



DYNAMIC PURCHASING SYSTEM FOR ROAD SURFACE TREATMENTS

DPS Reference DN318931

CONTRACT TERMS AND CONDITIONS

The following terms and conditions are the terms and conditions that will apply to all contracts awarded pursuant to this Dynamic Purchasing System.

These terms may not be qualified or amended with the submission of a tender for selection to this Dynamic Purchasing System.

Where an invitation to tender from this Dynamic Purchasing System refers to these terms and conditions they will be wholly incorporated in the Contract as defined in this document, unless otherwise amended by The Council in the invitation to tender.

Further conditions may be incorporated within specific contracts by The Council. Where this is the case, details of those further conditions will be included with the invitation to tender. It is a requirement that all tenders are submitted based on all incorporated conditions communicated in the invitation to tender.

It may be necessary for the Contractor and The Council to sign a written Contract and for each party to retain a copy following an award of contract from this Dynamic Purchasing System.

It is not a requirement for tenderers to sign these terms and conditions with their tender offer for selection to this Dynamic Purchasing System.

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1		BACKGROUND
	1.1	The Council placed a contract notice in the Official Journal of the European Union (OJEU ref 2018/S 020-041773 EN, publication date 31/01/2018) seeking expressions of interest from contractors for the provision of Road Surface Treatment Services to the Council and other contracting bodies identified in the contract notice under a dynamic purchasing system.
	1.2	<p>The Dynamic Purchasing System is for the provision of the following Road Surface Treatment Services:</p> <ul style="list-style-type: none"> • Premium Surface Dressing • Micro Asphaltting and Footway Surface Treatments • Carriageway Retexturing • Joint Sealing • Asphalt Preservation • In-Situ Road Recycling • Spray Injection Patching
	1.3	Dorset Council is acting as lead authority contracting on behalf of itself, Bournemouth, Christchurch & Poole Council, Swindon Council, Devon County Council and Plymouth City Council all of whom shall have access to use the Dynamic Purchasing System.
	1.4	Due to uncertainties surrounding future budgets for highway maintenance, the Council provides no guarantees as to the volume of services required and any quantities referred to are provided for indicative purposes only. Works will be determined by the Council's annual budget and is subject to annual variation.
	1.5	On the basis of the Contractor's tender, the Council selected the Contractor to enter into a contract to provide Services to the Council.
2		<p>DEFINITIONS</p> <p>In the Contract unless the context otherwise required the following provisions shall have the meanings give to them below:</p>
	2.1	'Background IPR' any Intellectual Property Rights vested in or licensed to the Council or the Contractor prior to or independently of the performance by the Contractor of its

		obligations under this Contract;
2.2		‘Commencement Date’ means the date the provision of Services commences as agreed at Contract award;
2.3		‘Commercially Sensitive Information’ means the Confidential Information marked as Confidential and comprising information:- <ul style="list-style-type: none"> • which is provided by the Contractor and designated as commercially sensitive information by the Council for the term of the Contract and/or • that constitutes a trade secret.
2.4		‘Confidential Information’ means: <ul style="list-style-type: none"> • 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 the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA; • the Commercially Sensitive Information,
2.5		‘Contracting Officer’ means the Council’s Network Operations Service Manager;
2.6		‘Contract’ means this Contract including all appendices and variations, the Specification, the invitation to Tender, the Contractor’s Tender submission and any documents accompanying it.
2.7		‘Contract Period’ means the period from the Commencement Date to the date of expiry as agreed at Contract award, or such earlier date of termination or partial termination of the agreement in accordance with the provisions of the Contract;
2.8		‘Contract Price’ means the price as set out in the Pricing Schedule;
2.9		‘Council’ means Dorset Council and any other contracting bodies identified in the OJEU contract notice to whom the Contractor is supplying the Services under these terms;
2.10		Clause not used

2.11	<p>'Default' means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Employees in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other;</p>
2.12	<p>'DPA' means the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;</p>
2.13	<p>'Environmental Information Regulations' means the Environmental Information Regulations 2004 and any subsequent revision or amendment;</p>
2.14	<p>'Employees' means all persons employed by the Contractor together with the Contractor's servants, agents, contractors and sub-contractors used in the performance of its obligations under this Contract;</p>
2.15	<p>'Equipment' means the Contractor's equipment, plant and materials used in the performance of its obligations under this Contract;</p>
2.16	<p>'FOIA' means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time with any guidance and/or codes of practice issued by the Information Commissioner in relation to the legislation;</p>
2.17	<p>'Force Majeure' means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:-</p> <ul style="list-style-type: none"> • Any industrial action occurring within the Contractor's or any sub-contractor's organisation or; • The failure by any sub-contractor to perform its obligations under any sub-contract (unless such failure itself is caused by Force Majeure);
2.18	<p>'Foreground IPR' means IPR arising as a result of the provision of the Services by the Contractor under the Contract;</p>

2.19	` Good Industry Practice ` means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances;
2.20	` Information ` has the meaning given under section 84 of the FOIA;
2.21	Clause not used
2.22	` Intellectual Property Rights ` or ` IPR ` means all patents, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights, and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;
2.23	` 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 codes, judgement of a relevant court of law, or directives or requirements of any Regulatory Body of which the Contractor is bound to comply;
2.24	` Month ` means calendar month;
2.25	` Notice ` means notice given in accordance with clause 9
2.26	` Parent Company ` means any company which is the ultimate Holding Company of the Contractor or any other company of which the ultimate Holding Company of the Contractor is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the Contractor or which is engaged by the same or similar business to the Contractor. The term "Holding Company" shall have the meaning ascribed in Section 736 of the Companies Act 1985 or any statutory re-enactment or amendment thereto;
2.27	` Party ` means the Council or the Contractor and ` Parties ` should be construed accordingly;
2.28	` Premises ` or ` Site ` means any location where the Services are delivered;

