[Insert Date 2021]

**FOR THE PURCHASE OF**

**GOODS, SERVICE & WORKS AGREEMENT**

between

**Oxford City Council**

**AND**

**[Insert Name of Contractor]**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**[Service Agreement for the Provision of [insert type of Commission]**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Head of Law and Governance**

**Oxford City Council**

**Town Hall**

**St. Aldates Street**

**Oxford**

**OX1 1BX**

**NOTE**: The Conditions applicable to an Order will vary depending upon whether it is a procurement for Goods, Services or Works. Check the specific terms of your Order to identify which of the Conditions apply. Legal Advice Should be sought for Works Contracts over £500K

|  |
| --- |
| **CONTRACT Particulars – Contract Reference no [ insert number if applicable ]** |
| **Council**  | **Oxford City Council** of Town Hall, St Aldate's, Oxford, OX1 1BX  |
| **Contractor** | [Add name of Contractor] , Company Number [ insert registered number ]  |
| **Contractor's Address for Notices:** | [Add registered office address of Contractor] |
| **Representatives:** | The Council: [insert details]Contractor: [insert details ]or such other person as is notified by a party to the other in writing. |
| **Commencement Date:** | [Add Commencement Date] |
| **Expiry Date:** | [Add Expiry Date] |
| **Extension Period:** | [Detail of any Extension Period] |
| **Required Insurance:** | **Public liability** insurance with a limit of indemnity of not less than **ten million pounds** Sterling **(£10,000,000**) for any occurrences arising out of each and every event and unlimited in the aggregate in any one period of insurance; **The Council’s (Compulsory) liability** insurance with a limit of indemnity of not less than **five million pounds** Sterling **(£5,000,000**) for any occurrences arising out of each and every event, and unlimited in the aggregate in any one period of insurance; Where relevant **Professional indemnity** insurance with a limit of not less than **one million pounds** Sterling **(£1,000,000**) for any occurrences arising out of each and every event; and Where relevant, P**roduct liability** insurance with a limit of not less than **two million pounds** Sterling **(£2,000,000**) for any occurrences arising out of each and every event.  [Vehicle's motor insurance: £ ][The Contractor shall ensure that the Council's interest is noted on each insurance policy, or that a generic interest clause has been included.] |

|  |  |
| --- | --- |
| **Schedule 4 - Optional Clauses to apply:** | The following Clauses shall apply to this Agreement:Optional Clause 1 – Safeguarding and Improper Conduct Optional Clause 2 – Social Networking and Internet [delete as necessary] |
| **Schedule 5 – Supply of Goods**  | Schedule 5 (Supply of Goods) shall [apply/ not apply] to this Agreement. |
| **Schedule 6 – Supply of Works**  | Schedule 6 (Supply of Works) shall [apply/ not apply] to this Agreement. |

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**This Agreement is dated [DATE]**

1. And is made between:
2. The **Council**, whose identity and address for service is set out in the Contract Particulars (“the **Council”**); and
3. The Contractor, whose identity and address for service is set out in the Contract Particulars “(the **Contractor”**);
4. each a Party and together the Parties.
5. WHEREAS:-
6. [On [**INSERT] The Council** issued an Invitation to Tender in respect of the Commission of the [Goods/Services/Works] (the “**Invitation**”).
7. The Contractor is an expert in providing [Goods/Services/Works] to pre-agreed service levels to organisations of the size and type of Council and has particular expertise in providing the Services and was therefore invited to respond to the Invitation.
8. Council has, through a competitive process, selected the Contractor to provide the [Goods/Services/Works] and the Contractor is willing and able to provide the [Goods/Services/Works] in accordance with the terms and conditions of this Agreement.
9. This Agreement comprises these Contract Particulars, the attached Terms & Conditions and Schedules the Invitation, the Contractor’s Response and any other documents (or parts thereof) specified by Council (collectively, the “**Agreement**”).
10. The Agreement constitutes the entire agreement between the parties relating to the subject matter of the Agreement. The Agreement supersedes all prior negotiations, representations, undertakings, agreements, understandings and arrangements between the parties whether written or oral in relation to such matters. Except in relation to fraudulent misrepresentation (in respect of which neither party's liability is limited or excluded), neither party shall have any right or liability in respect of any statement, representation or promise made prior to the date of this Agreement. The Contractor acknowledges and accepts that, in entering into this Agreement, it has not relied upon any statement, representation or promise, except as set out in this Agreement.
11. In the event of and only to the extent of any conflict or inconsistency between any clause in these Contract Particulars and basis of Agreement, any clause of the Terms & Conditions, any paragraph of a Schedule to this Agreement, any paragraph of the Invitation or any paragraph of the Contractor’s Response, such conflict or inconsistency shall be resolved according to the following order of priority:

(a) the clause of these Contract Particulars and basis of Agreement shall prevail, then;

(b) the clause of the Terms & Conditions, then;

(c) the paragraph of a Schedule, then;

(d) the paragraph of the Invitation, then;

(e) the paragraph of the Contractor’s Response.

1. For this purpose, an omission (whether deliberate or inadvertent) is not, by itself, to be construed as giving rise to a conflict or inconsistency
2. The Council, having taken consideration of the Contractor's relevant skills, knowledge and experience engages the Contractor to provide the Commission to the Council.
3. The Contractor is willing to provide such Commission to the Council in accordance with the terms and conditions of this Agreement.

