Dated 2020

(1) Derbyshire County Council

(2) [Contractor]

Contract for the Supply and Delivery of Frozen Food

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Date:

Parties:

**(1) Derbyshire County Council of County Hall, Matlock, Derbyshire, DE4 3AG (the “Council”)**

(2) [INSERT COMPANY NAME], of [INSERT COMPANY REGISTERED ADDRESS], a company incorporated in [INSERT COUNTRY], Company number: [INSERT COMPANY NUMBER] (the "Contractor")

Introduction

1. Derbyshire County Council placed a contract notice with reference number [ ] on [ ] in the Official Journal of the European Union seeking expressions of interest from potential service providers for the supply and delivery of frozen food to the Council and the Permitted Authority under this Contract.
2. The Council sought tenders for the supply and delivery of frozen food in accordance with the tender documents.
3. The contractor submitted a tender to the Council for the supply of the Goods and Services the Council has accepted the Contractor’s tender.
4. The Council requires and the Contractor undertakes to supply the Goods and Services on the terms set out in this Contract.

Agreed terms

1. Definitions

|  |  |
| --- | --- |
| **Additional Establishment** | means any Establishment not listed in the document entitled ‘Schedule of Establishments’ set out in Schedule 1; |
| **Affected Party** | means the Party seeking to claim relief in respect of a Force Majeure Event; |
| **Best Value Duty** | means the duty imposed on the Council by Section 3 of the Local Government Act 1999 in relation to the Goods; |
| **Business Day** | means a day other than a Saturday, Sunday or public holiday in England; |
| **Change in Law** | means any change in Law, which impacts on the provision of the Goods which comes into force after the Commencement Date; |
| **Commencement Date** | means 1 August 2020; |
| **Confidential Information** | means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and Contractors of either Party, all Personal Data within the meaning of the Data Protection Act 2018 and the Commercially Sensitive Information identified pursuant to clause 33.4; |
| **Conflict of Interest** | means any actual or potential conflict of interests between the personal or pecuniary interests of two or more Parties to this Contract; |
| **Contract Manager** | has the meaning given in clause 44; |
| **Contractor Personnel** | means all employees, workers, staff, agents and consultants of the Contractor engaged in the provision of the Goods and Services at any time; |
| **Contractor’s Tender** | means the tender submitted in response to the Specification and attached as Schedule 4; |
| **Council’s Policies** | means the policies of the Council; |
| **Council’s Premises** | means the premises belonging to the Council and shall include the Establishments and Additional Establishments; |
| **Data Processor** | has the meaning given to it in the Data Protection Act 2018; |
| **Data Protection Legislation** | means (i) the General Data Protection Regulation *(Regulation (EU) 2016/679)*, the Law Enforcement Directive *(Directive (EU) 2016/680)* and any applicable national implementing Laws as amended from time to time (ii) the Data Protection Act 2018; and (iii) all applicable Law about the processing of personal data and privacy; |
| **Delivery Date** | means the date specified by the Council in the Order Form for delivery of an Order; |
| **Delivery Note Number** | means the delivery note number generated by the Contractor for the delivery of Goods under an Order submitted through the Council’s electronic ordering system; |
| **Delivery Time** | means:   1. where an Order is to be delivered to an Establishment, the period during the opening hours of the Establishment as specified by the Council in the document entitled ‘Schedule of Establishments’ as set out in Schedule 1; or 2. where an Order is to be delivered to an Additional Establishment, the time specified by the Council. |
| **Deputy Contract Manager** | has the meaning given in clause 44; |
| **Disaster** | means a sudden, calamitous event which disrupts the supply of the Goods; |
| **Employee Liability Information** | means the employee liability information to be provided pursuant to Regulation 11 of TUPE; |
| **Employment Liabilities** | means all claims, including claims without limitation for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses; |
| **Establishment** | means the establishments as listed in the document entitled ‘Schedule of Establishments’ set out in Schedule 1; |
| **Expiry Date** | has the meaning set out in clause 3; |
| **Force Majeure Event** | means any cause affecting the performance by a Party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, being acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or Regulatory Bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Contractor or any other failure in the Contractor’s supply chain; |
| **Future Contractor** | means a Contractor of the provision of Goods equivalent to the provision of Goods immediately following expiry or termination of this Contractor; |
| **General Change in Law** | means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Contractor) or which would affect or relate to a comparable supply of goods to a third party; |
| **Goods** | means those goods to be supplied by the Contractor to the Council as set out in the Specification; |
| **Good Industry Practice** | means that degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced operator (engaged in the same type of undertaking as that of the Contractor) under the same or similar circumstances; |
| **Intellectual Property Rights** | means any and all patents, trade marks, service marks, copyright, database rights, moral rights, rights in a design, know-how, Confidential Information, the right to sue for passing off, and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto which is created, brought into existence, acquired, used or intended to be used by the Contractor for the purposes of providing the Goods; |
| **Invoice Address** | means the address provided by the Council to the Contractor to which all invoices shall be submitted; |
| **Law** | means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or statute, bye-law, regulation, order, rule of Court or directives or requirements of any competent Council, delegated or subordinate legislation; |
| **Losses** | means all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses); |
| **Net Price** | Means the wholesale price of the Goods as purchased by the Contractor and for the avoidance of doubt shall be net of value added tax and the Percentage On-Cost ; |
| **Order** | Means an order for Goods submitted by the Council to the Contractor in accordance with clause 8; |
| **Order Form** | Means an order form sent by the Council to the Contractor either by hand, post, email or through the Council’s electronic ordering system requesting the supply of Goods or confirming an oral order for Goods; |
| **Order Number** | Means the number applied to an Order by the Contractor or where an Order is submitted through the Council’s electronic ordering system, the number generated and applied to the Order by the electronic ordering system; |
| **Party** | means either the Council or the Contractor as applicable; |
| **Percentage On-Cost** | Means the percentage on-cost as more particularly described at Schedule 3; |
| **Permitted Authority** | means Derby City Council and for the avoidance of doubt includes Derbyshire County Council; |
| **Personal Data** | has the meaning given to it in the Data Protection Act 2018; |
| **Prescribed Rate** | means four per cent (4%) above the base rate from time to time of Barclays Bank plc; |
| **Price** | means the total of the Net Price and the Percentage On-Cost payable by the Council to the Contractor under the terms of this Contract, more particularly described at Schedule 3; |
| **Prohibited Act** | * + 1. offering or giving or agreeing to give to any person any gift or consideration of any kind as an inducement or reward for doing, or forbearing to do, or for having done, or refrained from doing any action in relation to the obtaining or execution of the Contract or any other contract with the Council;     2. showing, or appearing to show, favour or disfavour to any person in relation to any person in relation to this Council or any other agreement with the Council or if any like acts shall have been done by any person employed by the Contractor, or acting on the Contractors’ behalf (whether with or without the knowledge of the Contractor);     3. in relation to any contract with the Council the Contractor, or any person employed by the Contractor, or acting on the Contractor’s behalf commits any offence under the Bribery Act 2010 or any amendment to it;     4. gives any fee or reward the receipt of which is an offence under section 117 (2) of the Local Government Act 1972;     5. paying commission or agreeing to pay any commission to any employee or representative of the Council or any employee or representative of the Contractor doing the same;     6. offering, giving or agreeing to give to any employee, officer or member of the Council any gift or consideration of any kind as an inducement or reward:        1. for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with the Council; or        2. for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Council;     7. entering into this Contract or any other contract with the Council in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Council;     8. committing any offence:        1. under Law creating offences in respect of fraudulent acts;        2. at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Council; or     9. defrauding or attempting to defraud or conspiring to defraud the Council. |
| **Regulatory Bodies** | means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Council or the Contractor and **“Regulatory Body”** shall be construed accordingly; |
| **Relevant Requirements** | means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010; |
| **Relevant Transfer** | means a relevant transfer for the purposes of TUPE; |
| **Representative** | means the appointed personnel of the Council and the Contractor listed at Schedule 5; |
| **Request for Information** | means a request for information or an apparent request for information under the FOIA or the EIR; |
| **Returning Employees** | means those employees wholly or mainly engaged in the provision of the Goods as the case may be as immediately before the expiry or termination of this Contract whose employment transfers to the Council or a Future Contractor pursuant to TUPE; |
| **Services** | Means the services to be provided by the Contractor under this Contract as detailed in the Specification set out at Schedule 1; |
| **Site** | means a site which is not the Council’s Premises but may be specified as delivery address for the Goods by the Council; |
| **Specific Change in Law** | means a Change in Law that relates specifically to the business of the Council and which would not affect a comparable supply of goods to a third party; |
| **Specification** | means the specification of Goods and Services set out at Schedule 1; |
| **Sub-Contract** | means any contract entered into by the Contractor with a third party for the provision of any of the Services or Goods in accordance with clause 19. |
| **Sub-Contractor** | means any contractor that enters into a Sub-Contract with the Contractor; |
| **Transferring Third Party Employees** | means employees of current third party Contractors of all or some services similar or the same as the service to supply the Goods whose contracts of employment transfer with effect from the Commencement Date to the Contractor by virtue of the application of TUPE. |

1. Interpretation

In this Contract unless the context otherwise requires:

* 1. headings and sub-headings are for ease of reference only and shall not be taken into account in the interpretation or construction of this Contract;
  2. all references to clauses and schedules are references to the clauses of and the schedules to this Contract unless otherwise stated;
  3. the schedules form part of this Contract;
  4. all references to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, documents or other instrument as amended, supplemented, substituted, novated or assigned from time to time;
  5. all references to any statutory provision shall include references to any statute or statutory provisions which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations, codes of practice, instruments or other sub-ordinate legislation made under the relevant statute or statutory provision;
  6. words importing the singular include the plural and vice versa;
  7. words importing a gender include all genders;
  8. "person" includes an individual, partnership, forum, trust, body corporate, government, governmental body, authority, agency or unincorporated body of persons or association;
  9. the words "include" and "including" are to be construed without limitation and the rule of construction known as ejusdem generis shall not apply to this Contract;
  10. any obligation on a Party to do any act, matter or thing includes, unless expressly stated otherwise, an obligation to procure that it is done;
  11. subject to any express provisions of this Contract to the contrary, the obligations of any Party are to be performed at that Party's own expense; and
  12. in the event of, and only to the extent of any conflict or inconsistency between the terms and conditions of this Contract and any other terms and conditions, such conflict or inconsistency shall be resolved according to the following order of priority:
      1. the clauses of this Contract;
      2. the Schedules in this Contract excluding Schedule 4;
      3. Schedule 4; and
      4. the Contractor’s Terms and Conditions shall not be accepted as any part of this Contract.