2.29	<p>‘Product of the Services’ means all reports, checks, collated data and documentation in whatever format that the Contractor shall or may create to delivery to the Council as part of the Services provided by the Contractor;</p>
2.30	<p>‘Prohibited Act’: the following constitute Prohibited Acts:</p> <ol style="list-style-type: none"> 1. to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to: <ol style="list-style-type: none"> a. induce that person to perform improperly a relevant function or activity; or b. reward that person for improper performance of a relevant function or activity; 2. to directly or indirectly request, agreed 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; 3. committing any offence: <ol style="list-style-type: none"> a. under the Bribery Act 2010; b. under the legislation creating offences concerning fraudulent acts; c. at common law concerning fraudulent acts relating to this Contract or any other contract or agreement with the Council; or d. defrauding, attempting to defraud or conspiring to defraud the Council.
2.31	<p>‘Quality Standards’ means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with and any other quality standards as set out in the Specification;</p>
2.32	<p>‘Regulatory Bodies’ means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes or practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Council;</p>

2.33	` Services ` means the Services as detailed in the Specification;
2.34	` Specification ` means the specification attached at Appendix 1;
2.35	` Tender ` means both the documents published by the Council and the document(s) submitted by the Contractor to the Council in response to the Council's procurement process;
2.36	` Term ` means the Term as detailed in clauses 4 and 5;
2.37	` VAT ` means value added tax in accordance with the provisions of the Value Added Tax Act 1993;
2.38	` Working Days ` means Monday to Friday inclusive but not including any declared public holiday.

3.	INTERPRETATION
	The interpretation and construction of the Contract, including the Appendices, shall be subject to the following provisions:
3.1	words importing the singular meaning include where the context so admits the plural meaning and vice versa;
3.2	words importing the masculine include the feminine and the neuter;
3.3	the words "include", "includes" and "including" are construed as though they were immediately followed by the words "without limitation";
3.4	references to any person shall include persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns and transferees;
3.5	reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
3.6	reference to a Party shall include references to any successor body or person to which shall fall the right to enforce the benefit of this Contractor to which shall be transferred

		any statutory function of any of the Parties whether by way of act of Parliament, statutory instrument, express agreement or deed or otherwise;
	3.7	headings in this Contract are for ease of reference only and shall not affect the interpretation or construction of the Contract;
	3.8	reference to a clause is a reference to the whole of that clause unless stated otherwise;
	3.9	references to clauses and appendices are references to clauses and Appendices to this Contract;
	3.10	the provisions of the Appendices are incorporated in this Contract;
	3.11	any periods of time referred to in this Contract and expressed in days shall refer to calendar days unless stated otherwise;

PART ONE: TERM, EXTENSION AND PRIORITY

4.		Term
	4.1	The Contract shall take effect on the Commencement Date and shall expire automatically on the date agreed at Contract award, unless it is terminated earlier in accordance with the provisions of the Contract or otherwise lawfully terminated, or it is extended under clause 5 Extension of the Term
5		Extension of Term
	5.1	Subject to satisfactory performance by the Contractor of its obligations under the Contract, the Council may, by giving Notice to the Contractor extend the Contract Period by giving Notice to the Contractor.

6		Priority
	6.1	In the event of any conflict between the Specification, the Contract and any document referred to in those clauses, the conflict shall be resolved in the following order of precedence:
		<ul style="list-style-type: none"> i. the Specification ii. the Contract Terms; iii. the Tender; and

	iv. any other document referred to in the clauses of the Contract
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PART TWO: GENERAL CONTRACT OBLIGATIONS

7	CONTRACTOR'S STATUS
7.1	At all times during the Term the Contractor shall be an independent Contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

8	COUNCIL'S OBLIGATIONS
8.1	Save as otherwise expressly provided, the obligations of the Council under the Contract are obligations of the Council in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Council in any other capacity or lead to any liability under the Contract (howsoever arising) on the part of the Council to the Contractor. The Council shall pay any undisputed sums incurred which are due prior to any termination.

9	NOTICES
9.1	Any Notice to be given under this Contract shall be in writing and shall be hand delivered or sent by first class mail to the address of the Contractor and the Council at the head of this Contract or such other address as that party may from time to time notify to the other party in accordance with this clause.
9.2	Provided the Notice sent as above is not returned as undelivered it shall be deemed to have been received:
9.2.1	if delivered by hand before 4pm on a Working Day, at the time of delivery, otherwise receipt will be deemed to occur at 9am on the next following Working Day; or
9.2.2	if delivered by first class inland mail, two Working Days after the day of posting.
9.3	In proving the giving of a Notice it shall be sufficient to prove that the Notice was left or that the envelope containing the Notice was properly addressed and posted.

	9.4	For the purposes of this clause “writing” shall not include email and Notices will not be sent by email.
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10		CONFLICTS OF INTEREST
	10.1	The Contractor shall use reasonable endeavours to ensure that neither the Contractor nor any of its Employees, servants, agents, suppliers or sub-contractors is placed in a position where there is or may be an actual conflict or potential conflict between the pecuniary interests of the Contractor or such persons and the duties owed to the Council under the provisions of the Contract. The Contractor shall disclose to the Council full particulars of any such conflict of interest which may arise.
	10.2	This clause shall apply during the Term and for a period of two (2) years after expiry of the Term.

11		PREVENTION OF BRIBERY
	11.1	The Contractor:
	11.1.1	shall not, and shall procure that any agent, consultant, contractor, employee and sub-contractor of the Contractor or any of its sub-contractors shall not, in connection with this Contract commit a Prohibited Act.
	11.1.2	warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Contract.
	11.2	The Contractor shall:
	11.2.1	if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
	11.2.2	within 14 Working Days of the date at the head of this Contract, and annually

		thereafter, certify to the Council in writing (such certification to be signed by an officer of the Contractor) compliance with this clause 11 by the Contractor and all persons associated with it or other persons who are supplying Services in connection with this Contract. The Contractor shall provide such supporting evidence of compliance as the Council may reasonably request.
	11.3	The Contractor shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any agent, consultant, contractor, employee or sub-contractor of the Contractor from committing a Prohibited Act and shall enforce it where appropriate.
	11.4	If any breach of clause 11.1 is suspected or known, the Contractor must notify the Council immediately.
	11.5	If the Contractor notifies the Council that it suspects or knows that there may be a breach of clause 11.1, the Contractor must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation.
	11.6	The Council may terminate this Contract by written Notice with immediate effect if the Contractor, its agents, consultants, contractors, employees or sub-contractors, (in all cases whether or not acting with the Contractor's knowledge) breaches clause 11.1.
	11.7	Any Notice of termination under 11.6 must specify: <ul style="list-style-type: none"> a) the nature of the Prohibited Act; b) the identity of the party whom the Council believes has committed the Prohibited Act; and c) the date on which this Contract will terminate.
	11.8	Despite clause 48, any dispute relating to: <ul style="list-style-type: none"> a) the interpretation of clause 11 or b) the amount or value of any gift, consideration or commission; shall be determined by the Council and its decision shall be final and conclusive.
	11.9	Any termination under clause 11.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

