



East Devon District Council

Standard Conditions

of Contract

for the Supply of

Goods and Services, and for the

Performance of Works

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East Devon District Council Standard Conditions of Contract for the Supply of Goods and Services, and for the Performance of Works

These Conditions may only be varied with the written agreement of the Buyer. No terms or conditions put forward at any time by the Supplier shall form any part of the Contract unless previously agreed in writing by the Buyer.

1. Contract Incorporation

These Conditions shall be incorporated in any Contract made by the Buyer for the purchase of goods, services or works unless they are specifically excluded, and shall apply to the extent that they are not inconsistent with any separate Condition of Contract specifically agreed in writing by the Buyer as taking precedence over these Conditions.

2. Definitions

2.1 **'the Contract'** shall mean either: -

- (a) the agreement made by the acceptance by the Supplier of any order placed or Letter of Intent issued to the Supplier by the Buyer, *otherwise than in pursuance of a tender or quotation received and accepted in whole or in part by the Buyer*, or
- (b) the agreement made by the acceptance by the Buyer in whole or part of a tender or quotation, inclusive of any Contract Documents, submitted by the Supplier to the Buyer where such part of that tender or quotation is confirmed as accepted by way of the Buyer's Acceptance, and these Conditions and the Contract Documents shall be construed together as one instrument.

'Contract Documents' shall mean the Buyer's tender document or form of quotation or similar, all duly priced and submitted by the Supplier to the Buyer, incorporating and priced in accordance with any special conditions, preliminaries, specification, contract drawings and/or schedule of items to be supplied in relation to the Service together with the Buyer's Acceptance.

'the Buyer' shall mean East Devon District Council. The Buyer may by notice in writing to the Supplier appoint a representative to receive or administer receipt of the Service or any part of it on the Buyer's behalf, in which case reference in these Conditions to the Buyer shall be deemed to include reference to that appointed representative.

'the Supplier' shall mean the person, consultant, firm or company employed to carry out the Service for the Buyer being either:-

- (a) the person, consultant, firm or company having accepted an order or request from the Buyer either by Buyer's Acceptance or *otherwise than in the pursuance of a tender*, or
- (b) the person, consultant, firm or company whose tender or part of whose tender has been accepted, or in either case the expression shall where the context so admits include, as the case may be, the personal representatives or permitted assigns of that person, the successors of the partners for the time being in the firm and their permitted assigns, and the permitted assigns of the company.

'the Parties to the Contract' shall mean the Buyer of the first part and the Supplier of the second part.

'the Service' shall mean the supply of any services, goods or works (including all commodities and intellectual property), by the Supplier to the Buyer, or the carrying out of works (including all operations or installations) or the carrying out of surveys and the like and/or the supply of reports and other information and the like by the Supplier for the Buyer in accordance with the terms of the Contract.

'the Facility' shall mean the property or building or facility or land owned or leased by the Buyer to which the goods comprised in the Service are to be delivered, or where the services or works comprised in the Service are to be carried out.

'the Contract Price' shall mean the price given to the Buyer by the Supplier either by way of a tender or formal quotation or similar, or agreed by separate negotiation between the parties to the contract.

'the Buyer's Acceptance' shall mean either:-

- (a) a Letter of Intent, namely the letter written by the Buyer to the Supplier; or
- (b) a Buyer's official order namely the formal order form written by the Buyer and given to the Supplier; as appropriate to the case, and in either case detailing the agreements made within the Contract and triggering the Buyer's commitment to the Contract with the Supplier for the Service.

- 2.2 Any reference to an Act or Statutory Instrument shall include reference to any amendment or re-enactment thereof.