1. NOW IT IS AGREED as follows:
2. Definitions and Interpretation
	1. In these terms and conditions:

|  |  |
| --- | --- |
| **Agreement**  | means the contract between (i) the Council and (ii) the Contractor for the for the provision of the Services comprising the Agreement and Schedules and other documents as listed in the Contract Particulars; |
| **Contract Particulars** | means the particulars from the Council to the Contractor printed above these terms and conditions and which set out the particulars of the Agreement; |
| **Change** | means any change after the Commencement Date to any Commission, or Charges; |
| **Change Control Procedures** | means the procedure for implementing Changes, as set out in Schedule 6; |
| **Charge(s)** | means the sum indicated in the Order to be paid by the Council in consideration of the Contractor carrying out and completing the Commission to the Council’s reasonable satisfaction; |
| **Commission** | means all the Works, Services, materials and/or Goods set out, described in, referred to, or implied by the Specification and Contract Drawings (if any), together with any Change to the Commission; |
| **Confidential Information** | means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential; |
| **Contract Drawings** | means any drawings, plans or diagrams referred to in the Order illustrating the Commission; |
| **Contractor** | means the firm, company, or individual being the counterparty to the Council named in the Order; |
| **Contract Particulars** | means the particulars from the Council to the Contractor printed above these terms and conditions and which set out the particulars of the Agreement; |
| **Contractor Representative** | means a competent site agent, or foreman, or representative engaged by the Contactor, who will be authorised to receive instructions on behalf of the Contractor; |
| **Controller,** **Processor,** **Data Subject,** **Personal Data, Personal** **Data Breach,** **Data Protection Officer** | this terms shall take the meaning given to them in the DPA;this terms shall take the meaning given to them in the DPA;this terms shall take the meaning given to them in the DPA;these terms shall take the meaning given to them in the DPA; |
| **Commencement Date** | means the date for commencement of the Agreement as detailed in the Contract Particulars; |
| **Council** | means the Council as named in the Contract Particulars; |
| **Council Data**  | means (i) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are supplied to the Contractor by or on behalf of the Council pursuant to this Agreement; and (ii) any Personal Data for which the Council is the Data Controller; |
| **Council Representative**  | means the person for the time being appointed by The Council Council as being authorised to administer the Agreement on behalf of The Council Council or such person as may be nominated by the Representative to act on its behalf; |
|  **Data Loss Event** | any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach; |
| **Data Protection Legislation** | means, the Data Protection Act 2018 (“**DPA**”), the EU Data Protection Directive 95/46/EC, the General Data Protection Regulations (GDPR) EU 2016/679, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner(as amended or re-enacted from time to time; |
| **Data Protection Impact Assessment** | an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data; |
| **DPA****Data Subject Access Request** | means the Data Protection Act 2018; a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data; |
| **Default**  | means any failure by the Contractor to perform its material obligations under this Agreement; |
| **Environmental Laws**  | means the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations; |
| **Excepted Risks** | means damage, loss or injury caused by the effects of ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste, from the combustion of nuclear fuel, radioactive, toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof, pressure wave caused by aircraft or other aerial devices travelling at sonic or supersonic speeds; |
| **Expiry Date** | means the date the Agreement expires as set out in the Contract Particulars;  |
| **FOIA** | means the Freedom of Information Act 2000; |
| **GDPR** | means (a) the General Data Protection Regulation (Regulation (EU) 2016/679) which came into force on 25 May 2018; and (b) any equivalent legislation amending or replacing the General Data Protection Regulations (Regulation (EU) 2016/679); |
| **GOODS** | where Schedule 4 (Conditions Applicable to Supply of Goods) applies, means the material, articles, items or things or any part of any of them described in the Order and, where appropriate, such packaging as may be necessary for the immediate safe and secure containment or handling of the Goods, but excluding additional cartons, cases and other similar containers used for convenience of distribution; |
| **Information** | has the meaning given under section 84 of the FOIA;  |
| **Insured Risk** | means loss and damage by fire, lightning, explosion, storm, flood, escape of water from any water tank, apparatus or pipes, earthquake, aircraft or other aerial devices or articles dropped therefrom, riot and civil commotion, excluding the Excepted Risks;  |
| **LED** | Law Enforcement Directive *(Directive (EU) 2016/680)*; |
| **Offsite Materials** | means any goods and materials intended for incorporation into the Commission which are not stored at the Site; |
| **Material Breach** | means a breach of any material obligation under this Agreement; |
| **Order** | means the order form, deed, or other form of written agreement issued by the Council instructing the Contractor to perform the Commission (into which any part of these Conditions is expressly incorporated by reference), together with the Specification, Contract Drawings (if any) and any further documents referenced in or attached to the Order; |
| **Party** | means the Contractor or the Council (as appropriate) and Parties shall mean both of them;  |
| **Performance Default** | means a failure or delay (whether by act or omission) with the method or manner of execution of the obligations or responsibilities of the Contractor under this Agreement (but shall not include any Service Level Defaults which shall be dealt with separately) whether or not the same is, or is suspected to be, minor or significant and whether or not the same could constitute a Material Breach or Persistent Breach of this Agreement or a breach of any Applicable Law;  |
| **Persistent Breach** | means any breach of the same obligation of the Contractor which occurs on more than 3 (three) occasions in any Year (or part thereof in the case of the first and final Years of this Agreement) or on more than 2 (two) occasions during a period of 4 (four) consecutive months or which has continued for a period of 3 (three) consecutive months; |
| **Protective Measures** | appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it; |
| **Purchase Order Number** | means the Council’s unique number relating to the supply of the Services;  |
| **Request for Information** | has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term request shall apply);  |
| **Services** | means the services to be supplied by the Contractor to the Council under the Agreement;  |
| **Service Level** | means the standards for the delivery and performance of the Services by the Contractor set out in Schedule, or other document forming part of the Order as specified in Schedule 1 Part 1;  |
| **Service Level Default** | means, in relation to any Service Level, any failure by the Contractor to achieve the level of performance for that Service Level as specified in, or other document forming part of the Order as specified in Schedule 1 Part 1;  |
| **Specification** | means the description, standards, methods and techniques to be used in executing the Commission as specified in any specification, scope or work schedule, or other document forming part of the Order as specified in Schedule 1 Part 1;  |
| **Staff** | means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any sub-contractor of the Contractor engaged in the performance of the Contractor’s obligations under the Agreement;  |
| **Staff Vetting Procedures** | means vetting procedures that accord with good industry practice or, where requested by the Council, the Council’s procedures for the vetting of personnel as provided to the Contractor from time to time;  |
| **Sub-processor** | any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement; |
| **Supervising Officer** | means the person named in the Order or any Council or Contractor Representative designated or nominated by the Parties in writing as its representative, in relation to instructions to, and receipt of information, documents, etc. from the Contractor under an Order; |
| **Term** | means the period from the start date of the Agreement set out in the Contract Particulars to the Expiry Date as such period may be extended in accordance with clause 3.2 or terminated in accordance with the terms and conditions of the Agreement;  |
| **VAT** | means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and |
| **Working Day** | means Monday to Friday inclusive, excluding Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday in England. |
| **Year** | means a period of 12 (twelve) months commencing on the Commencement Date and each anniversary thereof . |

* 1. In these terms and conditions, unless the context otherwise requires:
		1. words in the singular shall include the plural and in the plural shall include the singular;
		2. a reference to one gender shall include a reference to the other genders;
		3. references to numbered clauses are references to the relevant clause in these terms and conditions;
		4. any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
		5. the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
		6. any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
		7. the word ‘including’ shall be understood as meaning ‘including without limitation’.
	2. If there is any conflict between the clauses and the Schedules, the conflict shall be resolved in accordance with the following order of preference:
		1. the clauses;
		2. Schedule 1 Part 1 (Specification) (and for the avoidance of doubt this shall not include Schedule 1 Part 2 (Contractor Documents and Proposal));
		3. any other Schedules;
		4. Schedule 1 Part 2 (Contractor Documents and Proposal);
1. Supply of Services
	1. The Contractor shall supply the Services to the Council for the Term subject to and in accordance with the terms and conditions of the Agreement.
	2. In supplying the Services, the Contractor shall:
		1. co-operate with the Council in all matters relating to the Services and comply with all the Council’s instructions;
		2. perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Contractor’s industry, profession or trade;
		3. use Staff who are suitably qualified, skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Contractor’s obligations are fulfilled in accordance with the Agreement;
		4. ensure that the Services shall conform in all respects with any descriptions and specifications set out in the Specification;
		5. comply with all applicable laws; and
		6. provide all equipment, tools and vehicles (if any) and other items as are required to provide the Services.
	3. The Council may by written notice to the Contractor at any time request a Change to the scope of the Services. In the event that the Contractor agrees to any Change to the scope of the Services, the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Parties.
2. Term
	1. This Agreement shall take effect on the Commencement Date specified in Contract Particulars and shall expire on the Expiry Date, unless it is otherwise extended in accordance with clause 3.2 or terminated in accordance with the terms and conditions of the Agreement.
	2. The Council may extend the Agreement for a period of up to six (6) months or as otherwise detailed in the Contract Particulars by giving not less than ten (10) Working Days’ notice in writing to the Contractor prior to the Expiry Date. The terms and conditions of the Agreement shall apply throughout any such Extension Period.
3. Charges, Payment and Recovery of Sums Due
	1. The Contractor shall submit invoices for payment of the Charges to the Council monthly in arrears unless otherwise stated to the contrary in Schedule 2, the Council shall pay the Charges to the Contractor in accordance with the payment plan outlined in Schedule 2. Each invoice shall include such supporting information required by the Council to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.
	2. Each invoice shall be addressed to the Council’s Representative and shall contain all appropriate references and a detailed breakdown of the Services and shall be supported by any other documentation reasonably required by the Council’s Representative to substantiate the invoice.
	3. Unless otherwise stated in Schedule 2 the Charges shall:
		1. remain fixed during the Term; and
		2. be the full and exclusive remuneration of the Contractor in respect of the supply of the Services and includes, without limitation, any royalties, licence fees, supplies and all consumables used by the Contractor, travel and subsistence expenses and Staff costs.
	4. The Council shall pay the Contractor the invoiced amounts no later than [ten (10) OR twenty (20)] Working Days after receipt of a valid and undisputed invoice quoting the relevant Purchase Order Number. The Council may, without prejudice to any other rights and remedies under the Agreement or otherwise, withhold or reduce payments in the event of unsatisfactory performance or if it receives an invoice which it believes is not valid and/ or properly due in accordance with clause 4.6 and 4.7 below. .
	5. If Schedule 6 (*Conditions Applicable to Works*) applies to the Order, the Council will only pay the Contractor the total value of any Offsite Materials if the Contractor can show to the Supervising Officer’s reasonable satisfaction:

a. that the Offsite Materials are clearly marked and identified for delivery to the Site;

b. documentary evidence of ownership;

c. that the Offsite Materials are stored in secure and locked accommodation appropriate to their value; and

d. documentary evidence that the Offsite Materials are covered by insurance for their full reinstatement value against the Insured Risks.

* 1. If Schedule 5 (*Conditions Applicable to Works*) applies to the Order, the Council will only pay the Contractor the total value of any Offsite Materials if the Contractor can show to the Supervising Officer’s reasonable satisfaction:

that the Offsite Materials are clearly marked and identified for delivery to the Site;

documentary evidence of ownership;

that the Offsite Materials are stored in secure and locked accommodation appropriate to their value; and

documentary evidence that the Offsite Materials are covered by insurance for their full reinstatement value against the Insured Risks.

* 1. The Charges stated are exclusive of VAT which if applicable shall be charged at the prevailing rate. The Council shall, following the receipt of a valid VAT invoice, pay to the Contractor a sum equal to the VAT chargeable in respect of the Services.
	2. Without prejudice to any of its other rights or remedies, Council may suspend payment of the Charges payable or reduce payment in respect of any Services in each instance where the Contractor has committed a Performance Default, Material Breach or Persistent Breach of this Agreement.
	3. Wherever under the Agreement any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to Council in respect of any breach of the Agreement), Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Agreement or under any other agreement or contract with Council.
	4. If a payment of an undisputed amount is not made by the Council by the due date, then the Contractor shall be entitled (upon written notice) but not obliged to charge the Council interest on the overdue amount from the due date for the payment up to the date of payment, at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
	5. The Council may at any time set off any liability of the Contractor to the Council against any liability of the Council to the Contractor, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Agreement. Any exercise by the Council of its rights under this clause shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.
	6. Any amounts due under this Agreement from the Contractor to the Council shall be paid in full without any set-off, counterclaim, deduction or withholding (other than deduction or withholding tax as required by law).
1. Premises and equipment
	1. If necessary, the Council shall provide the Contractor with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Council’s premises by the Contractor or the Staff shall be at the Contractor’s risk.
	2. If the Contractor supplies all or any of the Services at or from the Council’s premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Contractor shall promptly vacate the Council’s premises, remove the Contractor’s plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Council’s premises in a clean, safe and tidy condition to the satisfaction of the Council. The Contractor shall be solely responsible for making good any damage to the Council’s premises or any objects contained on the Council’s premises which is caused by the Contractor or any Staff, other than fair wear and tear.
	3. If the Contractor supplies all or any of the Services at or from its premises or the premises of a third party, the Council may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
	4. The Council shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Council’s premises the Contractor shall, and shall procure that all Staff shall, comply with all the Council’s security requirements.
	5. Where all or any of the Services are supplied from the Contractor’s premises, the Contractor shall, at its own cost, comply with all security requirements specified by the Council in writing.
	6. Without prejudice to clause 2.2.6, any equipment provided by the Council for the purposes of the Agreement shall remain the property of the Council and shall be used by the Contractor and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Council on expiry or termination of the Agreement.
	7. The Contractor shall reimburse the Council for any loss or damage to Council equipment (other than deterioration resulting from normal and proper use) caused by the Contractor or any Staff. Equipment supplied by the Council shall be deemed to be in a good condition when received by the Contractor or relevant Staff unless the Council is notified otherwise in writing within five (5) Working Days.
2. Staff
	1. If the Council reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Contractor:
		1. refuse admission to the relevant person(s) to the Council’s premises;
		2. direct the Contractor to end the involvement in the provision of the Services of the relevant person(s); and/or
		3. require that the Contractor replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Council to the person removed is surrendered;

and the Contractor shall comply with any such notice.

* 1. The Contractor shall:
		1. ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;
		2. if requested, provide the Council with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Council’s premises in connection with the Agreement; and
		3. procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Council.
1. Assignment and sub-contracting
	1. The Contractor shall not without the written consent of the Council assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Council may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal.
	2. Where the Contractor enters into a sub-contract for the purpose of performing its obligations under the Agreement, it shall:
		1. ensure that a provision is included in such sub-contract which requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice.
		2. remain responsible to the Council for the performance of its obligations under the Agreement notwithstanding the appointment of any sub-contractor and be responsible for the acts omissions and neglects of its sub-contractors; and
		3. impose obligations on its sub-contractor in the same terms as those imposed on it pursuant to this Agreement and shall procure that the sub-contractor complies with such terms.
	3. Where the Council has consented to the placing of sub-contracts, the Contractor shall, and where requested by the Council in writing, send copies of each sub-contract, to the Council as soon as is reasonably practicable.
	4. The Council shall be entitled to novate (and the Contractor shall be deemed to consent to any such novation) the Agreement to any other body which substantially performs any of the functions that previously had been performed by the Council.
2. Intellectual Property Rights
	1. All intellectual property rights in any materials provided by the Council to the Contractor for the purposes of this Agreement shall remain the exclusive property of the Council. The Council hereby grants the Contractor a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement for the sole purpose of enabling the Contractor to perform its obligations under the Agreement.
	2. In the absence of prior written agreement by the Council to the contrary, all intellectual property rights created by the Contractor or Staff:
		1. in the course of performing the Services; or
		2. exclusively for the purpose of performing the Services,

shall vest in the Council absolutely on creation.