12		WARRANTIES
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	12.1	The Contractor warrants and represents to the Council that:
	12.1.1	it has the full capacity and authority and all necessary consents, licences and permits to enter into and perform this Contract and that the Contract is executed by a duly authorised representative of the Contractor;
	12.1.2	as at the date of this Contract it is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Contract
	12.1.3	as at the Commencement Date, all information, statements and representations contained in the Tender are true, accurate and not misleading save as may have been specifically disclosed in writing to the Council prior to the execution of this Contract and it will promptly advise the Council of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
	12.1.4	no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under this Contract which may be entered into with the Council;
	12.1.5	no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
	12.1.6	it will supply the Services using reasonable care, skill and diligence using suitably qualified Employees and in accordance with generally accepted industry standards and practice; and
	12.1.7	in entering into the Contract, it has not committed any fraud.

13		HEALTH AND SAFETY
	13.1	The Contractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and all other Acts, orders, regulations and codes of practice relating to

		health and safety, including those provisions set out in the Specification, which apply to the performance of the Services.
	13.2	The Contractor shall promptly notify the Council of any health and safety hazards or any incident which causes personal injury or damage which may arise in connection with the performance of the Services in accordance with the requirements of the Specification. The Contractor shall draw these hazards to the attention of its Employees and sub-contractors or any persons engaged by the Contractor in the performance of the Services and shall instruct such persons in connection with any associated safety measures.
	13.3	The Contractor shall ensure that its health and safety policy is made available to the Council on reasonable request.
	13.4	The Council may at its sole discretion suspend the provision of the Services or part thereof in the event of non-compliance by the Contractor with its legal duties in health and safety matters. The Contractor shall not resume provision of the Services or such part as remains until the Council is satisfied that the non-compliance has been rectified.

14		SUSTAINABILITY
	14.1	The Contractor shall use reasonable endeavours to minimise the environmental impact of its activities in performing the Services in accordance with the requirements of the Specification.

PART THREE: SERVICES

15		CONTRACT PRICE AND PAYMENT
	15.1.1	In consideration of the Contractor's performance of its obligations under the Contract, the Council shall pay the Contract Price.
	15.1.2	The Council shall, in addition to the Contract Price and following evidence of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

15.1.3		Payment shall, unless otherwise stated, be deemed to be inclusive of all costs, expenses and overheads of any kind incurred by the Contractor in providing the Services.
15.1.4		In consideration of the Contractor performing its obligations under the Contract, the Council shall pay all sums due to the Contractor in cleared funds within thirty (30) days of receipt of a valid invoice.
15.1.5		<p>Invoices shall legibly state:</p> <ul style="list-style-type: none"> i) the full name and address of the department who ordered the Services and the official order number ii) a full and proper description of the Services provided and costs as set out in the Pricing Schedule. iii) The official purchase order number
15.1.6		If the Council intends to withhold all or any part of a payment it must not later than 5 Working Days before the final date for payment give notice to the Contractor to that effect which notice must specify the amount proposed to be withheld and the ground for doing so.

16		RETROSPECTIVE REBATE
16.1		The Council is obliged to cover the costs incurred in the establishment and management of the overarching Dynamic Purchasing System should it be used by other local authorities as named within the OJEU Notice. This obligation shall be met by means of a retrospective rebate which shall be payable by the Contractor to Dorset Council based on the total turnover of business conducted by them following Contracts awarded to them through the Dynamic Purchasing System by those other named authorities
16.2		The Contractor will pay a rebate of 1% net of the value of any Contract concluded by the Contractor with any other authority, other than Dorset Council, through the Dynamic Purchasing System (including VAT) to be paid by the Contractor to Dorset Council who will raise an invoice to the Contractor requesting payment
16.3		The rebate will be used to recover administration and management costs associated

		with the establishment and management of the Dynamic Purchasing System.
	16.4	For validation purposes the Contractor may be asked to provide a report on an annual basis to Dorset Council detailing the sales accrued by other authorities through the Dynamic Purchasing System and the retrospective rebate due based upon the said sales.
	16.5	The report shall include, but not be limited to: <ul style="list-style-type: none"> • The contract reference number • The period the sales and rebate relates to • the value of Contracts against which the rebate has been calculated • the overall sales figure, broken down between each authority

17		RECOVERY OF SUMS DUE
	17.1	Wherever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Council in respect of any breach of the Contract), the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Contract or under any other agreement or contract with the Council.
	17.2	Any overpayment, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made or authorised the overpayment from the Party in receipt of the overpayment.
	17.3	The Contractor shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be

18		SUPPLY OF SERVICES
	18.1	The Contractor shall supply the Services under the lots notified on Contract award in accordance with the Council's requirements in the Contract, the Specification, and any obligations implied by Section 2 of the Supply of Goods and Services Act 1982 and all relevant national specifications applicable to such including those of the British

		Standards Institution or European equivalent (or if there be no such specification shall be of the highest standard).
	18.2	The Contractor acknowledges that the Council relies on the skill and judgment of the Contractor in the supply of the Services and the performance of its obligations under the Contract.
19		DELIVERY
	19.1	The Contractor shall deliver the Services at the time(s), date(s) and Premises as specified and strictly in accordance with the Specification at all times.
	19.2	The Contractor shall not deliver any Services without the Council's prior request and approval.
	19.3	The Council shall be under no obligation to accept or pay for any Services delivered in excess of those ordered.
	19.4	The Council shall be under no obligation to accept or pay for any Services supplied earlier than the date for delivery specified.
20		CLAUSE NOT USED
21		CLAUSE NOT USED
22		CLAUSE NOT USED
23		CLAUSE NOT USED
24		SECURITY
	24.1	The Contractor shall comply with all reasonable security requirements of the Council while on the Site and shall ensure that its Employees, agents and sub-contractors shall likewise comply with such requirements.