3. Supplier's Obligation to Supply the Service

- 3.1 Subject to and in accordance with these Conditions, and in consideration of the Contract Price, the Supplier shall supply to the Buyer, or to whom the Buyer may direct in accordance with paragraph 3.2.3 of these Conditions, and shall deliver at the place specified by the Buyer, the Service specified in the Contract. The Service is to be of the quality and type and at the rates or prices and in the quantity all as specified in the Contract.
- 3.2 The Service shall be provided of satisfactory quality and be fit for its purpose and specifically fit for the particular purpose specified by the Buyer to the Supplier, and the Supplier warrants that it has the required skill and judgement to be able to supply the Service appropriately in order to properly execute the Contract.
- 3.3 The Supplier warrants that it has made sufficient investigations of the Facility, the reason why the Service is needed, and/or how the service is required to be delivered before either tendering or submitting a priced quotation, such as to have achieved an understanding of the nature and extent of the Service required and the circumstances in which the Service is required and any other matters connected with the Service and Facility. No claim by the Supplier for lack of knowledge of the Facility and/or the Service to be provided under the Contract will be accepted by the Buyer.

- 3.4 The Buyer reserves the right by notice to the Supplier to modify the quality or quantity of the Service and any alteration to the Contract Price or completion date, arising by reason of such modification, shall be agreed by negotiation between the parties.

4. The Contract Price

- 4.1 The Contract Price of the Service shall be as stated in the Contract Documents, quotation, Buyer's Acceptance, letter of offer to supply, purchase order or similar and no increase will be accepted by the Buyer before the execution of the Contract.
- 4.2 Unless otherwise agreed in writing by the Buyer, where the Service comprises distinct parts or consignments, the Supplier shall render a separate invoice in respect of each of the parts or consignments unless otherwise agreed with the Buyer. Payment shall be due within 30 days after receipt of an invoice providing that the invoice so received is deemed correct by the Buyer.
- 4.3 Value added tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge, and the Buyer shall be entitled to withhold payment of any invoice which does not constitute a valid VAT invoice so as to enable the Buyer to reclaim the VAT from HM Revenue and Customs.
- 4.4 If deemed applicable to this tender/quote, the Supplier is to allow in its price for the provision of all barriers and lighting, either day or night, necessary for protection of the Works, plant, materials and the like and for prevention of injury to the public. Should the Works take place within or near and occupied building then the Supplier shall provide satisfactory arrangements to allow safe occupation and safe access and egress from the building.
- 4.5 If deemed applicable to this tender/quote, the Supplier is to allow in their price and make their own arrangements regarding all services required for the execution of the Works and pay all charges and fees in connection therewith.
- 4.6 Before tendering, the Supplier, if it is deemed applicable to this tender/quote, must be satisfied so far as is practicable, to site conditions, extent of the work required, means of access to and egress from the site or sites, storage and working space, position of existing services and any other matters that may affect the tender price and shall include for the provision of such within the tender sum.

5. Supplier's Obligation to Meet Quality Standards

Without prejudice to paragraph 3.2 of these Conditions, the Service shall, unless otherwise directed in writing by the Buyer, be in accordance with any specifications of the British Standards Institution (BSI) or the International Standard Organisation (ISO) or the European Committee for Standardisation (CEN) relating to the Service and current at the date of the tender or priced quotation.

6. Default by Supplier and Buyer's Remedies

- 6.1 If the Service (including any goods supplied as part of it) shall not in every respect be of the quality contracted for, in the opinion of the Buyer whose decision shall be final, or if it shall not be provided at the time required, or if the Supplier shall in any other way fail to comply with the terms of the Contract, then the Buyer may reject the Service or goods (as the case may be).
- 6.2 In every such case the Buyer, without prejudice to any other remedy for breach of contract, shall be entitled to purchase, at such prices and on such terms and conditions as the Buyer determines, a new equivalent Service or any part thereof or employ any other person to provide the Buyer with a similar Service during the remainder of the term of the Contract or any part of that term in the place of the Supplier, and in such cases the Supplier shall pay to the Buyer or the Buyer may deduct from any sum that is due or may become due to the Supplier under the Contract or otherwise, a sum equal to all costs, charges and expenses relating to such additional or replacement supply or arising from such failure to perform the Contract.
- 6.3 Without prejudice to paragraphs 6.1 and 6.2, if the Supplier shall have committed a material breach of this Contract and (if such breach is capable of remedy) shall have failed to remedy such breach within thirty days of being required by the Buyer in writing to do so, the Buyer shall be at liberty to determine this Contract forthwith by notice in writing, and arrangements as in paragraphs 20.2 and 20.3 shall apply.