1. Term
   1. This Contract shall commence on the Commencement Date and shall continue in effect until twenty four (24) months following the Commencement Date (the “Expiry Date”) or until it is otherwise terminated or extended in accordance with the provisions of this Contract (the “Term”).
2. Extension
   1. Prior to the Expiry Date, the Council may, at its absolute discretion, serve notice on the Contractor in writing extending the term of this Contract for a further period or further periods of up to twelve (12) months to a maximum of two (2) further years (the “Extension Period”) making a maximum Term of four (4) years. In the event that the Council serves notice under this clause 4.1 the Expiry Date will be extended in accordance with the notice.
   2. Unless it is further extended under this clause 4 or terminated in accordance with clause 9, clause 13, clause 20, clause 21, clause 23, clause 35, clause 36, clause 37, or clause 38 the Contract shall terminate automatically at the end of the Extension Period without further notice.
3. Provision of the Goods and/or Services
   1. The Contractor shall supply the Goods and Services throughout the Term in accordance with the provisions of this Contract.
   2. If the Council informs the Contractor in writing that the Council reasonably believes that any part of the Goods and/or Services do not meet the requirements in the Specification or differ in any way from the Council’s requirements, the Contractor shall, at its own expense, re-schedule and deliver the Goods and/or Services in accordance with the Specification and requirements of the Council within such reasonable time as may be specified by the Council.
   3. The Contractor accepts responsibility for all damage to, shortage, or loss of the Goods if:
      1. the same is notified in writing to the Contractor within fifteen (15) Business Days of receipt of the Goods by the Council; and
      2. the Goods have been handled by the Council in accordance with the Contractors instructions.
   4. Where the contractor accepts responsibility under clause 5.3 the provisions of 11.3 shall apply.
   5. The Contractor agrees that the Council relies on the skill and judgment of the Contractor in the supply of the Goods and in the provision of the Services and in the performance of its obligations under the Contract.
4. The Goods
   1. With effect from the Commencement Date, the Contractor shall supply the Goods to the Council in accordance with the Specification.
   2. Without prejudice to the generality of clause 6.1 where specified as part of the Specification the Contractor shall ensure that the Goods meet the Council’s requirements as set out in the Specification.
   3. The Goods to be supplied to the Council by the Contractor shall:
      1. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose made known to the Contractor by the Council or set out in the Specification, and in this respect the Council relies on the Contractor’s skill and judgement;
      2. be capable of the performance required by the Council;
      3. without prejudice to clause 6.3.5 be free from all defects including but not limited to all diseases, rot, mould, decay, live insects and parasites and any mechanical or insect damage and be supplied in a clean and sound condition and be free from any taint, extraneous matter or toxic chemical residues;
      4. meet or exceed the standards detailed within the Contractor’s Tender;
      5. comply with all applicable statutory and regulatory requirements, including any relating to their quality, manufacture, labelling, packaging, storage, handling and delivery which shall include but not be limited to the Food Safety Act 1990, the Trade Descriptions Act 1968, the Weights and Measures Act 1985, the Food Information Regulations 2014, the European Food Information to Consumers Regulation 1169/2011 the Food Safety and Hygiene (England) Regulations 2013 and Regulation (EC) 852/2004 on the Hygiene of Foodstuffs;
      6. without prejudice to clause 6.3.5, display a label which shall include the following information as a minimum:
         1. a description of the Goods;
         2. the use by date of the Goods;
         3. the traceability coding of the Goods;
         4. a full list of ingredients contained in the Goods including allergens;
         5. instructions for use and storage of the Goods; and
         6. the net weight or volume of the Goods where applicable.
      7. correspond with:
         1. their description; and
         2. any examples or samples provided to the Council by the Contractor in relation to the provision of the Goods.
      8. be supplied with all product warranties in a form that can be utilised by the Council.
   4. The Contractor hereby guarantees the Goods for the Term against any defects. If the Council shall during the Term give notice in writing to the Contractor of any defect in any of the Goods as may have arisen during the Term, the Contractor shall (without prejudice to any other rights and remedies which the Council may have) promptly remedy such defects (whether by replacement or otherwise as the Council shall elect) free of charge.
   5. The Contractor is not given any sole or exclusive rights in relation to the provision of the Goods.
5. Standard and Performance of the Services
   1. The Contractor shall, and shall ensure that any Contractor Personnel ensure that the Services comply with and meet all the requirements of the:
      1. the Specification;
      2. Good Industry Practice;
      3. all applicable Council Policies and applicable Law,

with effect from the Commencement Date.

* 1. The Contractor shall, and shall procure that any Contractor Personnel shall, at all times in connection with this Contract, act in:
     1. good faith in the best interests of the Council;
     2. accordance with Good Industry Practice; and
     3. accordance with all relevant Law,

with effect from the Commencement Date.

* 1. The provision of the Services is in accordance with the acknowledgement by the Contractor that time is of the essence, unless agreed otherwise.
  2. The Contractor warrants that the vehicles used in the supply of the Goods and Services shall:
     1. only be used for the transportation of food and not for any other purpose during the period in which the Goods are being transported;
     2. not pose a risk of contamination to the Goods;
     3. be fitted with a temperature recording device which records the internal temperature of the box in which the Goods are stored in degrees celsius;
     4. be in a good, serviceable and roadworthy condition; and
     5. at all times be taxed, licenced, maintained and kept in accordance with all relevant statutory requirements and other regulations having the force of Law.
  3. The Contractor warrants that all Contractor Personnel engaged in the delivery of the Goods shall have the correct licence for the type of vehicle they operate and such licence is valid and up to date.

1. Ordering
   1. The Council shall submit each Order at least 5 (five) Business Days prior to the Delivery Date unless agreed otherwise.
   2. When the Council wishes to place an Order, it shall either send an Order Form to the Contractor or submit an Order orally. Oral Orders shall be confirmed by an Order Form (bearing the additional words "confirmation of oral order") within 2 (two) Business Days.
   3. Each Order shall:
      1. be given in writing or, if given orally, shall be confirmed in writing within 2 (two) Business Days;
      2. specify the type and quantity of Goods ordered, and
      3. specify the Delivery Date, and the address for delivery of the Order. If the Delivery Date and/address for delivery of the Order are to be specified after the placing of an Order, the Council shall give the Contractor reasonable advance notice of the relevant information.
   4. Save for Orders submitted through the Council’s electronic ordering system the Contractor shall assign an Order Number to each Order received from the Council and inform the Council of the Order Number.
   5. Each Party shall use the relevant Order Number in all subsequent correspondence relating to the Order.
   6. The Council may:
      1. amend an Order by giving oral notice by telephone or written notice by email to the Contractor no later than 10am 3 Business Days prior to the Delivery Date; and/or
      2. cancel an Order by giving oral notice by telephone to the Contractor not later than 2.00pm on the Business Day prior to the Delivery Date.
   7. Oral amendments and/or cancellations shall be confirmed by the Council in writing within 3 (three) Business Days of the date of the oral notice being given.
   8. If the Council amends or cancels an Order in accordance with clause 8.6 the Council shall not be liable to the Contractor for any costs reasonably incurred by the Contractor in fulfilling the Order up until the date of amendment or cancellation.
2. Delivery
   1. Goods shall be delivered in accordance with the terms of Schedule 2.
   2. The Contractor shall deliver the Goods:
      1. in accordance with the Specification in accordance with the Order;
      2. on the Delivery Date;
      3. at the Delivery Time; and

shall obtain a signed receipt for delivery of the Goods from any authorised officer of the Council.