	24.2	The Contractor shall ensure that access to the Site is restricted to its Employees and essential visitors engaged upon or in connection with the provision of the Services.
25		CONTRACTOR'S EQUIPMENT
	25.1	The Contractor shall provide all Equipment necessary for the provision of the Contract.
	25.2	The Contractor shall maintain in a safe and clean condition all Equipment used in the course of the Contract.
	25.3	All Equipment belonging to the Contractor which is brought onto the Site shall be at the Contractor's risk.
	25.4	On completion of the Contract, the Contractor shall remove the Equipment together with any unused materials and clear away all rubbish arising out of the Contract, making good any damage caused by the removal of the Equipment and leave the area where the Contract has been performed in a neat and tidy condition.
	25.5	All Equipment and materials used in the performance of the Contract shall comply with the latest relevant British or European Standard where such exists and the Contractor shall upon request furnish the Contracting Officer with evidence that the Equipment and materials comply with this condition.
	25.6	In the event of any loss of the Contractor's property held on the Site for the purpose of the Contract, due to whatever cause, the Contractor shall replace such property as soon as reasonably possible and shall, notwithstanding such loss, make all reasonable efforts to fulfil its obligations hereunder.
	25.7	The Council reserves the right to inspect the Contractor's Equipment during the Term.
26		CONTRACTOR'S EMPLOYEES
	26.1	The Contractor warrants and represents that all its Employees assigned to the performance of the Services shall be suitably qualified, trained and experienced to provide the Services required and shall be made fully aware of the Contractor's obligations under the Contract as it affects them in the performance of the Services.
	26.2	The Contractor shall employ sufficient persons to ensure the Services are provided at all times and in all respects in accordance with the Contract.

26.3	The Contractor's Employees shall not act in a manner likely to bring discredit to the Council.
26.4	The Contractor shall ensure all Employees deployed on work relating to the Contract are properly managed and sufficiently instructed, trained and supervised with regard to the provision of the Services.
26.5	The Contractor shall give, and ensure that its Employees give all reasonable assistance to the Council in the investigation of complaints, disciplinary matters, claims for damages, and similar matters.
26.6	Should the Council acting reasonably require the involvement in the Services of any Employee to be suspended or terminated, the Contractor shall provide a replacement that is acceptable to the Council. The Council shall in no circumstances be liable either to the Contractor or to the Employee in respect of any award, cost, expenses, liability, loss or damage occasioned by such removal and the Contractor shall fully indemnify the Council against any such claims made.
26.7	The Employees engaged in the provision of the Services shall obey all reasonable instructions given to them by the Council in any matter relating to health and safety.
26.8	The Contractor will comply with the specific provisions regarding the Contractor's Employees set out in the Specification.
27	INTELLECTUAL PROPERTY RIGHTS
27.1	Neither the Council nor the Contractor shall acquire any right, title or interest in the other's Background IPR used in connection with the Services.
27.2	The Contractor shall not (except where necessary for the performance of the Services) without the Council's prior written approval, use or disclose any Council Background IPR.
27.3	All title to and all rights and interest in any Foreground IPR shall vest in the Contractor other than where the Council commissions bespoke resources under this Contract in which case the Foreground IPR shall vest in the Council and the Contractor shall assign and/or grant to the Council title to and all rights and interest in such Foreground IPR.
27.4	The Contractor shall, during and after the Contract Period, indemnify the Council against

		any claim that the performance by the Contractor of the Services infringes a third party's IPR.
28		BUSINESS CONTINUITY
	28.1	The Contractor shall have contingency arrangements in place to ensure the continuity of the Services at all times at no extra cost to the Council. These shall include but not be limited to arrangements to deal with staff absences.
	28.2	The Contractor shall demonstrate that it has adequate business continuity plans and associated contingency arrangements in place to ensure minimum disruption in the provision of any part of the Services in the event of a major incident affecting its ability to provide the Services.

29		CONTRACT PERFORMANCE
	29.1	The Contractor shall perform its obligations under the Contract:
	29.1.1	with appropriately experienced, qualified and trained Employees with all due skill, care and diligence;
	29.1.2	in a timely manner; and
	29.1.3	in compliance with all applicable legislation, including but not limited to, any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.
	29.2	The Contractor shall ensure that the Services conform in all respects with the Specification and are fit and sufficient for all the purposes for which such Services are ordinarily used and for any particular purpose made known to the Contractor by the Council.
	29.3	The Contractor shall meet with the Council at the intervals detailed in the Specification in order to review Contract performance.

PART FOUR: STATUTORY OBLIGATIONS AND REGULATIONS

30		STATUTORY REQUIREMENTS
	30.1	The Contractor shall be responsible for obtaining all licences, authorisations, consents

		or permits required in relation to the performance of this Contract.
31		DISCRIMINATION
	31.1	The Contractor shall not unlawfully discriminate in the provision of the Services either directly or indirectly on such grounds as race, colour, ethnic or national origin, culture and linguistic background, disability, gender or sexual orientation, pregnancy and maternity, gender reassignment, marriage and civil partnership, religion or belief or age and, without prejudice to the generality of the foregoing, shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or other relevant legislation.
	31.2	The Contractor shall at all times operate a policy of equal opportunity in both staffing and service delivery which accords with that of the Council. The Contractor shall forward a copy of this policy to the Council when required and demonstrate its operation in the performance of the Contract.
	31.3	The Contractor shall take all reasonable steps to secure the observance of this clause by all Employees employed in the performance of the Contract.
	31.4	In the event of a finding of discrimination being made by any court or employment tribunal against the Contractor or any sub-contractor appointed by the Contractor during the performance of this Contract, or of an adverse finding in any formal investigations by the Equality and Human Rights Commission during the performance of this Contract, the Contractor shall inform the Council of this finding and shall take appropriate steps to prevent repetition of the unlawful discrimination.
	31.5	The Contractor shall indemnify the Council in respect of any claims against the Council which arise by reason of the Contractor's breach of the legislation referred to in clause 31.1 where such breach arises in the performance of its obligations under this Contract.
	31.6	The Contractor may be required to answer questions raised by the Council on matters referred to in this clause.
32		THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