7. Supplier's Contract Status

- 7.1 In carrying out the Service the Supplier shall be acting as principal and not as the agent of the Buyer.
- 7.2 Accordingly:-
- (a) the Supplier shall not, and shall procure that its agents, servants and sub-Suppliers do not say or do anything that might lead any other person to believe that the Supplier is acting as the agent of the Buyer; and
 - (b) nothing in this Contract shall impose any liability on the Buyer in respect of any liability incurred by the Supplier to any other person, but this shall not be taken to exclude or limit any liability of the Buyer to the Supplier that may arise by virtue of either a breach of this Contract or any negligence on the part of the Buyer's staff or agents.

8. Supplier's Personnel

- 8.1 If and when reasonably instructed by the Buyer, the Supplier shall give to the Buyer a list of all persons who are or may be at any time concerned with the Service, or any part of it, specifying the capacities in which they are so concerned, and giving such other supporting evidence as the Buyer may reasonably require to enable the Buyer to identify the Supplier's representatives.
- 8.2 The Supplier shall take all reasonable steps, as required by the Buyer, to prevent unauthorised persons being admitted to that part of the Facility related to the Service in the course of the delivery of the Supplier's obligations under the Contract. If the Buyer

instructs the Supplier, giving reasons, that any particular person is not to be admitted to or is to be removed from the Facility, or part thereof, or is not to become involved in or is to be removed from involvement in the performance of the Contract, the Supplier shall take all reasonable steps to comply with such notice and, if required by the Buyer, the Supplier shall replace any such person removed under this Condition with another suitably qualified person and shall ensure that the person so removed is not allowed any future access to the Facility or further involved in the supply of the Service.

- 8.3 The decision of the Buyer as to whether any person is to be admitted to or is to be removed from the Facility or is not to become involved in or is to be removed from involvement in the performance of the Contract, and as to whether the Supplier has furnished the information or taken the steps required of it by this Condition, shall be final and conclusive.
- 8.4 The Supplier shall bear the cost of any notice, instruction or decision of the Buyer under this Condition.

9. Supplier's Conduct in Carrying Out the Service

- 9.1 The Supplier shall not deliver materials, plant or anything else connected with the Service, nor commence any work on or to the Facility, without obtaining the Buyer's prior consent.
- 9.2 Access to the whole or any part of the Facility shall not be exclusive to the Supplier but only such as shall enable it to carry out the Service concurrently with the activities of others. The Supplier shall co-operate with such others as the Buyer may reasonably require.
- 9.3 The Buyer shall have the power at any time during the progress of the Service to order in writing:-
- (a) the removal from the Facility of any materials which in the opinion of the Buyer are either hazardous, noxious or not in accordance with the Contract, and /or
 - (b) the substitution of alternative, but similar, more appropriate, safe and suitable materials, and/or
 - (c) the proper re-execution, notwithstanding any previous or interim payment, of any work which, in respect of material or workmanship, is not in the opinion of the Buyer in accordance with the Contract.

10. Inconvenience to Buyer

The Supplier shall so arrange the Service as to cause as little inconvenience and interference to the duties and functions of any Buyer's Facility, which is likely to be in continual use during the progress of the Service. The Supplier is required to set in place safety provisions and take all necessary precautions to prevent any health and safety hazards or risks to occupants of the Facility and its environs and/or any undue nuisance from water, smoke, dust, rubbish, noise and other causes.

