



**Elmbridge**  
Borough Council

*... bridging the communities ...*

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## **Conditions of Contract – Services**

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## 1. Definitions

1.1 In the Contract, unless the context otherwise requires the following words and expressions shall have the following meanings assigned to them.

Term	Meaning
<b>'Acquired Rights Directive'</b>	The Business Transfers Directive (Acquired Rights Directive) 2001/23/EC
<b>'Authorised Officer'</b>	The duly authorised representative of the Council notified in writing to Tenderers for all purposes connected with the Contract. Any Notice or other written instruction given by or made to the Authorised Officer shall be taken as given by or made to the Council.
<b>'Commencement Date'</b>	The start date of the contract.
<b>'Conditions of Contract'</b>	These Conditions.
<b>'Confidential Information'</b>	<p>Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Agreement that relates to: (a) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party; and other Information provided by the Disclosing Party pursuant to or in anticipation of this Agreement that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient's attention or into the Recipient's possession in connection with this Agreement;</p> <p>(b) discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Agreement and all matters arising therefrom; and</p> <p>Information derived from any of the above but not including any Information which:</p> <p>(i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;</p> <p>(ii) the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient's knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;</p> <p>(iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality;</p> <p>(iv) was independently developed without access to the Confidential Information; or</p> <p>(v) relates to the Supplier's performance under this Agreement</p>

<b>'The Contract'</b>	These conditions, any special conditions, specification, drawings, pricing schedule, Contractor's tender, acceptance letter and any relevant documents agreeing modifications exchanged before the Contract is awarded, and any subsequent amendments or variations agreed in writing. The term 'Contract Documents' shall be construed accordingly. These Conditions for the supply of Services shall be deemed incorporated into each and every order placed by the Council for the Services.
<b>'Contract Period'</b>	The time period provided in the Contract for the provision of the Supply.
<b>'Contract Price'</b>	The price stipulated in the Contract, exclusive of VAT, at which the Contractor/Provider has agreed to provide the Supply as set out in the Pricing Schedule.
<b>'Contractor'</b>	The person, company or other body named in the Contract, who undertakes to supply the Services to the Council.
<b>'Council Property'</b>	All property issued or made available for use by the Council to the Contractor in connection with the Contract.
<b>'The Council'</b>	Elmbridge Borough Council.
<b>'Intellectual Property Rights'</b>	All Intellectual Property Rights including, without limitation, patents, patent applications, design rights, registered designs, utility models, trade and service marks and applications for the same, copyright know-how, rights in semi-conductor chip topography, and in each case, whether protectable in law or not, and if protectable, whether an application has been made for such protection or not, and all similar industrial, commercial, monopoly or other intellectual property rights, whether present or future, vested or contingent wherever protected.
<b>'Invitation to Tender' and 'Tender Documents'</b>	This document and any related documents published by the Council and made available to Tenderers.
<b>'Notice'</b>	Any written instruction or notice given to the Contractor by the Authorised Officer.
<b>'Permission'</b>	Express permission given in writing before the act being permitted.
<b>'Personal Data' and 'Sensitive Personal Data'</b>	Have the meaning ascribed to them under the Data Protection Act 1998 as amended
<b>'Pricing Schedule' and 'Price Schedule'</b>	The completed Pricing Schedule submitted by the Contractor and agreed by the Council.
<b>'The Parties'</b>	The Council and the Contractor. 'Party' shall be construed accordingly.
<b>'The Regulations'</b>	The Transfer of Undertakings (Protection of Employment) Regulations 2006.
<b>'Services'</b>	The Services to be provided by the Contractor, as described in the Contract and in particular the Specification, together with any variations or additions thereto and shall include any materials, articles and goods to be supplied.
<b>'Specification'</b>	The document/s forming part of the Invitation to Tender detailing the Services to be provided (including any amendments agreed by the Council).
<b>'Tenderers'</b>	Anyone being invited to respond to this Invitation to Tender.

<b>'Supply'</b>	The Goods and/or Services identified in the Specification.
<b>'Transferring Employees'</b>	Those employees who immediately before the Commencement Date were the employees of the Council or the Council's Contractor as the case may be engaged on the work comprised within the Services, and will under this Contract be transferred to the Contractor.
<b>'Undertaking'</b>	The undertaking within the meaning of the Regulations which immediately before the Commencement Date comprised the work constituting the Services.
<b>'Working Days'</b>	Any day of the week not including Saturday, Sunday and Bank Holidays.