	32.1	A person who is not a Party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him.
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PART FIVE: PROTECTION OF INFORMATION

33		DATA PROTECTION
	33.1	With respect to the Parties' rights and obligations under this Contract, the Parties agree that the Council is the Data Controller and that the Contractor is the Data Processor for the purposes of the Data Protection Act 1998 ("the 1998 Act").
	33.2	The Contractor and any person employed by it or acting on its behalf (whether with or without the knowledge of the Contractor) shall comply with the 1998 Act and any other applicable data protection legislation. In particular the Contractor agrees to comply with the obligations placed on the Council by the seventh data protection principle ("the Seventh Principle") set out in the 1998 Act, namely:
	33.2.1	to maintain technical and organisational security measures sufficient to comply at least with the obligations imposed on the Council by the Seventh Principle; and
	33.2.2	to allow the Council or any person authorised by the Council to audit the Contractor's compliance with the requirements of this clause on reasonable notice and/or to provide the Council or any person authorised by the Council with evidence of its compliance with the obligations set out in this clause.
	33.3	The Contractor shall:
	33.3.1	Process the Personal Data (as defined in the 1998 Act) only in accordance with instructions from the Council (which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified by the Council to the Contractor during the Term);
	33.3.2	Process the Personal Data only to the extent, and in such manner, as it is necessary for the performance of the Contract or as is required by Law or any Regulatory Body;
	33.3.3	obtain prior approval from the Council in order to transfer the Personal Data to any sub-contractors for the provision of the Services;
	33.3.4	ensure that all Employees required to access the Personal Data are informed of the

		confidential nature of the Personal Data and comply with the obligations set out in this clause;
	33.3.5	ensure that none of the Employees publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council;
	33.4	Both Parties agree to use all reasonable efforts to assist each other to comply with the 1998 Act. For the avoidance of doubt, this includes the Contractor providing the Council with reasonable assistance in complying with subject access requests served on the Council under Section 7 of the 1998 Act and the Contractor consulting with (and obtaining consent of) the Council prior to the disclosure by the Contractor of any Personal Data in relation to such requests.
	33.5	In the event that this Contract ends for any reason the Contractor shall promptly return all Personal Data held or collected in the course of the Contract, to the Council.
	33.6	Subject to Clause 44.1, the Contractor agrees to indemnify and keep indemnified the Council against all claims and proceedings and all liability, loss, costs and expenses incurred in connection therewith by the Council as a result of any claim made or brought by any individual or other legal person in respect of any loss, damage or distress caused to that individual or other legal person as a result of the Contractor's unauthorised processing, unlawful processing, destruction, loss and/or damage to any Personal Data processed by the Contractor, its staff or agents in the Contractor's performance of this Contract or as otherwise agreed between the Parties.
	33.7	For the avoidance of doubt, both parties agree and acknowledge that the cap on liability detailed in clause 44.2 shall not limit the Contractor's liability under clause 33.6.
	33.8	The obligations set out in this clause shall remain in force notwithstanding termination of this Contract.

34		CONFIDENTIAL INFORMATION
	34.1	Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
	34.1.1	treat the other Party's Confidential Information as confidential and safeguard it accordingly; and;
	34.1.2	not disclose the other Party's Confidential Information to any other person without the

	owner's prior written consent.
34.2	Clause 34.1 shall not apply to the extent that:
34.2.1	such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 35 (Freedom of Information);
34.2.2	such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
34.2.3	such information was obtained from a third party without obligation of confidentiality;
34.2.4	such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
34.2.5	it is independently developed without access to the other party's Confidential Information.
34.3	The Contractor may only disclose the Council's Confidential Information to its Employees who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Employees are aware of and shall comply with these obligations as to confidentiality.
34.4	The Contractor shall not, and shall procure that its Employees do not, use any of the Council's Confidential Information received otherwise than for the purposes of this Contract.
34.5	Nothing in this Contract shall prevent the Council from disclosing the Contractor's Confidential Information:
34.5.1	to any Crown Body or any other contracting authority. All Crown Bodies or contracting authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other contracting authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any contracting authority;
34.5.2	to any consultant, contractor or other person engaged by the Council;
34.5.3	for the purpose of the examination and certification of the Council's accounts;
34.5.4	for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the

		economy, efficiency and effectiveness with which the Council has used its resources.
34.6		The Council shall use all reasonable endeavours to ensure that any government department, contracting authority, employee, third party or contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause 34 is made aware of the Council's obligations of confidentiality.
34.7		Nothing in this clause 34 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.
34.8		This clause shall survive the termination or expiry of the Contract for a period of six years.

35		FREEDOM OF INFORMATION
35.1		The Contractor acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.
35.2		<p>The Contractor shall and shall procure that its sub-contractors shall:</p> <ul style="list-style-type: none"> a) transfer to the Council all requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a request for Information; b) provide the Council with a copy of all Information in its possession, or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Contractor's request; and c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
35.3		The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other contract whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental

		Information Regulations.
35.4		In no event shall the Contractor respond directly to a request for Information regarding this Contract unless expressly authorised to do so by the Council.
35.6		<p>The Contractor acknowledges that (notwithstanding the provisions of clause 34.2) the Council may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (“the Code”), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services:</p> <p>a) in certain circumstances without consulting the Contractor where required to disclose the information by Law or pursuant to a lawful authority; or</p> <p>b) following consultation with the Contractor and having taken their views into account;</p> <p>provided always that where 35.3 applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor’s attention after any such disclosure.</p>
35.7		The Contractor shall ensure that all Information is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.
36		RECORDS AND AUDIT ACCESS
36.1		The Contractor shall keep and maintain until six (6) years after the date of termination or expiry (whichever is the earlier) of the Contract, full and accurate records and accounts of the operation of the Contract including the Services provided under it.
36.2		The Contractor shall keep the records and accounts referred to in clause 36.1 above in accordance with good accountancy practice.
36.3		The Contractor shall on request afford the Council, the Council's representatives and/or its auditor access to such records and accounts as may be required by the Council from time to time.
36.4		The Contractor shall provide such records and accounts (together with copies of the

