

# CARMARTHENSHIRE COUNTY COUNCIL

## GENERAL CONDITIONS OF CONTRACT

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# CARMARTHENSHIRE COUNTY COUNCIL

## GENERAL CONDITIONS OF CONTRACT

### Part 1 General Provisions

#### 1. Interpretation

In these Conditions:

“The Council” means Carmarthenshire County Council, or its successor(s);

“The Contractor” means the person who by the Contract undertakes to supply the Goods/Service to the Council. Where the Contractor is an individual or partnership, the expression shall include the personal representatives of that individual or the partners;

“Contracting Authority” means any contracting Authority as defined in Regulation 3 of the Public Contracts Regulations 2006 other than the Council.

“The Contract” means the Contract concluded between the Council and the Contractor, consisting of these clauses and any attached Appendices or Schedules, and including all specifications and other documents which are incorporated or referred to herein and in the index of the Tender or Contract document. In case of discrepancy between these Conditions and other documents forming part of the Contract, these Conditions shall prevail unless otherwise agreed in writing;

"Award Date" means the date of the award of the Contract by the Council to the Contractor;

“Commencement Date” means the date that that The Contract begins.

“Tender” means the Contractor’s response to the Invitation to Tender (as clarified).

“The Goods” means all goods, materials or articles, which the Contractor is required to supply under the Contract;

“The Services” means the services specified in the Contract;

“The Contract Period” means the period specified in the Contract;

“Extension” means the extension of the duration of the Contract agreed in accordance with clause 26.

“Party” means a party to this Contract and “Parties” shall be construed accordingly.

“The Contract Price” means the price (exclusive of VAT) payable to the Contractor by the Council under the Contract for the goods/service and for the full and proper performance by the Contractor of its parts of the Contract;

“Pricing Schedule” means the Schedule containing details of the Price.

“The Contract Standard” means the standard specified in the Contract;

“The Specification” means the service specification – that is, the description of the Services to be performed under the Contract - as specified in the tender documentation agreed between the parties and contained herein;

“The Authorised Officer” means the person appointed by the Council and notified in writing to the Contractor to act as the representative of the Council for all purposes connected with the Contract, or the authorised representative of such a person;

"Contract Manager" means the official of the Council, or other person appointed by the Council to act on its behalf for the purpose of managing and administering the Contract;

“Contractor’s Representative” means the individual from time-to-time authorised to act on behalf of the Contractor for the purposes of the Contract.

“Approval” and “Approved” means the written consent of the Contract Manager.

"Key Personnel" means any person who, in the Council's opinion, is fundamental to the performance of the Contract;

“Council Property” means any property, other than real property, issued or made available to the Contractor by the Council in connection with the Contract.

“Intellectual Property Rights” means patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“Personal Data” has the same meaning as in Section 1(3) of the Data Protection Act 1998;

“Confidential Information” means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, [all personal data and sensitive personal data within the meaning of the Data Protection Act 1998] and the Commercially Sensitive Information.

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.

“Information” has the meaning given under section 84 of the Freedom of Information Act 2000.

“Requests for Information” shall have the meaning set out in FOIA or any apparent request for information under the FOIA.

“Default” means any breach of the obligations of either Party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either Party, its employees, agents or subcontractors in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other.

“Quality Standards” means the quality standards relating to the Goods published by the British Standards Institute, the International Organisation for Standardisation or any other equivalent body, with which a skilled and experienced operator engaged in the same type of industry or business as the Contractor’s would reasonably and ordinarily be expected to comply as supplemented by the Specification.

“Regulatory Bodies” means those government departments and regulatory, statutory and other entities, committees, ombudsmen 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 the Contract or any other affairs of the Council and “Regulatory Body” shall be construed accordingly.

“Legislation” and “Law” mean any Act of Parliament or subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative and any enforceable Community right within the meaning of section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any Regulatory Body of which the Contractor is bound to comply, in each case in the United Kingdom.

“General Change in Law” means a change in Law which comes into effect after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Contractor) or which would affect or relate to a comparable element of the same or a similar nature to the Contract.

Unless the context otherwise requires it, reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended or re-enacted by any subsequent enactment, order, regulation or instrument;

The headings to these conditions are for ease of reference only and shall not affect their interpretation.

Nothing in the Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Council and the Contractor, unless expressly stated under the Contract.

## **2. Appendices and Policy Statements**

2.1 These Standard General Conditions of Contract incorporate Appendices A, B, and C where indicated, indexed and attached, and the Carmarthenshire County Council Policy Statements indexed, enclosed with or explicitly referred to within the Tender documentation.