* 1. The Contractor shall indemnify and keep indemnified the Council against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any intellectual property right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Council's acts or omissions.
1. Governance, Audit and Records
	1. The Contractor shall:
		1. attend progress meetings with the Council at the frequency and times specified by the Council and shall ensure that its representatives are suitably qualified to attend such meetings; and
		2. submit progress reports to the Council at the times and in the format specified by the Council.
	2. The Contractor shall keep and maintain during the Term and for a period of (a) six (6) years after the expiry or termination of this Agreement (for whatever reason); or (b) such longer period as may be prescribed by the Council or as may be relevant according to applicable Laws, full and accurate records and a complete audit trail of all financial and non-financial transactions and information relating to this Agreement including, without limitation, the Commission provided under it, all expenditure reimbursed by the, and all payments made by the Council (the “**Records**”).
	3. During the Term and for a period of six (6) years after the date of expiry or termination of this Agreement (for whatever reason), The Council and its internal and external audit representatives shall have the right to perform audits and inspections of the Contractor and its approved Sub-contractors for the following purposes:

### to verify the make-up and accuracy of the Charges and invoices of the Contractor;

### to review the integrity, confidentiality and security of any data relating to the Council or any service users;

### to review the Contractor ’s compliance with the DPA and FOIA in accordance with clauses 11 and 12 and any other applicable law relevant to the Commission;

### to review any Records; and

### to otherwise examine the Contractor ’s performance of the Commission and its obligations and responsibilities under this Agreement.

* 1. Except where an audit is imposed on the Council by a regulatory body, the Council may not conduct an audit under this clause 9 more than twice in any calendar year.
	2. Subject to clause 9.3, the Council will endeavour (but is not obliged) to provide at least 5 (five) Working Days’ notice of its intention to conduct an audit save where a Material Breach or Persistent Breach of this Agreement or applicable law so requires.
	3. The Contractor shall on demand provide the Council and its internal and external audit representatives with all reasonable co-operation and assistance in relation to each audit including:

### all information requested within the scope of the audit including the Records;

### reasonable access to any Premises controlled by the Contractor and any equipment used (whether exclusively or non-exclusively) in the performance of the Commission; and

### access to the Contractor Staff.

* 1. The Contractor shall co-operate fully with any audit and shall promptly and efficiently give any assistance and facilities reasonably required in connection with any audit.
	2. The parties agree that they shall bear their own costs and expenses incurred in respect of compliance with their obligations under this clause 9, unless the audit identifies a material failure to perform its obligations under this Agreement in any material manner by the Contractor or its approved Sub-contractors in which case the Contractor shall reimburse the Council for all the Council’s reasonable costs incurred in the course of the audit.
	3. If the audit identifies that:

### the Contractor has failed committed a Performance Default, the provisions of clause 11 shall apply and shall be implemented;

### The Council has overpaid any Charges, the Contractor shall pay the Council the amount overpaid within ten (10) Working Days. The Council may deduct and off-set the relevant amount from the Charges if the Contractor fails to make this payment within this timeframe;

### The Council has underpaid any Charges, the Council shall pay to the Contractor the amount of the under-payment less the cost of the audit incurred by the Council if this underpayment was due to a default by the Contractor in relation to invoicing, within ten (10) Working Days;

* 1. The Contractor shall take all steps necessary and possible to procure that any approved Sub-contractor engaged in connection with the Commission shall comply in full the provisions of this clause 9 and shall grant and allow the same rights of access hereunder.
	2. The Contractor shall grant the Audit Commission, and any other relevant regulatory body, the same audit rights as those granted to the Council and/or its internal and external audit representatives hereunder save that:

### no prior notice of intention to audit by such parties shall be required

### the scope of the audit that can be carried out by such parties shall not be limited to that described in clause 9.3.

1. Confidentiality, Transparency and Publicity
	1. For the purposes of this Clause 10, **Disclosing Party** shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and **Recipient** shall mean the Party which receives or obtains directly or indirectly Confidential Information.
	2. Except to the extent set out in this Clause 10 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:
		1. treat the Disclosing Party’s Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
		2. not disclose the Disclosing Party’s Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner's prior written consent;
		3. not use or exploit the Disclosing Party’s Confidential Information in any way except for the purposes anticipated under this Agreement; and
		4. immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party’s Confidential Information.
	3. The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
		1. the Recipient is required to disclose the Confidential Information by Law, provided that Clause 11 (Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs; or
		2. the need for such disclosure arises out of or in connection with:
			1. any legal challenge or potential legal challenge against a Party arising out of or in connection with this Agreement; or
			2. the purpose of the examination and certification of the either Party's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6 (1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council is making use of any Services provided under this Agreement.
	4. If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or the Relevant Authority requiring such disclosure and the Confidential Information to which such disclosure would apply.
	5. Subject to this clause 10, either Party may only disclose the Confidential Information of the other Party on a confidential basis to:
		1. its personnel who are directly involved in the provision or receipt of the Services (as the case may be) and need to know the Confidential Information to enable performance by the respective Party of its obligations under this Agreement; and
		2. its professional advisers for the purposes of obtaining advice in relation to this Agreement.

Where a Party discloses the Confidential Information of the other Party pursuant to this clause 10.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.