1.2 All headings in these Conditions are for ease of reference only, and shall not affect the construction of the Contract.

1.3 Any reference in these Conditions to a statutory provision will include all subsequent modification, re-enactments or replacement.

1.4 References to the singular include the plural and vice versa and references to one gender include the other gender. References to a person include any individual, firm, unincorporated association or body corporate.

## **2. Authorised Officer**

2.1 The functions, rights and powers conferred by this Contract shall be exercised by the Authorised Officer. The Contractor shall comply with any instruction given by the Authorised Officer concerning or about, the Contract. All such instructions shall be in writing.

## **3. The Services**

3.1 The Contractor shall provide the Services in accordance with the Specification and provide all staff, equipment, materials and any other requirements necessary for the performance of the Contract using all skill, care and diligence, and to the satisfaction of the Authorised Officer.

## **4. Assignment**

4.1 The Contractor shall not assign, transfer or sub-contract the Contract, or any part of it, without the Permission of the Authorised Officer.

4.2 The Council shall be entitled to assign, transfer or sub contract the Contract or any part of it and shall give written notice of any assignment to the Contractor.

4.3 Any assignment, transfer or sub-contract entered into, shall not relieve the Contractor of any of his obligations or duties under the Contract.

## **5. Contract Period**

5.1 The Contractor shall perform the Services within the time stated in the tender documents, subject to any changes arising from Condition 9 (Variations).

## **6. Property**

- 6.1 All property issued by the Council to the Contractor in connection with the Contract shall remain the property of the Council, and shall be used in the execution of the Contract, and for no other purpose whatsoever without the prior approval of the Authorised Officer.
- 6.2 The Contractor shall keep all Council Property in safe custody and good condition, set aside and clearly marked as the property of the Council.
- 6.3 On expiry or earlier termination of the Contract the Contractor shall, if so required, either surrender such property to the Council or otherwise dispose of it as instructed by the Authorised Officer.

## **7. Materials**

- 7.1 The Contractor shall be responsible for establishing his own sources of supply for goods and materials and will be responsible for ensuring the reasonable and proper conduct by his Contractors and staff whilst on the Council's premises.
- 7.2 The Contractor shall not place, or cause to be placed, any orders with Contractors or otherwise incur liabilities in the name of the Council or any representative of the Council.

## **8. Security**

- 8.1 The Contractor shall be responsible for the security of all goods and equipment belonging to the Council and used by the Contractor in the provision of the Services, belonging to the Contractor, or Contractors staff, or sub-contractors whilst on Council premises.

## **9. Variations**

- 9.1 The Authorised Officer may vary the Contract by adding to, deleting or otherwise modifying the Services to be supplied, by written notice to the Contractor.
- 9.2 The value of any such variation, shall be determined by reference to the rates contained in the Pricing Schedule. Where the Services so ordered are not covered in the Pricing Schedule, they shall be valued at a fair and reasonable rate agreed between the Authorised Officer and the Contractor.
- 9.3 Where a variation is the result of some default or breach of the Contract by the Contractor or some other cause for which he is solely responsible, any additional cost attributable to the variation shall be borne by the Contractor.
- 9.4 The Contractor may also propose a variation to the Services but no such variation shall take effect unless agreed and confirmed in writing by the Authorised Officer.

## **10. Contractor's Staff**

- 10.1 The Contractor shall at all times during the Contract Period employ sufficient persons of sufficient abilities and skills for the proper performance of the Services. In particular the Contractor shall provide sufficient currently qualified staff to operate all premises and undertake all activities totally in accordance with all appropriate statutes, regulations and case law to ensure amongst other things that employees and members of the public are kept safe at all times.
- 10.2 The Contractor shall at all times during the Contract Period employ sufficient persons of sufficient abilities and skills to supervise and administer the performance of the Services in a proper and continuous manner.
- 10.3 The Contractor shall notify the Authorised Officer of the name, address and telephone number of the person who will be in charge of the Contract at local level.
- 10.4 The Contractor shall at all times take all such precautions as are necessary to protect the health and safety of all persons employed by him and shall comply with the requirements of the Health and Safety at Work etc Act 1974 ('the Act') and of any other Acts, regulations, orders or EU directives relating to the health or safety of employed persons.
- 10.5 The Contractor shall have regard to the Council's health and safety policy and safe working practices when preparing its own statements, copies of which shall be supplied to the Council before the Commencement Date. The Contractor shall nominate a person to be responsible for health and safety matters as required by the Act and any regulations, orders or EU directives. Whilst on Council owned premises the Contractor shall require its employees to comply with the lawful requirements of the Council's safety advisers.
- 10.6 The Contractor shall at all times be fully responsible for the payment of all income or other taxes, national insurance contributions or levies of any kind relating to or arising out of the employment of any person employed by the Contractor and shall indemnify the Council in respect of any liability which arises from the default of the Contractor.
- 10.7 The Authorised Officer shall be entitled to recommend to the Contractor by notice in writing to remove from the performance of the Services or to discipline any employee of the Contractor specified in such notice. The Council shall in no circumstances be liable either to the Contractor or to the employee in respect of any liability, loss or damage occasioned by such removal or disciplinary action and the Contractor shall indemnify the Council against any claim made by such employee.

