

Dated

2022

- (1) **Derbyshire County Council**
- (2) **[Contractor]**

Contract for Bus Stop and Bus Shelter Associated Works

PLACE112/IKEN 103799

Contents

Agreed terms	4
1 Definitions and Interpretation	4
2 Term	13
3 Provision of the Services	13
4 Equipment.....	13
5 The Goods	13
6 Standard of Performance.....	14
7 Ordering	15
8 Delivery	16
9 Title and Risk	18
10 Inspection and Acceptance	18
11 Works	19
12 Design.....	21
13 Charges.....	21
14 Charges adjustment extension	23
15 Conduct of Contractor	24
16 Access to Council Premises	24
17 Meeting and Reporting	25
18 Contract delay	25
19 Change	26
20 Best Value	26
21 Emergencies	27
22 Contractor Warranties and Undertakings.....	27
23 Termination.....	29
24 Voluntary Termination by the Council	31
25 Consequences of termination/expiry	31
26 Survival of termination	32
27 Indemnities	32
28 Limitation on Liability.....	33
29 Duty to mitigate	33
30 Interest.....	33
31 Right of Set-off	33
32 Insurance.....	33
33 IPR	34
34 Freedom of Information and Confidentiality.....	35
35 Data Protection	36

36	Bribery and Fraud.....	36
37	Discrimination	37
38	Sub-Contracting	38
39	Social Value	39
40	Human rights.....	39
41	Conflict of interest	39
42	Assignment/Novation	39
43	Business Continuity.....	40
44	Force Majeure.....	40
45	Records and Open Book Accounting.....	41
46	Resources, Training and Policies.....	42
47	Audit.....	42
48	Exit Arrangements.....	43
49	TUPE Employees.....	43
50	Canvassing.....	43
51	Capacity.....	43
52	Co-Operation.....	43
53	Public Relations and Publicity	43
54	Dispute resolution.....	44
55	Representatives	45
56	No Agency	45
57	Notices	46
58	Severability.....	46
59	Waiver	46
60	Assistance in legal proceedings	47
61	Third Party Rights.....	47
62	Entire Agreement.....	47
63	Double recovery.....	48
64	Counterparts	48
65	Variations	48
66	Governing Law and Jurisdiction	48
Schedule 1	Specification	50
Schedule 2	Payment	51
Schedule 3	Council and Contractor Representatives.....	52
Schedule 4	TUPE	53
Schedule 5	Tender Response	56
Schedule 6	Service Failures and Critical Failures	57

Date:

Parties:

- (1) Derbyshire County Council of County Hall, Matlock, Derbyshire, DE4 3AG (the "Council")
- (2) [INSERT COMPANY NAME], of [COMPANY REGISTERED ADDRESS], a company incorporated in [INSERT COUNTRY], Company number: [INSERT COMPANY NUMBER] (the "Contractor")

Introduction

- (A) On [INSERT DATE] Derbyshire County Council placed a contract notice with reference number [INSERT FTS REFERENCE] on the Find A Tender Service seeking expressions of interest from potential contractors for bus stop and bus shelter associated works.
- (B) The Council sought tenders for bus stop and bus shelter associated works in accordance with the tender documents.
- (C) The Contractor has submitted a tender to the Council for the supply of these services and the Council has accepted the Contractor's tender.
- (D) The Council appoints the Contractor and the Contractor accepts the appointment to provide the services in accordance with this Agreement.

Agreed terms

1 Definitions and Interpretation

1.1 Definitions

Affected Party	means the Party seeking to claim relief in respect of a Force Majeure Event;
Approval	means the written consent of the Council;
Best Value Duty	means the duty imposed on the Council by Section 3 of the Local Government Act 1999 in relation to, inter alia, any one (1) or more of the Services;
Business Day	means a day other than a Saturday, Sunday or public holiday in England;
Business Hours	means between the hours of 09:00 and 17:00 on any Business Day;
CDM2 Risk Assessment	means a risk assessment undertaken by the Contractor in compliance with the Construction (Design and Management) Regulations 2015;
Charges	means the charges payable by the Council to the Contractor under the terms of this Agreement,

	more particularly as described at Schedule 2 (Payment);
Commencement Date	means 12 October 2022;
Completion	a state in which the Council reasonably considers that the Services in respect of an Order are complete in all respects and free from any apparent defects, save for any minor items of any incomplete works or minor defects the existence, completion, rectification of which will not prevent or interfere with the use and enjoyment (or the fitting out for use) of the Services, provided that where it is expressly stated in any provisions of this Agreement that the testing, commissioning, regulation or adjustment of any mechanical or electrical services is to be completed before completion of the Services, the Services shall not be considered completed until the same is done as this Agreement requires;
Completion Date	means the date when the Council reasonably considers that Completion has been achieved;
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, Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and contractors of either Party, all personal data and sensitive personal data within the meaning of the Data Protection Act 2018 and the commercially sensitive information identified pursuant to Clause 34.5;
Conflict of Interest	means any actual or potential conflict of interests between the personal or pecuniary interests of two or more Parties to this Agreement;
Consumer Prices Index (CPI)	means the annual percentage change for the previous 12 months (whether an increase or a decrease) and calculated annually thereafter (or the most recently available last 12 months) in the UK Government Consumer Prices Index (CPI) as published by the Office for National Statistics at ons.gov.uk (or such successor or replacement price index or department, or failing such publication, such other index as the parties may agree most closely resembles such index);
Contract Manager	has the meaning given in Clause 55;
Contract Year	means either: (a) the 12-month period commencing on the Commencement Date;

- (b) a 12-month period commencing on an anniversary of the Commencement Date; or
- (c) the period between an anniversary of the Commencement Date and the date of expiry or termination of this Agreement.

Contractor Personnel	means all employees, volunteers, workers, staff, agents and consultants of the Contractor engaged in the provision of the Services at any time;
Contractor's Premises	means premises, in accordance with the Specification, where the Contractor may perform the Services throughout the Term;
Contractor's Tender	means the tender submitted in response to the Specification and attached as Schedule 5;
Council's Premises	means Council premises, as agreed with the Council, where the Contractor may perform the Services throughout the Term;
Council Policies	means the policies of the Council;
Critical Failure	means as set out in Schedule 6;
Data Protection Legislation	means all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party;
Deputy Contract Manager	has the meaning given in Clause 55;
Disaster	means a sudden, calamitous event which disrupts the supply of the Services;
Electrical Apparatus	means any electrical apparatus including but not limited to any electric appliance, equipment or installation;
Electrical Test Certificate	means an Electrical Installation Certificate certifying that the Electrical Apparatus is complete, undamaged and safe to connect to the electricity supply network;
Emergency	means an event causing or, in the reasonable opinion of a Party, threatening to cause death or injury to any individual, or serious disruption to the lives of a number of people or extensive damage to

	property, or contamination of the environment in each case on a scale beyond the capacity of the emergency services, or preventing the Services operating under normal circumstances and requiring the mobilisation and organisation of the emergency services;
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;
Equipment	means any equipment required for the provision of the Services;
Expiry Date	means 4 (four) years following the Commencement Date unless terminated earlier in accordance with the terms of this Agreement;
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 services equivalent to the Services immediately following expiry or termination of this Contractor;
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;
Goods	means the Goods to be supplied to the Council by the Contractor under the Agreement;
Highways Permit Scheme	means The Traffic Management (Derbyshire County Council) Permit Scheme Order 2015;
Intellectual Property Rights	means any and all patents, trademarks, 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 Services and/or otherwise for the purposes of this Agreement;
Law	means any applicable law, 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 with which the Contractor or Council is bound to comply;
Losses	means all liabilities, costs, fines, 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);
Order	means an order for Goods and/or Services submitted by the Council to the Contractor in accordance with Clause 7 (Ordering);
Order Form	means the form completed by the Council through Orderpoint when placing an Order with the Contractor;
Order Number	means the number applied to an Order by the Contractor;

Orderpoint	means the Council's electronic procurement software;
Party	means either the Council or the Contractor as applicable;
Payment Application Address	means Economy, Transport and Environment Finance Department, Derbyshire County Council, County Hall, Matlock, Derbyshire, DE4 3AG to which all Payment Applications shall be submitted;
Prescribed Rate	means four per cent (4%) above the base rate from time to time of Barclays Bank plc;
Prohibited Act	<ul style="list-style-type: none"> (a) 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 of execution of the agreement or any other contract with the Council; (b) showing, or forbearing 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 Contractor's behalf (whether with or without the knowledge of the Contractor); (c) 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; (d) gives any fee or reward the receipt of which is an offence under section 117 (2) of the Local Government Act 1972; (e) 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; (f) 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: <ul style="list-style-type: none"> (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or

any other contract with the Council; or

(ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Council;

(g) entering into this Agreement 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;

(h) committing any offence:

(i) under the Prevention of Corruption Acts 1889-1916;

(ii) under Law creating offences in respect of fraudulent acts; or

(iii) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Council; or

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 Agreement 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

are those employees, agents or otherwise of the Council and the Contractor listed at Schedule 3

	who will be involved in the management of this Agreement;
Returning Employees	means those employees wholly or mainly engaged in the provision of the Services as the case may be as immediately before the expiry or termination of this Agreement whose employment transfers to the Council or a Future Contractor pursuant to TUPE;
Request for Information	a request for information or an apparent request for information under the FOIA or the EIR;
Services	means the services to be delivered by or on behalf of the Contractor under this Agreement, more particularly described at Schedule 1 (Specification) and includes but is not limited to the Works and the supply of Goods;
Service Failure	means as set out in Schedule 6;
Site	means any specific area within which the Contractor is providing the Services;
Specification	means the specification in 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 equipment in relation to the Services in accordance with Clause 38;
Sub-Contractor	means any Contractors that enter into a Sub-Contract with the Contractor;
Sub-Contractor Personnel	means all employees, volunteers, workers, staff, agents and consultants of the Sub-Contractor engaged in the provision of the Services at any time;
Termination Date	means the date on which this Agreement expires at the end of the Term or the date on which this Agreement terminates following termination in accordance with Clause 23, Clause 24, Clause 37, or Clause 40;
Transferring Third Party Employees	mean employees of current third-party Contractors of all or some services similar or the same as the Services whose contracts of employment transfer with effect from the Commencement Date to the Contractor by virtue of the application of TUPE;
Works	means the installation of, and any associated works relating to the installation of, the Goods;
Works Schedule	means the schedule created for each Order which shall detail as a minimum the date and time of delivery of the Goods, the date of the commencement of the Works and the expected date for Completion.