## **3. Variation of Conditions**

3.1 The Goods shall be supplied in accordance with these Conditions. Any conditions which the Contractor may seek to impose and which in any way add to, vary or contradict these Conditions shall be excluded and not form part of the Contract, unless each of such conditions has been specifically agreed to in writing by the Council.

3.2 No later variation shall be binding unless it has been agreed in writing and signed by an authorised representative of the Council.

#### **4. Notices**

4.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.

4.2 Any notice given in relation to the Contract shall be treated as properly given and effective on the date of posting.

4.3 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), or by facsimile transmission or electronic mail (confirmed in either case by letter). Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted, or four hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

4.4 Either Party may change its address for service by serving a notice in accordance with this clause.

#### **5. Inspection of Premises**

5.1 Save as the Council may otherwise direct, the Contractor is deemed to have inspected the Premises before submission of its tender and to have made appropriate enquiries so as to have understood the nature and extent of the Contract to be carried out and be satisfied in relation to all matters connected with the performance of the Contract.

5.2 The Council shall, at the request of the Contractor, grant such access as may be reasonable for the purpose referred to in clause 5.1.

#### **6. Mistakes in Information**

6.1 The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Council by the Contractor in connection with the provision of the Goods, and shall pay the Council any extra costs occasioned by any discrepancies, errors or omissions therein.

#### **7. Conflicts of Interest**

7.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any employee, servant, agent, supplier or sub-contractor is placed in a position where, in the reasonable opinion of the Council there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or such persons and the duties owed to the Council under the provisions of the Contract. The Contractor will disclose to the Council full particulars of any such conflict of interest, which may arise.

7.2 The provisions of this clause shall apply during the continuance of the Contract and for a period of two years after its termination or expiry.

## **8. Fraud**

8.1 The Contractor shall take all reasonable steps, in accordance with good industry practice, to prevent any fraudulent activity by the Staff, the Contractor (including its shareholders, members, directors) and/or any of the Contractor's suppliers, in connection with the receipt of monies from the Council. The Contractor shall notify the Council immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

## **Part 2 Payment and Price**

### **9. Price & Payment**

9.1.1 The Contract Price shall be "net", that is, after deduction of all agreed discounts. The amount of any duty additional to the Contract Price and any early settlement discounts shall be shown separately in the Contract.

9.1.2 Where Goods are to be supplied, the Contract Price shall include the cost of packaging, packing materials, addressing, labelling, loading and delivery to the addresses named in the Contract or orders.

9.2 The Council shall pay the Contract Price to the Contractor, by BACS if the Council so chooses, within thirty days of the receipt and agreement of the satisfactory condition of the goods and upon receipt and agreement of a valid invoice.

9.3 Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor, the same may be deducted from any sum then due, or which at any time thereafter may become due, to the Contractor under the Contract or under any other contract within the Council.

9.4 If for any reason, the Contract comes to an end otherwise than at the end of a complete calendar month, the Council must pay in respect of the partly completed calendar month  $\frac{1}{365}$ <sup>th</sup> of the annual Contract Price for each completed day worked by the Contractor in the partly completed calendar month.

9.5.1 The Price shall be firm for the initial Term. In the event of an extension of the Term being considered by the Council pursuant to Clause 26, the Council will (as part of such

consideration) review the Price with the Contractor in the six Months period prior to the expiry of the Contract.

9.5.2 If a Price variation is agreed with the Council as part of its consideration relating to an extension of the Term, the revised Price will take effect from the first day of any extension of the Term pursuant to Clause 26 and shall remain firm for the period of the extension of the Term.

9.5.3 Any increase in the Price pursuant to Clauses 9.5.1 and 9.5.2 above will only be considered if the increase does not exceed the percentage change in the Office of National Statistics' Consumer Prices Index (CPI) (or another such index specified in a Schedule to this Contract) between the Commencement Date and the date of any notice given under clause 9.5.2.

9.6.1 Any requirement of Law to account for the Goods in euro (or to prepare for such accounting), instead of and/or in addition to sterling, shall be implemented by the Contractor at nil charge to the Council.

9.6.2 The Council shall provide all reasonable assistance to facilitate compliance by the Contractor under clause 9.6.1.

### **Part 3 Statutory Obligations and Regulations**

#### **10. Health & Safety**

10.1 The Contractor represents and warrants to the Council that the Contractor has satisfied himself that all necessary tests and examinations have been made or will be made prior to delivery of the goods/service to ensure that the goods/service are designed and constructed so as to be safe and without risk to the health or safety of persons using the same, and that he has made available to the Council adequate information about the use for which the goods/service have been designed and have been tested and about any conditions necessary to ensure that when put to use the goods/service will be safe and without risk to health. The Contractor shall indemnify the Council against all actions, suits, claims, demands, losses, charges, costs and expenses which the Council may suffer or incur as a result of or in connection with any breach of this condition.