## **11. Independent Contractor**

- 11.1 The Contractor is not and shall in no circumstances hold itself out as being the agent of the Council.
- 11.2 The Contractor is not and shall in no circumstances hold itself out as being authorised to enter into any contract on behalf of the Council or in any other way

to bind the Council to the performance, variation, release or discharge of any obligation.

- 11.3 The Contractor has not and shall in no circumstances hold itself out as having the power to make, vary, discharge or waive any byelaw or regulation of any kind.
- 11.4 The employees of the Contractor are not, shall not hold themselves out to be and shall not be held out by the Contractor as being employees or agents of the Council for any purposes.

## **12. Transfer of Staff**

- 12.1 The Contractor hereby acknowledges and undertakes to the Council that with effect from the Commencement Date it will become the employer of the Transferring Employees listed in Appendix I on the transfer of the Undertaking to which the Regulations apply.
- 12.2 The Council or the Council's existing contractor as the case may be shall be responsible for all outgoings in respect of the Transferring Employees currently employed by the Council or the Council's existing contractor up to the Commencement Date including (without limitation) all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions, expenses or otherwise.
- 12.3 The Contractor shall employ each of the Transferring Employees on terms no less favourable than their existing terms with the Council, or the Council's existing contractor as the case may be, such offer of employment taking effect as from the Commencement Date.
- 12.4 The Contractor shall be responsible for all emoluments and outgoings in respect of the Transferring Employees (including, without limitation, all wages, holiday pay, bonuses, commissions, PAYE, national insurance contributions, pension contributions and otherwise) from the Commencement Date.
- 12.5 Without prejudice to the other obligations of the Contractor under this Agreement, the Contractor shall immediately upon request by the Council provide to the Council any information deemed by the Council to be necessary concerning any measures (within the meaning of the Regulations and the Acquired Rights Directive) that the Contractor intends to take in relation to any Transferring Employee. Further, the Contractor shall fully comply with its obligations under the Regulations, including but not limited to Regulations 11 and 13.
- 12.6 The Contractor shall indemnify and keep the Council indemnified from and against each and every direct, indirect or consequential cost, claim, liability, expense, loss or demand (including legal costs and other professional expenses on an indemnity basis) awarded against or incurred or paid by the Council, its agents and/or sub-contractors as a result of any breach of the Contractor's obligations under this Agreement.
- 12.7 Without prejudice to the generality of Condition 12.6, the Contractor shall indemnify and keep the Council indemnified from and against each and every

direct, indirect or consequential cost, claim, liability, expense, loss or demand (including legal costs and other professional expenses on an indemnity basis) awarded against or incurred or paid by the Council, its agents and/or sub-contractors in connection with or as a result of any claim or demand by any Transferring Employee and/or any trade union, staff association or employee representative (whether or not recognised by the Council) in respect of any statutory employment claim (including but not limited to any claim for unfair dismissal and unlawful discrimination), any wrongful dismissal, breach of contract, any other claim arising at common law or in tort, whether under UK or European law, arising from any act, default or omission of the Contractor in relation to any Transferring Employee before, on or after the Commencement Date which shall be deemed to include the cessation of such employee's employment with the Council or the Council's existing contractor as the case may be as contemplated by this contract (whether or not the Regulations do in fact apply).