In this Agreement, unless the context otherwise requires:

- 1.2 headings and sub-headings are for ease of reference only and shall not be taken into account in the interpretation or construction of this Agreement;
- 1.3 all references to clauses and Schedules are references to the clauses of and the schedules to this Agreement unless otherwise stated;
- 1.4 the Schedules form part of this Agreement;
- 1.5 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;
- 1.6 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;
- 1.7 words importing the singular include the plural and vice versa;
- 1.8 words importing a gender include all genders;
- 1.9 "person" includes an individual, partnership, firm, trust, body corporate, government, governmental body, Council, agency or unincorporated body of persons or association;
- 1.10 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 Agreement;
- 1.11 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;
- 1.12 references to Sub-Contractors shall be to Sub-Contractors of any tier;
- 1.13 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;
- 1.14 subject to any express provisions of this Agreement to the contrary, the obligations of any Party are to be performed at that Party's own expense;
- 1.15 in the event of, and only to the extent of any conflict or inconsistency between the terms and conditions of this Agreement and any other terms and conditions, such conflict or inconsistency shall be resolved according to the following order of priority:
 - 1.15.1 the clauses of this Agreement;
 - 1.15.2 the Specification; and
 - 1.15.3 the other Schedules to this Agreement

2 Term

- 2.1 This Agreement shall commence on the Commencement Date and shall continue in effect until the Expiry Date or until it is otherwise terminated in accordance with the provisions of this Agreement (the **Term**).

3 Provision of the Services

- 3.1 The Contractor shall provide the Services throughout the Term in accordance with the provisions of this Agreement, including, without limitation, the provisions of Schedule 1 (Specification), Schedule 2 (Payment) and Schedule 6 (Service Failures and Critical Failures).
- 3.2 The Contractor is not given any sole or exclusive rights in relation to the provision of the Services.
- 3.3 Without prejudice to the provisions of the Specification and the rest of this Agreement, the Contractor shall provide the Services with effect from the Commencement Date.

4 Equipment

- 4.1 All Equipment shall be provided by the Contractor unless otherwise stated in the Specification or as directed by the Council.

5 The Goods

- 5.1 With effect from the Commencement Date, the Contractor shall supply the Goods to the Council in accordance with the Specification.
- 5.2 Without prejudice to the generality of Clause 5.1 where specified as part of the Specification:
- 5.2.1 the Contractor shall ensure the Goods are compatible with any Council Equipment referred to in the Specification; and
 - 5.2.2 the Contractor shall ensure that the Goods meet the Council's requirements as set out in the Specification.
- 5.3 The Goods to be supplied to the Council by the Contractor shall:
- 5.3.1 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;
 - 5.3.2 be capable of the performance required by the Council;
 - 5.3.3 be new and free from defects in design, materials and workmanship;
 - 5.3.4 meet or exceed the standards detailed within the Contractor's Tender;
 - 5.3.5 comply with all applicable statutory and regulatory requirements, including any relating to their manufacture, labelling, packaging, storage, handling and delivery;

- 5.3.6 comply with all required British and/or European Standards;
- 5.3.7 correspond with:
 - (a) their description; and
 - (b) any examples or samples provided to the Council by the Contractor in relation to the provision of the Goods.
- 5.3.8 be supplied with all product warranties in a form that can be utilised by the Council.
- 5.4 The Contractor shall ensure that at all times the Goods are delivered and installed by appropriately qualified and trained personnel.
- 5.5 The Contractor warrants the Goods for the Term and 12 months after the Completion Date against faulty materials and workmanship.
- 5.6 The Contractor shall ensure that all Goods supplied under this Agreement shall be supplied with such manufacturer's guarantee and all other guarantees as set out in the Specification.
- 6 Standard of Performance**
 - 6.1 Without prejudice to the generality of Clause 6.4 the Contractor will at all times ensure that the Services comply with and meet all the requirements of this Agreement, the Specification, Guidance, and all applicable Council Policies and Law with effect from the Commencement Date.
 - 6.2 The Contractor shall ensure, and shall procure that any Contractor Personnel shall ensure, that the Services are carried out in compliance with race equality requirements.
 - 6.3 The Contractor shall ensure that at all times the Services are performed by appropriately experienced, qualified and trained personnel.
 - 6.4 The Contractor shall at all times in connection with this Agreement act in:
 - 6.4.1 good faith in the best interests of the Council;
 - 6.4.2 accordance with Good Industry Practice; and
 - 6.4.3 accordance with all relevant Law.
 - 6.5 If the Council informs the Contractor in writing that the Council reasonably believes that any part of the Services does not meet the requirements of this Agreement or differs in any way from those requirements, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of this Agreement within such reasonable time as may be specified by the Council.
 - 6.6 The Contractor shall make good within ten (10) Business Days at no cost to the Council any defects, faults, omissions, failings which appear within twelve (12) months of the Completion Date which result from:
 - 6.6.1 the Services not being performed in accordance with this Agreement; and/or

- 6.6.2 the Goods being unsatisfactory, defective or otherwise not meeting the requirements of this Agreement.
- 6.7 If the Contractor fails to meet its obligations under Clause 6.5 and/or Clause 6.6 the Council reserves the right to:
 - 6.7.1 carry out the Services itself; and/or
 - 6.7.2 procure an alternative contractor to provide the Goods and/or Services; and
 - 6.7.3 recover from the Contractor any additional costs incurred by the Council under Clause 6.7.1 and Clause 6.7.2.

7 Ordering

- 7.1 When the Council wishes to place an Order, it shall issue an Order Form to the Contractor through Orderpoint.
- 7.2 Each Order shall be given in writing and shall detail:
 - 7.2.1 the type and quantity of Goods ordered;
 - 7.2.2 the configuration of the Goods ordered;
 - 7.2.3 the Services ordered;
 - 7.2.4 the address for delivery of the Order;
 - 7.2.5 the address of the Site where the Works are to be carried out;
 - 7.2.6 the date and time for delivery of the Order where the Council requires the Order to be delivered on a specified date and at a specified time;
 - 7.2.7 the date on which the Works are to commence where the Council requires the Works to commence on a specified date;
 - 7.2.8 the date by which the Works are to be completed where the Council requires the Works to be completed by a specified date; and
 - 7.2.9 any specific requirements of the Council relating to the Works with which the Contractor is required to comply.
- 7.3 The Contractor shall provide to the Council as soon as possible and in any event within five (5) Business Days of the date of the Order:
 - 7.3.1 written confirmation of receipt of the Order; and
 - 7.3.2 a request for any additional information relating to the Site which the Contractor reasonably requires in order to undertake its obligations under this Agreement.
- 7.4 The Contractor shall provide to the Council:
 - 7.4.1 a Works Schedule for the Council's Approval at least four (4) weeks prior to commencement of the Works; and

- 7.4.2 a completed CDM2 Risk Assessment at least two (2) Business Days prior to the commencement of the Works.
- 7.5 The Contractor shall ensure that the Works Schedule submitted to the Council pursuant to Clause 7.4.1 shall:
- 7.5.1 comply with any date for:
- (a) delivery of the Goods; and
 - (b) commencement of the Works; and
 - (c) completion of the Works,
- as specified by the Council in the Order or as otherwise notified to the Contractor by the Council; and
- 7.5.2 subject to Clause 7.5.1 provide for the Services to be completed within eight (8) weeks of the date of the Order.
- 7.6 The Contractor shall assign an Order Number to each Order received from the Council and inform the Council of the Order Number. Each party shall use the relevant Order Number in all subsequent correspondence relating to the Order.
- 7.7 The Council may:
- 7.7.1 amend an Order; and/or
- 7.7.2 cancel an Order,
- by giving verbal notice by telephone to the Contractor no later than five (5) Business Days from the date of the Order.
- 7.8 Verbal amendments and/or cancellations shall be confirmed by the Council in writing within three (3) Business Days of the date of the verbal notice being given.
- 7.9 If the Council amends or cancels an Order in accordance with Clause 7.7 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.