10.2 The Contractor warrants that the Contract will be undertaken by appropriately qualified and trained persons with due care and diligence and to such high standards as it is reasonable for the Council to expect in all circumstances.

10.3 The Contractor shall ensure that its safety policy has been drawn to the attention of all its members of staff, and that all of its management and supervisory staff have a detailed knowledge of this policy and that they will observe the policy and require the Contractor's staff to comply fully with its provisions. The Contractor shall also ensure that its staff complies with the Council's Health & Safety and other relevant policies and procedures at all times, whilst on the Council's premises.

10.4 Where COSHH Regulations or other safety legislation is applicable to the Goods/Service supplied, the Contractor must ensure that the appropriate safety data sheets are made available to the Council.

## **11. Equal Opportunities**

11.1 The Contractor shall comply with the Council's statutory obligations under the Sex Discrimination Act 1975 (as amended to the Sex Discrimination Act 1986), the Race Relations (Amendment) Act 2000, the Disability Discrimination Acts 1995, 2005 & Disability Rights Commission Act 1999, the Rehabilitation of Offenders Act 1974, the Equal Pay Act 1970 and (Amendment) Regulations 1986, the Human Rights Act 1998, The Employment Equality (Religion & Belief) Regulations 2003, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Age) Regulations 2006, or other relevant legislation and, accordingly, will not discriminate directly or indirectly against any person because of his or her sex, marital status, race, colour, nationality ethnic or national origin, disability, Religion or Belief, Age or spent offences in decisions to recruit, train, promote, discipline or dismiss employees.

11.2 The Contractor shall observe as far as is practicable the Codes of Practice of the Equal Opportunities Commission and the Commission for Racial Equality, the Code of Good Practice on the Employment of Disabled People and the Code of Practice for the elimination of discrimination in the field of employment against disabled persons or persons who have had a disability.

11.3 In the event of any finding of unlawful discrimination being made against the Contractor, during the Contract Period by any court or industrial tribunal, or of an adverse finding in any formal investigation by the Equal Opportunities Commission or the Commission for Racial Equality over the same period, the Contractor shall inform the Council of this finding and shall take appropriate steps to prevent repetition of such unlawful discriminations.

11.3.1 The Contractor shall, upon request, provide the Council with details of any steps taken under the above condition.

11.4 The Contractor shall provide such information as the Council may reasonably request for the purpose of assessing the Contractor's compliance with the above conditions including, if requested, examples of any instructions, recruitment advertisements or other literature and details of monitoring applicants and employees.

## **12. Training**

12.1 The Contractor shall provide education and training for the Council's personnel as set out in the specification. As a minimum, the combination of training provided hereunder and the Documentation and Materials provided in accordance with Clause 12.2 below shall be sufficient to allow proper use, operation and management of the System and Deliverables by appropriately qualified personnel who receive such training and who have access to such Documentation and Materials. For the avoidance of doubt, "appropriately qualified" shall mean a generally accepted level of ability, education and experience required for such tasks and shall not refer to any particular personnel of the Council.

12.2 The Contractor shall supply Documentation and Materials to the Council as specified in the specification. As a minimum, the combination of Documentation and Materials provided hereunder and the training provided in accordance with Clause 12.1 above shall be sufficient

to allow proper use, operation and management of any System and Deliverables by appropriately qualified personnel who have access to such Documentation and Materials and who receive such training. For the avoidance of doubt, "appropriately qualified" shall mean a generally accepted level of ability, education and experience required for such tasks and shall not refer to any particular personnel of the Council.

### **13. Inducements**

13.1 The Contractor shall not offer to the Council or its representatives as a variation of the Conditions of the Contract or as a Contract collateral to it any advantage other than a cash discount against the Contract Price.

13.2 The Council shall be entitled to cancel the Contract and to recover from the Contractor the amount of any loss resulting from such cancellation if:

13.2.1 the Contractor shall have offered, or given, or agreed to give to any person any gift, consideration, inducement or reward of any kind, for doing or not doing any action in relation to the Contract or any other Contract with the Council; or

13.2.2 the acts referred to in 13.2.1 above shall have been done by any person employed by the Contractor or acting on its behalf (whether with or without the knowledge of the Contractor); or

in relation to any Contract with the Council, the Contractor or person employed by it or acting on its behalf shall:

13.2.3 have committed any offence under the Prevention of Corruption Acts 1889 to 1916, or

13.2.4 have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

13.3 Any clause limiting the Contractor's liability does not apply to this clause.

### **14. The Contracts (Rights of Third Parties) Act 1999**

14.1 No person who is not a Party to the Contract (including without limitation any employee, officer, agent, representative, or sub-contractor of either the Council or the Contractor) shall have any right to enforce any term of the Contract, which expressly or by implication, confers a benefit on him without the prior agreement in writing of both Parties, which agreement should specifically refer to the clause 14. This clause does not affect any right or remedy of any person, which exists or is available otherwise than pursuant to that Act.