* 1. Deliveries shall be made on the Delivery Date at the Delivery Time. Where a Bank Holiday or school inset day falls on a scheduled Delivery Date, delivery shall be offered on an alternative day in the same week.
  2. The Contractor shall arrange for delivery of the Goods having regard to access, visibility, quantity of the Goods being delivered and the safety of individuals at the Council’s Premises or Site and the Delivery Time.
  3. The Council may refuse admission to the Contractor Personnel or require such personnel to leave the Council’s Premises at any time and shall not be obliged to give the Contractor any reasons for its decision. Any such decision taken by the Council may result in such persons no longer delivering the Goods on behalf of the Contractor under this Contract.
  4. Whilst on the Council’s Premises or other Site, the Contractor shall, and shall procure that all Contractor Personnel shall:
     1. abide by the rules, regulations and policies relating to the Council’s Premises or the Site;
     2. comply with the Council’s Policies or the policies of the Site as applicable relating to conduct of Contractor Personnel and security arrangements; and
     3. at all times whilst on the Council’s Premises or other Site have a form of identification acceptable to the Council which shall be displayed visibly on that persons uniform.
  5. Subject to clause 9.4, delivery of the Goods shall occur at the point the Goods are unloaded and deposited at the relevant Council’s Premises or Site in accordance with the Specification and Order and, where this does not result in any conflict with the Specification, the reasonable instructions of any authorised officer of the Council. A signed receipt obtained by the Contractor from the Council shall only be proof that delivery has been affected, and shall not confirm the Council’s liability to accept the goods.
  6. With every delivery the Contractor shall provide to the Council a delivery note which shall specify:
     1. the description, Price, quantity and quality of the Goods supplied;
     2. the Order Number;
     3. the address for delivery of the Order; and
     4. where the Order has been submitted by the Council’s electronic ordering system, the Delivery Note Number.
  7. Time of delivery is of the essence.
  8. Should the Contractor fail to deliver the Goods in accordance with the Delivery Date or the Delivery Time the Council shall be entitled to:
     1. reject the Goods which were not delivered in accordance with the Delivery Date or Delivery Time and recover any payments made, or be released from any obligation to make payment, in respect of those Goods;
     2. reject:
        1. any instalment of Goods already received under this Contract; and
        2. any future delivery of Goods due under this Contract

and recover any payments made, or be released from any obligation to make payment, in respect of those Goods;

* + 1. require the Contractor to deliver replacement goods equivalent to the Goods, within 24 hours of notice given to the Contractor by the Council;
    2. purchase replacement goods equivalent to the Goods in lieu thereof;
    3. terminate this Contract.
  1. In the event that the Council rejects the Goods, including any instalment of the Goods or any future delivery of the Goods under clause 9.10 the Contractor shall issue a credit note to the Council in respect of the rejected Goods within 3 Business Days of the date of rejection by the Council.
  2. In the event that quantities of Goods are delivered which are in excess of the quantities required to be delivered at the relevant time in accordance with the Specification:
     1. the Council shall be under no obligation to accept the excess quantities supplied; and
     2. the Council shall be entitled to dispose of the excess quantities of Goods supplied and recover the costs of disposal from the Contractor.
  3. The Council shall not be required to accept any Goods delivered either prior, or subsequent to, the Delivery Date or Delivery Time unless the Specification expressly states otherwise.

1. Title and Risk
   1. Subject to clause 11, risk and title in the Goods shall pass to the Council at the point of delivery.
2. Inspection and acceptance
   1. The Council shall be entitled to reject the Goods or any element of the Goods which it determines do not conform to the requirements of this Contract including but not limited to Goods which are:
      1. damaged and/or defective;
      2. not at a temperature–of minus twelve (-12) degrees celsius or below upon delivery;
      3. not of satisfactory quality, including but not limited to any deterioration of the Goods;
      4. not of the quantity and/or weight specified by the Council.
   2. In order to exercise its right to reject under clause 11.1 the Council shall give written notice to the Contractor that it intends to reject the Goods or any element of the Goods of this rejection together with an explanation of the reasons why within a reasonable period of time after delivery of the Goods.
   3. In the event that the Council exercises its right to reject the Goods in accordance with clauses 11.1 and 11.2. or where the Contractor accepts responsibility for all damage to, shortage, or loss of the Goods under clause 5.3 the Council may elect:
      1. for the Contractor to replace the rejected Goods with Goods which conform to the requirements of this Contract as soon as reasonably practicable and in any event within two (2) Business Days; or
      2. to purchase the goods in lieu of the Goods from an alternative provider and for the Contractor to:
         1. issue a credit note for any element of the Price attributable to the rejected Goods already paid by the Council within 3 (three) Business Days of the date of rejection by the Council;
         2. release the Council from any further obligation to make payments in respect of the Price attributable to the rejected Goods; and
         3. deduct any costs, expenses or Losses incurred by the Council in obtaining any substitute or replacement for the rejected Goods from the next invoice,

and in either case the Contractor shall, at its own risk and cost, collect the rejected Goods in accordance with the instructions of the Council.

* 1. The Council shall not be deemed to have accepted the Goods until it has provided express confirmation in writing confirming acceptance of Goods.
  2. The Contractor shall at his own expense remove from the Council Premises or Site, as appropriate, any Goods properly rejected by the Council immediately after the service of the written notice pursuant to clause 11.2.
  3. The Council may arrange for the removal and disposal of any rejected Goods which have not been removed by the Contractor and any costs so incurred shall be deducted from the next invoice.
  4. Any acceptance notified to the Contractor in accordance with clause 11.4 shall remain subject to the Council’s right to reject the Goods in accordance with clauses 11.1 and 11.2.
  5. The Council’s rights under clauses 11.1 to 11.7 shall apply equally to any replacement Goods provided by the Contractor.

1. Meeting and Reporting
   1. The Parties shall appoint Representatives in accordance with clause 44 to provide direct contact points for the management of this Contract.
   2. Contract review meetings shall be held bi-annually between the Council and the Contractor throughout the Term, to discuss delivery of the Goods and provision of the Services and the first contract review meeting shall be held 6 months from the Commencement Date and thereafter on each 6 month anniversary.
   3. The Contractor’s Representatives will:
      1. attend meetings with the Council Representatives when required by the Council to discuss the delivery of the Goods and provision of the Services;
      2. meet with the Council when requested and when the Council deems the Contractor’s performance to be below expected standard or there is significant concerns over the ability of the Contractor to perform its obligations under the Contract;
      3. provide monthly progress reports to the Council detailing sales statistics by the operational unit and data on delivery accuracy and timeliness;
      4. prepare and submit to the Council annual reports detailing the total spend of the Council and the Permitted Authority for that period under the Contract;
      5. on request provide the Council with such further information, reports, explanations and documents as the Council may reasonably require in order for it to establish that the Goods are being provided properly in accordance with this Contract including but not limited to details of temperature recordings for delivery vehicles;
      6. notify the Council immediately and in any event on the same Business Day that the Contractor becomes aware of any issues with the Goods including but not limited to any contamination, recall by the manufacturer or other authorised body or anything which may impact on the safety of the Goods.
      7. ensure that the Contractor attends all meetings required under the dispute resolution process set out in clause 49.
2. Change
   1. Should the Council wish to change any aspect of the provision of the Goods or Services it shall provide the Contractor with written notice of the proposed change including sufficient detail to enable the Contractor to comply with its obligations under clause 13.2
   2. Within five (5) Business Days of receipt of the notice referred to in clause 13.1 the Contractor shall provide the Council with:
      1. details of the proposed timetable for implementation of the change; and
      2. where applicable details of any changes to the Price arising as a result of the proposed change on a transparent and open-book basis.
   3. In calculating any changes to the Price the Contractor shall ensure that any alteration reflects a fair and proportionate change based upon the reasonable costs of a well-run provider of Goods and the current profit margin achieved by the Contractor.
   4. After receipt of the information referred in clause 13.2 the Council shall be entitled to abandon or continue with the proposed change. Should the Council decide to continue with the proposed change the Parties shall take steps such as are reasonably necessary to agree a variation to this Contract to reflect the proposed change.
   5. Should the Parties be unable to agree any changes to the Price under this clause 13, the Council may, in its absolute discretion, terminate this Contract immediately upon notice in writing to the Contractor.
   6. Notwithstanding clause 13.2.2 where the Council requires:
      1. the inclusion of an Additional Establishment; or
      2. the removal of an Establishment or Additional Establishment; or
      3. a variation in the frequency of deliveries to an Establishment or Additional Establishment

under this Contract, the Price as set out in Schedule 3 shall apply.

1. Contract delay
   1. If, at any time, the Contractor becomes aware of any circumstance or occurrence which may lead to a delay in the provision of the Goods or Services or otherwise adversely affect the Contractor’s performance of its obligations under this Contract it shall immediately notify the Council’s Contract Manager or Deputy Contract Manager in the event that the Contract Manager is unavailable, providing details of the potential or actual delay.
   2. The Contractor shall use its best endeavours to avoid and mitigate the impact of any circumstance or occurrence referred to in clause 14.1 upon the Council.
2. Invoicing and Payment

* 1. In consideration for the Contractor’s compliance with its obligations under this Contract the Council shall pay the Price within thirty (30) days of receipt of a valid and undisputed invoice from the Contractor.
  2. The Contractor shall invoice the Council for the supply of the Goods in accordance with Schedule 2 and:
     1. any invoice submitted by the Contractor shall be considered and verified by the Council in a timely manner.
     2. where the Council fails to comply with clause 15.2.1 and there is undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of clause 15.1 after a reasonable time has passed.
  3. If the Council disputes any invoice or other statement of monies due, the Council shall immediately notify the Contractor in writing. The Parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Contractor shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment.
  4. If the Parties have not resolved the dispute within ten (10) Business Days of the Council giving notice to the Contractor, the dispute shall be resolved in accordance with clause 49 Dispute Resolution.
  5. Where only part of an invoice is disputed, the undisputed amount shall be paid on the due date as set out in 15.1. The Contractor’s obligations to supply the Goods shall not be affected by any payment dispute.
  6. The Council shall not be liable to pay the Price, or any part of the Price, if invoiced more than six (6) months after the end of the month on which the relevant Goods were delivered and/or expenses (if any) incurred.
  7. All payments shall be made through the BACS Payment system.
  8. Changing market conditions shall require the Contractor’s prices to remain competitive throughout the Term.
  9. Any changes to the Contractor’s payment details shall be submitted in writing on headed paper, signed by an authorised officer of the Contractor, to “Accounts Payable, County Hall, Matlock, DE4 3AG” as soon as possible.
  10. The Price excludes any amount in respect of VAT and the Council shall, upon receipt of a valid VAT invoice, pay such additional amounts in respect of VAT as are chargeable on the value of the Goods.
  11. Where an Establishment or Additional Establishment is removed under clause 13 the Council shall not be liable to pay the Price in respect of any Orders relating to that Establishment or Additional Establishment from the date of the service of the notice.

