council being in breach of any of its obligations or duties under the Data Protection Legislation or equivalent applicable legislation in any other country. For the avoidance of doubt this indemnity includes any penalty or fine imposed by the Information Commissioners Office on the Council where the breach of the Data Protection Legislation or the loss of Personal Data is the caused by the negligence of the Contractor or its Representatives.

1.15 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 to amend this Schedule to ensure that it complies with any guidance issued by the Information Commissioner's Office.

ANNEX 1

Processing, Personal Data and Data Subjects

1. The Contractor shall comply with any further written instructions with respect to processing by the Council.
2. Any such further instructions shall be incorporated into this Annex.

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