* 1. The Council may disclose the Confidential Information of the Contractor:
		1. strictly on a confidential basis for the purpose of audit; or
		2. to a proposed Successor Body.
	2. Nothing in this clause 10 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party’s Confidential Information or an infringement of intellectual property rights.
	3. The Contractor shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Council.
1. Freedom of Information
	1. The Contractor acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:
		1. provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;
		2. transfer to the Council any Request for Information relating to this Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
		3. provide the Council with a copy of all Information belonging to the Council requested in the Request for Information which is in its possession or control in the form that the Council requires within five (5) Working Days (or such other period as the Council may reasonably specify) of the Council's request for such Information; and
		4. not respond directly to a Request for Information unless authorised in writing to do so by the Council.
	2. The Contractor acknowledges that the Council may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Contractor or the Services (including commercially sensitive information) without consulting or obtaining consent from the Contractor. In these circumstances the Council shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Contractor advance notice, or failing that, to draw the disclosure to the Contractor’s attention after any such disclosure.
	3. Notwithstanding any other provision in the Agreement, the Council shall be responsible for determining in its absolute discretion whether any Information relating to the Contractor or the Services is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.
2. Data Protection
	1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in Schedule 3 by the Council and may not be determined by the Contractor.
	2. The Contractor shall (and shall procure that any of the Contractor Staff involved in the provision of the Agreement) comply with any notification requirements under the DPA and both parties will duly observe all their obligations under the DPA which arise in connection with the Agreement.
	3. The Contractor shall comply with any notification requirements under the Data Protection Legislation and shall observe all of its obligations under the Data Protection Legislation which arise during the Term of the Agreement.
	4. The Contractor acknowledges that they shall not hold or process any personal data unless such data applies for the performance of the Agreement a process shall be agreed between the Contractor and the Council as to how the personal data shall be managed.
	5. If a breach does occur by the Contractor of its obligations under the Data Protection Legislation then the Council may terminate the Agreement.
	6. If the Contract is terminated by the Council the Contractor shall comply with the Council’s requirements which may include:
		1. the delivery of the originals of such information, records and papers to the Council’s offices or such other address as specified by the Council, and/or;
		2. immediately destroy all original and copies of such information, records and papers;
	7. The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
		1. process that Personal Data only in accordance with Schedule 3, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Council before processing the Personal Data unless prohibited by Law;
		2. ensure that it has in place Protective Measures, which have been reviewed and approved by the Council as appropriate to protect against a Data Loss Event having taken account of the:
			1. nature of the data to be protected;
			2. harm that might result from a Data Loss Event;
			3. state of technological development; and
			4. cost of implementing any measures;
		3. ensure that :
			1. the Staff do not process Personal Data except in accordance with this Agreement (and in particular Schedule 3);
			2. it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
			3. are aware of and comply with the Contractor’s duties under this clause;
			4. are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
			5. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Council or as otherwise permitted by this Agreement; and
			6. have undergone adequate training in the use, care, protection and handling of Personal Data; and
		4. not transfer Personal Data outside of the EU unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
			1. the Council or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Council;
			2. the Data Subject has enforceable rights and effective legal remedies;
			3. the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Council in meeting its obligations); and
			4. the Contractor complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
		5. at the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.
	8. Subject to clause 12.6, the Contractor shall notify the Council immediately if it:
		1. receives a Data Subject Access Request (or purported Data Subject Access Request);
		2. receives a request to rectify, block or erase any Personal Data;
		3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
		4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
		5. receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
		6. becomes aware of a Data Loss Event.
	9. The Contractor’s obligation to notify under clause 12.5 shall include the provision of further information to the Council in phases, as details become available.
	10. Taking into account the nature of the processing, the Contractor shall provide the Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 12.5 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:
		1. the Council with full details and copies of the complaint, communication or request;
		2. such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
		3. the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
		4. assistance as requested by the Council following any Data Loss Event;
		5. assistance as requested by the Council with respect to any request from the Information Commissioner’s Office, or any consultation by the Council with the Information Commissioner's Office.
	11. The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than two hundred and fifty (250) staff, unless:
		1. the Council determines that the processing is not occasional;
		2. the Council determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
		3. the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
	12. The Contractor shall allow for audits of its Data Processing activity by the Council or the Council’s designated auditor.
	13. The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
	14. Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:
		1. notify the Council in writing of the intended Sub-processor and processing;
		2. obtain the written consent of the Council;
		3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 12 such that they apply to the Sub-processor; and
		4. provide the Council with such information regarding the Sub-processor as the Council may reasonably require.
	15. The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
	16. The Council may, at any time on not less than twenty (20) Working Days’ notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
	17. The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. The Council may on not less than twenty (20) Working Days’ notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner’s Office.
	18. The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.
3. Liability and Insurance
	1. Nothing in this Agreement shall limit or exclude the Contractor's or the Council’s liability for:
		1. death or personal injury caused by its negligence, or the negligence of its personnel, agents or sub-contractors;
		2. fraud or fraudulent misrepresentation;
		3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
		4. any other liability which cannot be limited or excluded by applicable Law.
	2. The Contractor shall indemnify and keep indemnified the Council against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of this agreement, to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself or of its employees or of any of its representatives or sub-contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of this agreement or applicable law by the Council or its representatives (excluding any Staff).
	3. Nothing in this Agreement shall limit or exclude:
		1. the Contractor’s liability under clause 8.3 (IPR) and clause 17.3 (Prevention of Fraud and Corruption), and no amounts awarded or agreed to be paid under those clauses shall count towards the cap on the Contractor’s liability.
	4. Subject to clauses 13.1, 13.2 and 13.5, neither Party shall have any liability to the other Party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise for any indirect or consequential loss arising under or in connection with this Agreement.
	5. Subject always to clauses 13.1 and 13.2, the total aggregate liability of Council under or in connection with this Agreement for all claims, whether in contract, tort (including negligence or breach of statutory or regulatory duty) or otherwise, during any Year shall be, (a) of **200**% of the Charges paid by Council to the Contractor in such Year when the claim arose; or (b) or **£1,000,000.00 (one million pounds)** whichever is higher)
	6. Notwithstanding the provisions of clause 13.3 but subject always to clause13.4, the Contractor assumes responsibility for the following losses which may be recoverable by the Council:
		1. the Council’s additional operational and administrative costs and expenses arising from a Default;
		2. the Council’s wasted expenditure or charges reasonably incurred by the Council arising from a Default;
		3. any compensation or interest paid to a third party by the Council arising from a Default;
		4. any loss or corruption to or alteration of any Council Data; and
		5. any fines, expenses or other losses suffered or incurred by the Council arising from a breach by the Contractor of any Law.
	7. Nothing in this Agreement shall be taken as in any way reducing or affecting a general duty to mitigate loss suffered by a Party.
	8. The Contractor shall at its own cost effect and maintain with reputable insurance companies such policies of insurance as set out in the Contract Particulars (“the **Required Insurances”**).
	9. Each Party shall, during the term of this Agreement do nothing to invalidate any insurance policy relating to the Required Insurances and use its reasonable endeavours to procure that the terms of such policies are not altered in such a way as to have a material adverse effect on the benefit of such policies as they were at the Commencement Date.
	10. Following a written request of the Council (acting reasonably) for the same, the Contractor shall provide the Council with:
		1. copies of all insurance policies relating to the Required Insurances (or a broker's verification of insurance) and the Council shall be entitled to inspect such insurance policies at reasonable times during ordinary business hours; and
		2. evidence that the premiums payable under the insurance policies relating to the Required Insurances have been paid and that the insurances are in full force and effect.
	11. Without prejudice to the Council’s other rights under this Agreement, if, for whatever reason, the Contractor fails to give effect to and maintain the Required Insurances, the Council may make alternative arrangements to keep such insurance in force and may recover the costs of such arrangements from the Contractor.
	12. The Council shall immediately notify the Contractor of any claims or potential claims of which it becomes aware in relation to any risk covered by any of the Required Insurances and for which it reasonably believes that the Contractor is responsible and shall provide the Contractor with all information and assistance it may reasonably require in order for the Contractor to effectively manage such claim.
4. Continuous Improvement & Change Control Procedure
	1. The Contractor shall have an on-going obligation throughout the Term to identify new or potential improvements to the Services. As part of this obligation, the Contractor shall identify and report to the Council annually during the Term on:

the emergence of new and evolving relevant technologies which could improve the Services;

new or potential improvements to the Services including the quality, responsiveness, procedures and performance mechanisms in relation to the Services;

new or potential improvements to the interfaces and integration of the Services with other services provided by third parties of the Council which might result in efficiency or productivity gains or in reduction of operational risk; and

changes in ways of working that would enable the Services to be delivered at lower cost and/or greater benefits to the Council.