		Contractor's published accounts) during the Term and for a period of six (6) years after the expiry of the Term to the Council and the auditor.
	36.5	The Council shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services save insofar as the Contractor accepts and acknowledges that control over the conduct of audits carried out by the auditor is outside of the control of the Council.
	36.6	Subject to the Council's rights of Confidential Information, the Contractor shall on demand provide the auditors with all reasonable co-operation and assistance in relation to each audit, including:-
	36.6.1	all information requested by the Council within the scope of the audit;
	36.6.2	reasonable access to sites controlled by the Contractor used in the provision of the Services; and
	36.6.3	reasonable access to Employees.
	36.7	The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 36, unless the audit reveals a material Default by the Contractor in which case the Contractor shall reimburse the Council for the Council's reasonable costs incurred in relation to the audit.
37		CONTROL OF CONTRACT
	37.1	The Contractor shall not assign, novate, sub-contract or in any other way dispose of the Contract or any part of it without the Council's prior approval.
	37.2	The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
	37.3	Where the Council has consented to the placing of sub-contracts the Contractor shall:
	37.3.1	ensure that a provision is included in such sub-contract which requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding thirty days from the receipt of a valid claim.

	37.3.2	at the request of the Council, send copies of each sub-contract to the Council as soon as reasonably practicable
	37.4	The Council may assign, novate or otherwise dispose of its rights and obligations under the Contract, including to any statutory successor to its functions, provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.
	37.5	The Council may disclose to any transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Contract. In such circumstances the Council shall authorise the transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Contract and for no other purposes and shall take all reasonable steps to ensure that the transferee gives a Confidential Information undertaking in relation to such Confidential Information.

PART SIX: INADEQUATE PERFORMANCE AND DISRUPTION

38		REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE
	38.1	In the event that the Council is of the reasonable opinion that there has been a material breach of the Contract by the Contractor, then the Council may, without prejudice to its rights under clause 41, do any of the following:-
	38.1.1	without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Council that the Contractor will once more be able to supply all or such part of the Services in accordance with the Contract;
	38.1.2	without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;
	38.1.3	terminate, in accordance with clause 41 the whole of the Contract; and/or
	38.1.4	charge the Contractor for, and the Contractor shall pay any costs reasonably incurred

		by, the Council (including any reasonable administration costs) in respect of the supply of any part of the Services by the Council or a third party provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
	38.2	If the Contractor fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Council shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 (ten) Working Days of the Council's instructions or such other period of time as the Council may direct.
	38.3	In the event that the Contractor:-
		(a) fails to comply with clause 38.2 above and the failure is materially adverse to the interests of the Council or prevents the Council from discharging a statutory duty; or
		(b) persistently fails to comply with clause 38.2 above;
		then the Council may terminate the Contract with immediate effect by giving the Contractor Notice.
	38.4	Without prejudice to any other right or remedy which the Council may have, if any Services are not supplied in accordance with, or the Contractor fails to comply with any of the terms of the Contract the Council shall be entitled to avail itself of any one or more of the following remedies at its discretion whether or not any part of the Services have been accepted by the Council:-
		<ul style="list-style-type: none"> (a) to rescind the Contract; (b) to reject the Services (in whole or in part) and return them to the Contractor at the risk and cost of the Contractor on the basis that a full refund for the Services so returned shall be paid forthwith by the Contractor; (c) at the Council's option to give the Contractor the opportunity at the Contractor's expense to either remedy any defect in the Services or to supply replacement Services; (d) to refuse to accept any further deliveries of the Services but without any liability to the Council; and (e) to claim such damages as may have been sustained in consequence of the Contractor's breach or breaches of the Contract.

39		DISRUPTION
	39.1	The Contractor shall immediately inform the Council of any actual or potential industrial action, whether such action be by its own Employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
	39.2	In the event of industrial action by the Employees, the Contractor shall seek the Council's approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under the Contract.
	39.3	If the Contractor's proposals referred to in clause 39.2 are considered insufficient or unacceptable by the Council acting reasonably then the Contract may be terminated with immediate effect by the Council by Notice in writing.
	39.4	If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Council, an appropriate allowance by way of extension of time will be approved by the Council. In addition, the Council will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.
40		FORCE MAJEURE
	40.1	Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of six Months, either Party may terminate the Contract with immediate effect by Notice in writing.
	40.2	Any failure or delay by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent, sub-Contractor or Contractor shall be regarded as due to Force Majeure only if that agent, sub-Contractor or Contractor is itself impeded by Force Majeure from complying with an obligation to the Contractor.
	40.3	If either Party becomes aware of a Force Majeure event or occurrence which gives rise to or which is likely to give rise to any such failure or delay on its part as described in clause 40.1 it shall immediately notify the other by the most expeditious method then

	available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.
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PART SEVEN: CONTRACT TERMINATION AND SUSPENSION