12.8 Save as disclosed in Appendix II the Council hereby represents, warrants and undertakes to the Contractor that—

- 12.8.1 it has disclosed in writing to the Contractor all material facts and matters relating to or concerning the employment of all Transferring Employees including but not limited to their respective ages, length of service, notice periods, personnel files, including car loans and car leasing arrangements, disciplinary records, employer's tax records (for the previous 12-month period) all terms and conditions of employment, pension arrangements (for those Transferring Employees who as at the Commencement Date are members of the (*specify*) Pension Scheme), benefits, policies or other agreements or arrangements or understandings in respect of each of them and any variation agreed with or imposed upon any Transferring Employee within a period of 6 months preceding the Commencement Date;
- 12.8.2 it has disclosed all material facts and matters relating to all or any collective agreements, arrangements or other understandings which the Council has with any trade union, staff association or other body representing any of the Transferring Employees;
- 12.8.3 it has disclosed to the Contractor all material facts and matters relating to or concerning all or any obligations arising from the Working Time Regulations 1998;
- 12.8.4 it has disclosed in writing to the Contractor full details of any written representations or statements made by the Council to any of its employees (or their unions or other representatives) in any way connected with or concerning employment with the Council within the period of 6 months preceding the Commencement Date;
- 12.8.5 there are no enquiries or investigations existing and the Council has no notice of any pending or threatened enquiries or investigations into the Undertaking by the Equality and Human Rights Commission, the Health and Safety Executive or other similar authority;
- 12.8.6 as at the Commencement Date the Council has in respect of the Transferring Employees discharged fully its obligations to pay all salaries, wages, commissions, bonuses, overtime pay, holiday pay, sick pay, PAYE, national insurance and pension contributions and other benefits of employment and the Council is not aware of any liability for any such matters which may fall upon the Council in respect of the

Transferring Employees employed by the Council or any former employee of the Undertaking for any period before the Commencement Date;

12.8.7 the Contractor shall indemnify and keep the Council indemnified from and against each and every cost, liability or expense it may incur in connection with any claim made against it by a Transferring Employee in relation to any personal injury claim or any change made by the Contractor after the Commencement Date to such Transferring Employee's terms and conditions of employment.

12.9 For the avoidance of doubt, all salaries and other emoluments including overtime pay, accrued flexitime, holiday pay, sick pay, tax and national insurance payments and contributions to retirement benefit schemes and private health insurance schemes relating to the Transferring Employees shall be borne by the Council up to and including the Commencement Date and all necessary apportionments shall be made accordingly.

### **13. Force Majeure**

13.1 The Contractor shall not be liable to the Council or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of the Contractor's obligations under the Contract if the delay or failure was due to circumstances beyond the Contractor's reasonable control.

13.2 Without prejudice to the generality of Condition 13.1, circumstances beyond the Contractor's reasonable control shall include act of God, server crashes, virus attach on equipment, fire or accident, war or threat of war, sabotage, insurrection, civil disturbance or requisition, acts, restrictions.

### **14. Default**

14.1 The Contractor shall be in default if he—

14.1.1 fails to perform the Contract with due skill, care, diligence and timeliness;

14.1.2 refuses or neglects to comply with any reasonable written instruction given by the Authorised Officer;

14.1.3 is in breach of the Contract.

14.2 Where in the opinion of the Authorised Officer, the Contractor is in default, the Authorised Officer may serve a Notice giving at least seven days in which to remedy the default.

14.3 If the Contractor fails to comply with such a Notice the Authorised Officer may, without prejudice to any other rights or remedies under the Contract, take over for as such a period as is necessary the performance of the relevant part of the Contract and make other arrangements for its completion. Any extra costs arising from this action, will be paid by the Contractor or deducted from any monies owing to him.

## **15. Termination**

- 15.1 The Council may immediately, without prejudice to any other rights and remedies under the Contract, terminate all or any part of the Contract by Notice in writing to the Contractor, Receiver, Liquidator or to any other person in whom the Contract may become vested, and recover all its loss if the Contractor—
- 15.1.1 fails in the opinion of the Authorised Officer to comply with (or take reasonable steps to comply with) a Notice under Condition 14.2.
  - 15.1.2 becomes bankrupt or insolvent, or has a receiving order made against him, or makes an arrangement with his creditors or (being a corporation) commences to be wound up, not being a voluntary winding up for the purpose of reconstruction or amalgamation, or has a receiver, administrator, or administrative receiver appointed by a Court.
  - 15.1.3 has offered or given or agreed to give any person any gift or a consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this Contract or any other Contract with the Council or for showing or forbearing to show favour or disfavour to any person in relation to this Contract or any other Contract with the Council or if the like acts shall have been done by any person employed by it or acting on its behalf (whether with or without the knowledge of the Contractor) or if in relation to any Contract with the Council the Contractor or any person employed by him or acting on his behalf has committed any offence under the Bribery Act 2010 or under Section 117 of the Local Government Act 1972; or committed any fraud in connection with this or any other Council Contract; or
  - 15.1.4 undergoes a change of control.