1. Annual Price Adjustment
   1. The Parties agree that the Price shall remain fixed and firm until 1 November 2021.
   2. For the avoidance of doubt, the Percentage On-Cost shall be fixed for the Term of the Contract.
   3. The Council may, in its absolute discretion require the Contractor to meet with the Council to review and, where appropriate, agree changes to the Price paid by the Council for the Goods and Services (the “Price Review”). The first Price Review shall be held in July 2021 and annually thereafter. Agreed changes to the Price shall take effect from the 1 November in each year following a Price Review.
   4. In agreeing the Price pursuant to a Price Review, the Parties shall have regard to the following factors:
      1. changes to the Contractor’s costs of supplying the Goods and Services;
      2. the volumes of Goods and Services ordered by, and supplied to, the Council;
      3. whether there are additional Goods or Services which the Council requires the Contractor to supply;
      4. the price at which the Contractor supplies the Goods and Services to comparable customers;
      5. the prices at which comparable Goods and Services are supplied by other Contractors in the open market; and
      6. any cost reductions achieved by the Contractor since the last Price Review (to the extent that they have not already been taken into account in the Price).
   5. Any variation to the Charges following a Price Review shall be limited to the prevailing RPIX at the time of the Price Review. For the avoidance of doubt, the Price may be subject to an increase or a decrease following a Price Review.
   6. If the Parties cannot agree the Price for the following year following a Price Review the Council shall have the right to terminate this Contract.
2. Contractor Warranties and Undertakings
   1. The Contractor warrants, represents and undertakes to the Council that on the date hereof:
      1. it is properly constituted and incorporated under the Laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;
      2. the information contained in the Contractor’s Tender remains true and accurate unless and to the extent that any changes have been notified to the Council and the Council has agreed to the provision of the Goods and Services on the basis of those changes and no others;
      3. it has the corporate power to enter into and to exercise its rights and perform its obligations under this Contract;
      4. all action necessary on the part of the Contractor to authorise the execution of and the performance of its obligations under this Contract has been taken;
      5. the obligations expressed to be assumed by the Contractor under this Contract are legal, valid, binding and enforceable to the extent permitted by Law and is in the proper form for enforcement in England;
      6. the execution, delivery and performance by it of this Contract does not contravene any provision of:
         1. any existing Law either in force, or enacted but not yet in force binding on the Contractor;
         2. the Memorandum and Articles of Association of the Contractor, if applicable;
         3. any order or decree of any court or arbitrator which is binding on the Contractor; or
         4. any obligation which is binding upon the Contractor or upon any of its assets or revenues;
      7. no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Contractor, pending or threatened against it or any of its assets which will or might have a material adverse effect on the ability of the Contractor to perform its obligations under this Contract;
      8. it is not the subject of any other obligation, compliance with which will or is likely to have a material adverse effect on the ability of the Contractor to perform its obligations under this Contract;
      9. no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues; and
      10. it has not paid commission or agreed to pay any commission to any employee, agent, officer or member of the Council either directly or through another on its behalf,

and the Council relies upon such warranties and representations.

* 1. The Contractor warrants and undertakes to the Council that for so long as this Contract remains in full force:
     1. the Goods and Services shall be provided by appropriately experienced, qualified and trained personnel with all due skill, care and diligence;
     2. it shall discharge its obligations hereunder (including the provision of the Goods and Services) with all due skill, care and diligence including in accordance with Good Industry Practice and its own established internal procedures;
     3. it shall have and maintain a valid and up to date recognised food safety accreditation;
     4. the Goods and Services are and will continue to be during the Term:
        1. of satisfactory quality; and
        2. in conformance with the relevant specifications set out in this Contract, the Specification and all applicable Law;
     5. it will upon becoming aware that any litigation, arbitration, administrative or adjudication or mediation proceedings before or of any court, arbitrator or relevant council may be threatened or pending and immediately after the commencement thereof give the Council notice of all such litigation, arbitration, administrative or adjudication or mediation proceedings which would adversely affect, to an extent which is material in the context of the delivery of the Goods and Services, the Contractor's ability to perform its obligations under this Contract;
     6. it will not without the prior written consent of the Council (and whether by a single transaction or by a series of transactions whether related or not) sell, transfer, lend or otherwise dispose of (other than by way of security) the whole or any part of its business or assets which would materially affect the ability of the Contractor to perform its obligations under this Contract;
     7. it will not cease to be resident in the United Kingdom or transfer in whole or in part its undertaking, business or trade outside the United Kingdom;
     8. it shall not without the written consent of the Council (such consent not to be unreasonably withheld or delayed) make any loans or grant any credit or give any guarantee or indemnity to or for the benefit of any person or otherwise voluntarily or for consideration assume any liability (whether actual or contingent) in respect of any obligation of any other person except in the ordinary course of business; and
     9. it shall not change or cease its business or start any other business which is materially different from that to be carried on by it under this Contract.
  2. All warranties, representations, undertakings, indemnities and other obligations made, given or undertaken by the Contractor in this Contract are cumulative and none shall be given a limited construction by reference to any other.