11. Delivery

- 11.1 Goods provided in relation to the Service are to be delivered at reasonable times and on the day and at the place specified in the Buyer's Acceptance or, if not specified therein, as specified elsewhere in the Contract. The Contract Price shall be deemed to include delivery charges, and delivery shall be at the Supplier's risk. Delivery to a carrier shall not be deemed to be delivery to the Buyer.
- 11.2 Property and risk in goods provided in relation to the Service shall without prejudice to any of the rights or the remedies of the Buyer pass to the Buyer at the time of actual delivery or, if later, such time of delivery as may have been specified by the Buyer.
- 11.3 Where any access to the Facility is necessary in connection with delivery or installation, the Supplier shall at all times comply with the reasonable requirements of the Buyer.

12. Damage in Transit

On dispatch of any consignment of goods provided in relation to the Service, the Supplier shall, as requested by the Buyer, send to the Buyer at the address for delivery of the goods an advice note specifying the means of transport, the place and date of despatch, the number of packages and their weight and volume. The Supplier shall free of charge and as quickly as possible either repair or replace, as directed by the Buyer and to the Buyer's satisfaction, such of the goods as may either be damaged in transit or having been placed in transit fail to be delivered to the Buyer provided that:-

- (a) in the case of damage to such goods in transit, that are provided in relation to the Service, the Buyer shall within thirty days of delivery give notice to the Supplier that the goods have been damaged;
- (b) in the case of non-delivery of goods and, provided that the Buyer has been properly advised of the dispatch of goods, the Buyer shall within ten days of the notified date of delivery give notice to the Supplier that the goods have not been delivered.

13. Labels and Packaging

- 13.1 Goods provided in relation to the Service shall be packed and marked in a proper manner and in accordance with the Buyer's instructions and any statutory requirements and, subject to the foregoing, any requirements of the carriers. In particular such goods shall be marked with the Order Number, the net, gross and tare weights, the name of the contents shall be clearly marked on each container, and all containers of hazardous goods (and all documents relating thereto) shall bear prominent and adequate warnings.
- 13.2 All packaging materials will be considered non-returnable and will be destroyed unless the Supplier's advice note states that such materials will be charged for unless returned. The Buyer accepts no liability in respect of the non-arrival at the Supplier's premises of empty packages returned by the Buyer unless the Supplier shall, within ten days of receiving notice from the Buyer that the packages have been dispatched, notify the Buyer of such non-arrival.

14. Removal of Rejected Goods or Materials

Goods or materials rejected by the Buyer pursuant to paragraph 6 of these Conditions shall be removed by and at the expense of the Supplier within a reasonable time following notice to the Supplier by the Buyer of the rejection, and in the case of perishable goods within 24 hours. Such rejected goods shall remain at the sole risk of the Supplier and in the event that the Supplier shall fail to either remove the goods or cause such goods to be removed the Buyer shall retain the right to remove the goods, the cost of such removal being recoverable by the Buyer from the Supplier as a debt to the Buyer.

15. Interruption to Supply of Service Delivery

If owing to;

- (i) any strike or lock out or any working to rule,
- (ii) civil commotion,
- (iii) cessation or material interruption of traffic by air, road, rail or sea,
- (iv) force majeure, or
- (v) exceptionally inclement weather,

either party of the Contract shall be unable to continue the provision or receipt of the Service or any part of it, such party shall not be bound during such inability to provide or receive as the case may be the Service or such part of it which but for this clause such party ought during that period to have provided or received, and after the termination of such inability the Buyer shall, within one month after the cessation of such inability, determine whether it requires the Service or that part of it to be cancelled or to be supplied. In the latter event the Contract shall be performed in the same manner as if the time for provision and receipt had been extended by a period equal to the duration of such inability.

16. Time of Performance

16.1 Time shall be of the essence of the Contract.

16.2 The Supplier shall begin performing the Service on the date stated in the Contract or otherwise agreed in writing between the parties, and shall work with due diligence from commencement until the Service has been completed and delivered properly to the Buyer's satisfaction and all the Supplier's obligations under the Contract have been fulfilled and discharged. The Supplier shall complete the Service by the date stated in the Contract or continue to perform the Service for the period stated in the Contract or as otherwise agreed in writing.