41	TERMINATION
41.1	This Contract shall terminate:
41.1.1	On the expiry of the Term;
41.1.2	Immediately if either party commits a fundamental breach of the terms and conditions of the Contract, with the offended party serving Notice to the party in breach, giving details of the way in which it is considered they are in breach;
41.2	The Council may by Notice in writing to the Contractor terminate this Contract as from the date of service of such Notice if:
41.2.1	the Contractor passes a resolution or a court makes an order that the Contractor be wound up otherwise than for the purpose of a bona fide solvent reconstruction or amalgamation; or
41.2.2	circumstances exist which entitle a court or a creditor to appoint a receiver, manager or administrator or which entitle a court otherwise than for the purpose of a bona fide solvent reconstruction or amalgamation to make a winding-up order regarding the Contractor; or
41.2.3	the Contractor undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, which impacts adversely and materially on the performance of this Contract; or
41.2.4	the Contractor becomes the subject of a voluntary arrangement under s1 of the Insolvency Act 1986; or
41.2.5	the Contractor has a receiver, manager, administrator, or administrative receiver appointed over all or any part of its undertakings, assets or income, or has passed a resolution for its winding up; or
41.2.6	the Contractor has a petition presented to any court for its winding up or for an

	administration order; or
41.2.7	the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
41.2.8	the Contractor suffers any distraint, execution or other process to be levied or enforced on any of its property by any third party and is not paid out, withdrawn or discharged within 7 days; or
41.2.9	the Contractor is in breach of paragraph 4.4 of the Specification in respect of its Ofsted rating.
41.3	The Council may only exercise its right under clause 41.2.3 within six Months after a change of control occurs and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs. The Contractor shall notify the Contracting Officer immediately any change of control occurs.
41.4	The Council shall be entitled to terminate this Contract immediately and recover from the Contractor the amount of any loss resulting from such cancellation if, in relation to any agreement with the Council, the Contractor or any person employed by him or acting on his behalf shall have committed an offence under the Bribery Act 2010, or shall have given any fee or reward, the receipt of which is an offence under sub-section (2) of Section 117 of the Local Government Act 1972.
41.5	The Council may at any time by Notice in writing to the Contractor terminate this Contract as from the date of service of such Notice whenever any of the following events occurs:
41.5.1	the Contractor commits a material breach of any of its obligations under or in relation to this Contract which is not capable of remedy or, if capable of remedy, is not remedied within 30 days after receipt of written Notice from the non-breaching party of its intention to terminate; or
41.5.2	the Contractor is continually in breach or commits a series of repeated breaches of this Contract, which cannot be remedied within 30 days of written Notice from the Council of its intention to terminate.
41.6	The Council shall have the right to terminate this Contract or to terminate the provision of any part of the Contract at any time by giving three month's written Notice to the

		Contractor.
	41.7	When requested to do so by the Council, the Contractor shall upon the termination of the Contract, immediately deliver up to the Council all correspondence, documents, specification papers and property belonging to the Council which may be in his possession or under his control.
42		CONSEQUENCES OF EXPIRY OR TERMINATION
	42.1	Where the Council terminates the Contract under clause 41.5 and then makes other arrangements for the supply of the Services, the Council may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Council throughout the remainder of the Term. The Council shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated due to the Contractor's Default, no further payments shall be payable by the Council until the Council has established the final cost of making those other arrangements.
	42.2	Subject to clause 41 where the Council terminates the Contract under clause 41.5, the Council shall indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Contractor shall reduce its unavoidable costs by any insurance sums available.
	42.3	The Council shall not be liable under clause 42.2 to pay any sum which:- <ul style="list-style-type: none"> (a) was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or (b) when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the Contract had not been terminated prior to the expiry of the Term.
	42.4	Save as otherwise expressly provided in the Contract, termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such

		termination or expiry
43		RECOVERY UPON TERMINATION
	43.1	On the termination of the Contract for any reason, the Contractor shall:
	43.1.1	Immediately deliver to the Council all property that may have been provided to the Contractor by the Council;
	43.1.2	Assist and co-operate with the Council to ensure an orderly transition of the provision of the Contract to the replacement contractor and /or the completion of any work in progress.

PART EIGHT: LIABILITY AND INSURANCE

44		LIABILITIES AND INDEMNITIES
	44.1	Nothing in this clause attempts to limit or exclude either Party's liability for:
	44.1.1	Death or personal injury caused by its negligence;
	44.1.2	Fraud or fraudulent misrepresentation by it or its Employees;
	44.1.3	Breach of any obligations as to title implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.
	44.2	Subject to clause 44.1, both Parties agree that each Party's total aggregate liability in connection with this Contract whether those liabilities are expressed as an indemnity or otherwise in each twelve (12) month period during the Term (whether in contract, tort including negligence breach of statutory duty or howsoever arising) shall in no event exceed one hundred and fifty per cent (150%) of the Contract Price for the Contract.
	44.3	Subject to clause 44.1 and 44.2 the Contractor shall indemnify and keep indemnified the Council on demand in full from and against all legally enforceable claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with any death or personal injury or loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused by an act or omission of the Contractor.

44.4	Clause 44.3 shall not apply to the extent that the Contractor is able to demonstrate that such loss detailed in that clause was not caused or contributed to by its negligence or Default, or the negligence or Default of the Contractor's Employees.
44.5	<p>In no event shall either Party be liable to the other for:</p> <ul style="list-style-type: none"> (a) Loss of profits; (b) Loss of business; (c) Loss of revenue; (d) Loss of or damage to goodwill; (e) Subject to 44.6, any indirect, special or consequential loss or damage
44.6	<p>In accordance with clause 44.3, the Contractor shall be liable for the following types of loss, damage, cost or expense flowing from an act or Default of the Contractor which shall (without in any way limiting other categories of loss, damage, cost or expense which may be recoverable by the Council) be recoverable by the Council:</p> <ul style="list-style-type: none"> (a) any additional operational and/or administrative costs and expenses arising from any Default; (b) the cost of procuring, implementing and operating any alternative or replacement services to the Services; (c) any wasted expenditure or charges rendered unnecessary and/or incurred by the Council arising from the Contractor's Default (to include wasted staffing costs in the event of delayed delivery);and (d) Any regulatory losses, fines, expenses or other losses arising from a breach by the Contractor of any Law.
45	INSURANCE
45.1	The Contractor shall effect and maintain the following insurances at its own expense for the duration of the Contract in relation to the performance of the Contract:
45.1.1	a valid policy or policies of public liability insurance with a minimum level of indemnity of £5 million for any one claim.
45.1.2	a valid policy or policies or employer's liability insurance with a minimum level of indemnity of £5 million for any one claim in respect of all sums the Contractor is found legally liable to pay for injury, illness or disease suffered by an employee of the

		Contractor acting in the course of his duties.
	45.1.4	Clause not used
	45.2	Details of the above policies together with evidence that the policies are currently in force must be produced to the Council on demand.
	45.3	The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities arising under the Contract.
	45.4	If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the Contract then the Council may make alternative arrangements to protect its interests and recover the costs of such arrangements from the Contractor.