1. Mistakes in information/inspection of premises
   1. The Contractor acknowledges and confirms that prior to entering into this Contract: 
      1. it has raised all relevant due diligence questions with the Council before the Commencement Date; and
      2. it has entered into this Contract in reliance on its own due diligence.
   2. The Contractor is deemed to have inspected the Council’s Premises and relevant Sites for the purposes of this Contract and is deemed to have understood and be satisfied with all matters in relation to the Premises and the provision of the Goods to the Council’s Premises and or Sites before entering into this Contract.
2. Sub-Contracting
   1. The Contractor shall not, without the prior written consent of the Council, sub-contract, whether in whole or in part, any one or more of its obligations under this Contract.
   2. In relation to any sub-contracting pursuant to clause 19.1:
      1. the Contractor shall be responsible to the Council in Law or otherwise for all such sub-contracted Services and / or Goods and such sub-contracting shall not modify, diminish, reduce or in any other way affect the liability and/or obligations of the Contractor under this Contract and / or at Law or otherwise;
      2. the Contractor’s remuneration shall not be increased by the amounts payable by the Contractor to its Sub-Contractors; and
      3. the Contractor shall be liable to the Council for the tortious acts and omissions of the person performing any sub-contracted work and/or Services.
3. Termination
   1. Without affecting any other right or remedy available to it, the Council may terminate all or part of this Contract with immediate effect by giving written notice to the Contractor if:
      1. the Contractor fails to pay any amount due under this Contract on the due date for payment and remains in default not less than ten (10) Business Days after being notified in writing to make such payment;
      2. the Contractor commits a material breach of any term of this Contract which breach is irremediable or if such breach is remediable fails to remedy that breach within a period of fifteen (15) Business Days after being notified in writing to do so;
      3. the Contractor repeatedly breaches any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract;
      4. the Contractor, or any of the Contractor’s employees, agents or Sub-Contractor’s (in all cases whether or not acting with the Contractor’s knowledge):
         1. directly or indirectly offers, promises or gives any person working for or engaged by the Council a financial or other advantage to:
      5. induce that person to perform improperly a relevant function or activity; or
      6. reward that person for improper performance of a relevant function or activity;
         1. directly or indirectly requests, agrees to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this contract;
         2. commits any offence:
4. under Section 117(2) of the Local Government Act 1972;
5. under the Bribery Act 2010;
6. under the Fraud Act 2006 or any other legislation creating offences concerning fraudulent acts;
7. at common law concerning fraudulent acts relating to this contract or any other contract with the Council; or
8. to defraud, attempt to defraud or conspire to defraud the Council.
   * 1. the Contractor suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
     2. 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;
     3. 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);
     4. 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);
     5. the holder of a qualifying floating charge over the assets of the Contractor (being a company) has become entitled to appoint or has appointed an administrative receiver;
     6. 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;
     7. the Contractor (being an individual) is the subject of a bankruptcy petition or order;
     8. a creditor or encumbrancer of the Contractor attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within fourteen (14) Business Days;
     9. 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 clauses 20.1.4 to 20.1.11;
     10. the Contractor suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
     11. the Contractor (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation;
     12. there is a change of control of the Contractor (within the meaning of section 1124 of the Corporation Tax Act 2010);
     13. this Contract has been subject to substantial variation which would have required a new procurement procedure in accordance with regulation 72(9) of the Public Contract Regulations 2015;
     14. the Contractor was, at the time when this Contract was awarded, in one of the situations referred to in regulation 57(1) of the Public Contract Regulations 2015, including as a result of the application of regulation 57(2), and therefore should not have been awarded this Contract;
     15. any competent court makes an award for ineffectiveness of this Contract under the Public Contract Regulations 2015; or
     16. this Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations of the Treaty on the European Union, the Treaty on the Functioning of the European Union (the “TFEU”) or the Public Contracts Directive 2014 that has been declared by the Court of Justice of the European Union under a procedure under Article 258 of TFEU.
   1. For the purposes of clause 20.1.2, material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating Party would otherwise derive from a substantial portion of this Contract over the Term. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.
9. Voluntary Termination by the Council
   1. The Council may terminate all or part of this Contract at any time giving a minimum notice period of 1 month on or before its Expiry Date by complying with its obligations under clause 21.2.
   2. If the Council wishes to terminate the Contract under this 21, it must give notice to the Contractor stating:
      1. that the Council is terminating the Contract under this clause 21; and
      2. the date that the Contract will terminate.
   3. The Contract will terminate on the date specified in the notice given to the Contractor pursuant to clause 21.2.
10. Consequences of termination/expiry
    1. In the event that this Contract is terminated in accordance with clause 20.1 with the exception of clauses 20.1.19 and 20.1.20 the Council shall be entitled to recover any Losses from the Contractor it suffers as a result of the circumstances giving rise to the Council’s ability to terminate this Contract.
    2. The Losses referred to in clause 22.1 shall include:
       1. any additional costs incurred by the Council in procuring replacement goods and services (including any difference in purchase price); and
       2. any costs incurred by the Council in procuring an alternative contractor to provide goods and services similar to the Goods and Services.
    3. In the event that this Contract is terminated in accordance with clause 20.1.19 or 20.1.20 each Party shall bear its own costs and shall have no liability to the other Party.
    4. Immediately upon termination or expiry of this Contract the Contractor shall provide to the Council all documents, materials, correspondence, papers, specifications, information contained within databases, manuals, guidance and other information in its control or possession which the Council may require or requests in writing in order to assist in the timely and efficient procurement of an alternative contractor to provide goods and services similar to the Goods and Services.
    5. On termination or expiry of this Contract the Contractor shall assist and co-operate with the Council to enable the Council to procure an alternative or successor contractor of goods and services similar to the Goods and Services in a timely, efficient an orderly manner.
    6. Termination or expiry of this Contract shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.
11. Force Majeure
    1. Subject to the remaining provisions of this clause 23, either Party may claim relief from liability for non-performance of its obligations to the extent this is due to a Force Majeure Event.
    2. The Contractor cannot claim relief if the Force Majeure Event is attributable to its:
       1. wilful act,
       2. neglect;
       3. failure to take reasonable precautions against the relevant Force Majeure Event; or
       4. failure to comply with the Contractor’s own Disaster Recovery Plan.
    3. An Affected Party cannot claim relief as a result of a failure or delay by any other person in the performance of that other person's obligations under a contract with the Affected Party (unless that other person is itself prevented from or delayed in complying with its obligations as a result of a Force Majeure Event).
    4. The Affected Party shall immediately give the other Party written notice of the Force Majeure Event. The notification shall include details of the Force Majeure Event together with evidence of its effect on the obligations of the Affected Party, and any action the Affected Party proposes to take to mitigate its effect.
    5. As soon as practicable following the Affected Party's notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Contract. Where the Contractor is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
    6. The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract. Following such notification, this Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.
    7. The Price payable by the Council shall be reduced to the extent that the Council does not receive the Goods as a result of the Force Majeure Event.
    8. If the performance of the Affected Party’s obligations under the Contract is prevented by circumstances of a Force Majeure Event for a period of ten (10) Business Days or more then the Council may by notice to the Contractor terminate the Contract upon giving five (5) Business Days’ written notice to the Contractor.
12. Business Continuity
    1. The Contractor shall comply at all times with the business continuity and disaster recovery requirements of the Council.
    2. Following the declaration of a Disaster in respect of any part of the provision of the Goods or Services, the Contractor shall:
       1. Implement a business continuity and disaster recovery plan (‘**BCDR Plan’**) which shall be in accordance with the business continuity and disaster recovery requirements of the Council;
       2. continue to provide the Goods and Services to the Council in accordance with the BCDR Plan and the Council’s business continuity and disaster recovery requirements; and
       3. restore the effected part of the provision of the Goods and/or Services to normal within such period as specified by the Council.
13. Indemnities
    1. Neither Party excludes or limits liability to the other Party for:
       1. death or personal injury;
       2. fraud; or
       3. fraudulent misrepresentation.
    2. The Contractor shall indemnify the Council against all Losses suffered or incurred by the Council arising out of or in connection with:
       1. the Contractor’s breach, negligent performance or non-performance of any of its obligations under this Contract;
       2. any breach of statutory duty arising in relation to this Contract;
       3. the enforcement of this Contract;
       4. 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 any act or omission by the Contractor, Contractor Personnel, professional advisors and consultants in the delivery of its obligations under this Contract; or
       5. any claim made against the Council by a third party including but not limited to any claim for personal injury or property damage arising out of or in connection with this Contract to the extent that such claim arises out of the performance, negligent performance or failure or delay in performance of this Contract by, or presence at the Council Premises or relevant Site of, the Contractor, Contractor Personnel, professional advisors and consultants.
14. Limitation on Liability
    1. Subject to clause 25.1, the Council’s total aggregate liability under this Contract, in addition to its obligation to pay the Price as and when it falls due for payment, shall be limited to one hundred per cent (100%) of the aggregate annual Price paid, due or which would have been payable under this Contact in the twelve (12) month period immediately preceding the event giving rise to liability (or if such event occurs in the first twelve (12) months of the Term, the amount estimated to be paid in the first twelve (12) months).
15. Duty to mitigate
    1. Both Parties shall at all times throughout the duration of this Contract use reasonable endeavours to mitigate any loss, damage, costs or expenses suffered as a result of any acts or omissions of the other Party in relation to the performance of obligations under this Contract.
16. Interest
    1. Save where otherwise specifically provided, if a Party fails to make any payment due to the other Party under this Contract within twenty (20) Business Days of the due date for payment, the defaulting Party shall pay interest on the overdue amount at the Prescribed Rate from the due date until the date of actual payment.
    2. In relation to any payments that are disputed in good faith, interest under this clause shall be payable only after such dispute is resolved, and only on any sums found to be outstanding, from twenty (20) Business Days after such dispute is resolved until the date of actual payment.
17. Double recovery
    1. Notwithstanding any other provisions of this Contract, neither Party shall be entitled to recover compensation or make a claim under this Contract in respect of any loss that it has incurred to the extent that it has already been compensated in respect of that loss pursuant to the provisions of this Contract or otherwise.
18. Right of Set-off
    1. The Council may retain or set off any amount owed to it by the Contractor against any amount due to the Contractor under this Contract or under any other agreement between the Contractor and the Council.
19. Insurance
    1. The Contractor shall take out and maintain with a reputable insurance underwriter or companies a policy or policies of insurance which are adequate to cover its liability under this Contract, and any other insurances required in order to comply with the Law for the duration of the Term. These insurances must be effective in each case not later than the date on which the relevant risk commences.
    2. The insurances referred to at clause 31.1 shall include but not be limited to the following, in each case for any one occurrence or series of occurrences arising out of one event:
       1. Product Liability Insurance to the value of £5,000,000 (five million);
       2. Employers’ Liability Insurance to the value of £5,000,000 (five million); and
       3. Public Liability Insurance to the value of £10,000,000 (ten million).
    3. The Contractor shall provide to the Council on request, copies of all insurance policies referred to in this clause 31 or a broker’s verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
    4. The Contractor shall not take any action or fail to take any reasonable action, or permit anything to occur, which would entitle any insurer to refuse to pay any claim under any insurance policy referred to in clause 31.1.
    5. Should the Contractor fail to take out any insurances in accordance with clause 31.1 the Council may purchase such insurances and recover the costs of such insurances from the Contractor.
20. Social Value
    1. The Contractor shall as part of the supply of the Goods and Services fulfil any social value requirements as set out in the Specification.
21. Freedom of information and confidentiality
    1. In respect of any Confidential Information it may receive from the other Party (“the Discloser”) and subject always to the remainder of this clause 33, each Party (“the Recipient”) undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party, without the Discloser’s prior written consent provided that:
       1. the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of this Contract;
       2. the provisions of this clause 33.1 shall not apply to any Confidential Information which:-
          1. is in or enters the public domain other than by breach of this Contract or other act or omissions of the Recipient;
          2. is obtained by a third party who is lawfully authorised to disclose such information;
          3. is authorised for release by the prior written consent of the Discloser;
          4. the disclosure of which is required to ensure the compliance of the Council with the Freedom of Information Act 2000 (the “FOIA”) the Environmental Information Regulations 2004 (the “EIR”) or the Local Government Transparency Code 2015;
          5. the Council may, at its sole discretion, elect to publish this Contract (including any variations to this Contract) in its entirety.
    2. Nothing in this clause 33 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law or, provided that the information is subject to confidentiality undertakings equivalent to those set out in clause 33.1, to its professional advisors or insurers.
    3. The Contractor acknowledges that the Council is subject to the FOIA and the EIR. The Contractor notes and acknowledges the FOIA, the EIR and the Codes of Practice under section 45 and 46 of the FOIA). The Contractor will act in accordance with the FOIA, the EIR and these Codes of Practice (and any other applicable codes of practice or guidance notified to the Contractor from time to time) to the extent that they apply to the Contractor's performance under this Contract.
    4. The Contractor agrees that:
       1. without prejudice to the generality of clause 33.3, the provisions of this clause 33.4 are subject to the obligations and commitments of the Council under the FOIA and the Codes of Practice issued under section 45 and 46 of the FOIA.
       2. where it considers that any information should not be available for disclosure, it will:
          1. identify it specifically; and
          2. explain the grounds for exemption from disclosure and the time period applicable to that sensitivity.
    5. All decisions regarding disclosure of information following a Request For Information will be made at the sole discretion of the Council. The Contractor acknowledges that, even where the Contractor has indicated that information is commercially sensitive (the “Commercially Sensitive Information”), the Council may be required to disclose it under the FOIA or EIA, with or without consulting the Contractor and although the Council will use reasonable endeavours to consult with the Contractor prior to any disclosure, the Council shall not be under any further obligation to consult the Contractor prior to disclosure.
    6. The Contractor shall transfer to the Council any Request for Information it should receive, as soon as practicable after receipt and in any event within five (5) Business Days of receiving a Request for Information.
    7. Where the Council is managing a request as referred to in clause 33.5, the Contractor shall co-operate with the Council and shall respond together with copies of any documentation so requested within five (5) Business Days of any request by it for assistance.
22. Data Protection
    1. The Contractor shall (and shall procure that any Contractor Personnel shall) comply with any notification requirements under the Data Protection Act 2018 (the ‘**DPA**’) and both Parties shall duly observe all their obligations under the Data Protection Legislation, which arise in connection with this Contract.
    2. Notwithstanding the general obligation in 34.1, where the Contractor is processing Personal Data as a Data Processor for the Council, the Contractor shall:
       1. ensure that it has in place appropriate technical and organisational measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Sixth Data Protection Principle in section 40 of the DPA;
       2. provide the Council with such information as the Council may reasonably require to satisfy itself that the Contractor is complying with its obligations under the DPA;
       3. promptly notify the Council of any breach of the security measures required to be put in place pursuant to 34.2; and
       4. ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Authority's obligations under the DPA.
    3. The Contractor shall indemnify and keep indemnified the Council against all Losses incurred by it in respect of any breach of this clause 34 by the Contractor.
    4. The provisions of this clause shall apply during the continuance of the Contract and indefinitely after its expiry or termination.
23. Bribery and Fraud
    1. The Contractor represents and warrants that neither it, nor to the best of its knowledge any Contractor Personnel, have at any time prior to the Commencement Date:
       1. committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; or
       2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
    2. The Contractor shall not during the term of this Contract:
       1. commit a Prohibited Act; and/or
       2. do or suffer anything to be done which would cause the Council or any of the Council’s, consultants, contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
    3. The Contractor shall during the term of this Contract:
       1. establish, maintain and enforce policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
       2. keep appropriate records of its compliance with its obligations under clause 35.3.1 and make such records available to the Council on request.
    4. The Contractor shall immediately notify the Council in writing if it becomes aware of any breach of clause 35.1 and/or 35.2, or has reason to believe that it has or any of the Contractor Personnel have:
       1. been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
       2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
       3. received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or Party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.
    5. If the Contractor makes a notification to the Council pursuant to clause 35.4, the Contractor shall respond promptly to the Council’s enquiries, co-operate with any investigation, and allow the Council to audit any books, records and/or any other relevant documentation in accordance with clause 40.
    6. If the Contractor fails to comply with its obligations under clauses 35.1 and/or 35.2, the Council may by notice:
       1. require the Contractor to remove from performance of this Contract any Contractor Personnel whose acts or omissions have caused a breach of clauses 35.1 and/or 35.2; or
       2. immediately terminate this Contract.
    7. Any notice served by the Council under clause 35.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Council believes has committed the Prohibited Act and the action that the Council has elected to take (including, where relevant, the date on which this Contract shall terminate).
24. Discrimination
    1. The Contractor acknowledges the Council’s obligations under equality Law and agrees to perform its obligations under this Contract, and agrees to procure that any Contractor Personnel shall perform his or her obligations in relation to the Goods with regard to:
       1. all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
       2. the Council’s equality and diversity policy as updated from time to time;
       3. the Equality and Human Rights Commission’s Code of Practice in Employment as updated from time to time;
       4. any other relevant statutory code of practice in relation to equalities legislation or prevention of discrimination in the workplace;
       5. any other requirements and instructions which the Council imposes in connection with any equality obligations imposed on the Council at any time under applicable equality Law or under the Council’s own policies or rules.
    2. The Contractor shall 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).
    3. To the extent that the Contractor‘s obligations under this Contract involve the exercise of public functions of the Council, the Contractor shall, and shall procure that any Contractor Personnel shall comply to the extent permitted by Law with the provisions of:
       1. Sections 28 and 29 of the Equality Act 2010, as if they were a body within the meaning of those Sections 28 and 29; and
       2. Part 11 of Chapter 1 of the Equality Act 2010, as if they were a body within the meaning of Schedule 19 of that Act.
    4. The Contractor shall assist the Council in its performance of its obligations under the Equality Act 2010, including but not limited to the provision of information that the Council shall require in order to monitor compliance with the Council’s obligations under equality Law.
    5. The Contractor shall provide to the Council such information as the Council may require within five (5) Business Days of receipt of a request from the Council.
    6. The Contractor shall ensure and shall procure that any Contractor Personnel engaged in the provision of the Goods shall comply with the requirements of this clause 36.
    7. Breach of this clause 36 by the Contractor shall entitle the Council to terminate the Contract with immediate effect.
25. Human rights
    1. The Contractor shall, and shall procure that the Contractor Personnel shall, at all times comply with the provisions of the Human Rights Act 1998 (the “HRA 1998”) in the performance of this Contract.
    2. The Contractor shall undertake or refrain from undertaking, and shall procure that the Contractor Personnel shall undertake or refrain from undertaking, such acts as the Council requests in order to enable the Council to comply with its obligations under the HRA 1998.
    3. In the event that the Contractor or any Contractor Personnel does or omits to do, or permits or allows anything to be done which is incompatible with the provisions of the HRA 1998 which causes or may cause the Council to be in breach of its obligations under the HRA 1998 the Contractor shall immediately notify the Council in writing and the Council may terminate this Contract immediately upon notice in writing in its absolute discretion.
    4. The Contractor shall indemnify the Council against any Losses or liability (including any interest, penalties or costs incurred) which arises as a result of a breach by the Contractor of its obligations under this clause 37.
26. Conflict of interest
    1. The Contractor acknowledges and agrees that no Conflict of Interest exists between the Contractor and the Council at the date stated on the face of this Contract. In the event that the Contractor becomes aware of a Conflict of Interest between its own interests and the Council, it shall notify the Council of the full details of any such Conflict of Interest immediately.
    2. The Council reserves the right to terminate this Contract immediately by notice in writing and/or take such steps as it shall deem necessary should it become aware of a Conflict of Interest between itself and the Contractor.
27. Assignment/Novation
    1. The Council may at any time in whole or in part assign, novate, Sub-Contract or otherwise transfer any of its rights and obligations under this Contract.
    2. The Contractor shall not assign, novate, or otherwise transfer its rights and obligations under this Contract in whole or in part except with the prior written consent of the Council.
28. Records
    1. The Contractor shall:
       1. at all times maintain a full record of particulars of the costs of performing its obligations under this Contract;
       2. upon request by the Council, provide a written summary of any of the costs referred to in clause 40.1.1, including details of any funds held by the Contractor specifically to cover such costs, in such form and detail as the Council may reasonably require to enable the Council to monitor the performance by the Contractor of its obligations under this Contract; and
       3. provide such access as the Council may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this clause 40.
    2. Compliance with clause 40 shall require the Contractor to keep books of account in accordance with best accountancy practices with respect to this Contract, showing in detail:
       1. administrative overheads;
       2. capital and revenue expenditure; and
       3. such other items as the Council may reasonably require from time to time to conduct costs audits for verification of cost expenditure or estimated expenditure, for the purpose of this Contract,