8 Delivery

- 8.1 The Contractor shall deliver the Goods in accordance with:
- 8.1.1 the Specification;
- 8.1.2 the Order Form; and
- 8.1.3 the Works Schedule including any changes made to the Works Schedule in accordance with this Agreement.
- 8.2 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 times.

- 8.3 The Council may refuse admission to the Contractor Personnel or require such personnel to leave its premises or Site 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.
- 8.4 Whilst on the Council's Premises, the Contractor shall abide by the Council's rules, regulations and policies relating to the Council's Premises.
- 8.5 Subject to Clause 8.2, delivery of the Goods shall occur at the point the Goods are unloaded and deposited at the relevant Site (specified in the Order Form) in accordance with the Specification and, where this does not result in any conflict with the Specification, the reasonable instructions of any authorised officer of the Council.
- 8.6 Time of delivery is of the essence.
- 8.7 Should the Contractor fail to deliver the Goods in accordance with the times and dates set out in the Works Schedule the Council shall be entitled to:
- 8.7.1 reject the Goods which were not delivered in accordance with the Specification, Order Form or Works Schedule and recover any payments made, or be released from any obligation to make payment, in respect of those Goods;
- 8.7.2 reject:
- (a) any instalment of Goods already received under this Contract; and
- (b) 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;
- 8.7.3 purchase replacement goods equivalent to the Goods in lieu thereof; and/or
- 8.7.4 terminate this Agreement.
- 8.8 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:
- 8.8.1 the Council shall be under no obligation to accept the excess quantities supplied; and
- 8.8.2 the Council shall be entitled to dispose of the excess quantities of Goods supplied and recover the costs of disposal from the Contractor.
- 8.9 The Council shall not be required to accept any Goods delivered prior to the times and dates set out in the Works Schedule unless the Specification expressly states otherwise.

9 Title and Risk

- 9.1 Subject to Clause 10, risk and title in the Goods shall pass to the Council at the point of delivery.

10 Inspection and Acceptance

- 10.1 The Council shall be entitled to reject the Goods or any element of the Goods which it determines does not conform to the requirements of this Agreement.

- 10.2 In order to exercise its right to reject under Clause 10.1 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:

10.2.1 a reasonable period of time after delivery of the Goods which shall in any event be not less than fifteen (15) Business Days from the date of delivery; or

10.2.2 in the case of a latent defect in the Goods, within a reasonable period of time after discovery of the latent defect which shall in any event be not less than fifteen (15) Business Days from the date of discovery.

- 10.3 In the event that the Council exercises its right to reject the Goods in accordance with Clauses 10.1 and 10.2. it may elect:

10.3.1 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 five (5) Business Days; or

10.3.2 to purchase the goods in lieu of the Goods from an alternative provider and for the Contractor to:

(a) repay any element of the Charges attributable to the rejected Goods already paid by the Council;

(b) release the Council from any further obligation to make payments in respect of the Charges attributable to the rejected Goods; and

(c) 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.

- 10.4 The Council shall not be deemed to have accepted the Goods until it has provided express confirmation in writing confirming acceptance of Goods.

- 10.5 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 10.2.

- 10.6 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.

10.7 Any acceptance notified to the Contractor in accordance with Clause 10.4 shall remain subject to the Council's right to reject the Goods in accordance with Clauses 10.1 and 10.2.

10.8 The Council's rights under Clauses 10.1 to 10.7 shall apply equally to any replacement Goods provided by the Contractor.

11 Works

11.1 The Contractor shall carry out the Works

11.1.1 in a good, proper and workmanlike manner;

11.1.2 in accordance with Good Industry Practice;

11.1.3 in accordance with the Council's Highways Permit Scheme as set out at: <http://www.legislation.gov.uk/ukxi/2015/107/contents/made>; and

11.1.4 in accordance with the Works Schedule provided to the Council by the Contractor pursuant to Clause 7.4.1 including any changes made to the Works Schedule in accordance with this Agreement.

11.2 The Works shall be commenced on the date set out in the Works Schedule including any changes made to the Works Schedule in accordance with this Agreement and carried out and completed:

11.2.1 within the period for completion stated in the Works Schedule; and

11.2.2 reasonably in accordance with the progress of any other works on Site that are notified by the Council to the Contractor from time to time.

11.3 Except as otherwise provided in the Agreement, and subject always to Clause 11.11 the Contractor shall be entitled to an extension of time for completion of the Works in the event that there is a delay to the period for completion of the Works that arises as a result of an event that is beyond the Contractor's reasonable control. Any extension of time, or in the event of an omission of Works any reduction of the period for completion of the Works, will be assessed by the Council who shall confirm its decision in writing to the Contractor.

11.4 The Contractor shall provide the Council with not less than five (5) Business Days written notice of the date when the Contractor expects that they will achieve Completion.

11.5 The Contractor shall complete and provide to the Councils Representative an Electrical Test Certificate within five (5) Business Days of the date notified to the Council by the Contractor pursuant to Clause 11.4.

11.6 Any failure by the Contractor to perform the obligations set out under Clause 11.5 shall be a Service Failure and the provisions of Schedule 6 will apply.

11.7 Within ten (10) Business Days of the date notified to the Council by the Contractor pursuant to Clause 11.4, the Council shall inspect the Goods and Works and shall where the Council considers in its absolute discretion that:

- 11.7.1 Completion has been achieved, provide written notice to the Contractor of the Completion Date; or
- 11.7.2 Completion has not been achieved, provide a written report to the Contractor detailing the reasons why Completion has not been achieved which may include but not be limited to:
 - (a) the Services not being performed in accordance with this Agreement; and/or
 - (b) the Goods being unsatisfactory, defective or otherwise not meeting the requirements of this Agreement.
- 11.8 Within ten (10) Business Days of receipt of the report provided pursuant to Clause 11.7.2 the Contractor shall have undertaken all action and Works necessary to achieve Completion at no cost to the Council.
- 11.9 If the Contractor fails to meet its obligations under Clause 11.8 the Council reserves the right to:
 - 11.9.1 carry out the Services itself; and/or
 - 11.9.2 procure an alternative contractor to provide the Goods and/or Services; and
 - 11.9.3 recover from the Contractor any additional costs incurred by the Council under Clause 11.9.1 and Clause 11.9.2.
- 11.10 If the Contractor fails to achieve Completion within the period for completion as specified in the Works Schedule (or as may otherwise be adjusted by the Council under this Agreement), the Contractor shall pay or allow to the Council the amount of any direct loss and/or expense suffered or incurred or likely to be incurred by the Council that is caused by that failure.
- 11.11 The Contractor shall not be entitled to any extension of time for Completion on account of any circumstance arising by reason of any error, omission, negligence or default of the Contractor or the Contractor's Personnel.
- 11.12 Where any access to the Council's Premises is necessary in connection with the Goods and Services, the Contractor shall at all times comply with the reasonable requirements of the Council's security procedures as notified to the Contractor from time to time.
- 11.13 The Council shall have the right at any time during the Term of this Agreement to require the Contractor to remove from the Site or the Council's Premises any materials which in the opinion of the Council are either hazardous, noxious or not in accordance with the Agreement.
- 11.14 The Contractor shall ensure that the Goods are safe and without risk to health when installed and properly used.
- 11.15 On Completion the Contractor shall remove the Contractor's Equipment and unused materials and shall clear away from the Council's Premises and/or the Site all rubbish arising out of the Agreement and leave the Council's Premises and/or the Site in a neat and tidy condition.

12 Design

12.1 Where the Council requires the Contractor to carry out and complete any design, the Contractor shall:

- 12.1.1 carry out and complete that design using all the reasonable skill, care and diligence to be expected of a designer of the appropriate professional discipline who is experienced in undertaking such design work in relation to works of a similar size, scope and nature to the design required by this Agreement;
- 12.1.2 comply with any instructions from the Council regarding the integration of the Contractor's design with any other design;
- 12.1.3 be solely responsible in all respects for the Contractor's design;
- 12.1.4 as and when necessary without charge, provide the Council with details of the Contractor's design for the Council's approval; and
- 12.1.5 not specify or use any materials that are generally considered in the construction industry at the relevant time to pose a threat to the health and safety of any person, or the structural stability, performance or physical integrity of the Works, or possibly reduce the life expectancy of the Works, or not be in accordance with relevant British standards.

13 Charges

13.1 In consideration for the Contractor's compliance with its obligations under this Agreement the Council shall pay to the Contractor the Charges calculated in accordance with Schedule 2 (Payment).

13.2 The Charges exclude any amount in respect of VAT and the Council shall, upon receipt of a valid and undisputed VAT invoice, pay such additional amounts in respect of VAT as are chargeable on the value of the Services.

13.3 The Charges shall be paid by the Council in accordance with Schedule 2 (Payment) and unless otherwise specified by the Council, the Charges in respect of an Order shall be paid:

- 13.3.1 within 30 days of the Completion Date, where Completion is achieved less than 45 days after commencement of the Services in relation to each Order; or
- 13.3.2 where the Services are expected to last more than 45 days, at intervals of not less than one month, beginning one month after the Contractor begins performing the Services in relation to each Order.

