

**Tender for**

**Graphic Design Services Contract**

**Tender DOCUMENT THREE**

# TERMS AND CONDITIONS OF CONTRACT

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**1. TERMS AND CONDITIONS**

* 1. **Definitions**

In these Conditions the following words will have the meanings assigned to them

(a) "The Council" means Blaby District Council.

(b) "The Contractor" means the other party to the contract.

(c) "The Contract Manager" shall mean the person nominated by the Council and made known to the Contractor.

(d) "The Contract Period" shall mean the period that the contract is in existence as shown in the contract documents.

(e) "The Contract Documents" shall mean all the documents attached to these General Conditions of Contract. Where there is a conflict between these General Conditions and the Contract Documents the Contract Documents will prevail.

(f) “Data Protection Legislation” (i) the General Data Protection Regulation (Regulation (EU) 2016/679), the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [ subject to Royal Assent ] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy (iiii)‘Data Protection Act 1998

* 1. **Construction of Contract**

Any contract resulting from this Invitation shall be governed by English Law and the parties shall be deemed to have submitted to the jurisdiction and procedures of the English Courts.

* 1. **Corruption**

If the Contractor or a person employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) corruptly offers, gives or agrees to give, to any person, a gift or consideration of any kind as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any action in relation to the obtaining or execution of the Contract, or any other contract with the Council, or for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other contract with the Council, or, if, in relation to any contract with Council, the Contractor, or any person employed by him or acting on their behalf, (whether with or without the knowledge of the Contractor) commits an offence under the Prevention of Corruption Acts 1889-1916, the Council shall be entitled to terminate the Contract, and to recover from the Contractor the amount of any loss resulting from such termination. For the avoidance of doubt, the Contractor acknowledges that the conduct referred to in this clause may occur before, on and after the date of this contract.

**1.4 The Council’s Responsibilities**

Taking into consideration the terms listed in Clause 1.5 below:-

1.4.1 The Council shall provide the Contractor with all information reasonably required to perform their duties under the Contract.

1.4.2 The Council shall permit the Contractor’s staff to have access to the sites by prior agreement and at reasonable times to enable them to perform the Contract.

1.4.3 The Council reserves the right to accompany the Contractor’s staff in certain locations.

**1.5 Identification and Restriction on Access**

1.5.1 The Contractor must note that all employees of the Council have the right to refuse admission to any site, building or premises to any person who is unable to establish their identity and justifiable cause for their presence.

1.5.2 It is a Condition of Contract that, on receipt of the first order for each establishment and before delivery of that order takes place, the Contractor shall ascertain from a duly authorised officer of the Council if any special restrictions concerning service delivery to the establishment are in force and shall ensure that these are complied with fully by all personnel in their employ.

1.5.3 The defined in 1.1 Council will entertain no claims of any sort by a Contractor who, as a result of their failure to comply with this condition and with any special requirement arising there from which has been communicated to him, is not allowed to make any delivery, and under such circumstances the Council reserves the right to seek redress for their failure to effect delivery.

**1.6 Assignment, Transfer, Subletting**

The Contractor shall not transfer, assign or sublet the Contract or any part thereof, without the prior written consent of the Council and if such consent is given the Contractor shall remain liable for the performance of the Contract in its entirety as if such assignment or sublet had not taken place.

**1.7 Price Variations**

The charges quoted in the submission will be valid for the duration of the Contract.

**1.8 Supply and Delivery**

During the Contract Period, the Contractor shall supply and deliver to the Council such goods or materials of the descriptions and at the prices indicated in the Contract Documents and in such quantities and by such methods of delivery and at such times and places as set out in the Contract Documents or (if not so set out) as shall be required by the Council. If the Contract Period expires before the supply or delivery of goods already ordered, the Contractor shall remain liable for the completion of the order. The terms and conditions of the contract shall continue in full force and effect until such completion occurs.

**1.9 Patterns and Samples**

All goods or materials to be supplied by the Contractor shall be in accordance with the Council's specification. Any bulk goods supplied shall match the sample provided by the Contractor and approved by the Council. Samples submitted by the Contractor for inspection must be delivered at own risk and expense and the Council shall not be liable for any loss or damage caused to them. Quotations for any alternative product to the brand stated in the pricing document should be supported with a sample.

**1.10 Sale of Goods Act 1979**

Nothing in the Contract Documents shall restrict the provisions of the Sale of Goods Act 1979.

**1.11.** **Inspection, Rejection and Guarantee of Goods**

The Contractor shall permit the Council or its authorised representatives to make any inspections or tests the Council may reasonably require and the Contractor shall afford all reasonable facilities and assistance free of charge. No failure to make a complaint at the time of such inspection or tests and no approval given during or after such tests or inspections shall constitute a waiver by the Council of any rights or remedies in respect of the Goods.