16.3 The Buyer may by written notice require the Supplier to execute the Service in such order as the Buyer determines. In the absence of such notice the Supplier shall submit such detailed programmes of work and progress reports as the Buyer may from time to time require.

17. Auditing of Records and Documents

The Supplier shall keep and maintain, until twelve months from the 31st March following final payment of the Contract for the Service rendered, records to the satisfaction of the

Buyer of all expenditures which are reimbursable by the Buyer and of the hours worked and costs incurred in connection with any employees of the Supplier paid for by the Buyer. The Supplier shall provide the Buyer with such access to those records as the Buyer may require in connection with the Contract.

18. Canvassing

The Buyer may cancel this Contract and recover from the Supplier the amount of any loss resulting from such cancellation, if the Supplier or any person on its behalf is found to have canvassed prior to the submission of a tender or quotation.

19. Inducements

The Buyer may cancel this Contract and recover from the Supplier the amount of any loss resulting from such cancellation, if the Supplier shall have offered, or given or agreed to give, to any person employed by, or in the service of, the Buyer any gift, consideration or reward of any kind as an inducement for doing, or promising to do or for having done or promising to do, any action in relation to the obtaining or the execution of this Contract or any other contract with the Buyer, or for showing or promising to show favour or disfavour to any person, in relation to this Contract or any other contract with the Buyer, or if the like acts shall have been done by it, or person employed by it or acting on its behalf (whether with or without the Supplier's knowledge) or if in relation to any contract with the Buyer the Supplier or any person employed by it or acting on its behalf shall have committed an offence under the Prevention of Corruption Acts 1889 to 1916, or shall have given any fee or reward the receipt of which is an offence under Section 117 (2) and (3) of the Local Government Act 1972.

20. Bankruptcy / Insolvency

20.1 If any bankruptcy petition shall be presented in respect of the Supplier, or if the Supplier shall become bankrupt or make any composition or arrangement with its creditors or commit any act of bankruptcy, or if the Supplier being a company passes any resolution of voluntary winding up or if a provisional liquidator, receiver or manager of the Supplier's business is duly appointed or possession is taken thereof by or on behalf of the holders of debentures or under a floating charge, or if the Supplier is dissolved, or, where the Supplier is an individual, if he shall die or be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983, paragraph 20.2 shall apply. Reference in paragraph 20.2 to the Supplier's representative shall include its trustee in bankruptcy, manager, liquidator, receiver or personal representatives as the case may be.

20.2 On the occurrence of any of the events described in the preceding paragraph, or in paragraph 6.3, the Buyer shall be at liberty to determine this Contract forthwith by notice in writing. Thereupon, without prejudice to any other of the Buyer's rights, the Buyer may itself complete the Service or have it completed by a third party, using for that purpose (making a fair and proper allowance therefore in any payment subsequently made to the Supplier or its representative) all materials, plant and equipment on the Facility belonging to the Supplier, and the Buyer shall not be liable to make any further payment to the Supplier or its representative until the Service has been completed in accordance with the requirements of the Contract, and shall be

entitled to deduct from any amount due to the Supplier or its representative the costs thereof incurred by the Buyer. If the total cost to the Buyer exceeds the amount, if any, due to the Supplier or its representative, the difference shall be recoverable by the Buyer from the Supplier or its representative as the case may be.

- 20.3 Termination under the preceding paragraphs shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Buyer, and shall not affect the continuing requirements of paragraphs 17 and 21 to 30 inclusive of these Conditions.

21. Liability and Indemnity

The Supplier shall be liable for and shall indemnify the Buyer, its servants and agents from and against all costs (including legal costs), charges, expenses, damages, claims or proceedings arising from or in connection with:-

- (a) any failure by the Supplier to provide the Service in accordance with these Conditions or any other term of the Contract or at all;
- (b) any breach by the Supplier of these Conditions (not amounting to a failure to provide the Service);
- (c) any injury, death, sickness or ill health caused to or suffered by any servant or agent of the Buyer or of the Supplier, customer or visitor to any Facility, or other person affected by provision of the Service;
- (d) any loss or damage to any land, building or other property of any person;
- (e) any other third party claim; except where the same results from the wilful or negligent act or omission of the Buyer or any of its servants or agents.