13.4 The Contractor shall submit an application for payment for each instalment of the Charges (the **Payment Application**). The Payment Application must be marked for the attention of the Public Transport Unit and state as a minimum:

- 13.4.1 the sum that the Contractor considers to be due to him at the due date and the basis upon which that sum is calculated;
- 13.4.2 the Contractor's name, invoice number/reference and address;

- 13.4.3 the Order Number;
- 13.4.4 the address of the Site to which the Payment Application relates; and
- 13.4.5 the VAT number and split of VAT for each VAT rate (where applicable).
- 13.5 Payment Applications must be sent to the Payment Applications Address unless otherwise notified by the Council to the Contractor in writing.
- 13.6 Payment shall be due on the date the Council receives each Payment Application. Not later than 5 days after the due date the Council shall give a notice to the Contractor which shall specify the sum that it considers to be or have been due at the due date and the basis upon which that sum has been calculated (the **Payment Notice**).
- 13.7 The final date for payment shall be 30 days after the due date for payment.
- 13.8 Subject to any Pay Less Notice given by the paying party under Clause 13.9, the paying party shall pay the sum specified in the Payment Notice, or if no Payment Notice is provided the sum specified in the Payment Application, on or before the final date for payment.
- 13.9 Where the paying party intends to pay less than the sum stated as due in the Payment Notice, or if no Payment Notice is provided the sum specified in the Payment Application, the paying party may not later than 1 day prior to the final date for payment give notice to the other party that it intends to pay less (the **Pay Less Notice**). Any Pay Less Notice shall specify the sum that the paying party considers to be due on the date that the notice is served, and the basis on which that sum is calculated.
- 13.10 In the event that the sum specified in a Payment Notice is a negative figure showing a balance due to the Council, the Contractor shall, subject to any Pay Less Notice given under Clause 13.9, pay the sum specified in the Payment Notice to the Council by the final date for payment. Where a Pay Less Notice is given by the Contractor to the Council, the payment to be made to the Council on or before the final date for payment shall not be less than the amount stated as due in the Pay Less Notice.
- 13.11 If the payer fails to pay an amount due to the other Party by the final date for payment and fails to give a Pay Less Notice under Clause 13.9, simple interest shall be added to the unpaid amount from the final date for payment until the actual date of payment. This shall be calculated on a daily basis at the Prescribed Rate. The Parties acknowledge that the payer's liability under this Clause 13.11 is a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.
- 13.12 Unless otherwise specified by the Council, the amount of each payment shall be the gross value of the Services calculated at the relevant due date for payment less:
 - 13.12.1 deduction of the sums previously paid under the Agreement; and
 - 13.12.2 any expense, liability, loss, claim or proceedings incurred or likely to be incurred by the Council as a result of the Contractor's breach of this Agreement.

- 13.13 Notwithstanding any other term in the Agreement if the Contractor becomes insolvent within the meaning contained within section 113 of the Housing Grants Construction and Regeneration Act 1996 after the date by which the Contractor's notice may be served in accordance with Clause 13.6 the Council shall not be obliged to pay the sum that it would otherwise be obliged to pay.
- 13.14 Where the Contractor enters into a Sub-Contract for the purpose of performing its obligations under this Agreement, the Contractor shall 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 (30) days from the receipt of a valid and undisputed invoice.
- 13.15 Notwithstanding any other provision of this Agreement, if the Contractor notifies the Council that the Contractor has failed to pay a valid and undisputed Sub-Contractor's invoice within thirty (30) days of receipt, or the Council otherwise discovers the same, the Council shall be entitled to publish the details of the late payment or non-payment (including on government websites and in the press).

14 Charges Adjustment Extension

- 14.1 The Parties agree that the Charges shall remain fixed and firm for 12 months from the Commencement Date of the Agreement.
- 14.2 The Council may, in its absolute discretion require the Contractor to meet to review and, where appropriate, agree changes to the Charges paid by the Council for the Services (the **Price Review**). The first Price Review shall be held in October 2023 and a second may be held in April 2025. Agreed changes to the Charges shall take effect from 12 October 2023 in respect of the first Price Review and 12 April 2025 in respect of the second Price Review. In agreeing the Charges for the following year, the Parties shall have regard to the following factors:
- 14.2.1 changes to the Contractor's costs of providing the Services;
 - 14.2.2 the volumes of Goods and/or Services ordered by, and supplied to, the Council;
 - 14.2.3 whether there are additional Goods and/or Services which the Council requires the Contractor to supply;
 - 14.2.4 the price at which the Contractor supplies the Goods and Services to comparable customers;
 - 14.2.5 the prices at which comparable Goods and Services are supplied by other Contractors in the open market; and
 - 14.2.6 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 Charges);
- 14.3 Any variation to the Charges following a Price Review shall be limited to the prevailing CPI at the time of the Price Review. For the avoidance of doubt, the Charges following a Price Review may go down as well as up.

- 14.4 If within one (1) month of beginning a Price Review the Parties cannot agree the Charges for the following year, the Council shall have the right to terminate this Agreement.

15 Conduct of Contractor

- 15.1 Whilst engaged in the provision of the Services the Contractor shall comply with the Council's Policies relating to the conduct of Contractor Personnel and security arrangements. The Council (acting reasonably) may:

15.1.1 instruct the Contractor that disciplinary action is taken against any employee of the Contractor involved in the provision of the Services (in accordance with the terms and conditions of employment of the employee concerned) where such employee misconducts himself or is incompetent or negligent in his duties (in which case the Council shall co-operate with any disciplinary proceedings and shall be advised in writing of the outcome); or

15.1.2 where the Council has reasonable grounds for considering that the presence or conduct of an employee at any location relevant to the performance of the Services is undesirable, require the exclusion of the relevant employee from the relevant location(s).

- 15.2 Where the Contractor is unable (acting reasonably) to comply with Clause 15.1.2 by the time period specified in it then the Contractor shall comply with its obligations under that Clause as soon as reasonably practicable and by no later than the end of the day on which the relevant individual first goes on Site. Until such time as the Contractor has complied with its obligations in respect of that individual, he or she shall at all times be accompanied on Site by a member of the Contractor's Personnel who has been properly notified to the Council in accordance with Clause 15.1.2.

16 Access to Council Premises

- 16.1 The Council shall provide the Contractor with access to such parts of the Council's Premises as the Contractor reasonably requires for the purposes of properly providing the Services.

- 16.2 The Contractor shall ensure that only those of the Contractor Personnel that are duly authorised and competent to enter upon the Council's Premises for the purposes of providing the Services do so.

- 16.3 Whilst on the Council's Premises or, if applicable any other land, premises, or Site which the Contractor is required to access for the provision of the Services, the Contractor shall:

16.3.1 adhere to all reasonable requests and instructions of the Council as may be provided from time to time;

16.3.2 take steps to minimise and keep to a minimum interference with any other activities taking place;

16.3.3 ensure that all Contractor Personnel are aware of and comply with the Council's Health and Safety Policy and are aware of any potential risks to health and safety in relation to the Council's Premises, Contractor's Premises or any other land or Site to which access is required for the purposes of providing the Services;

- 16.3.4 comply with all security measures implemented by the Council in relation to the Council's Premises, including the provision of all Contractor Personnel entering the Council's Premises with a form of identification acceptable to the Council, which shall be displayed visibly on that person's clothing at all times whilst they are on the Council's Premises or other premises used for the provision of the Services; and
- 16.3.5 immediately remove any Contractor from the Council's Premises or other premises, land or Site used for the provision of the Services where the Council requests this.

17 Meeting and Reporting

17.1 The Contractor's Representatives will:

- 17.1.1 provide the Council Representatives with quarterly reports setting out how the Services for the preceding quarter have been achieved against the performance indicators detailed in the Specification and the first quarterly report shall be submitted three (3) months from the Commencement Date and thereafter on each 3-month anniversary;
- 17.1.2 attend contract review meetings with the Council Representative no more frequently than quarterly, or at such other frequency as may be specified by the Council to discuss the delivery of the Services and ensure that detailed notes are taken during each meeting and that these notes are circulated within two (2) Business Days of the date of the meeting;
- 17.1.3 ensure that the Contractor attends all meetings required under the dispute resolution process set out in Clause 54.
- 17.1.4 on request provide the Council with such further information, explanations and documents as the Council may reasonably require in order for it to establish that the Services are being provided properly in accordance with this Agreement;
- 17.1.5 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 deliver the required Service;
- 17.1.6 engage in regular conversations and/or meetings with the Council throughout the duration of this Agreement and the Contractor shall make themselves reasonably available for such communications.

18 Contract Delay

- 18.1 If, at any time, the Contractor becomes aware of any circumstance or occurrence which may lead to a delay in the provision of the Services or otherwise adversely affect the Contractor's performance of its obligations under this Agreement it shall immediately notify the Council in writing, providing details of the potential or actual delay.
- 18.2 The Contractor shall use its best endeavours to avoid and mitigate the impact of any circumstance or occurrence referred to in Clause 18.1 upon the Council.