and the Contractor shall have the books of account evidencing the items listed in sub-clauses 40.2.1 – 40.2.3 inclusive, available for inspection by the Council (and its advisers) upon reasonable notice, and shall promptly present a written report of these to the Council as and when requested from time to time.

* 1. The Contractor shall maintain or procure detailed records relating to the performance of its obligations under this Contract, in each case in accordance with Good Industry Practice and any applicable Law.
  2. The records referred to in this clause 40 shall be retained for a period of at least six (6) years after the Contractor's obligations under this Contract have come to an end.

1. Audit
   1. The Council shall be entitled to carry out audits to determine whether the Contractor has performed its obligations under this Agreement. For this purpose, the Contractor grants to the Council, its statutory auditors or any authorised agents of the Council, a right of reasonable access to any premises of the Contractor which are used in connection with the performance of the Contractor's responsibilities and obligations under this Agreement. Such access shall include a right to access to all computer systems, personnel and financial records, minute books and any other relevant evidence (including obtaining relevant copies without charge to the Council).
   2. The Contractor shall afford the Council, its auditors or agents all co-operation and assistance reasonably required for the purposes of carrying out an audit of the Contractor's compliance with this Agreement.
2. Assistance in legal proceedings
   1. The Contractor shall, when reasonably requested to do so by the Council, provide all information that is relevant to the performance of its obligations under this Contract to the Council free of charge in connection with any actual or expected legal proceedings in which the Council is or may be involved or any relevant internal disciplinary hearing at the Council.
   2. The Contractor shall ensure that the Contractor Personnel and the Contractor’s, agents, professional advisors and consultants are available to be interviewed in connection with or to give evidence in relation to such proceedings or hearings.
   3. In circumstances where:
      1. it is reported that Losses (incurred by any person or body) have either been caused by or have been contributed to by an act or omission on the part of the Contractor; and
      2. the Council decides to, in light of such finding, make a payment to or provide some other benefit to such person or body,

then the Contractor shall either reimburse the Council the amount of any such payment or pay to the Council the reasonable cost of any such benefit as is applicable and proportionate to the act or omission of the Contractor. The Council may also deduct any such amounts from any payment otherwise due to the Contractor under this Contract.