PART EIGHT: OTHER PROVISIONS

46		VARIATIONS TO THE CONTRACT
	46.1	The Council may propose a variation to the Contract by serving the Contractor with written notice of the proposal to vary the Contract.
	46.2	The notice of variation will contain sufficient detail to allow the Contractor to consider whether any changes to the Pricing Schedule are necessary.
	46.3	On receipt of the notice, the Contractor has seven days to respond in writing with any objections to the variation. Where the Council does not receive any written objections within the timescales detailed, the Council may serve the Contractor with a written agreement detailing the variation to be signed and returned by the Contractor within seven days of receipt.
	46.4	Where the Contractor can demonstrate that a variation would result in a change to the prices set out in the Pricing Schedule, the Council may require further evidence from the Contractor that any additional costs to the Contractor will be kept to a minimum.
	46.5	The Council may require the Contractor to meet and discuss any proposed changes to the Pricing Schedule that would result from a variation.
	46.6	Where a change to the Pricing Schedule is agreed by the Council the Council shall notify its acceptance of the change to the Contractor in writing.

	46.7	In the event that the Council and the Contractor cannot agree to the changes to the prices set out in the Pricing Schedule, the Council may withdraw the variation or propose an amendment to it.
47		WAIVER
	47.1	Failure by the Council or the Contractor to insist on strict performance of this Contract or to exercise any right or remedy upon breach of any provision of this Contract shall not constitute a waiver of the contract conditions or a waiver of any subsequent breach or default in the performance of the Contract. The rights and remedies provided in this Contract are cumulative and not exclusive of any rights and remedies provided by law.
48		DISPUTE RESOLUTION
	48.1	It is the intention of the parties to settle amicably by negotiation all disagreements and differences on matters relating to this Contract.
	48.2	In the event that any disagreement or difference of opinion arises out of this Contract the matter shall be dealt with as follows:
	48.2.1	the Contracting Officer and the Contractor's representative shall meet to seek a resolution. In the event that they do not meet within ten Working Days of the date on which either party convenes a meeting to resolve the matter or should they not be able to resolve the matter within ten Working Days of the first meeting, the matter shall be promptly referred by either party to the next level of management within the respective organisations for immediate resolution.
	48.2.2	if within fourteen Working Days of the matter having been referred to the next level of management no agreement has been reached as to the matter in dispute, the Parties shall thereafter seek to determine the matter in dispute by adopting the procedure set out below:
		(a) An independent expert shall be appointed by agreement between the Parties. The Parties shall promptly furnish to such expert all information relating to the dispute to enable him to give a decision as to what course of action in his reasonable opinion ought to be followed to give an outcome equitable to the

		<p>Parties taking into account the respective rights and obligations of the Parties.</p> <p>(b) The decision of the expert shall be final and binding on the Parties.</p> <p>(c) The Parties shall share equally the fees and expenses of the expert unless the expert directs otherwise.</p>
	48.2.3	<p>Alternatively, either Party may refer the matter for decision to arbitration whereupon the Parties shall comply with the following provisions:</p> <p>(a) the arbitration shall be governed by the provisions of the Arbitration Act 1996;</p> <p>(b) the arbitration fees shall be met by the Council and Contractor in equal shares;</p> <p>(c) the decision of the arbitrator shall be binding on the Parties.</p>
49		SEVERANCE
	49.1	<p>If any part of this Contract becomes invalid, illegal or unenforceable, the Parties shall negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted which gives effect to their original intentions.</p>
50		PUBLICITY
	50.1	<p>The Contractor shall seek written approval from the Council prior to the publication of any publicity where the Council is acknowledged.</p>
51		CHANGE IN LAW
	51.1	<p>The Contractor shall neither be relieved of its responsibility to perform its obligations under the Contract nor be entitled to an increase in the Contract Price as a result of a change in law if the change and its effect are known at the Commencement Date of the Contract.</p>
	51.2	<p>If a change in law occurs or is shortly to occur, the Contractor shall notify the Council to express an opinion of the likely effects of the change including:</p>
	51.2.1	<p>whether any change is required to the Services, Contract Price or the Contract;</p>
	51.2.2	<p>whether the Contractor requires any relief from compliance with its obligations;</p>

	51.3	If the Parties to this Contract agree upon the effects of the change in law and any financial consequences, such agreement shall be implemented through the variation provisions of clause 46.
52		Modern Slavery Act 2015
	52.1	The Contractor warrants and undertakes that in performing its obligations under the terms of this Contract, it will:
	52.1.1	comply with the Modern Slavery Act 2015; and
	52.1.2	not engage in any activity, practice or conduct that would constitute an offence under the Modern Slavery Act 2015; and
	52.1.3	include in its subcontracting arrangements provisions that are at least as onerous as those set out in this clause 52.1.
	52.2	The Contractor warrants that neither it nor any of its officers, employees, agents or subcontractors has:
	52.2.1	committed an offence under the Modern Slavery Act 2015 ('a MSA Offence'); or
	52.2.2	been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
	52.2.3	is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA offence or prosecution under the Modern Slavery Act 2015.
53		LAW AND JURISDICTION
	53.1	This Contract shall be governed by and constructed in accordance with English law and each Party agrees to submit to the exclusive jurisdiction of the English courts.
54		ENTIRE AGREEMENT
	54.1	This Contract constitutes the entire agreement between the Parties relating to the

		subject matter of the Contract. This Contract supersedes all prior negotiations, representations and undertakings whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation
	54.2	Each of the Parties acknowledges and agrees that in entering into the 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 the Contract. The only remedy available to either Party for any such statements, representation, warranty or understanding shall be for breach of contract under the terms of the Contract.
	54.3	Nothing in clauses 51.1 and 51.2 shall operate to exclude Fraud or fraudulent misrepresentation.

The following to be incorporated upon award of Contract:

Appendix 1 – Specification/s

Appendix 2 - Pricing Schedule