19 Change

- 19.1 Should the Council wish to change any aspect of the provision of 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 19.3.
- 19.2 Any change shall include but not be limited to any change to the Works Schedule including without limitation a change to the date of delivery or installation of the Goods, as a result of but not limited to:
- 19.2.1 the progress of other works on the Site; and/or
 - 19.2.2 Compliance with Highway Permit Scheme requirements.
- 19.3 Within three (3) Business Days of receipt of the notice referred to in Clause 19.1 the Contractor shall provide the Council with details of the proposed timetable for implementation and details of any changes to the Charges arising as a result of the proposed change on a transparent and open-book basis.
- 19.4 In calculating any changes to the Charges the Contractor shall ensure that any alteration reflects a fair and proportionate change based upon the reasonable costs of a well-run Contractor of Services and the current profit margin achieved by the Contractor.
- 19.5 After receipt of the information referred to in Clause 19.3 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 Agreement to reflect the proposed change.
- 19.6 Should the Parties be unable to agree any changes to the Charges under this Clause 19, the Council may, in its absolute discretion, terminate this Agreement immediately upon notice in writing to the Contractor.

20 Best Value

- 20.1 The Contractor acknowledges that:
- 20.1.1 the Council is subject to the Best Value Duty;
 - 20.1.2 the provisions of this Clause 20 are intended to assist the Council in discharging its Best Value Duty in relation to the Services; and
 - 20.1.3 the provisions of this Clause 20.1 shall apply in respect of the obligations of the Contractor and the Council concerning the Best Value Duty.
- 20.2 The Contractor shall, throughout the Term, but only to the extent of its obligations in this Agreement, make arrangements to secure continuous improvement in the way in which the Services are provided, having regard to a combination of economy, efficiency and effectiveness.
- 20.3 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:

- 20.3.1 complying with all requests by the Council to procure the attendance of specific officers or employees of the Contractor at any meetings of the Council at which the Services are to be discussed; and
- 20.3.2 permitting any officer or employee of the Council at all reasonable times and upon reasonable notice, access to:
 - (a) any document or data relating to the Services; and
 - (b) any Contractor Personnel.

21 Emergencies

- 21.1 If an Emergency arises during the Term which cannot be dealt with by performance of the Services, the Council may instruct the Contractor to use its best endeavours to procure that such additional or alternative services are undertaken by the Contractor as and when required by the Council to ensure that the Emergency is dealt with and normal provision of the Services resumes as soon as is reasonably practicable provided that the Contractor shall not be obliged to provide any service which it is neither qualified nor competent to provide.

22 Contractor Warranties and Undertakings

- 22.1 The Contractor warrants and represents to the Council that on the date hereof:
 - 22.1.1 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;
 - 22.1.2 it has the corporate power to enter into and to exercise its rights and perform its obligations under this Agreement;
 - 22.1.3 it shall at all times comply with all relevant Law and all applicable codes of practice and other similar codes or recommendations, and shall notify the Council immediately of any significant departure from such Law, codes or recommendations;
 - 22.1.4 it has all necessary resources and expertise to deliver the Services;
 - 22.1.5 it is not aware of anything in its own affairs, which it has not disclosed to the Council or any of the Council's advisers, which might reasonably have influenced the decision of the Council to award this contract;
 - 22.1.6 it has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;
 - 22.1.7 all relevant financial and other information concerning the Contractor has been disclosed to the Council and is to the best of the Contractor's knowledge and belief is true and accurate;
 - 22.1.8 since the date of its last accounts there has been no material change in its financial position or prospects;

- 22.1.9 it is not subject to any contractual or other restriction imposed by its own or any other organisation's rules or regulations or otherwise which may prevent or materially impede it from meeting its obligations in connection with the delivery of the Services;
- 22.1.10 all action necessary on the part of the Contractor to authorise the execution of and the performance of its obligations under this Agreement has been taken;
- 22.1.11 the obligations expressed to be assumed by the Contractor under this Agreement are legal, valid, binding and enforceable to the extent permitted by Law and is in the proper form for enforcement in England;
- 22.1.12 it has not committed, and will not commit, and shall procure that the Contractor Personnel have not committed and shall not commit any Prohibited Act;
- 22.1.13 it shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to employees and other persons delivering the Services;
- 22.1.14 the execution, delivery and performance by it of the Services does not contravene any provision of:
- (a) any existing Law either in force, or enacted but not yet in force binding on the Contractor;
 - (b) the Memorandum and Articles of Association of the Contractor;
 - (c) any order or decree of any court or arbitrator which is binding on the Contractor; or
 - (d) any obligation which is binding upon the Contractor or upon any of its assets or revenues;
- 22.1.15 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
- 22.1.16 it has not paid commission or agreed to pay any commission to any employee, agent, Sub-Contractor, officer or member of the Council either directly or through another on its behalf;

and the Council relies upon such warranties and representations.

22.2 The Contractor warrants and undertakes to the Council that for so long as this Agreement remains in full force:

- 22.2.1 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 Services, the Contractor's ability to perform its obligations under this Agreement;

- 22.2.2 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 the whole or any part of its business or assets which would materially affect the ability of the Contractor to deliver the Services;
- 22.2.3 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;
- 22.3 All warranties, representations, undertakings, indemnities and other obligations made, given or undertaken by the Contractor in this Agreement are cumulative and none shall be given a limited construction by reference to any other.

23 Termination

- 23.1 Without affecting any other right or remedy available to it, the Council may terminate all or part of this Agreement with immediate effect by giving written notice to the Contractor if:
 - 23.1.1 the Contractor fails to pay any amount due under this Agreement 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;
 - 23.1.2 the Contractor commits a material breach of any term of this Agreement 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;
 - 23.1.3 the Contractor repeatedly breaches any of the terms of this Agreement 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 Agreement;
 - 23.1.4 the Contractor commits a Critical Failure;
 - 23.1.5 the Contractor, or any of the Contractor's employees and agents (in all cases whether or not acting with the Contractor's knowledge):
 - (a) directly or indirectly offers, promises or gives any person working for or engaged by the Council a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
 - (b) 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 Agreement;

(c) commits any offence:

- (i) under Section 117(2) of the Local Government Act 1972;
- (ii) under the Bribery Act 2010;
- (iii) under legislation creating offences concerning fraudulent acts;
- (iv) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Council; or
- (v) to defraud, attempt to defraud or conspire to defraud the Council.

- 23.1.6 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;
- 23.1.7 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;
- 23.1.8 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);
- 23.1.9 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);
- 23.1.10 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;
- 23.1.11 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;
- 23.1.12 the Contractor (being an individual) is the subject of a bankruptcy petition or order;
- 23.1.13 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;

- 23.1.14 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 23.1.5 to 23.1.14;
 - 23.1.15 the Contractor suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
 - 23.1.16 there is a change of control of the Contractor (within the meaning of section 1124 of the Corporation Tax Act 2010);
 - 23.1.17 this Agreement has been subject to a substantial variation which would have required a new procurement procedure in accordance with regulation 72(9) of the Public Contracts Regulations 2015;
 - 23.1.18 the Contractor was, at the time when this Agreement 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 Agreement; or
 - 23.1.19 any competent court makes an award for ineffectiveness of this Agreement under the Public Contracts Regulations 2015;
- 23.2 For the purposes of Clause 23.1.2, 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 Agreement 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.

24 Voluntary Termination by the Council

- 24.1 The Council may terminate the Agreement at any time giving a minimum notice period of 3 months on or before its Expiry Date by complying with its obligations under Clause 24.2.
- 24.2 If the Council wishes to terminate the Agreement under this Clause 24, it must give notice to the Contractor stating:
 - 24.2.1 that the Council is terminating the Agreement under this Clause 24; and
 - 24.2.2 the date that the Agreement will terminate.
- 24.3 The Agreement will terminate on the date specified in the notice given to the Contractor pursuant to Clause 24.2.

25 Consequences of Termination/Expiry

- 25.1 In the event that this Agreement is terminated in accordance with Clause 23, with the exception of Clause 23.1.19, 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.
- 25.2 The Losses referred to in Clause 25.1 shall include:

- 25.2.1 any additional costs incurred by the Council in procuring replacement services (including any difference in purchase price); and
- 25.2.2 any costs incurred by the Council in procuring an alternative Contractor to provide services similar to the Services.
- 25.3 In the event that this Agreement is terminated in accordance with Clause 23.1.19 each Party shall bear its own costs and shall have no liability to the other Party.
- 25.4 In the event that this Agreement is terminated in accordance with Clause 24 each Party shall bear its own costs and shall have no liability to the other Party.
- 25.5 Immediately upon termination or expiry of this Agreement 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 transfer of services to any third party providing the same or similar services to the Services or the adoption of such Services by the Council itself.
- 25.6 Termination or expiry of this Agreement 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.

26 Survival of Termination

- 26.1 On termination or expiry of this Agreement, the following Clauses shall continue in force: Clause 3 (Provision of Services), Clause 6 (Standard of Performance), Clause 13 (Charges), Clause 15 (Conduct of Contractor Personnel), Clause 22 (Contractor Warranties and Undertakings), Clause 27 (Indemnities), Clause 28 (Limitation on Liability), Clause 29 (Duty to Mitigate), Clause 30 (Interest), Clause 32 (Insurance), Clause 34 (Freedom of Information and Confidentiality), Clause 35 (Data Protection), Clause 37 (Discrimination), Clause 38 (Sub-contracting), Clause 40 (Human Rights), Clause 45 (Records), Clause 46 (Resources, Training and Policies), Clause 47 (Audit), Clause 49 (TUPE), Clause 53 (Public Relations and Publicity) and Clause 60 (Assistance in Legal Proceedings).