1. Council’s obligations/fettering discretion
   1. Save as otherwise expressly provided, the obligations of the Council under this Contract are obligations of the Council in its capacity as a contracting counterparty and nothing in this Contract shall operate as an obligation upon, or in any other way fetter or constrain the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under this Contract (howsoever arising) on the part of the Council to the Contractor.
2. Representatives
   1. The Council shall, prior to the Commencement Date, appoint both a Contract Manager and a Deputy Contract Manager (to act in those instances where the Contract Manager is unavailable).
   2. The contact details for the Contract Manager and the Deputy Contract Manager are as listed at Schedule 5.
   3. The Contractor shall appoint Representatives to manage the Contract, these are listed at Schedule 5 Part B.
   4. Any changes to the contact details under clause 44.2 or 44.3 shall be notified to the other Party as soon as is reasonably practicable in accordance with the provisions of clause 51.
   5. The Contract Manager (and where applicable the Deputy Contract Manager) and the appropriate Representative of the Contractor shall have authority to act on behalf of the Council and the Contractor respectively for all purposes in connection with this Contract unless otherwise notified to the other Party in accordance with clause 51.
   6. The Council’s Contract Manager shall be entitled to give directions to the Contractor’s Representatives from time to time for any purpose under or in connection with this Contract.
   7. The Council reserves the right to reject the appointment of any individual as the Contractor’s Contract Manager who, at the absolute discretion of the Council, either does not possess the necessary experience in the provision of the Goods or is in any other way unsuitable for the role.
3. Canvassing
   1. The Contractor warrants that, up until the date of this Contract, it has not directly or indirectly canvassed any member, official or employee of the Council or their advisers in relation to this Contract or its subject matter.
4. Co-Operation
   1. Each Party agrees to co-operate, at its own expense (but without being compelled to incur material additional expenditure), with the other Party in the fulfilment of the purposes and intent of this Contract. To avoid doubt, neither Party shall be under any obligation to perform any of the other's obligations under this Contract.
5. Best Value
   1. The Contractor acknowledges that:
      1. the Council is subject to the Best Value Duty;
      2. the provisions of this clause 47 are intended to assist the Council in discharging its Best Value Duty in relation to the Goods and Services; and
      3. the provisions of this clause 47.1 shall apply in respect of the obligations of the Contractor and the Council concerning the Best Value Duty and the Local Government Act 1999 generally.
   2. The Contractor shall, throughout the Term, but only to the extent of its obligations in this Contract, make arrangements to secure continuous improvement in the way in which the Goods and Services are provided, having regard to a combination of economy, efficiency and effectiveness.
   3. The Contractor shall undertake or refrain from undertaking such actions as the Council shall reasonably request to enable the Council to comply with its Best Value Duty, including:
      1. complying with all requests by the Council to procure the attendance of specific Contractor Personnel at any meetings of the Council at which the Goods and Services are to be discussed;
      2. permitting any officer or employee of the Council at all reasonable times and upon reasonable notice, access to:
         1. any document or data relating to the Goods and/or Services; and
         2. any Contractor Personnel.
6. Public Relations and Publicity
   1. The Contractor shall not undertake any publicity (including any announcements, advertisements, promotions or marketing initiatives) in relation to or publicise in any way either the Contract (or any part thereof) or its activities under the Contract without obtaining the prior approval of the Council. Such approval shall not be unreasonably withheld and, if applicable, will be notified to the Contractor in accordance with the provisions of clause 48.
   2. The Contractor shall ensure that Contractor Personnel, professional advisors and consultants comply with the provisions of this clause 48.
   3. In circumstances where an announcement is required by Law, any governmental or regulatory Council, or by any court or other competent Council, the Party required to make the announcement shall notify the other Party as soon as is reasonably practicable in accordance with the provisions of clause 48. The Party subject to the requirement shall use reasonable endeavours to agree the content of the announcement with the other Party before making it.
   4. The award of this Contract shall not entitle the Contractor to endorse its products by reference in any way to the Council nor shall the Contractor exhibit or display for advertisement or otherwise any goods, equipment or vehicles to be supplied under this Contract to the Council and which can be identified with the Council (whether the property in such goods, equipment or vehicles shall have passed to the Council or not) without the written consent of the Council.
   5. The provisions of this clause 48 shall apply throughout the duration of this Contract and indefinitely beyond either its expiry or termination.
7. Dispute resolution
   1. The Parties shall attempt in good faith to negotiate a settlement to any dispute (a “Dispute”) between them arising out of or in connection with the Contract within ten (10) Business Days of either Party notifying the other of the dispute. In the first instance, the relevant representative of the Contractor will be one of the individuals identified in Schedule 5, dependant on the nature of the dispute.
   2. In the event that the Dispute cannot be resolved within in ten (10) Business Days of notification being provided in accordance with clause 49.1 the Parties shall escalate the dispute to the Head of the County Catering Service of the Council and the Managing Director (or equivalent) of the Contractor.
   3. If the Dispute cannot be resolved by the Parties pursuant to clauses 49.1 and 49.2 within twenty (20) Business Days of notification being provided in accordance with clause 49.1 the Parties may seek to resolve the dispute through mediation in accordance with the Centre for Effective Dispute Resolution Model Mediation Procedure (or such other appropriate dispute resolution model as is agreed by both Parties). Unless otherwise agreed, the Parties shall bear the costs and expenses of the mediation equally.
   4. Neither Party may initiate any legal action until the process set out in clauses 49.1 to 49.3 above has been completed unless such Party has reasonable cause to do so to avoid damage to its business or to protect any right of action it may have.
   5. Unless this Contract has already been terminated by the date the dispute arises, the Contractor shall, in every case, continue to provide the Goods with all due diligence regardless of the nature of the dispute and the Council shall continue to make payment of the Price (excluding any disputed sums) in accordance with Schedule 2.
8. IPR
   1. All Intellectual Property Rights
      1. owned by the Council before the Commencement Date or developed by the Council during the Term shall remain the property of the Council;
      2. owned by the Contractor before the Commencement Date shall remain the property of the Contractor; and
      3. developed or created by the Contractor during the Term that relate to the performance of its obligations under the Contract shall belong to the Council.
   2. Where the Council has provided the Contractor with any of its Intellectual Property Rights for use in connection with the Contractors performance of its obligations under this Contract (including without limitation its name and logo) the Contractor shall cease to use such Intellectual Property Rights immediately upon termination of this Contract and shall either return or destroy such Intellectual Property Rights as requested by the Council.
   3. The Contractor acknowledges and agrees that all rights, titles and interests in or to any information, documents, procedures, technology, know-how, reports or any other Intellectual Property Rights developed or created by the Contractor during the Term shall belong to the Council.
9. Notices
   1. A notice (or any other communication) from one Party to the other under or in connection with this Contract shall be:
      1. in writing;
      2. signed on behalf of the Party giving it;
      3. marked for the attention of the representative of the receiving Party as provided for in clause 44 at the Party’s usual place of business or registered address; and
      4. sent by a delivery method listed in clause 51.2.
   2. The table below sets out the delivery methods by which a notice (or any other communication) in connection with this Contract may be sent as well as the corresponding dates and times of deemed delivery that shall apply:

|  |  |
| --- | --- |
| **Delivery Method** | **Deemed Delivery** |
| By hand | On signature of a delivery receipt. |
| By pre-paid first class post, recorded delivery or other next Business Day delivery service | At 09:00 on the second Business Day after posting. |

* 1. All references to the time of deemed delivery in clause 51.2 are to local time in the place of deemed receipt.
  2. This clause shall not apply to the service of proceedings or any other document in connection with any legal action or, if applicable, in connection with any other method of dispute resolution as provided for in clause 49.

1. Change in Law
   1. The Contractor shall neither be relieved of its obligations to supply the Goods in accordance with the terms of this Contract nor be entitled to an increase in the Price as the result of:
      1. a General Change in Law; or
      2. a Specific Change in Law where the effect of that Specific Change in Law on the provision of Goods is known at the Commencement Date.
   2. If a Specific Change in Law occurs or will occur during the Term (other than those referred to in clause 52.1.2), the Contractor shall notify the Council of the likely effects of that change, including:
      1. whether any Change is required to the provision of Goods, the Price or this Contract; and
      2. whether any relief from compliance with the Contractor’s obligations is required.
   3. A soon as practicable after any notification in accordance with clause 52.2, the Parties shall discuss and seek to agree the matters referred to in that clause and any ways in which the Contractor can mitigate the effect of the Specific Change of Law, including:
      1. providing evidence that the Contractor has minimised any increase in costs or maximised any reduction in costs;
      2. demonstrating that a foreseeable Specific Change in Law had been taken into account by the Contractor before it occurred;
      3. giving evidence as to how the Specific Change in Law has affected the cost of providing the Goods; and
      4. demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of clause 47, has been taken into account in amending the Price.
   4. Any increase in the Price or relief from the Contractor’s obligations agreed by the Parties pursuant to clause 52.3 shall be implemented in accordance with clause 13.
2. Survival of termination
   1. On termination or expiry of this Contract, the following clauses shall continue in force: clause 6 (Goods), clause 9 (Ordering and Delivery), clause 10 (Title and Risk), clause 11 (Inspection and Acceptance), clause 15 (Invoicing and Payment), clause 17 (Contractor Warranties and Undertakings), clause 18 (Mistaken Information/ Inspection of Premises), clause 25 (Indemnities), clause 26 (Limitation on Liability), clause 27 (Duty to Mitigate), clause 28 (Interest), clause 29 (Double Recovery), clause 31 (Insurance), clause 33 (Freedom of Information and Confidentiality), clause 34 (Data Protection), clause 36 (Discrimination), clause 37 (Human Rights), clause 40 (Records), clause 41 (Audit), clause 42 (Assistance in Legal Proceedings) and clause 48 (Public Relations and Publicity).
3. TUPE Employees
   1. The Contractor and the Council shall comply with all their obligations set out in Schedule 6 (TUPE) of this Contract.
4. Severability
   1. If any term, condition or provision of this Contract shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this Contract.
5. No Agency
   1. Nothing in this Contract shall be construed as creating a partnership or as a contract of employment between the Council and the Contractor.
   2. Save as expressly provided otherwise in this Contract, the Contractor shall not be, or be deemed to be, an agent of the Council and the Contractor shall not hold itself out as the Council or having power to bind the Council in any way.
   3. Without limitation to its actual knowledge, the Contractor shall for all purposes of this Contract, be deemed to have such knowledge in respect of the Goods as is held (or ought reasonably to be held) by any Contractor Personnel.
6. Waiver
   1. A waiver of any right or remedy either by Law or under this Contract shall only be effective if it is notified to the other Party in accordance with the provisions of clause 51 and is expressly stated to be a waiver.
   2. No waiver of any right or remedy arising from a breach of this Contract shall be deemed to be a waiver of any right or remedy relating to any subsequent breach of this Contract.
   3. Any failure or delay by a Party to exercise any right or remedy either by law or under this Contract shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy either by Law or under this Contract shall prevent or restrict the further exercise of that or any other right or remedy.
7. Third Party Rights
   1. No term of this Contract is enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to this Contract.
8. Counterparts
   1. This Contract may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.
   2. No single counterpart shall be effective until each Party has executed and delivered at least one counterpart.
9. Variations
   1. All additions, amendments and/or variations to this Contract must be annexed to this Contract and be in writing and shall only be binding if signed or initialled by the authorised representatives of the Council and the Contractor.
10. Governing Law and Jurisdiction
    1. This 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 the law of England.
    2. Each Party irrevocably agrees that the Courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims.
11. Entire Agreement
    1. This Contract, together with the documents referred to in it, constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels and nullifies any previous agreement between the Parties in relation to such matters.
    2. The Contractor acknowledges and agrees that in entering into this Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Contract.
    3. Nothing in this clause 62 shall operate to exclude any liability for fraud.

|  |  |
| --- | --- |
| Signed by  for and on behalf of  **DERBYSHIRE COUNTY COUNCIL** | ...................................................................  Signature  ...................................................................  Title  ...................................................................  Signature  ...................................................................  Title |
| Signed by  for and on behalf of  **[NAME OF CONTRACTOR**] | ...................................................................  Signature |

1. Specification

**[INSERT SPECIFICATION AND SCHEDULE OF ESTABLISHMENTS]**

1. Delivery and Invoicing

**Part 1: Delivery**

1. Upon receipt of an Order the Contractor shall arrange with the Council for on-site attendance/delivery with the Council as detailed on the Order.