## **Part 4 Protection of Information**

### **15. Confidentiality**

15.1 The Contractor and its staff must not disclose to any person other than a person authorised by the Council any information acquired by them in connection with the Contract.

15.2 Without prejudice to the generality of Condition 15.1, the Contractor and its staff must not disclose to any person other than a person authorised by the Council any information acquired by them in connection with the provision of the Services which concerns the Council, its staff or procedures, or the medical condition of any employee.

15.3 In these Conditions, "Commercially Sensitive Information" means all matters relating to the Contract together with all information designated as such by either party in writing and all other information which relates to the proceedings, business, affairs, products, trade secrets, developments, know-how, personnel, customers and suppliers of either party and information which may reasonably be regarded as the confidential information of the disclosing party.

15.4 Subject to Clause 15.5 and 15.6 below, each Party shall keep confidential all Commercially Sensitive Information disclosed to it. Each Party shall procure that its employees shall not make any disclosure to any person of any Commercially Sensitive Information.

15.5 The Contractor acknowledges the commitment of the Council to open government and public access to information. Accordingly, the Parties agree that:

15.5.1 the provisions of this Clause 16 are subject to the respective obligations and commitments of the Council under the Freedom of Information Act 2000 (for the purposes of this clause the FOIA) (as may be amended from time to time);

15.5.2 subject to Clause 15.5.3 the decision on whether any exemption applies to a request for disclosure of recorded information is a decision solely for the Council;

15.5.3 where the Council is managing a request as referred to in Clause 15.5.2 then it will consult with the Contractor in relation to any request for disclosure of recorded information to which this Clause applies and in accordance with the guidance referred to in the Code of Practice on the Discharge of Public Authorities' Obligations issued under section 45 of the FOIA. The Contractor shall co-operate with the Council making the request and respond within 5 Working Days to any request by it for assistance in determining how to respond to a request for disclosure; and

15.5.4 the Parties shall each nominate a representative for considering and agreeing matters relating to this Clause 15.5.3.

15.6 Clause 15.3 shall not apply to:

15.6.1 any disclosure of information to each of the Parties' professional advisors;

15.6.2 any disclosure of information which is required to ensure the Council's compliance with the FOIA as set out in Clause 15.5 above;

15.6.3 any disclosure of information that is reasonably required by, or to, persons engaged in the performance of its obligations under the Contract including the

Contractor's and subcontractors provided that such subcontractors have entered into undertakings as to confidentiality and as to compliance with the FOIA substantially in the form of this Clause;

15.6.4 any information which the disclosing party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this Clause 15;

15.6.5 any disclosure to enable a determination to be made under clause 36 Arbitration;

15.6.6 any disclosure which is required by any law (including any order of a court of competent jurisdiction) or the rules of any stock exchange or governmental or regulatory Council having the force of law;

15.6.7 any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party, and which is not subject to an obligation of confidentiality;

15.6.8 any provision of information to the Contractor's bankers or their professional advisers or insurance advisers or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to the Contractor to enable it to carry out its obligations under the Contract, to that person but only to the extent reasonably necessary to enable a decision to be taken on the proposal;

15.6.9 when appropriate, any registration or recording of the consents and property registration required;

15.6.10 Subject to Clause 15.4 any disclosure by the Council of any document related to the Contract to which it is a party and which the Contractor (acting reasonably) has agreed in writing with the Party making the request contains no Commercially Sensitive Information; and

15.6.11 any disclosure for the purpose of:

15.6.11.1 the examination and certification of the Council's accounts; or

15.6.11.2 any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources.

15.6.12 any disclosure of information which is or was lawfully received by the receiving party from a third party and which is or was not the subject of any obligations of confidentiality; or

15.6.13 any information shown to the reasonable satisfaction of the other party to have been independently developed or created by the receiving party or its agents or sub-contractors without access to the Commercially Sensitive Information supplied.

15.7 Where disclosure is permitted under Clause 15.6.2, 15.6.3, 15.6.5, 15.6.8 the disclosing party shall ensure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in these Conditions.

15.8 The provisions and obligations set out in this Clause 15 shall survive and remain in force upon and following the termination of the Contract.