27 Indemnities

- 27.1 Neither Party excludes or limits liability to the other Party for:
 - 27.1.1 death or personal injury;
 - 27.1.2 fraud; or
 - 27.1.3 fraudulent misrepresentation.
- 27.2 The Contractor shall be liable for and shall indemnify the Council against all Losses suffered or incurred by the Council arising out of or in connection with:
 - 27.2.1 the Contractor's breach, negligent performance or non-performance of any of its obligations under this Agreement;
 - 27.2.2 any breach of statutory duty arising in relation to this Agreement;

- 27.2.3 the enforcement of this Agreement;
- 27.2.4 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 Agreement; or
- 27.2.5 any claim made against the Council by a third party arising out of or in connection with this Agreement to the extent that such claim arises out of the performance, breach, negligent performance or failure or delay in performance of this Agreement by, or presence at the Council's Premises of, the Contractor, Contractor Personnel, professional advisors and consultants.

28 Limitation on Liability

- 28.1 Subject to Clause 27.1, the Council's total aggregate liability, in addition to its obligation to pay the Charges as and when they fall due for payment, shall be limited to one hundred per cent (100%) of the aggregate annual Charges paid, due or which would have been payable under this Agreement 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).

29 Duty to Mitigate

- 29.1 Both Parties shall at all times throughout the duration of this Agreement 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 Agreement.

30 Interest

- 30.1 Save where otherwise specifically provided, if a Party fails to make any payment due to the other Party under this Agreement 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.
- 30.2 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.

31 Right of Set-off

- 31.1 The Council may retain or set off any amount owed to it by the Contractor against any amount due to the Contractor under this Agreement or under any other agreement between the Contractor and the Council.

32 Insurance

- 32.1 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 Agreement, 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 and be maintained for the duration of the Term and for a minimum period of 6 (six) years following the expiration or earlier termination of the Agreement.

32.2 The insurances referred to in Clause 32.1 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:

32.2.1 Employers' Liability Insurance to the value of £10,000,000 (ten million pounds);

32.2.2 Public Liability Insurance to the value of £5,000,000 (five million pounds); and

32.2.3 Professional Indemnity Insurance to the value of £5,000,000 (five million pounds).

32.3 The Contractor shall provide to the Council on request, copies of all insurance policies referred to in this Clause 32 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.

32.4 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 32.1.

32.5 Should the Contractor fail to take out any insurances in accordance with Clause 32.1 the Council may purchase such insurances and recover the costs of such insurances from the Contractor.

33 IPR

33.1 All Intellectual Property Rights

33.1.1 owned by the Council before the Commencement Date or developed by the Council during the Term shall remain the property of the Council;

33.1.2 owned by the Contractor before the Commencement Date shall remain the property of the Contractor; and

33.1.3 developed or created by the Contractor during the Term that relate to the Services shall belong to the Council.

33.2 Where the Council has provided the Contractor with any of its Intellectual Property Rights for use in connection with the Services (including without limitation its name and logo) the Contractor shall cease to use such Intellectual Property Rights immediately upon termination of this Agreement and shall either return or destroy such Intellectual Property Rights as requested by the Council.

33.3 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.

34 Freedom of Information and Confidentiality

- 34.1 In respect of any Confidential Information it may receive from the other Party (the **Discloser**) and subject always to the remainder of this Clause 34, 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:
- 34.1.1 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 Agreement;
- 34.1.2 the provisions of this Clause 34.1 shall not apply to any Confidential Information which:-
- (a) is in or enters the public domain other than by breach of this Agreement or other act or omissions of the Recipient;
 - (b) is obtained by a third party who is lawfully authorised to disclose such information;
 - (c) is authorised for release by the prior written consent of the Discloser;
 - (d) 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; and
 - (e) the Council may, at its sole discretion, elect to publish this Agreement (including any variations to this Agreement) in its entirety.
- 34.2 Nothing in this Clause 34 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 34.1, to its professional advisors or insurers.
- 34.3 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 Agreement.
- 34.4 The Contractor agrees that:
- 34.4.1 without prejudice to the generality of Clause 34.3, the provisions of this Clause 34.4 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.
- 34.4.2 where it considers that any information should not be available for disclosure, it will:

- (a) identify it specifically; and
- (b) explain the grounds for exemption from disclosure and the time period applicable to that sensitivity.

34.5 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 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.

34.6 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.

34.7 Where the Council is managing a request as referred to in Clause 34.5, 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.

35 Data Protection

35.1 The Contractor shall (and shall procure that the Contractor Personnel shall) comply with any notification requirements under the DPA 2018 and both Parties will duly observe all their obligations under the Data Protection Legislation, which arise in connection with the Agreement.

36 Bribery and Fraud

36.1 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:

36.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; or

36.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

36.2 The Contractor shall not during the term of this Agreement:

36.2.1 commit a Prohibited Act; and/or

36.2.2 do or suffer anything to be done which would cause the Council or any of the Council's employees, consultants, Contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

36.3 The Contractor shall during the term of this Agreement:

- 36.3.1 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
- 36.3.2 keep appropriate records of its compliance with its obligations under Clause 36.3.1 and make such records available to the Council on request.
- 36.4 The Contractor shall immediately notify the Council in writing if it becomes aware of any breach of Clause 36.1 and/or Clause 36.2, or has reason to believe that it has or any of the Contractor Personnel have:
 - 36.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 36.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - 36.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.
- 36.5 If the Contractor makes a notification to the Council pursuant to Clause 36.4, 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.
- 36.6 If the Contractor is in default under Clause 36.3.1 and/or Clause 36.2, the Council may by notice:
 - 36.6.1 require the Contractor to remove from performance of this Agreement any Contractor Personnel whose acts or omissions have caused the default; or
 - 36.6.2 immediately terminate this Agreement.
- 36.7 Any notice served by the Council under Clause 36.6 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 Agreement shall terminate).

37 Discrimination

- 37.1 The Contractor acknowledges the Council's obligations under equality Law and agrees to perform its obligations under this Agreement, and agrees to procure that any Contractor Personnel shall perform its obligations in relation to the Services with regard to:
 - 37.1.1 all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - 37.1.2 the Council's equality and diversity policy as updated from time to time;

- 37.1.3 the Equality and Human Rights Commission's Code of Practice in Employment as updated from time to time;
 - 37.1.4 any other relevant statutory code of practice in relation to equalities legislation or prevention of discrimination in the workplace; and
 - 37.1.5 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.
- 37.2 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).
- 37.3 To the extent that the Contractor's obligations under this Agreement 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:
- 37.3.1 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
 - 37.3.2 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.
- 37.4 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:
- 37.4.1 equality of access to the Services; and
 - 37.4.2 compliance with the Council's obligation under the equality Law.
- 37.5 The Contractor shall provide to the Council such information as the Council may require in order to confirm the Contractor's compliance with its obligations under this Clause 37 within five (5) Business Days of receipt of a request from the Council's Representative.
- 37.6 The Contractor shall ensure that any Contractor Personnel engaged in the provision of the Services shall comply with the requirements of this Clause 37.
- 37.7 Breach of this Clause 37 by the Contractor shall entitle the Council to terminate the Agreement with immediate effect.
- 38 Sub-Contracting**
- 38.1 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 Agreement.
- 38.2 In relation to any sub-contracting pursuant to Clause 38.1:
- 38.2.1 the Contractor shall be responsible to the Council in Law or otherwise for all such sub-contracted Services 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 Agreement and/or at Law or otherwise;

38.2.2 the Contractor's remuneration shall not be increased by any amounts payable by the Contractor to its Sub-Contractors; and

38.2.3 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.

39 Social Value

39.1 The Contractor shall fulfil any social value requirements as set out in the Specification.

40 Human Rights

40.1 The Contractor shall at all times comply with the provisions of the Human Rights Act 1998 (the **HRA 1998**) in the performance of this Agreement.

40.2 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.

40.3 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 Agreement immediately upon notice in writing in its absolute discretion.

40.4 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 40.

41 Conflict of Interest

41.1 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 Agreement. 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.

41.2 The Council reserves the right to terminate this agreement 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.

42 Assignment/Novation

42.1 The rights and obligations of the Council under this Agreement shall not be assigned, novated or otherwise transferred (whether by virtue of any Law or any scheme pursuant to any Law or otherwise) to any person other than to any public body (being a single entity) acquiring the whole of the Agreement and having the legal capacity,

power and Council to become a Party to and to perform the obligations of the Council under this Agreement being:

- 42.1.1 a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975;
- 42.1.2 any Local Council which has sufficient financial standing or financial resources to perform the obligations of the Council under this Agreement;
or
- 42.1.3 any other public body whose obligations under this Agreement are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Contractor) by the Council or a Minister of the Crown having the legal capacity, power and Council to perform the obligations under the guarantee and the obligations of the Council under this Agreement.