* 1. Any potential Changes highlighted as a result of the Contractor’s reporting in accordance with clause 14.1 shall be addressed by the parties using the Schedule 6 - Change Control Procedure.
	2. Any requirement for a Change shall be subject to the Schedule 6 - Change Control Procedure.
1. Termination
	1. The Council may terminate the Agreement at any time by notice in writing to the Contractor to take effect on any date falling at least one (1) month (or, if the Agreement is less than three (3) months in duration, at least ten (10) Working Days) later than the date of service of the relevant notice.
	2. Without prejudice to any other right or remedy it might have, the Council may terminate the Agreement by written notice to the Contractor with immediate effect if the Contractor:
		1. (without prejudice to clause 15.2.5), is in material breach of any obligation under the Agreement which is not capable of remedy;
		2. repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;
		3. commits a Default provided that if the Default is capable of remedy, the Council may only terminate this Agreement if the Contractor has failed to remedy such Default with twenty-eight (28) days of receipt of notice from the Council;
		4. undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;
		5. breaches any of the provisions of clauses 6.2, 10, 11, 12 and 16; or
		6. becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Contractor (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Contractor’s assets or business, or if the Contractor makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 15.2.6) in consequence of debt in any jurisdiction.
	3. The Contractor shall notify the Council as soon as practicable of any change of control as referred to in clause 15.2.4 or any potential such change of control.
	4. The Contractor may terminate the Agreement by written notice to the Council if the Council has not paid any undisputed amounts within ninety (90) days of them falling due.
	5. Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights and obligations of the Parties under this clause and clauses 8 (Intellectual Property Rights), 9 (Governance and Records), 10 (Confidentiality, Transparency and Publicity), 11 (Freedom of Information), 12 (Data Protection), 13 (Liability and Insurance) and this clause 15 (Termination) or any other provision of the Agreement that either expressly or by implication has effect after termination.
	6. Upon termination or expiry of the Agreement, the Contractor shall:
		1. give all reasonable assistance to the Council and any incoming Contractor of the Services; and
		2. return all requested documents, information and data to the Council as soon as reasonably practicable.
2. Compliance
	1. The Contractor shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Council shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Council’s premises and which may affect the Contractor in the performance of its obligations under the Agreement.
	2. The Contractor shall:
		1. comply with all the Council’s health and safety measures while on the Council’s premises; and
		2. notify the Council immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Council’s premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
	3. The Contractor shall:
		1. perform its obligations under the Agreement in accordance with all applicable equality law and the Council’s equality and diversity policy as provided to the Contractor from time to time; and
		2. take all reasonable steps to secure the observance of clause 16.3.1 by all Staff.
	4. The Contractor shall supply the Services in accordance with the Council’s environmental policy as provided to the Contractor from time to time.
3. Prevention of Fraud and Corruption
	1. The Contractor shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.
	2. The Contractor shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Contractor (including its shareholders, members and directors) in connection with the Agreement and shall notify the Council immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
	3. If the Contractor or the Staff engages in conduct prohibited by clause 17.1 or commits fraud in relation to the Agreement or any other contract with the Council, the Council may:
		1. terminate the Agreement and recover from the Contractor the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the supply of the Services and any additional expenditure incurred by the Council throughout the remainder of the Agreement; and/ or
		2. recover in full from the Contractor any other loss sustained by the Council in consequence of any breach of this clause 17.
4. Dispute Resolution
	1. All disputes and differences between the parties arising out of or in connection with this Agreement (a **Dispute**) shall be resolved pursuant to the Dispute Resolution Procedure set out at Schedule 8.
5. General
	1. Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
	2. A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
	3. The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
	4. The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
	5. Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
	6. The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party’s behalf.
	7. Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
	8. If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.
6. Notices
	1. Any notice or other communication given to a Party under or in connection with this Agreement shall be in writing marked for the attention of the Party's Representative and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case). Any notice or communication shall be deemed to have been received:
		1. if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; or
		2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service.
	2. This clause 20 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
7. Governing Law and Jurisdiction
	1. The Agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and interpreted in accordance with the laws of England and Wales.
	2. The parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales in relation to all matters arising out of or in connection with this Agreement.
8. Warranties and Representations
	1. The Contractor warrants and represents that :
		1. 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 Agreement and that this Agreement is executed by a duly authorised representative of the Contractor;
		2. the Contractor shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to Good Industry Practice ;
		3. all obligations of the Contractor pursuant to the Agreement shall be performed and rendered by appropriately experienced, qualified and trained Contractor Staff with all due skill, care and diligence;
		4. 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 Agreement.

IN WITNESS whereof the Parties have executed and delivered this Contract as a Deed the day and year first before written.

**EXECUTED as a DEED**

**BY AFFIXING THE COMMON SEAL )**

of **THE OXFORD CITY COUNCIL    )**

in the presence of: **)**

                     **)**

……………………………

Authorised Signatory

Date:………………………………………….

|  |  |  |  |
| --- | --- | --- | --- |
| Executed as adeed[, but not delivered until the first date specified on page 1,] by [                    **name of CONTRACTOR**] by a director in the presence of a witness: | )))) | Signature |  |
|  |  |  |  |
|  |  | Name (block capitals) |  |
|  |  |  | **Director** |
|  |  |  |  |
| Witness signature |  |  |
|  |  |  |
| Witness name  |  |  |
| (block capitals) |  |  |
|  |  |  |
| Witness address |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

Schedule 1 Part 1 – Specification

**1 Background**

1.1 \*\*\**This is an opportunity for you to give the Contractor background information which he needs but does not have.*\*\*\*

**2 Aim**

2.1 The Contractor shall use all reasonable endeavours to achieve the following aims:

* \*\*\**aim one*\*\*\*
* \*\*\**aim two - etc.*\*\*\*

 \*\*\**This is an opportunity for you to state the specific aims of the Agreement.*\*\*\*

**3 Objectives**

3.1 The Contractor shall use all reasonable endeavours to achieve the following objectives:

* \*\*\**objective one*\*\*\*
* \*\*\**objective two - etc.*\*\*\*

\*\*\**This is an opportunity for you to state specific objectives of the Agreement, which will not appear as tasks below.*\*\*\*

**4 Methodology**

The Contractor shall perform the tasks detailed in the Schedule of Work.

 **SCHEDULE OF WORK**

|  |  |  |
| --- | --- | --- |
| **Task** | **Output** | **Date Required** |
|  |  |  |
|  |  |  |
|  |  |  |

Schedule 1 Part 2 – Contractor Documents and Proposal

Contractor proposals in response to tender opportunity and specification to be inserted here

1. Charges and payment

**Calculation of the Charges**

The Charges shall be calculated on the basis of the rates and prices set out in this Schedule.