15.9 Where the Contractor, in carrying out its obligations under the Contract, is provided with Commercially Sensitive Information from or by a third party, the Contractor shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless the Contractor has sought the prior written consent of that third party, and has obtained the prior written consent of the Council.

15.10 In entering into the Contract to provide goods or services for parties which are all defined as public bodies under the FOIA, the Contractor notes and acknowledges the Freedom of Information Act 2000 and both the respective Codes of Practice on the Discharge of Public Authorities` Functions and on the Management of Records (which are issued under sections 45 and 46 of the FOIA respectively). The Contractor will act in accordance with these provisions to the extent they apply to the Contract and will provide all reasonable assistance to the Council to facilitate its compliance therewith.

15.11 The Parties acknowledge that the Wales Audit Office has the right to publish details of the Contract in its reports.

## **16. Data Protection**

16.1 Where the Contractor is processing personal data on behalf of the Council as a Data Processor defined under the Data Protection Act 1998 the Contractor must only use the personal data as instructed by the Council and solely for the purpose connected with provision by the Contractor of the service to the Council.

16.2. The Contractor must take appropriate technical and organisational security measures to safeguard the personal data it processes for the Council; and

16.2.1 Ensure the reliability of its employees that have access to the data by providing appropriate training in secure data handling;

16.2.2 Not divulge or disclose the data directly or indirectly to any person without the express prior written consent of the Council, except to its employees, agents and subcontractors who are engaged in the processing of the data and are subject to binding obligations or except as may be required by any law or regulation;

16.2.3 Notify the Council promptly and without undue delay of any security breaches that occur, such as unauthorised disclosure, loss or theft of data.

16.3 The Contractor must indemnify the Council against all claims and proceedings and all liability, loss, costs and expenses incurred in connection therewith made or brought by any person in respect of any loss, damage or distress caused to that person by the loss or disclosure of any personal data by the Contractor, its employees or agents.

16.4 The provisions of clause 16.3 shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

16.5 Upon the expiry or termination of this Contract, the Contractor shall:

16.5.1 Provide confirmation in writing that all personal data processed on behalf of the Council has been completely deleted or destroyed securely; or

16.5.2 Ensure that the personal data is returned to the Council in its entirety via a secure method of transfer.

## **17. Intellectual Property Rights Indemnity**

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

- (a) furnished to or made available to the Contractor by the Council shall remain the property of the Council;
- (b) prepared by or for the Contractor for use, or intended use, in relation to the performance of this Contract 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 Contract) without prior Approval, use or disclose any such Intellectual Property Rights, or any other information (whether or not relevant to this Contract) which the Contractor may obtain in performing the Contract except information which is in the public domain.

17.2 The Contractor shall obtain Approval before using any material, in relation to the performance of the Contract, 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.

17.3 It is a condition of the Contract that the materials supplied or licensed by the Contractor will not infringe any Intellectual Property Rights of any third Party and the Contractor shall during and after the Initial Term on written demand indemnify and shall 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 refers to:

- (a) designs furnished by the Council;
- (b) the use of data supplied by the Council, which is not required to be verified by the Contractor under any provision of the Contract.

17.4 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.

17.5 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Right in materials supplied or licensed by the Contractor, provided always that the Contractor:

- (a) shall consult the Council on all substantive issues which arise during the conduct of such litigation and negotiations;
- (b) shall take due and proper account of the interests of the Council; and
- (c) shall not settle or compromise any claim without the Council's prior written consent (not to be unreasonably withheld or delayed).

17.6 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 Contract and shall be repaid all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so.

17.7 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 Contract.

17.8 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract 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:

- (a) modify any or all of the Goods without reducing the performance or functionality of the same, or substitute alternative Goods of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutates mutandis to such modified Goods or to the substitute Goods; or
- (b) procure a licence to use and provide the Goods, which are the subject of the alleged infringement, on terms, which are acceptable to the Council.

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

17.10 The provisions of this clause shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

## **18. Publicity, Media and Official Enquiries**

Without prejudice to the Council's obligations under the Freedom of Information Act, neither Party shall make any press announcements or publicise the Contract or any part thereof in any way, except with the written consent of the other Party.

The provisions of this clause shall apply during the continuance of this Contract and indefinitely after its expiry or termination

## **19. Audit and the Wales Audit Office**

19.1 The Contractor shall keep and maintain until [twelve years] after the Contract has been completed, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Goods provided under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Contractor shall on request afford the Council or the Council's representatives such access to those records as may be required by the Council in connection with the Contract.

## **Part 5 Control of the Contract**

### **20. Contract**

20.1 During the period for which any Contract is accepted the Contractor(s) shall supply and deliver to the Council and the Council shall accept such goods, services, articles or materials (subject as hereinafter mentioned) of the description and at the prices mentioned in the tender annexed hereto in such quantities and at such prices as may be ordered by the Council.