42.2 The Contractor shall not assign, novate, subcontract or otherwise transfer its rights and obligations under this Agreement in whole or in part except with the prior written consent of the Council.

43 Business Continuity

43.1 The Contractor shall comply at all times with the business continuity and disaster recovery requirements of the Council.

44 Force Majeure

44.1 Subject to the remaining provisions of this Clause 44, either Party may claim relief from liability for non-performance of its obligations to the extent this is due to a Force Majeure Event.

44.2 The Contractor cannot claim relief if the Force Majeure Event is attributable to its:

44.2.1 wilful act,

44.2.2 neglect;

44.2.3 failure to take reasonable precautions against the relevant Force Majeure Event ;or

44.2.4 failure to comply with the Contractor's own business continuity disaster recovery procedures.

44.3 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).

44.4 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.

- 44.5 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 Agreement. 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.
- 44.6 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 Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.
- 44.7 The Charges payable by the Council shall be reduced to the extent that the Council does not receive the Services as a result of the Force Majeure Event.
- 44.8 If the performance of the Affected Party's obligations under the Agreement 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 Agreement upon giving five (5) Business Days' written notice to the Contractor.

45 Records and Open Book Accounting

45.1 The Contractor shall:

- 45.1.1 monitor the delivery and success of the Services throughout the Term to ensure the objectives and outcomes of the Services are being met and that the Contractor is complying with the terms and conditions of this Agreement.
- 45.1.2 provide the Council with an insurance review in the format required by the Council.
- 45.1.3 on request provide the Council with such further information, explanations and documents as the Council may reasonably require in order for it to establish that the Services are being properly delivered and that it is complying with all other obligations under the Agreement.
- 45.1.4 provide the Council with a final report on completion of the Term which shall confirm whether the delivery of the Services has been successfully and properly completed and if the Services have not been delivered successfully and properly the final report shall explain why.
- 45.1.5 retain all information required for the Council, or any other body with statutory powers to do so.
- 45.2 The Council may monitor the delivery of the Services by the Contractor and the Contractor shall co-operate with the Council in carrying out such monitoring as the Council considers necessary at no additional cost to the Council.
- 45.3 The Contractor acknowledges and agrees it shall permit the Council (and any person authorised by the Council) reasonable access to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Contractor's fulfilment of the conditions of this Agreement and shall, if so required, provide appropriate oral or written explanations from them.

45.4 The Contractor shall permit any person authorised by the Council for the purpose to visit the Contractor once every quarter to monitor the delivery of the Services. Where, in its absolute discretion, the Council considers that additional visits are necessary to monitor the delivery of the Services, it shall be entitled to authorise any person to make such visits on its behalf.

45.5 For the purpose of fulfilling its obligations under this Clause the Contractor shall retain all information relevant to this Agreement for a minimum of 6 years following the termination or expiry of this Agreement.

46 Resources, Training and Policies

46.1 The Contractor shall procure that all employees receive such training and supervision as is necessary to ensure the proper performance of the Services under this Agreement.

46.2 The Contractor shall procure that there are set up and maintained by it, personnel policies and procedures covering all relevant matters (including discipline, grievance, equal opportunities and health and safety). The Contractor shall procure that the terms and implementation of such policies and procedures comply with Law and Good Industry Practice and that they are published in written form and that copies of them (and any revisions and amendments to them) are issued to the Council when requested.

46.3 The Contractor shall ensure that each of the Contractor Personnel shall comply at all times with each of the Council's policies (which shall include rules, codes of practice, procedures and standards) as amended or updated from time to time and any additional policies which the Council may adopt from time to time.

46.4 For the avoidance of doubt, the Contractor Personnel shall include any Sub-Contractors engaged by the Contractor at any time for the provision of the Services.

46.5 The Contractor shall procure that any Sub-Contractor engaged in the provision of the Services shall ensure that the Sub-Contractor's Personnel shall comply with this Clause 46.

47 Audit

47.1 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).

47.2 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.

48 Exit Arrangements

- 48.1 The Contractor shall assist the Council with all exit provisions required by the Council prior to the end of this Agreement or where terminated earlier, prior to such termination date, when requested by the Council.

49 TUPE Employees

- 49.1 The Contractor and the Council shall comply with all their obligations set out in Schedule 4 (TUPE) of this Agreement.

50 Canvassing

- 50.1 The Contractor warrants that, up until the date of this Agreement, it has not directly or indirectly canvassed any member, official or employee of the Council or their advisers in relation to this Agreement or its subject matter.

51 Capacity

- 51.1 Save as otherwise expressly provided, the obligations of the Council under this Agreement are obligations of the Council in its capacity as a contracting counterparty and nothing in this Agreement 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 Agreement (howsoever arising) on the part of the Council to the Contractor.

52 Co-Operation

- 52.1 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 Agreement. To avoid doubt, neither Party shall be under any obligation to perform any of the other's obligations under this Agreement.

53 Public Relations and Publicity

- 53.1 The Contractor shall not make any announcement (including advertisements) in relation to or publicise in any way either the Agreement (or any part thereof) or its activities under the Agreement 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 57.
- 53.2 The Contractor shall acknowledge the support of the Council in any materials that refer to the delivery of the Services and in any public communications about the Services.
- 53.3 The Contractor shall ensure that Contractor Personnel and professional advisors and consultants comply with the provisions of this Clause 53.
- 53.4 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 57. The Party subject to the requirement shall use reasonable endeavours to agree the content of the announcement with the other Party before making it.

53.5 The provisions of this Clause 53 shall apply throughout the duration of this Agreement and indefinitely beyond either its expiry or termination.

54 Dispute Resolution

54.1 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 Agreement within ten (10) Business Days of either Party notifying the other of the dispute.

54.2 In the event that the Dispute cannot be resolved within ten (10) Business Days of notification being provided in accordance with Clause 54.1 the Parties shall escalate the dispute to the Senior Project Officer of Economy Transport and Environment-Local Bus Team of the Council and the Managing Director/Chief Executive (or equivalent) of the Contractor.

54.3 If the Dispute cannot be resolved by the Parties pursuant to Clauses 54.1 and 54.2 within twenty (20) Business Days of notification being provided in accordance with Clause 54.1 the Dispute shall be referred to mediation pursuant to the procedure set out in Clause 54.4.

54.4 The procedure for mediation and consequential provisions relating to mediation are as follows:

54.4.1 a neutral adviser or mediator (the **Mediator**) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Business Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Business Days from the date of the proposal to appoint a Mediator or within ten (10) Business Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (**CEDR**) to appoint a Mediator.

54.4.2 the Parties shall within ten (10) Business Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.

54.4.3 unless otherwise agreed, all negotiations connected with the Dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

54.4.4 if the Parties reach agreement on the resolution of the Dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is executed by their duly authorised representatives.

54.4.5 failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Agreement without the prior written consent of both Parties.

54.4.6 The performance of the Agreement shall not be suspended, cease or be delayed by the application of the procedures set out in this Clause 54 and

Contractor shall comply fully with the requirements of the Agreement at all times.

54.5 Notwithstanding any other provision of this Agreement either Party may refer a dispute arising under this Agreement to adjudication at any time under Part I of the Scheme for Construction Contracts (England and Wales) Regulations 1998.

54.6 Nothing in this Clause 54 shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

55 Representatives

55.1 The Council shall, prior to the Commencement Date, appoint both an Authorised Officer and a Deputy Authorised Officer (to act in those instances where the Authorised Officer is unavailable).

55.2 The Contractor 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).

55.3 The contact details for the Authorised Officer, the Deputy Authorised Officer, the Contract Manager and the Deputy Contract Manager are as listed at Schedule 3.

55.4 Any changes to the contact details under Clause 55.3 shall be notified to the other Party as soon as is reasonably practicable in accordance with the provisions of Clause 57.

55.5 The Authorised Officer and the Contract Manager (and where applicable the Deputy Authorised Officer and the Deputy Contract Manager) shall have authority to act on behalf of the Council and the Contractor respectively for all purposes in connection with this Agreement unless otherwise notified to the other Party in accordance with Clause 57.

55.6 The Authorised Officer shall be entitled to give directions to the Contract Manager from time to time for any purpose under or in connection with this Agreement.

55.7 The Council reserves the right to reject the appointment of any individual as Contract Manager who, at the absolute discretion of the Council, either does not possess the necessary experience in the provision of the Services or is in any other way unsuitable for the role.

56 No Agency

56.1 Nothing in this Agreement shall be construed as creating a partnership or as a contract of employment between the Council and the Contractor.

56.2 Save as expressly provided otherwise in this Agreement, the Contractor shall not be, or be deemed to be, an agent of the Council and the Contractor shall not hold itself out as having Council or power to bind the Council in any way.

56.3 Without limitation to its actual knowledge, the Contractor shall for all purposes of this Agreement, be deemed to have such knowledge in respect of the provision of the Services as is held (or ought reasonably to be held) by any Contractor Personnel.

57 Notices

57.1 A notice (or any other communication) from one Party to the other under or in connection with this Agreement shall be:

57.1.1 in writing;

57.1.2 signed on behalf of the Party giving it;

57.1.3 marked for the attention of the Representative of the receiving Party as provided for in Clause 55; and

57.1.4 sent by a delivery method listed in Clause 57.2.