22. Insurance

Without prejudice to its liability to indemnify the Buyer, the Supplier shall take out and maintain the following insurances with reputable insurers lawfully carrying on such insurance business in the United Kingdom:-

- (a) in respect of liability for personal injury or death of any person under a contract of service or apprenticeship with the Supplier and arising out of or in the course of such person's employment, where such insurance shall comply with all relevant legislation;
- (b) in respect of liability for personal injury or death of any other person, and loss or damage to real or personal property belonging to any person, such as is necessary to cover the liability of the Supplier and without prejudice to that requirement, where the Supplier is working at an Buyer's facility, such cover shall be for not less than £5 million for any occurrence or series of occurrences;
- (c) in respect of the Service and any unfixed materials or goods intended to form an intrinsic part of the Service, including those delivered to or placed adjacent to the Facility until delivery is accepted by the Buyer, against loss and damage by fire, lightning, explosion, storm, tempest, flood, bursting or overflowing water tanks or pipes, earthquake, aerial devices and articles dropped there from, theft, riot and civil commotion, for the full reinstatement value thereof plus 15% to cover professional fees, such insurance to be in the joint names of the Supplier and the Buyer unless this requirement is waived in writing by the Buyer;
- (d) where the Service is in the nature of consultancy or advice, professional indemnity insurance covering (without limitation) all liability under the Contract

upon customary and usual terms and conditions prevailing for the time being in the insurance market, with the amount in cover being not less than one million pounds (or as otherwise agreed in writing by the Buyer) for any occurrence or series of occurrences, for a period expiring no earlier than 12 years after the end of the Contract, provided always that such insurance is available at commercially reasonable rates in the insurance market at large. Any increased or additional premium required by insurers by reason of the Supplier's own claims record or other acts, omissions, matters or things particular to the Supplier shall be deemed to be within commercially reasonable rates.

23. Evidence of Insurance

23.1 The Supplier shall produce such evidence of insurance as the Buyer may reasonably require in relation to the insurances demanded as detailed above. Such evidence shall show that the insurances referred to and required by the Contract have been taken out, paid for and shall remain in force at all material times throughout the duration of the Contract, and (in the case of professional indemnity insurance) as required thereafter by paragraph 22(d) of these Conditions. In this regard the Supplier shall furnish the Buyer with details of each renewal of insurance as and when its renewal is made throughout the duration of the contract and (if so required by the Buyer) thereafter.

24. HM Revenue & Customs Requirements - Generally

The Supplier shall comply with conditions imposed by the Income and Corporation Taxes Act 1988, and the regulations made there under and relevant Income Tax regulations

25. HM Revenue & Customs Requirements - Construction Work

Where the Service involves construction work the Supplier shall satisfy the Buyer that the Supplier has properly registered with HM Revenue and Customs for the Construction Industry Scheme (CIS) and holds a Unique Taxpayer Reference (UTR) number. The Supplier must present the Buyer with suitable evidence of registration with HM Revenue and Customs before any payment is made to the Supplier for construction work. The Supplier must similarly check the exemption of all sub-Suppliers before similar payment is made to them.

26. Equal Opportunities

As the Buyer is committed to equal opportunities in all its activities, it requires that the Supplier, by entering into this Contract shall comply with all current appropriate legislation and without prejudice to that will not discriminate on the grounds of race, skin colour, nationality, ethnic or national origin, gender, sexual orientation, marital status, disability, age, religious belief or class at any time in the execution of the Contract.