20.2 In the event that a different organisation is required to take over the supply of Goods/Service at the expiry or termination of the Contract, the Contractor shall co-operate in the transfer, under arrangements to be notified to him by the Council. The transfer shall be arranged between the Council and the Contractor so as to reduce to a minimum any interruption in the supply of such Goods/Service.

### **21. Monitoring of Performance**

21.1 The Contractor shall comply with the monitoring arrangements set out in the Specification including, but not limited to, providing such data and information as the Contractor may be required to produce under the Contract.

### **22. Severability**

22.1 If any provision of the Contract is or becomes illegal, void or invalid, that shall not affect the legality and validity of its other provisions.

### **23. Contract Performance**

23.1 If the Contractor(s) shall fail to deliver goods/services and/or services in accordance with these Conditions the Council shall be entitled to obtain such goods/services and/or services elsewhere and the Contractor(s) shall indemnify the Council against all expenses arising from or in relation to such failure on his part. The Council shall be entitled to deduct such expenses from monies payable to the Contractor(s) under the Contract and/or

any other contract in force for the time being between the Contractor(s) and the Council and the Contractor(s) shall forthwith pay the balance of such expenses not so deducted.

## **24. Waiver**

24.1 The failure of either party to seek redress for breaches or to insist on strict performance of any provision of the Contract or the failure of either party to exercise any right or remedy to which it is entitled under the Contract shall not constitute a waiver thereof and shall not cause a diminution of the obligations under the Contract.

24.2 No waiver of any provisions of the Contract shall be effective unless it is agreed by both parties in writing.

24.3 No waiver of any default shall constitute a waiver of any subsequent default.

## **25. Transfer, Sub-contracting & Change of Control**

25.1 The Contractor(s) shall be prohibited from transferring or assigning directly or indirectly to any person or persons whatsoever, any portion of his contract without the written permission of the Council. Sub-letting of any part(s) of the work except to the extent permitted in writing by the Chief Officer concerned, shall be prohibited.

25.2 The Contractor shall exercise due care and propriety when dealing with third parties in connection with the Contract and ensure that no commitments are entered into (unless expressly required under the Contract), without the Council's prior written consent.

25.3 The Contractor shall ensure that any sub-contractor complies with the terms and conditions of the Contract, so far as they are applicable. Any sub-contract shall not relieve the Contractor of his obligations under the Contract.

25.4 The Contractor shall forthwith inform the Council in writing of any proposal or negotiations which may or will result in a merger, take-over, change of control, change of name or status, or the Contractor (being a company as defined in the Companies Act 1985) shall inform the Council of any such change as defined in section 416 of the Income and Corporation Taxes Act 1988. The Contractor shall comply with any request by the Council for information arising from this Condition.

## **26. Possible Extension of Term**

26.1 Subject to satisfactory performance by the Contractor during the Initial Term, the Council shall be entitled by written notice to the Contractor given not less than one month prior to the last day of the Term to extend the Contract for one further period. The provisions in this Contract will apply throughout any such extended period.

## **27. Novation**

27.1 The Council shall be entitled to assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof to any Contracting Council, private

sector body or any other body established under statute ("Transferee") provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under this Contract.

27.2 The Council shall be entitled to disclose to any Transferee any Confidential Information of the Contractor, which relates to the performance of the Contract by the Contractor. In such circumstances the Council shall authorise the Transferee to use such Confidential Information only for purposes relating to the Contracts for Goods performance of the Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee accepts an obligation of confidence.

## **Part 6 Liabilities**

### **28. Liabilities, Indemnity & Insurance**

28.1 The Contractor(s) shall indemnify the Council against any costs, claims, demands, actions and expenses arising in respect of personal injury to any person whether or not employed by the Contractor(s) occasioned by or in relation to the performance or purported performance of the Contract or damage to property. Proof of adequate Insurance cover must be provided before the Contract is awarded, in respect of Public Liability, Employer's Liability, Professional Liability and/or Product Indemnity (as normally required), and to the specified sum (such sum(s) will be as detailed in the Contract Specification and/or the Tender document).

28.2 The Contractor shall, prior to the commencement of the Contract; and thereafter on the renewal date of each individual policy of insurance, as and when such occurs; and at such other times as the Supervising Officer may reasonably require:

- (a) Provide sight of original documentation (including policies, cover notes, premium receipts and any other documents) to the Council;
- (b) Supply copies of the original insurance documentation;
- (c) Supply confirmation from the Contractor's and if relevant, sub-contractors' insurers that the insurance obtained is fully compliant with the obligations of this Contract.