57.2 The table below sets out the delivery methods by which a notice (or any other communication) in connection with this Agreement 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.
By email	upon delivery provided that any notice dispatched by email after 4pm on a Business Day or dispatched on a day that is not a Business Day shall be deemed to have been served at the start of the next Business Day following despatch, provided that a confirmatory copy is dispatched by pre-paid post within 24 hours of the email transmission.

57.3 All references to the time of deemed delivery in Clause 57.2 are to local time in the place of deemed receipt.

57.4 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 54.

58 Severability

58.1 If any term, condition or provision of this Agreement 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 Agreement.

59 Waiver

59.1 A waiver of any right or remedy either by Law or under this Agreement shall only be effective if it is notified to the other Party in accordance with the provisions of Clause 57 and is expressly stated to be a waiver.

59.2 No waiver of any right or remedy arising from a breach of this Agreement shall be deemed to be a waiver of any right or remedy relating to any subsequent breach of this Agreement.

59.3 Any failure or delay by a Party to exercise any right or remedy either by law or under this Agreement 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 Agreement shall prevent or restrict the further exercise of that or any other right or remedy.

60 Assistance in Legal Proceedings

60.1 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 Agreement 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.

60.2 The Contractor shall ensure that its servants, employees, agents, sub-Contractors, Contractors, professional advisors and consultants are available to be interviewed in connection with or to give evidence in relation to such proceedings or hearings.

60.3 In circumstances where:

60.3.1 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

60.3.2 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 Agreement.

61 Third Party Rights

61.1 No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to this Agreement.

62 Entire Agreement

62.1 This Agreement, 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.

62.2 The Contractor acknowledges and agrees that in entering into this Agreement 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 Agreement.

62.3 Nothing in this Clause 62 shall operate to exclude any liability for fraud.

63 Double Recovery

63.1 Notwithstanding any other provisions of this Agreement, neither Party shall be entitled to recover compensation or make a claim under this Agreement 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 Agreement or otherwise.

64 Counterparts

64.1 This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

64.2 No single counterpart shall be effective until each Party has executed and delivered at least one counterpart.

65 Variations

65.1 All additions, amendments and/or variations to this Agreement must be annexed to this Agreement and be in writing and shall only be binding if signed by the Representatives of the Council and the Contractor.

66 Governing Law and Jurisdiction

66.1 This agreement 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.

66.2 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 Agreement or its subject matter or formation (including non-contractual disputes or claims).

SIGNED for and on behalf of

DERBYSHIRE COUNTY COUNCIL

(the COUNCIL)

.....

Signature

Director of Place

.....

Date

.....

Signature

Director of Legal Services

.....

Date

SIGNED for and on behalf of

[XXX] (the CONTRACTOR)

.....

Signature

.....

Authorised Signatory's Name

.....

Title

.....

Date

Schedule 1 Specification

[INSERT A COPY OF THE SPECIFICATION]

Schedule 2 Payment

1. Subject to the provisions of this Schedule 2 and any changes to Charges made under Clause 14 of this Agreement, all Charges shall be those set out in the attached Contractor's Pricing Schedules.

[INSERT COPY OF THE CONTRACTOR'S TENDERED PRICE SCHEDULES]

2. The Charges shall be paid in accordance with the provisions of Clause 13 and this Schedule 2.
3. No payments will be made unless the information set out at Clause 13.4 is provided by the Contractor.
4. The Council reserves the right to modify the payment process detailed in with Clause 13 and this Schedule 2.
5. All payments will be made through the BACS Payment System.
6. Any changes to banking/payment details shall be submitted to the Payment Applications Address as soon as possible. This should be in the form of a letter headed document which specifies all bank details and is signed by the Contract Manager or Deputy Contract Manager.

Schedule 3 Council and Contractor Representatives

PART A

Council

[INSERT DETAILS OF COUNCIL REPRESENTATIVES]

Job Role	Name and email	Telephone Number	Address
Authorised Officer			County Hall Matlock
Deputy Authorised Officer			County Hall Matlock

PART B

Contractor

[INSERT DETAILS OF CONTRACTOR REPRESENTATIVES]

Job Role	Name	Telephone Number	Address
Contract Manager			
Deputy Contract Manager			

Schedule 4 TUPE

1 TRANSFER OF EMPLOYEES TO THE CONTRACTOR ON THE COMMENCEMENT DATE

- 1.1 The Council and the Contractor agree that where the identity of the Contractor of any of the Services 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.
- 1.2 The Contractor shall be liable for and indemnify and keep indemnified the Council against any Employment Liabilities arising from or as a consequence of:
- 1.2.1 any proposed changes to terms and conditions of employment the Contractor may consider making on or after the Commencement Date;
 - 1.2.2 any of the employees informing the Council and any third-party employer they object to being employed by the Contractor; and
 - 1.2.3 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.
- 1.3 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 Services, 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.
- 1.4 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.

2 EMPLOYMENT EXIT PROVISIONS

- 2.1 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.
- 2.2 The Contractor within ten (10) Business Days of a request by the Council or following the service of a termination notice under Clauses 23 or 24.1 or as a consequence of the Council notifying the Contractor of its intention to retender this Contract:

- 2.2.1 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 Services (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**);
 - 2.2.2 provide the Retendering Information promptly and at no cost to the Council;
 - 2.2.3 notify the Council forthwith in writing of any material changes to the Retendering Information promptly as and when such changes arise;
 - 2.2.4 be precluded from making any material increase or decrease in the numbers of Assigned Employees;
 - 2.2.5 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;
 - 2.2.6 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 Services to provide the Services save with the Council's prior written consent;
 - 2.2.7 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
 - 2.2.8 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.
- 2.3 On the expiry or earlier termination of this Agreement, 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 a Service 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 paragraph is without prejudice to such determination.
- 2.4 Upon expiry or termination of this Agreement for whatever reason (the **Return Date**), the provisions of this Schedule 4 will apply:

- 2.4.1 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 Services) 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;
- 2.4.2 Without prejudice to paragraph 2.4, the Contractor shall:
- (i) remain responsible for all the Contractor's employees (other than the Returning Employees) on or after the time of expiry or termination of this Agreement 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;
 - (ii) 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.
- 2.4.3 The Council shall be entitled to assign the benefit of this indemnity to any Future Contractor.
- 2.5 In the event that the Contractor enters into any sub-contract in connection with this Agreement, 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 paragraph and/or the Sub-Contractor's failure to comply with such terms.

Schedule 5 Tender Response

[INSERT CONTRACTORS TENDER RESPONSE]

Schedule 6 Service Failures and Critical Failures

1 Service Failures

1.1 The Service Failures are contained in the table below:

Service Failure
The Contractor delays in the performance of the Services specified in the Order, such delay being more than ten (10) Business Days but less than one (1) calendar month.
Where the Council determines, in its absolute discretion, that the Services claimed to have been undertaken by the Contractor have not been carried out properly or at all.
The Contractor offers or undertakes work for the Council's customers outside of this Agreement.
The Contractor fails to carry out the Services in accordance with the Council's instructions as set out in Schedule 1(Specification).
The Contractor fails to carry out the Services in accordance with the manufacturer's instructions.
The Contractor undertakes the Services without prior authorisation of the Council where required.
The Contractor fails to provide an Electrical Test Certificate in accordance with Clause 11.5.

1.2 Should the Contractor commit a Service Failure, the Council shall immediately serve written notice on the Contractor setting out the Service Failure (**Default Notice**).

1.3 Upon receipt of a Default Notice the Contractor shall immediately take all remedial action to rectify (where rectifiable) the Service Failure.

1.4 If any action taken under paragraph 1.3 has not rectified the Service Failure, the Contractor shall provide to the Council a plan setting out what further action the Contractor shall take to rectify the Service Failure and prevent it from recurring (the **Correction Plan**) within four (4) Business Days (or such other period as the Council specifies) from the day the Council notifies the Contractor under paragraph 1.2.

1.5 The Contractor shall only implement the Correction Plan with the prior written consent of the Council and within the timeframe determined by the Council.

1.6 Should the Contractor fail to provide or implement the Correction Plan, the Council reserves the right to:

1.6.1 take all remedial action necessary to rectify the Service Failure; and

1.6.2 recover from the Contractor any additional costs incurred by the Council under paragraph 6.

1.7 If at any time the Contractor has accrued in aggregate four (4) Service Failures in any twelve (12) month period, this shall constitute a Critical Failure.

2 Critical Failures

2.1 The Critical Failures are contained in the table below:

Critical Failure
The Contractor accrues in aggregate four (4) Service Failures within any 12-month period.
The Contractor fails to comply with RIDDOR.
The Contractor commits or is prosecuted for an offence under the Health and Safety at Work Act 1974 as a result of, but not limited to, any contravention of RIDDOR.
The Contractor delays in the performance of the Services specified in the Order, such delay being more than one (1) calendar month.
The Contractors actions in performing the Service creates a danger to life and/or property.

2.2 Should the Contractor commit a Critical Failure, the Council reserves the right to terminate this Agreement with immediate effect pursuant to Clause 23.