27. Freedom of Information (FOI)

The Supplier is to be aware that the Council is bound by the Freedom of Information and the Environmental Information Regulations, so the release of contract information to the public is also governed by such regulations. Disclosure of contractual information will be dependant on exemptions and the public interest test. Suppliers are to be aware that agreements or confidentiality clauses in contracts may be invalid to the extent that

they may exceed the exemptions or public interest. Although not a legal requirement, in accordance with the recommendation of Section 45 of the FOI Act, the Council will consult with Suppliers if their views would help to decide if contract related information is a) exempt or b) in the public interest. However the Supplier is to be aware that it is the Council, not the Supplier, who will decide whether information should be disclosed.

28. Sustainability

The Council strives to protect and enhance the environment of Devon so that it can make a major contribution to quality of life, support balanced economic growth and make a positive contribution to the global environment. The Council is therefore committed to the achievement of sustainable development that minimises the environmental, economic and social impacts, either locally or globally, associated with the products, services and works it procures. In purchasing supplies, services or new development projects, the inherent sustainable qualities possessed by those purchases are of vital importance to the Council and such qualities therefore form a prime requirement in purchasing decisions to achieve best value for the Council. The Supplier therefore is required, through its service delivery, to seek wherever practicable by design or supply to conserve energy, reduce waste, use more durable and upgradeable goods, use more sustainable products (i.e. those that minimise environmental, social and economic impacts) and influence their Suppliers to develop same and contribute to the establishment of better sustainable supply chains.

29. Health and Safety

- 29.1 The Supplier represents and warrants to the Buyer that the Supplier has satisfied himself that all necessary tests and examinations have been made or will be made prior to delivery of the Service to ensure that the Service is designed and constructed so as to be safe and without risk to the health or safety of persons using or affected by the same.
- 29.2 The Supplier shall undertake the Service with the proper regard to health and safety and shall comply with all statutory enactments, regulations (such as the Health and Safety at Work etc Act 1974 and, where applicable, the Construction (Design and Management) Regulations 2007) and by-laws applicable thereto or to the Facility, the cost of complying with the same being deemed to be included in the Contract Price.

30. Patents and Information

- 30.1 Except to the extent that the Service incorporates designs furnished by the Buyer, the Supplier shall ensure that the Service does not infringe any patent, trade mark, registered design, copyright or other right in the nature of intellectual property of any third party.
- 30.2 All rights, including ownership and copyright, in any specifications, instructions, plans, drawings, patents, models, designs, reports, surveys, or other materials or the like either:-
- (a) furnished to or made available to the Supplier by the Buyer and shall vest in the Buyer absolutely, or,
 - (b) prepared by or for the Supplier for use, or intended use, in relation to the performance of this Contract are hereby assigned to and shall vest in the Buyer absolutely.

31. Confidential Information

The Supplier shall not make use of for its or their own purposes, divulge, disclose, dispose of or part with possession, custody or control of any documents, material or other information (in whatever form) prepared, supplied or obtained for or pursuant to this Contract, unless prior written consent has been given by the Buyer. The Supplier shall not refer to the Buyer or the Contract in any advertisement without the Buyer's prior written consent.

32. Assignment and Sub-Contracting

- 32.1 The Supplier shall not sub-contract any part of the Contract without the prior written consent of the Buyer. Sub-contracting any part of the Contract shall not relieve the Supplier of any obligation or duty attributable to it under the Contract including these conditions.
- 32.2 Where the Buyer has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Supplier to the Buyer immediately it is issued.
- 32.3 The Supplier shall ensure that its sub-Suppliers are informed of these Conditions and required to comply with them at all times.

33. Transfer of Contract

- 33.1 The Supplier shall not transfer or assign the Contract, or any part, share or interest in it, directly or indirectly to any person whomsoever, without the written consent of the Buyer.
- 33.2 The Buyer may transfer or assign the Contract, or any part, share or interest in it, to a successor to any of its functions, or to a Supplier performing any of its functions on the Buyer's behalf, in which case the Buyer shall give immediate written notice to the Supplier of the transfer or assignment.