## **16. Consequences of Termination**

- 16.1 In the event of termination of this Contract (in whole or in part) for any of the reasons specified in Condition 15 the Council may exercise any or all of the following rights—
- 16.1.1 the Council may require the Contractor to perform any of its obligations existing at the date of termination;
  - 16.1.2 the Council shall cease to be under any obligation to make any further payments under this Contract;
  - 16.1.3 the Council shall be entitled to recover from the Contractor and the Contractor shall fully indemnify the Council in respect of any loss, damages, costs or expenses to the Council resulting from or arising out of the termination of this Contract (in whole or in part) including the reasonable cost to the Council of time spent by its officers in terminating this Contract (in whole or in part) and, without limitation, the costs of procuring suitable alternative Services in accordance with the procedures laid down by the Council's Contract Procedure Rules and relevant legislation.
  - 16.1.4 the termination (in whole or in part) or expiration of this Contract shall be without prejudice to the rights and remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination or expiration.

## **17. Determination**

- 17.1 Without prejudice to any other rights or remedies under the Contract, the Council reserves the right to determine the Contract at any time by giving not less than one month's Notice, (or such other time period as may be appropriate).
- 17.2 The Council shall pay the Contractor such amounts as may be necessary to cover his reasonable costs and outstanding and unavoidable commitments necessarily and solely incurred in properly performing the Contract prior to determination.
- 17.3 The Council will not pay for any costs or commitments that the Contractor is able to mitigate and shall only pay those costs that the Council has validated to its satisfaction. The Council's total liability under this Condition shall not in any circumstances exceed the Contract Price that would have been payable for the Services if the Contract had not been determined.

## **18. Termination by the Contractor**

- 18.1 The Contractor may terminate this Contract (in whole or in part) forthwith by written notice having immediate effect in the following circumstances—
- 18.1.1 if the Council is in breach of any of its obligations under this Contract and if such breach is capable of remedy fails to remedy the breach within 15 working days of a written request by the Contractor to remedy the same.

## **18A Exiting the Contract**

At the end of this Contract or earlier Termination for whatsoever reason, the Contractor shall fully cooperate with the Council to ensure that all outstanding matters are smoothly handed over to the Council or a new Contractor. The Contractor shall ensure all materials, records and information are handed over and where appropriate deleted and destroyed from the Contractor's Information System and data storage facilities. The Council reserves the right to request certification to confirm the information has been so deleted and destroyed .

## **19. Liability of the Contractor and Indemnity to the Council**

- 19.1 The Contractor shall be liable for and shall indemnify the Council against any actions, claims, liability, demands, proceedings, damages, costs, charges or expenses whatsoever, arising under any statute or at common law in respect of personal injury to or death of any person arising out of or in the course of or caused by the performance of the Services, except to the extent that the same is due to any act or neglect of the Council or of any person for whom the Council is responsible.
- 19.2 The Contractor shall be liable for and shall indemnify the Council against any actions, claims, liability, demands, proceedings, damages, costs, charges or

expenses whatsoever, in respect of any loss of or injury or damage to any property, real or personal, in so far as such loss, injury or damage arises out of or in the course of or by reason of the performance of the Services by the Contractor, its employees or agents or of any person employed or engaged by the Contractor upon or in connection with the performance of the Services or any part, its employees or agents.

- 19.3 The Contractor shall indemnify the Council against all actions, claims, liability, demands, proceedings, damages, costs, charges or expenses whatsoever, which result from the Contractor's failure, including failure that results in the Council being in breach of any statutory duty.
- 19.4 The Contractor warrants that it has fully satisfied itself as to the scope and nature of the Services and of its obligations under the Contract and has made all necessary appropriate searches, enquiries and inspections.