The Council may by written notice to the Contractor reject any of the Goods which fail to meet the requirements specified in this Contract. If the Council shall reject any of the Goods the Council shall be entitled (without prejudice to his other rights and remedies) either:

* to have the Goods concerned as quickly as possible either repaired by the Contractor or (as the Council shall elect) replaced by the Contractor with Goods which comply in all respects with the requirements specified in the Order; or
* to obtain a refund from the Contractor in respect of the Goods concerned.
* Any Goods rejected or returned by the Council shall be returned to the Contractor at the Contractor’s risk and expense.

If the Contractor fails to remedy within 25 days of written notice, the Council reserves the right to terminate the contract by serving one months notice (the months notice will includes the provision of the 25 days).

**1.13 Delivery**

The goods or materials shall be delivered free of charge to the Council at the places mentioned in the Contract documents or otherwise specified by the Council, and shall remain at the Contractor's risk until the Council has notified the Contractor that the goods have been accepted.

Failure to deliver the goods or services by the agreed due date on two separate occasions, will give the Council the right to terminate the contract by serving one months notice.

**1.14 Termination of Contract**

Where any of the following conditions apply, Blaby District Council reserves the right to terminate the Contract by serving one months written notice to the Contractor and shall be entitled to recover from the Contractor by way of liquidated damages any additional costs to Blaby District Council or the end user incurred as a result of engaging others to carry out the necessary work for the unexpired period of the contract.

If the Contractor or any of their sub-contracting companies associated with this Contract is subject to receivership, liquidation or similar, or if they are subject to a change of ownership, or in the event that the Contractor is in breach of any provisions of this contract and does not remedy the same, within one month of notification of this breach by the Council.

**1.15 Duration of Orders and Effect**

Where goods are ordered and the duration of the order extends beyond the Contract Period, these terms and conditions shall remain in force and effect within that order provided always that such order was raised by the Council prior to the expiry of the Contract Period.

**1.16 Delivery Notes, Invoices and Payment**

1. The Contractor shall comply with all requirements of the Contract Manager with regard to the invoicing and identification of goods or materials. In the absence of any such requirements, the Contractor shall, on the day on which any goods or materials are dispatched to the Council, forward to the Council a delivery note or delivery notes giving full particulars thereof, together with a priced invoice, and the Council shall not be obliged to accept delivery of any goods or materials unless such delivery note or notes and invoice are produced as aforesaid.
2. The Council shall only be liable for the payment of goods delivered and the Contractor shall provide all reasonable information required by the Council thereto.

**1.17 Bankruptcy or Breach of Contract**

If the Contractor shall commit any act of bankruptcy, or if (the Contractor being a Company) proceedings shall be commenced for the winding up of the Contractor, or if the Contractor shall make any arrangement or composition with their creditors or shall suffer any execution to be levied on their goods or shall fail to observe or perform any of the terms and conditions of the Contract or shall not, in the opinion of the Council, exercise such due diligence as will enable the Contract to be performed during the Contract Period, then and in any such case the Council may be noticed in writing under the hand of the Chief Legal Officer, given or addressed to the Contractor in the manner hereinafter provided, determine the Contract but without prejudice to the liabilities of the Contract already accrued thereunder.

**1.18 Re-letting**

Where the Contract is determined by the Council due to the Contractor's default, the Contractor shall make good to the Council and all other persons or bodies entitled thereto all loss, damages and expenses they or any of them may incur or be liable to in consequence of re-letting this contract for the period which this contract should have existed had the Contractor not defaulted.

**1.19 Price Adjustment on extension of the Contract Period**

The Contract Price shall be firm for the initial Contract Period. In the event of an extension being considered beyond the Contract Period, the Council and the Contractor shall review the Contract Price prior to expiry of the initial Contract Period.

Any claim for increase or decrease in the Contract Price during the Extended Contract Period will only be considered if supported by an appropriate index already agreed between the Council and the Contractor, for the period in question, such index to be determined by negotiation or mediation in default of agreement between the Parties.

Following agreement in writing with the Council, the Contractor may increase or decrease the Contract Price to be charged for the Extended Contract Period.

**1.20 Indemnity and Insurance**

The Contractor shall indemnify and keep indemnified the Council against all losses and claims for injuries (including death, illness and disease) or damage to any person or property whatsoever which may arise out of or in consequence of the execution of this contract and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto. Provided always that the Contractor’s liability to indemnify the Council as aforesaid shall be reduced proportionately to the extent that the act or neglect of the Council, their servants or agents may have been contributed to the said loss, injury or damage.