34. Notices

Any notice given under or pursuant to the Contract may be sent by the recorded delivery service or transmitted by facsimile or other electronic transmission resulting in the receipt of a written communication in permanent form, and if so sent or transmitted to the address of the party shown on the Tender or quotation, or to such other address as the party may by notice to the other have substituted therefore, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

35. Settlement of Disputes - Mediation

If any dispute or difference arises between the Buyer and the Supplier or any matter or thing arising out of or relating to the Contract, which cannot be resolved by negotiation, then such dispute or difference shall firstly be referred to the process of mediation conducted by a person to be agreed between the parties. If an agreement to resolve the dispute or difference is subsequently made after proper mediation then that agreement will be binding on both parties to the Contract.

36. Settlement of Disputes - Arbitration

If any dispute or difference arises between the Buyer and the Supplier or any matter or thing arising out of or relating to the Contract which cannot be otherwise resolved and mediation is unsuccessful, or the parties agree not to use mediation, then such dispute or difference shall be referred to arbitration and final decision by a person to be agreed between the parties, or, failing agreement as to the person within 14 days after either party has given to the other a written request to reach an agreement as to the appointment of a specific Arbitrator, then a person is to be appointed by an independent but appropriate body agreed by the parties hereto and in accordance with the provisions of the Arbitration Act 1996. The award of such Arbitrator shall be final and binding on the parties.

37. Headings

The headings to Conditions shall not affect their interpretation.

38. Applicable Law

These Conditions shall be governed by English Law.

39. Contracting Out

None of the provisions of this Agreement are intended to or will operate to confer any benefit pursuant to the Contracts (Rights of Third Parties) Act 1999 on a person who is not named as a party to this Agreement.

40. Access to Acts And Regulatory Information

Should the Supplier be unable to obtain copies of or view relevant Acts of Parliament or regulatory documents or any relevant part thereof referred to in these Conditions, such copies will be made available to view (by appointment only) at the offices of the Buyer. Accordingly no claim by the Supplier of lack of knowledge of the content or requirements of these documents will be accepted by the Buyer.

41. Data Quality

Quality information is key to the Council's objectives. Where a contract involves the exchange of information it is important that the following assurance steps have been taken to enable the following quality standards to be met:- Clear ownership of the data, evidenced information available if necessary, the data is accurate and consistent, relevant and on time.

42. Data Protection

The Supplier shall comply with the requirements of the Data Protection Act 1998.

DATA PROTECTION STATEMENT

The Council is bound by the requirements in the Data Protection Act 1998. The Council requires that all Suppliers abide by the requirements set out in the Data Protection Act 1998.

Your Company shall therefore;

- 1) comply with any statute, statutory instrument, rule, order or regulation under the Act
- 2) at all times have in place and maintain to the satisfaction of the Council procedures to protect any data from unauthorised or unlawful processing, loss, damage or destruction
- 3) keep the Council fully indemnified against all actions, claims, costs, expenses and damages brought against or suffered by the Council arising out of any breach of the above conditions or the principles of data protection

43. Break Clause

Break Clause Provision – Buyer or Supplier (“the parties”)

Notwithstanding the duration of the contract period, from inception to completion, the employment of the Supplier may be determined by either party at the following points;

- (a) not earlier than the end of 6 months from the date of commencement of the contract
- (b) at the end of 12 months from the date of commencement of the contract
- (c) at any stage, but not earlier than the end of 6 months from the date of commencement of the contract where for reasons of failure to secure sufficient financial resources or for any other circumstance whereby the Council finds itself unable to continue with the project.

All providing at least 6week notice to that effect shall have been given to the other party.

Either party shall invoke a Break clause by notice in writing within 10 working days of a critical point, either before or after the point.

On receipt, by either party as the case may be, of the notice as referred to above, the Supplier shall not, unless otherwise agreed between the parties, be under any obligation to proceed with the Service.

When a Break Clause is invoked and the Supplier’s employment terminated, the Supplier shall be paid by the Buyer either the sums due at the point of break as previously agreed in the tender or, if such sums have not been pre-tendered, as in point (c) above, any such reasonable costs due based on the percentage of the service satisfactorily completed as determined by the Buyer.