## **20. Insurance**

- 20.1 The Contractor shall insure and maintain insurance against liabilities under Condition 19 in the manner and to the values listed in the Contract with a reputable insurance company approved by the Council. If no sum is stated, the value insured shall be five million pounds for any one occurrence and where appropriate, professional indemnity cover in a sum not less than one hundred thousand pounds.
- 20.2 The Contractor shall, upon request, produce to the Authorised Officer documentary evidence that the insurances required are fully paid up and in force at all material times in relation to the cover required.
- 20.3 The Authorised Officer shall be entitled to notify the Contractor in writing that in the opinion of the Authorised Officer any such policy of insurance does not effect sufficient cover to comply with the Contract and to require the Contractor to effect such insurances as will comply. Upon receipt of such notice the Contractor shall immediately procure and effect such insurance as the Authorised Officer shall require and in default the Authorised Officer may himself cause such insurance to be effected, whereupon the Contractor shall pay to the Council such sum as the Authorised Officer shall certify as being the cost to the Council of effecting such insurance

## **21. Dispute Resolution**

- 21.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the [*insert appropriate job title*] for the Contractor and the Head of [*insert appropriate Head of Service*] for the Council.
- 21.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 21.3 If the dispute cannot be resolved by the Parties pursuant to Condition 21.1 the Parties shall refer it to mediation pursuant to the procedure set out in Condition

- 21.5 unless (a) the Council considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.
- 21.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Contractor shall comply fully with the requirements of the Contract at all times.
- 21.5 The procedure for mediation and consequential provisions relating to mediation are as follows—
- 21.5.1 A neutral adviser or mediator (the “Mediator”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the ADR Group to appoint a Mediator.
- 21.5.2 The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the ADR Group to provide guidance on a suitable procedure.
- 21.5.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- 21.5.4 If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- 21.5.5 If the Parties fail to reach agreement in the structured negotiations within 30 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.
- 21.6 Subject to Condition 21.2, the Parties shall not institute court proceedings until the procedures set out in Conditions 21.3 and 21.5 have been completed save that—
- 21.6.1 the Council may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with Condition 21.7;
- 21.6.2 if the Contractor intends to commence court proceedings, it shall serve written notice on the Council of its intentions and the Council shall have 21 days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with Condition 21.7;
- 21.6.3 the Contractor may request by notice in writing to the Council that any dispute be referred and resolved by arbitration in accordance with Condition 21.7, to which the Council may consent as it sees fit;

- 21.7 In the event that any arbitration proceedings are commenced pursuant to Condition 21.6—
- 21.7.1 the arbitration shall be governed by the provisions of the Arbitration Act 1996;
  - 21.7.2 the Council shall give a written notice of arbitration to the Contractor ('the Arbitration Notice') stating—
    - 21.7.2.1 that the dispute is referred to arbitration; and
    - 21.7.2.2 providing details of the issues to be resolved;
  - 21.7.3 the London Court of International Arbitration ('LCIA') procedural rules in force at the date that the dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
  - 21.7.4 the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
  - 21.7.5 if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Council under Condition 21.7.2 or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
  - 21.7.6 the arbitration proceedings shall take place in London and in the English language; and
  - 21.7.7 the arbitration proceedings shall be governed by, and interpreted in accordance with, English law.

## **22. Monitoring and Audit**

- 22.1 The Authorised Officer may inspect and examine the Services being carried out on the Council's premises, or elsewhere at any reasonable time. The Contractor shall give all such facilities as the Authorised Officer may reasonably require for such inspection and examination.
- 22.2 The Contractor recognises that the Council is a public body and its decisions may be subject to scrutiny. The Contractor therefore agrees, if requested by the Council, to attend any meeting (including scrutiny meetings with Council Members) to discuss the Services (including the costs and performance of such service being undertaken under the Contract. If the meeting where attendance is required is to discuss the performance of or actions resulting from the Services undertaken that the cost of attendance will be at the expense of the Contractor.
- 22.3 The Contractor shall allow persons nominated by the Council access to all management records and documents in the possession of the Contractor in connection with the performance of this contract, including all accounting records and financial information in the possession, custody or control of the Contractor or the Contractor's auditor.
- 22.4 Where this Contract requires the Contractor to make payments or collect income on behalf of the Council, the Council's rights of audit shall be reserved as if the Contractor was an employee of the Council

## **23. Contract Price**

- 23.1 The Contract Price will be paid by the Council to the Contractor as amended by any Variations ordered under Condition 9.
- 23.2 In addition to the Contract Price, the Council will pay to the Contractor such Value Added Tax (if any) as may properly be chargeable at rates ruling at the time of invoice.