The indemnity given by the Contractor in this clause shall insure against any damage, loss or injury which may occur to any property or to any person by or arising out of the execution of the Contract or in carrying out of the Contract. Such insurance shall be affected with an insurer and in terms approved by the Council and for at least the sum of £3,000,000 any one claim, unlimited in any one period of insurance or for any higher amount specified by the Council.

The terms shall include a provision whereby in the event of any claim in respect of which the Contractor would be entitled to receive indemnity under the policy being brought or made against the Council, the insurer will indemnify the Council against such a claim and any costs, charges and expenses in respect thereof. The Contractor shall wherever required produce to the Council the policy or policies of insurance and receipts for payment of the current premiums.

**1.21 Power of "Set-off"**

The Council shall have power to set off any sums due from the Contractor to the Council against any sums due from the Council to the Contractor under the Contract.

**1.22 Notices**

Any documentation to be given to the Contractor pursuant to the Contract may, in the case of an individual or partnership, be left at or sent by prepaid post to their or their principal place of business in the United Kingdom, or if no place of business shall be known to the Council at the date of service, their or their last known private address or addresses in the United Kingdom, and in the case of a Company may be left at or sent by prepaid post to the Registered Office for the time being. Any notice served by the contractor on the Council should be marked for the attention of Corporate Services Group Manager, Blaby District Council, Council Offices, Desford Road, Narborough, Leics LE19 2EP.

**1.23 Data Protection**

The Contractor shall at all times abide by the Data Protection Legislation and shall indemnify the Council against any loss claims and expenditure resulting from the Contractor’s breach of this Clause.

**1.24 Human Rights**

1. The Contractor shall not do or permit or allow anything to be done which is incompatible with the rights contained within the European Convention on Human Rights.
2. The Contractor shall not do or permit or allow anything to be done which may result in the Council acting incompatibly with the rights contained within the European Convention on Human Rights and the Human Rights Act 1998.
3. The Contractor shall indemnify the Council against any loss claims and expenditure resulting from the Contractor's breach of Clauses 1.24 a) and b) above.

**1.25. Equal Opportunities**

1. The Contractor must include with their submission, a copy of their Equality Policy which relates to employment and service delivery and comply with the following legislation:-
* Race Relations Act 1976
* Race Relations (Amendment) Act 2000
* Sex Discrimination Act 1975
* Equal Pay Act 1970
* Disability Discrimination Act 1995
* Human Rights Act 1998
* Employment Equality (Religion or Belief) Regulations 2003
* Employment Equality (Sexual Orientation) Regulations 2003
1. The Equality Policy should specifically seek to ensure that the Contractor or their sub contractors will not treat one group of people less favourably than others because of their colour, race, ethnic or national origin, disability, gender, marital status, age, religion or belief, sexual orientation, membership of a Trade Union or political beliefs, in relation to decisions to recruit, train, promote or the treatment of employees, and also in relation to decisions in relation to the purchasing or service delivery activities of the Contractor.
2. The equality policy must, furthermore, ensure that the Contractor shall set out its policies on race, disability, gender, age, religion or belief, and sexual orientation:

• In instructions to those concerned with recruitment, training, promotion, employee management in relation to disciplinary actions or employee grievances;

* In documents available to employees, recognised trade unions or other representative groups of employees;
* In recruitment advertisements or other literature;
* As information provided for employees and customers in accessible formats for disabled people;
* In relation to instructions or procedures for employees in relation to service delivery, customer care and procurement of services and goods;
* In relation to sub-contractors used or employed to complete the contract with the Council.
1. The Contractor shall comply with their equality policy submitted to the Council as part of its submission and finally agreed by the Council.
2. In the event of any finding of unlawful discrimination being made against the Contractor in the last three years by any court or tribunal, or any adverse finding by any formal investigation by any Equalities Commission over the same period, the Contractor shall take appropriate steps, to the satisfaction of the Council, to prevent any further or repeated unlawful discrimination. The Contractor shall, on request, provide the City Council with details and evidence of steps taken to remedy any unlawful discrimination or to prevent any further unlawful discrimination.
3. The Contractor shall, on request, provide the Council with details and evidence of steps taken to remedy or prevent any formal complaint being made against the Contractor under the Council’s Complaints Policy/Procedures.
4. The Contractor shall use their best endeavours to ensure that agency staff who undertake duties for the Council in pursuance of the contract are made aware of all Council Codes of Practice relevant to their duties.
5. The Contract shall be performed by the Contractor in accordance with any statutes, directives, regulations, codes and industry practice which shall exist either at the commencement date of the Contract, or may come into force at any time thereafter until the expiry or termination of the Contract.