28.3 The Council shall be entitled to notify the Contractor in writing that in its opinion any such policy of insurance or self-insurance arrangement does not provide sufficient cover such insurance as will so comply. Upon receipt of such notice, the Contractor shall forthwith procure and maintain such insurance as the Council shall reasonably require in breach of which the Council itself may cause such insurance to be effected. Where such breach does occur, the Contractor shall pay to the Council as a debt such sum as the Council shall certify as being the cost to the Council of effecting such insurance, together with a sum equal to 10% of the costs of such insurance as a contribution towards the Council's administrative costs and overheads.

28.4 The Contractor will be required at tender stage to indicate what its systems for dealing with third party insurance claims are. It shall be a condition of the Contract that the

Contractor will deal speedily and efficiently with all claims submitted to it by third parties, either by its own staff or by referring such claims to its insurers or their agents.

28.5 In its performance under the Contract the Contractor shall accept full responsibility for and shall indemnify and hold harmless the Council, its other contractors and its and their staff from and against the following claims:

28.5.1 All claims in respect of the Contractor's and its sub-contractor's non-compliance with applicable laws and regulations, including but not limited to the Health and Safety at Work etc. Act 1974, The Income and Corporation Taxes Act 1988, The Finance (No. 2) Act 1975, The Employment Protection (Consolidation) Act 1978 or any application of The Transfer of Undertakings (Protection of Employment) Regulations 1981 or the Acquired Rights Directive (EEC/77/187); as amended.

28.5.2 All claims whatsoever and howsoever arising which may at any time be made, which arise out of accidents to the Contractor's staff or the staff of the Contractor's sub-contractors, and/or loss or damage to the Contractor's property and the property of its sub-contractors and its and their staff;

28.5.3 All third party claims arising from the performance under the Contract and all liabilities of whatsoever nature caused by the negligence of the Contractor and/or its sub-contractor and its sub-contractor and its and their staff. Where the Contractor and/or its sub-contractors and its or their staff have merely contributed by their negligence to such a claim, the Council will only rely on this indemnity to the extent of the Contractor's or its sub-contractors' contributory negligence;

28.5.4 All loss or damage caused to any land, building or chattel in the ownership, occupation or possession of or partial occupation or possession of the Council by an employee or agent of the Contractor or its sub-contractors (whether such damage be caused by negligence or in any other way whatsoever);

28.5.5 Any consequential or indirect loss suffered by the Council as a result of the acts or omissions of the Contractor and/or its sub contractors or its or their staff;

28.4.6 All claims whatsoever and howsoever arising which may be made in relation to any Intellectual Property Rights in accordance with Clauses 17.1 to 17.10 inclusive, contained herein;

28.5.7 All claims whatsoever and howsoever arising which may at any time be made, which arise out of the failure of the Contractor to provide occupational pension benefits not less favourable in aggregate than those currently provided by the Council to its staff under the terms of the Local Government Superannuation Scheme where those staff have transferred to the Contractor under the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 1981 or the Acquired Rights Directive (EEC/77/187).

28.6 The Council shall be liable to the Contractor for any loss or damage to the Contractor's property which is caused by the wilful or negligent acts of the Council or its staff during the course of their employment but not in any other way whatsoever.

28.7 The Council shall in no circumstances be liable to the Contractor for any consequential, economic or financial loss of any kind whatsoever which the Contractor sustains in consequence of any failure on the Council's part to commission the volume of work anticipated by the Contractor or in any other way to generate the anticipated level of remuneration under this Contract. The Council shall be liable for payment of sums properly due to the Contractor under this Contract but shall only be liable to the Contractor for any consequential, economic or indirect loss caused by non-payment where the Contractor has given the Council at least one month's prior written notice of the importance of a particular payment, and has quantified the anticipated loss which a delay in payment would cause.

28.8 Any information given to the Contractor by way of guide quantities in the Bills of Quantities/Schedules of Rates and/or any plan, drawing, report, database, file or similar information in the Specification, is only given as a guide. The Contractor agrees that it has ascertained for itself the accuracy of the information and shall be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances, which might reasonably influence or affect the Contractor's tender. No claim against the Council shall be allowed whether in contract, in tort, under the Misrepresentation Act 1967, or otherwise on the ground of any inaccuracy.

## **29. Warranties and Representations**

29.1 The Contractor warrants and represents that: -

- (a) the Contractor has the full capacity and Authority and all necessary consents (including, but not limited to, where its procedures so require, the consent of its parent company) to enter into and perform this Contract and that this Contract is executed by a duly authorised representative of the Contractor;
- (b) the Contractor shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to good industry practice;
- (c) all obligations of the Contractor pursuant to the Contract shall be performed and rendered by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
- (d) the Contractor is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Contract.