## **24. Invoicing and Payment**

- 24.1 Invoices shall only be submitted for work already satisfactorily completed, and accompanied by such information as the Authorised Officer may reasonably require to verify the Contractor's entitlement to payment. Such invoices will be paid in 30 days from receipt by the Council.
- 24.2 If any sum is payable under the Contract by the Contractor to the Council, whether by deduction from the Contract or otherwise, it will be deducted from the next available invoice.
- 24.3 The Council reserves the right to withhold or set off payment against any invoice which is not submitted in accordance with the Contract or if the Contractor is in breach of any of its obligations under the Contract or any other contract between the parties until such time as a corrected invoice is submitted or the breach is cured. The Council shall in each case notify the Contractor in writing of the reason for withholding payment.
- 24.4 The Council requires the Contractor to offer equivalent payment terms as in 24.1 to its supply chain sub-contractors and reserves the right to request information to confirm the terms offered to the Sub Contractors

## **25. Intellectual Property Rights**

- 25.1 The Contractor warrants to the Council that the performance of the Services, shall not in any way infringe any Intellectual Property Rights belonging to any third party and shall fully indemnify the Council against all actions, claims, costs, charges, expenses and liabilities of whatsoever nature arising from or incurred by reason of any infringement, or alleged infringement.
- 25.2 The Contractor shall not be liable under this Condition if such infringement arises from the use of any design, technique or method of working provided by or specified by the Council.
- 25.3 If the Contractor is prevented from carrying out his obligations under the Contract due to any infringement or alleged infringement of any Intellectual Property Rights, the Council may without prejudice to any other rights and remedies under the Contract, exercise the powers and remedies available to it under Conditions 15 and 17, Termination and Determination respectively.

## **26. Data Protection and Information Security**

- 26.1 The Contractor and the Council shall each comply with their respective obligations under the Data Protection Act 1998 and other applicable statutory

provisions or provision of any European directive in respect of personal data and records containing personal or corporate information. In particular, the Contractor shall ensure that at all times they have in place appropriate technical and organisational measures to guard against unauthorised or unlawful processing of the Personal Data and/or accidental loss, destruction or damage to Personal Data.

26.2 The Contractor shall ensure that all data in relation to the Services is securely stored and managed through effective policies, procedures and training. This will include but will not be limited to ensuring all data is password protected and ensuring all paper files are securely stored in a locked location out of hours.

26.3 The Contractor shall not remove, transmit, or exchange data by any means, unless previously agreed in writing with the Council and ensure that any personal data is not held for longer than required and disposed of properly and securely.

## **27. Warranty**

27.1 The Contractor warrants that the Services supplied by him are fit for the Council's intended purpose so far as this has been communicated to him, or which he would reasonably be expected to know.

## **28. Equality and Diversity**

28.1 The Supplier shall perform its obligations under this Agreement (including those in relation to the Services) in accordance with all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise); the Authority's equality and diversity policy as provided to the Supplier from time to time; and any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law;

28.2 The Supplier shall take all necessary steps, and inform the Authority 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)..

## **29. Environment**

29.1 The Contractor shall in all his operations, including purchase of materials goods and services, adopt a sound proactive environmental approach, designed to minimise harm to the environment and be able to provide proof of so doing to the Authorised Officer on demand.

## **30. Publicity**

30.1 The Contractor shall not advertise or publicly announce that he is supplying Services or undertaking work for the Council without the Permission of the Authorised Officer.

## **31 Confidential Information**

- 31.1 For the purposes of this Clause 31, the term “Disclosing Party” shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and “Recipient” shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 31.2 Except to the extent set out in this Clause 31 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:
- 31.2.1 treat the Disclosing Party’s Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
  - 31.2.2 not disclose the Disclosing Party’s Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner's prior written consent;
  - 31.2.3 not use or exploit the Disclosing Party’s Confidential Information in any way except for the purposes anticipated under this Agreement; and immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party’s Confidential Information.
- 31.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
- 31.3.1 the Recipient is required to disclose the Confidential Information by Law, provided that Clause 32 (Freedom of Information) shall apply to disclosures required under FOIA or EIRs; or/ and as required under Local Government Transparency Code 2014 for all awards of Contracts exceeding £5000 in value; 31.3.2 the need for such disclosure arises out of or in connection with:
    - 31.3.2.1 any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Agreement;
    - 31.3.2.2 the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any audit of the economy, efficiency and effectiveness with which the Authority is making use of any Services provided under this Agreement; or
    - 31.3.2.3 the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010
- 31.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 31.5 The Supplier may disclose the Confidential Information of the Authority on a Confidential basis only to:

- 31.5.1 Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Agreement;
  - 31.5.2 its auditors; and
  - 31.5.3 its professional advisers for the purposes of obtaining advice in relation to this Agreement.
- 31.6 Where the Supplier discloses Confidential Information of the Authority pursuant to this Clause 31.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.
- 31.7 The Authority may disclose the Confidential Information of the Supplier:
- 31.7.1 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
  - 31.7.2 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 31.6(a) (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;
  - 31.7.3 on a confidential basis for the purpose of the exercise of its rights under this Agreement.
- 31.8 Nothing in this Clause 31 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