**1.26 Intellectual Property Rights**

a) All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:

(i) furnished to or made available to the Contractor by the Council shall remain the property of the Council;

(ii) prepared by or for the Contractor for use, or intended use, in relation to the performance of the Agreement shall belong to the Council and the Contractor shall not, and shall procure that the Contractor’s employees, servants, agents, suppliers and sub-contractors shall not, (except when necessary for the implementation of the Agreement) without prior Approval, use or disclose any such Intellectual Property Rights, or any other information (whether or not relevant to the Agreement) which the Contractor may obtain in performing the Agreement except information which is in the public domain.

b) The Contractor shall obtain Approval before using any material, in relation to the performance of the Agreement which is or may be subject to any third party Intellectual Property Rights. The Contractor shall procure that the owner of the rights grants to the Council a non-exclusive licence, or if itself a licensee of those rights, shall grant to the Council an authorised sub-licence, to use, reproduce, and maintain the material. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party providing services to the Council, and shall be granted at no cost to the Council.

c) It is a condition of the Agreement that the Services will not infringe any Intellectual Property Rights of any third party and the Contractor shall during and after the Term on written demand indemnify and keep indemnified the Council against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Council may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim relates to:

(i) designs furnished by the Council;

(ii) the use of data supplied by the Council which is not required to be verified by the Contractor under any provision of the Agreement.

d) The Council shall notify the Contractor in writing of any claim or demand brought against the Council for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor. The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor:

(i) shall consult the Council on all substantive issues which arise during the conduct of such litigation and negotiations;

(ii) shall take due and proper account of the interests of the Council; and

(iii) shall not settle or compromise any claim without the Council’s prior written consent (not to be unreasonably withheld or delayed).

e) The Council shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Council or the Contractor for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of the Agreement and shall be repaid all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. Such costs and expenses shall not be repaid where they are incurred in relation to a claim, demand or action which relates to the matters in clause c) (i) and (ii),

f) The Council shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Council or the Contractor in connection with the performance of the Agreement.

g) If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Agreement or in the reasonable opinion of the Contractor is likely to be made, the Contractor may at its own expense and subject to the consent of the Council (not to be unreasonably withheld or delayed) either:

 modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply with any necessary changes to such modified Services or to the substitute Services; or

 procure a licence to use and provide the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Council.

h) At the termination of the Agreement the Contractor shall immediately return to the Council all materials, work or records held, including any back-up media.

i) The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

**1.27 Force Majeure**

The Contractor’s performance against the contract will be monitored against the specification. Failure on the part of the contractor to meet the specification requirements or to perform their obligations under the contract, except due to circumstances beyond their reasonable control, will constitute a material breach of the contract, and the Council shall be entitled to cancel the Contract.

**1.28 Criminal Records Bureau (only if specifically requested )**

Contractors are required to check the criminal backgrounds of both permanent and temporary workers. Standard Disclosures will be required for those whose work will involve regular contact with children and vulnerable adults. Enhanced Disclosures are required for those who will be regularly caring for, or training, supervising or being in sole charge of children or vulnerable adults. The Contractor will be responsible for obtaining the relevant Disclosure and must ensure that the temporary worker does not have anything in their criminal background that may pose a risk to Council service users. Contractors must comply with the CRB Code of Practice and have produced the following documents: Policy Statement on the Recruitment of Ex-Offenders, Policy Statement on the Secure Storage, Handling Use, Retention and Disposal of Disclosures and Disclosure Information Guidance for applicants.

**1.29 Environmental Policies and Legislation**

The Contractor shall comply with their statutory obligations under Environmental Legislation and for the purposes of this Contract.

**1.30 Freedom of Information Act 2000**

Information in relation to this contract may be made available on demand in accordance with the requirements of the Freedom of Information Act 2000. When required by the Council, the Contractor shall assist the Council at no additional charge in meeting its obligations under the Freedom of Information Act 2000 and the Data Protection Act 1998, or any statutory modification or re-enactment thereof or any related guidelines or codes of practice.

Contractors should state if any of the information supplied by them is confidential or commercially sensitive or should not be disclosed in response to a request for information under the Act. Contractors should state why they consider the information to be confidential or commercially sensitive.

This will not guarantee that the information will not be disclosed but will be examined in the light of the exemptions provided in the Act.

It is important to note that information may be commercially sensitive for a time (e.g. during a contract submission process) but afterwards it may not be. The timing of any request for information may be extremely important in determining whether or not information is exempt. However Contractors should note that no information is likely to be regarded as exempt forever.

**1.31 Publicity, Media and Official Enquiries**

Without prejudice to the Authority’s obligations under the FOIA, neither Party shall make any press announcements or publicise the Agreement or any part thereof in any way, except with the written consent of the other Party. Both Parties shall take all reasonable steps to ensure the observance of the provisions of clause 1.31 by all their servants, employees, agents, professional advisors and consultants. The Contractor shall take all reasonable steps to ensure the observance of the provisions of clause 1.31 by its sub-contractors. The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.