**Charges based on a fixed price**

|  |  |
| --- | --- |
| **Service** | **Monthly cost (£)** |
| [INSERT RELEVANT PART OF SERVICES] | [INSERT FIGURE TO BE CHARGED TO AUTHORITY] |
| [INSERT RELEVANT PART OF SERVICES] | [INSERT FIGURE TO BE CHARGED TO AUTHORITY] |
| [INSERT RELEVANT PART OF SERVICES] | [INSERT FIGURE TO BE CHARGED TO AUTHORITY] |
| **TOTAL** | [INSERT FIGURE TO BE CHARGED TO AUTHORITY] |

**Charges based on hourly rates**

|  |  |
| --- | --- |
| **Hours of service in invoice period** | **Hourly rate (£)** |
| [Up to 100] | [INSERT FIGURE PER HOUR TO BE CHARGED TO AUTHORITY] |
| [101-200] | [INSERT FIGURE PER HOUR TO BE CHARGED TO AUTHORITY] |
| [201-300] | [INSERT FIGURE PER HOUR TO BE CHARGED TO AUTHORITY] |

**Payment triggered by meeting milestones**

|  |  |  |  |
| --- | --- | --- | --- |
| **Workstream** | **Milestone** | **Date completion expected** | **Charge payable on completion (£)** |
| [INSERT] | [INSERT DETAILS] | [INSERT DATE] | [INSERT FIGURE] |
| [INSERT] | [INSERT DETAILS] | [INSERT DATE] | [INSERT FIGURE] |
| [INSERT] | [INSERT DETAILS] | [INSERT DATE] | [INSERT FIGURE] |

**Menu pricing**

|  |  |
| --- | --- |
| **Type of Fixed Cost** | **Charges (£)** |
| [INSERT TYPE OF SERVICE TO BE PROVIDED] | [INSERT FIGURE (EXPRESSED AS UNIT COST OR HOURLY RATE) TO BE CHARGED TO AUTHORITY FOR THAT SERVICE] |
| [INSERT TYPE OF SERVICE OR GOODS TO BE PROVIDED] | [INSERT FIGURE (EXPRESSED AS UNIT COST OR HOURLY RATE) TO BE CHARGED TO AUTHORITY FOR THAT SERVICE] |
| [INSERT TYPE OF SERVICE OR GOODS TO BE PROVIDED] | [INSERT FIGURE (EXPRESSED AS UNIT COST OR HOURLY RATE) TO BE CHARGED TO AUTHORITY FOR THAT SERVICE] |
| [INSERT TYPE OF SERVICE OR GOODS TO BE PROVIDED] | [INSERT FIGURE (EXPRESSED AS UNIT COST OR HOURLY RATE) TO BE CHARGED TO AUTHORITY FOR THAT SERVICE] |

**Payment Plan**

1. [INSERT DETAILS OF WHEN INVOICES WILL BE SUBMITTED BY THE CONTRACTOR AND WHEN THEY WILL BE DUE FOR PAYMENT]
2. Processing, Personal Data and Data Subjects

This Appendix shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Appendix shall be with the Council at its absolute discretion.

* 1. The contact details of the Council’s Data Protection Officer are: [insert officer’s contact details].
	2. The contact details of the Contractor’s Data Protection Officer are: **[Insert** Contact details].
	3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
	4. Any such further instructions shall be incorporated into this Appendix.

|  |  |
| --- | --- |
| 1. **Description**
 | 1. **Details [to be completed by the commissioning department]**
 |
| 1. Subject matter of the processing
 | 1. *[This should be a high level, short description of what the processing is about i.e. its subject matter]*
 |
| 1. Duration of the processing
 | 1. *[Clearly set out the duration of the processing including dates]*
 |
| 1. Nature and purposes of the processing
 | 1. *[Please be as specific as possible, but make sure that you cover all intended purposes.*
2. *The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.*
3. *The purpose might include: employment processing, statutory obligation, recruitment assessment etc]*
 |
| 1. Type of Personal Data
 | 1. *[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]*
 |
| 1. Categories of Data Subject
 | 1. *[Examples include: Staff (including volunteers, agents, and temporary workers), Councils/ clients, Contractors, patients, students / pupils, members of the public, users of a particular website etc]*
 |
| 1. Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data
 | 1. *[Describe how long the data will be retained for, how it be returned or destroyed]*
 |

1. Supply of Goods
	* + 1. **DEFINITIONS**

In this Schedule, unless the context requires otherwise, capitalised terms shall have the meaning given to that term as set out below or the meaning given to such term where it is defined elsewhere in this Agreement:

**Deliver** means physically transfer the Goods to the Council at the Delivery Location and on the Delivery Date, which shall include unloading and any other specific arrangements set out in the Agreement Specification and Order Form or subsequently agreed in writing between the Parties. Delivered and Delivery shall be construed accordingly.

**Delivery Date** the date which the Goods must be delivered to the Council by the Contractor in accordance with the terms and conditions of this Agreement.

**Delivery Location** the address for delivery of the Goods to the Council by the Contractor in accordance with the terms and conditions of this Agreement.

**Goods** means the whole of the Goods or any of them to be provided by the Contractor as identified in the Goods Specification pursuant to this Agreement from time to time.

**Goods Specification** means the specification of the Goods set out in the Invitation to Tender.

**Replacement Goods** means any Goods which are the same as or substantially similar to any of the Goods and which the Council receives in substitution for any of the Goods following the expiry or termination of this Agreement, whether those Goods are provided by the Council internally and/or by any third party.

* + - 1. **THE GOODS**
				1. The Contractor shall ensure that the Goods:

correspond with their description and the Goods Specification;

be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Contractor or made known to the Contractor by the Council expressly or by implication, and in this respect the Council relies on the Contractor's skill and judgement;

where they are manufactured products, be free from defects in design, material and workmanship and remain so for 12 months after delivery; and

comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

* + - * 1. The Contractor shall commence the supply of the Goods on the Commencement Date and shall thereafter continue to provide the Goods throughout the Contract Term in accordance with the terms of this Agreement.
				2. The Contractor shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Agreement.
			1. **DELIVERY AND INSPECTION**
				1. The Council may inspect and test the Goods at any time before delivery. The Contractor shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Contractor's obligations under the Agreement.
				2. If following such inspection or testing the Council considers that the Goods do not conform or are unlikely to comply with the Contractor's undertakings at Paragraph 2.1, the Council shall inform the Contractor and the Contractor shall immediately take such remedial action as is necessary to ensure compliance.
				3. If the Council fails to take delivery of any one or more instalments of Goods delivered in accordance with a Contract, the Contractor shall store the Goods at its own premises or at another suitable location at its own expense for a reasonable period and arrange with the Council an alternative delivery time.
				4. The Contractor shall notify the Council immediately after receipt of an Order if the delivery dates for the Goods cannot be met.
				5. The Council may conduct further inspections and tests after the Contractor has carried out its remedial actions.
				6. The Contractor shall ensure that:

the Goods are properly packed and secured in such manner as to enable them to reach their Delivery Location in good condition;

each delivery of the Goods is accompanied by a delivery note which shows the date of the order, the order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered;

the Goods be free from defects in materials and workmanship, be of satisfactory quality and conform to and in all respects with the specifications set out in the Order and any other specifications, standards, procedures and requirements agreed in writing between the parties from time to time;

if the Contractor requires the Council to return any packaging material to the Contractor, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Contractor at the cost of the Contractor;

the Goods not be the subject of any security interest, lien, encumbrance, charge or adverse title.

* + - * 1. The Contractor shall deliver the Goods:

on the Delivery Date;

at the Delivery Location; and

during the Council's normal business hours or as instructed by the Council.

* + - * 1. Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location.
				2. The Contractor shall not deliver the Goods in instalments without the Council's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Contractor to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Council to the remedies set out in clause 4.
			1. **REMEDIES**
				1. If the Goods are not delivered on the Delivery Date, or do not comply with the undertakings set out in clause 2.1, then, without limiting any of its other rights or remedies, and whether or not it has accepted the Goods, the Council may exercise any one or more of the following remedies :

to terminate this Agreement in accordance with Clause 15 (Termination);

to reject the Goods (in whole or in part) and return them to the Contractor at the Contractor's own risk and expense;

to require the Contractor to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);

to refuse to accept any subsequent delivery of the Goods which the Contractor attempts to make;

to recover from the Contractor any costs incurred by the Council in obtaining substitute goods from a third party; and

to claim damages for any other costs, loss or expenses incurred by the Council which are in any way attributable to the Contractor's failure to carry out its obligations under the Agreement.