## **32 Freedom of Information**

- 32.1 The Contractor recognises that the Council is subject to legal duties which may require the release of information under the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004 (EIRs) or any other applicable legislation or codes governing access to information and that the Council may be under an obligation to provide information on request. Such information may include matters relating to, arising out of or under this contract. The Contractor will assist and co-operate with the Council to enable the Council to comply with its obligations under the FOIA or the EIRs or other applicable legislation governing access to information. The Contractor will respond to any such request for assistance from the Council at its own cost and promptly and in any event within 5 days of receiving the Council's request.
- 32.2 The Contractor shall transfer to the Council all requests for information relating to this Agreement that it receives as soon as practicable and in any event within 2 working days.
- 32.3 The Contractor acknowledges that the Council may be required under the FOIA or the EIRs to disclose information (including commercially sensitive information) without consulting or obtaining consent from the Contractor. The Council shall take reasonable steps to notify the Contractor of a request for information (in accordance with the Secretary of State's section 45 Code of Practice on the

Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Council shall be responsible for determining in its absolute discretion whether any commercially sensitive information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

### **32A Business Continuity**

In order to support the Employer's Business Continuity and Emergency Planning obligations as defined by the Civil Contingencies Act 2004, the Contractor shall have, on commencement or within six weeks from commencement of the Contract, documented arrangements that meet good practice guidelines to effectively protect the Employer from the consequences of a business interruption (or series of interruptions). Such arrangements must fully integrate with the Employers own business continuity arrangements and include plans for restoring and maintaining the delivery of the goods, services and/or works which are the subject of the Contract and for maintaining communication with the Employer.

The Contractor shall ensure that there is a Business Continuity Plan which is regularly reviewed and updated to ensure continued and uninterrupted service to the Employer.

The Contractor shall undertake to test their business continuity arrangements no less than once per annum; or at other agreed intervals and where appropriate share results of the test(s) with the Employer and agree to support the Council in testing its own Business Continuity Plan for the specific requirements with in this Contract.

The Contractor shall promptly (and in any case within three months) implement any actions or remedial measures which the Contractor or Client considers to be necessary as a result of audits; tests or exercises; business interruptions; emerging risks; a change to the goods, services and/or works covered by this Contract or any underlying business processes.

### **31. British Standards**

- 31.1 Where an appropriate British Standard Specification or British Standard Code of Practice issued by the British Standards Institution is current, all goods used or supplied and all workmanship shall be in accordance with that Standard or accepted equivalent and unless the Contractor's quality assurance so complies the Contractor shall seek to secure that its quality assurance complies with ISO 9000.

### **32. Observance of Statutory Requirements**

- 32.1 The Contractor shall comply with all statutory and other provisions to be observed and performed in connection with the Services provided under this

Contract with particular regard to the health and safety of employees and of the public and shall indemnify and keep indemnified the Council accordingly.

**33. Rights and Duties Reserved**

33.1 Nothing in this Contract shall prejudice or fetter the proper exercise of any function by the Council or its officers.

**34. Fees**

34.1 Each party shall bear its own legal and other fees in relation to the Contract.

**36. Whole contract**

36.1 This Contract constitutes the whole agreement and understanding of the parties as to the subject matter of this Contract and there are no prior or contemporaneous agreements between the parties.

**37. Waiver**

37.1 Failure by the Council at any time to enforce any provision of this Contract or to require performance by the Contractor of any of the provisions of this Contract shall not be construed as a waiver of any such provisions and shall not affect the validity of this Contract or any part of it or the right of the Council to enforce any provision in accordance with its terms.

**38. Severance**

38.1 If any provision of this Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way such invalidity or unenforceability shall in no way impair or affect any other provision, all of which shall remain in full force and effect.

**39. Inconsistency**

39.1 In the event of a conflict between any provision of the Conditions and any provision of the Specification the provision of the Conditions shall prevail.

**40. Condition headings**

40.1 The Condition headings shall not be construed as part of these Conditions.

**41. Law**

41.1 This Contract shall be governed by and construed in accordance with the laws of England and the Contractor irrevocably submits to the jurisdiction of the English courts.

IN WITNESS etc.

**Appendix I**

Details of Transferring Employees.

**Appendix II**

Disclosures Against Warranties.