**Part 2: Invoicing**

1. The Contractor shall submit electronic consolidated itemised invoices to the Invoice Address unless requested otherwise in writing.
2. Invoices for Goods shall be submitted weekly in arrears.
3. The Contractor may not submit an invoice before the Delivery Date but the Contractor shall submit an invoice within five (5) Business Days of successful delivery of the Goods.
4. Each invoice shall include the following information:
   1. Contractor Order Number;
   2. Purchase order number;
   3. Delivery address;
   4. Product code;
   5. Unit of issue;
   6. Number of units supplied;
   7. A full and proper description of the Goods;
   8. Unit Price
   9. Total invoice Price;
   10. Clearly identified amount of VAT payable, as applicable; and
   11. Delivery note number (if different to the invoice number).
5. In the event that any credit notes are issued by the Contractor in accordance with clause 9.11 or clause 11.3.2(a) they shall be submitted to the Council within three (3) Business Days of the date of rejection of the Goods and shall include the corresponding Order Number and purchase order number.
6. For each credit note issued the Contractor shall ensure that a corresponding credit is detailed on the next consolidated invoice issued to the Council.
7. Price
   1. Subject to the provisions of this Schedule 3 and clause 16 the Price shall be as set out below and in the attached Contractor’s Pricing Schedules.

**[INSERT CONTRACTOR’S TENDERED PRICES]**

1. Contractor’s Tender

**[INSERT CONTRACTOR’S TENDER DOCUMENTS]**

1. Council and Contractor Representatives

**PART A**

**Council**

|  |  |  |  |
| --- | --- | --- | --- |
| **Job Role** | **Name** | **Telephone Number** | **Address** |
| Contract Manager |  |  |  |
| Deputy Contract Manager |  |  |  |

**PART B**

**Contractor**

|  |  |  |  |
| --- | --- | --- | --- |
| **Job Role** | **Name** | **Telephone Number** | **Address** |
| Contract Manager |  |  |  |
| Deputy Contract Manager |  |  |  |

1. TUPE
2. TRANSFER OF EMPLOYEES TO THE CONTRACTOR ON THE COMMENCEMENT DATE
   1. The Council and the Contractor agree that where the identity of the Contractor supplying the Goods changes, this shall constitute a Relevant Transfer and the contracts of employment of any Transferring Third Party Employees shall transfer to the Contractor. The Contractor shall comply with its obligations under TUPE. The first Relevant Transfer shall occur on the Commencement Date.
   2. The Contractor shall be liable for and indemnify and keep indemnified the Council against any Employment Liabilities arising from or as a consequence of:
      1. any proposed changes to terms and conditions of employment the may consider making on or after the Commencement Date;
      2. any of the employees informing the Council and any third party employer they object to being employed by the Contractor; and
      3. any change in identity of the Transferring Third Party Employees' employer as a result of the operation of TUPE or as a result of any proposed measures the Contractor may consider taking on or after the Commencement Date.
   3. The Contractor shall be liable for and indemnify and keep indemnified the Council against any failure to meet all remuneration, benefits, entitlements and outgoings for the Transferring Third Party Employees and any other person who is or will be employed or engaged by the Contractor in connection with the provision of the supply of Goods, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, National Insurance contributions, pension contributions, termination costs and otherwise from and including the Commencement Date.
   4. The Contractor shall immediately on request by the Council provide details of any measures that the Contractor envisages it will take in relation to any Transferring Third Party Employees including any proposed changes to terms and conditions of employment. If there are no measures, the Contractor will give confirmation of that fact, and shall indemnify the Council against all Employment Liabilities resulting from any failure by it to comply with this obligation.
3. EMPLOYMENT EXIT PROVISIONS
   1. The Contractor shall as soon as reasonably practicable and in any event within five (5) Business Days following a written request by the Council provide to the Council details of any measures which the Contractor envisages it or they will take in relation to any employees who are or who will be the subject of a subsequent Relevant Transfer, and if there are no measures, confirmation of that fact, and shall indemnify the Council against all Losses resulting from any failure by the Contractor to comply with this obligation.
   2. The Contractor within ten (10) Business Days of a request by the Council or following the service of a termination notice under clauses 20 or 21.1 or as a consequence of the Council notifying the Contractor of its intention to retender this Contract:
      1. on receiving a request from the Council provide in respect of any person engaged or employed by the Contractor or any Sub-Contractor in the provision of the supply of the Goods (the Assigned Employees) full and accurate details regarding the identity, number, age, sex, length of service, job title, grade and terms and conditions of employment of and other matters affecting each of those Assigned Employees who it is expected, if they remain in the employment of the Contractor until immediately before the Termination Date, would be Returning Employees (the Retendering Information);
      2. provide the Retendering Information promptly and at no cost to the Council;
      3. notify the Council forthwith in writing of any material changes to the Retendering Information promptly as and when such changes arise;
      4. be precluded from making any material increase or decrease in the numbers of Assigned Employees;
      5. be precluded from making any increase in the remuneration or other change in the terms and conditions of the Assigned Employees other than in the ordinary course of business and with the Council's prior written consent;
      6. be precluded from transferring any of the Assigned Employees to another part of its business or moving other employees from elsewhere in its or their business who have not previously been employed or engaged in providing the Goods to provide the Goods save with the Council's prior written consent;
      7. without prejudice to paragraphs 2.2.1 and 2.2.7 the Contractor shall provide the Employee Liability Information to the Council at such time or times as are required by TUPE, and shall warrant at the time of providing such Employee Liability Information that such information will be updated to take account of any changes to such information as is required by TUPE; and
      8. the Contractor shall indemnify and shall keep indemnified in full the Council and at the Council's request any Future Contractor against all Losses arising from any claim by any party as a result of the Contractor failing to provide or promptly to provide the Council and/or any Future Contractor where requested by the Council with any Retendering Information and/or Employee Liability Information or to provide full Retendering Information and/or Employee Liability Information or as a result of any material inaccuracy in or omission from the Retendering Information and/or Employee Liability Information provided that this indemnity shall not apply in respect of the Retendering Information to the extent that such information was originally provided to the Contractor by the Council and was materially inaccurate or incomplete when originally provided.
   3. On the expiry or earlier termination of this Contract, the Council and the Contractor agree that it is their intention that TUPE shall apply in respect of the provision thereafter of any service equivalent to the provision of Goods but the position shall be determined in accordance with the Law at the date of expiry or termination as the case may be and this clause is without prejudice to such determination.
   4. Upon expiry or termination of this Contract for whatever reason (the “Return Date”), the provisions of this paragraph 2.4 will apply:
      * 1. The Contractor shall or shall procure that all wages, salaries and other benefits of the Returning Employees and other employees or former employees of the Contractor (who had been engaged in the provision of the Goods) and all PAYE tax deductions, pension contributions and national insurance contributions relating thereto in respect of the employment of the Returning Employees and such other employees or former employees of the Contractor up to the Return Date are satisfied;
        2. Without prejudice to paragraph 2.4, the Contractor shall:
           1. remain responsible for all the Contractor's employees (other than the Returning Employees) on or after the time of expiry or termination of this Contract and shall indemnify the Council and any Future Contractor against all Losses incurred by the Council or any Future Contractor resulting from any claim whatsoever whether arising before on or after the Return Date by or on behalf of any of the Contractor's employees who do not constitute the Returning Employees;
           2. in respect of those employees who constitute Returning Employees indemnify the Council and any Future Contractor against all Losses incurred by the Council or any Future Contractor resulting from any claim whatsoever by or on behalf of any of the Returning Employees in respect of the period on or before the Return Date (whether any such claim, attributable to the period up to and on the Return Date, arises before, on or after the Return Date) including but not limited to any failure by the Contractor to comply with its or their obligations under Regulations 13 and 14 of TUPE and any award of compensation under Regulation 15 of TUPE and/or Article 6 of the Directive as if such legislation applied, even if it does not in fact apply save to the extent that any such failure to comply arises as a result of an act or omission of the Council or any Future Contractor.
        3. The Council shall be entitled to assign the benefit of this indemnity to any Future Contractor.
   5. In the event that the Contractor enters into any Sub-Contract in connection with this Contract, it shall impose obligations on its Sub-Contractors in the same terms as those imposed on it pursuant to this Schedule and shall procure that the Sub-Contractor complies with such terms. The Contractor shall indemnify and keep the Council indemnified in full against all Losses, incurred by the Council or any Future Contractor as a result of or in connection with any failure on the part of the Contractor to comply with this clause and/or the Sub-Contractor's failure to comply with such terms.