## **Part 7 Default, Disruption and Termination**

### **30. Insolvency**

30.1 The Council may at any time by notice in writing summarily terminate the Contract without compensation to the Contractor in any of the following events: -

- 30.1.1 if the Contractor, being an individual, or, where the Contractor is a firm, any partner in that firm shall at any time become bankrupt, or shall have a receiving

order, administration order or interim order made against him, or shall make any composition or scheme of arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or if in Scotland he shall become insolvent or notour bankrupt, or any application shall be made for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors; or

30.1.2 if the Contractor being a company shall pass a resolution, or the Court shall make an order, that the company shall be wound up (except for the purpose of amalgamation or reconstruction), or if an administrative receiver on behalf of a creditor shall be appointed, or if the Court shall make an administration order, or if circumstance shall arise which entitle the Court or a creditor to appoint an administrative receiver or which entitle the Court to make a winding-up order or administration order;

provided always that such termination shall not prejudice or affect any right of action or remedy, which shall have accrued or shall accrue thereafter to the Council.

### **31. Termination**

31.1 Unless terminated earlier in accordance with the following provisions of this clause, this Contract shall be for a period of duration as stated on the Contract Schedule relating to the specific Contract made and starting from the Contract commencement date and shall continue thereafter for the agreed duration, specified on the Contract Schedule but subject to termination by either party giving to the other three months notice in writing.

31.2 If either party is in breach of any obligation on it under the Contract, and, in the case of a breach capable of remedy, the breach shall not have been remedied by the defaulting party within 30 days a written notice specifying the breach and requiring it to be remedied then the party not in breach of the obligation may forthwith terminate this Contract by notice in writing to the other without prejudice on the accrued rights of either party.

31.3 The Council shall be entitled to terminate this Contract forthwith by notice in writing to the Contractor in the event that:

31.3.1 it has reasonable grounds for anticipating that any action taken by, taken against or imposed on the Contractor shall have a material effect on the Contractor's ability to perform its obligations under the Contract;

31.3.2 the Contractor shall convene a meeting of its creditors or a proposal shall be made for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or a proposal made for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if it shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or if a trustee, receiver, administrative receiver, administrator or liquidator is appointed in respect of all or any part of its business or assets or if a petition is presented or a meeting is convened for the purposes of considering a resolution or other steps are taken for the winding up of the Contractor or for the making of an administration order (otherwise than for the purpose of a solvent amalgamation or reconstruction) or if the Contractor ceases or threatens to cease its business, or if the Contractor fails to meet any statutory condition or demand in relation to its solvency.

31.4 Termination of the Contract shall not prejudice or affect any right of action or remedy which shall have accrued or which may thereafter accrue to the Council or the Contractor.

## **32. Accrued Rights & Remedies**

32.1 Neither the expiration nor the termination of the Contract shall prejudice or affect any right of action or remedy, which shall have accrued or shall thereafter accrue either to the Council or to the Contractor.

## **33. Force Majeure**

33.1 Neither party shall be liable to the other for any failure to perform its obligations under the Contract where such performance is rendered impossible by Force Majeure, but nothing in this Condition shall limit the obligations of the Contractor to use its best endeavours to fulfil its obligations under the contract.

## **Part 8 Disputes and Law**

### **34. Law**

34.1 This Contract shall be governed by and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England and Wales.

### **35. Dispute Resolution**

35.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 21 days of either Party notifying the other of the dispute such efforts shall involve the escalation of the dispute to the [finance director] (or equivalent) of each Party.

35.2 Nothing in this dispute resolution procedure 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.

35.3 If the dispute cannot be resolved by the Parties pursuant to clause 35.1 the dispute shall be referred to arbitration unless (a) the Council considers that the dispute is not suitable for resolution by arbitration; or (b) the Contractor does not agree to arbitration.

35.4 The performance of the Contract shall not be suspended, cease or be delayed by the reference of a dispute to arbitration and the Contractor (or employee, agent, supplier or sub-contractor) shall comply fully with the requirements of the Contract at all times.

### **36. Arbitration**

36.1 If any question, dispute or difference shall arise between the County Council and the Contractor(s) in respect of this contract or any matter or thing arising thereunder, such question, dispute or difference shall be referred to a single arbitrator or other person to be appointed by the County Councils whose decision shall in all cases and at all times be final, binding and conclusive on both the County Council and the Contractor(s), and such reference to arbitration shall be a submission within the meaning of the Arbitration Act, 1996 or any statutory re-enactment thereof, and be subject to the provision of the said Act or any statutory modification thereof for the time being in force.

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