* + - * 1. This Paragraph shall also apply to any repaired or Replacement Goods supplied by the Contractor.
				2. The Council's rights and remedies under the Agreement are in addition to its rights and remedies implied by statute and common law.
			1. **TITLE AND RISK**
				1. Risk in the Goods shall pass to the Council once they are delivered to the Council. Title in the Goods shall pass to the Council on delivery, unless payment for the Goods is made prior to delivery, when it shall pass to the Council once payment has been made and received by Contractor.
				2. The Contractor shall at its own cost collect any Goods rejected under Clause 3 or Clause 22. Risk and title in the rejected Goods shall pass back to Contractor at the point at which the Goods are collected or, if earlier, ten days from the date on which the Council notifies the Contractor of the rejection.
				3. Should the Goods have already been paid for by the Council at the time they are rejected title in the rejected Goods shall pass back to the Contractor when the Council has received a refund of all payment made to the Contractor for the rejected Goods.
1. Supply of Works – Below £500,000.00 (Legal Advice Should be Sought)
	* + 1. **DEFINITIONS (Applicable to Works)**

In this Schedule, unless the context requires otherwise, capitalised terms shall have the meaning given to that term as set out below or the meaning given to such term where it is defined elsewhere in this Agreement:

**CDM Regulations** mean the Construction (Design and Management) Regulations 2015;

**Completion Date** means the date (or, where the Commission is divided into Sections, the dates) by which the Council required the Commission to be complete specified in the Order, subject to such extensions as may be awarded pursuant to **Condition 2.5**;

**Construction Phase Plan** means the plan prepared by the Contractor in its capacity as Principal Contractor under the CDM Regulations prior to the commencement of the Commission, and refined and revised by him during the execution of the Commission in accordance with regulation 12 of the CDM Regulations;

**Date of Possession** means the date(s) specified in the Order for the start of the whole Commission, or (where the Commission is divided into Sections) for each Section, on site, subject to such deferment as may be made in accordance with **Condition 2.9** by the Supervising Officer;

**Defect** means any defects, shrinkages or other faults in the Commission appearing within the Defects Correction Period due to material or workmanship not in accordance with the Order;

**Defects Correction Period** means the period specified in the Order commencing from the date of the Practical Completion Certificate, or (where the Commission is to be completed in Sections) commencing from the date of the Section Completion Certificate for the last Section of the Commission to be completed;

**Deleterious Materials** means materials or equipment that are generally accepted, or generally suspected, in the construction industry at the relevant time as posing a threat to health and safety of any person; or posing a threat to the structural stability performance or physical integrity of the Works or any normal life expectancy of the Works or any part or component or the Works; or not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément. For the avoidance of doubt, Deleterious Materials includes, but is not limited to, the following:

High alumina cement concrete;

Cement containing added calcium chloride as a setting agent;

Crocidolite;

Asbestos products;

Woodwool slabs in permanent shuttering form;

Polyisocynurate or polyurethane foam;

Calcium chloride in blockwood or brickwork;

Aggregates which do not comply with BS882 and BS8100 and aggregates susceptible to alkali silica reaction;

Cement made with aggregate containing silica;

Calcium silicate bricks and titles;

Lead or any product containing lead for use in drinking water systems;

Urea formaldehyde foam; and/or

Materials which are generally composed of mineral fibres either manmade or naturally occurring which have a diameter of 3 microns or less and /or a length of 200 microns or less or which contain any fibres not sealed or otherwise stabilised to ensure that fibre migration is prevented.

**Delay Application** means a written notification from the Contractor pursuant to **Condition 2.4** setting out the reasons for the delay and giving an estimate of the extra time that the Contractor will need to complete the Commission or the relevant Section. In the case of a Time and Money Event this time estimate must also be accompanied by an assessment of the loss and expense likely to be caused to the Contractor because of the delay;

**Environmental Laws** meansthe Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;

**Final Certificate** means a certificate issued pursuant to **Condition 6.6** stating the total sum paid under all Payment Notices and any valid notice issued pursuant to **Condition 4** and the full value of the final account (as agreed or finally determined);

**Hazardous Substances** meansany natural or artificial substances (whether in solid or liquid form or in the form of a gas or vapour and whether alone or in combination with any other substances) capable of causing harm to man or any other living organism supported by the environment or damaging the environment or public health including but not limited to any controlled, hazardous, toxic or dangerous waste;

**Making Good Defects Certificate** means the certificate issued by the Supervising Officer pursuant to **Condition 5.4**;

**Practical Completion Certificate** means a certificate issued by the Supervising Officer pursuant to **Condition 5.1** in respect of practical completion of the whole of the Commission, or (where applicable) the last Section or part of the Commission to be completed;

**Principal Designer** means the person appointed by the Council to act as such under the CDM Regulations;

**Section Completion Certificate** means a certificate issued by the Supervising Officer pursuant to **Condition 4.1** or **Condition 5.1** in respect of practical completion of a Section or part of the Commission, other than the last Section or part of the Commission to be completed;

**Standard of Care** meansall the reasonable skill, care and diligence to be expected of a qualified and experienced architect (or other appropriate professional designer) undertaking the design of works (insofar as the Contractor is responsible for designing the Works) similar in scope and character to the Works including (but without limitation to the generality of the foregoing) not using or causing or permitting to be used any Deleterious Materials or Hazardous Substances in the Works;

**Time Event** means any of the following:

1. exceptionally adverse weather conditions,
2. ancient relics being discovered on the Site,
3. civil commotion, strike or other labour dispute affecting the execution of the Commission (except among the Contractor’s own workforce),
4. delay on the part of a local authority or statutory undertaker in carrying out work pursuant to its statutory obligations, or failing to carry out such work,
5. the Commission (or any part) being damaged by an Insured Risk or Excepted Risk,
6. the use or threat of use of terrorism and/or the activities of the relevant authorities in dealing with the use or threat of terrorism, or
7. any circumstances wholly beyond the control of the Contractor, which the Contractor could not reasonably be expected to have foreseen at the date of signing the Order;

**Time and Money Event** means any of the any of the following:

1. the issue of an instruction by the Supervising Officer pursuant to **Condition 2.7** or **4**,
2. delay on the part of the Supervising Officer in supplying information, drawings or instructions required under the Order not occasioned by the Contractor,
3. any valid suspension by the Contractor of performance of its obligations under the Order under **Condition 4**, or

any impediment, prevention or default, whether by act or omission, by the Council or any person for whom the Council is responsible except to the extent that it is caused or contributed to by any default, whether by act or omission, of the Contractor, its employees, agents, sub- contractors or Contractors;

|  |  |
| --- | --- |
| **1.**  | **Contractor’s Obligations**  |

**1.1.** The Contractor will commence on the Commencement Date, execute and complete the

Commission (or, if applicable, each Section) in compliance with:

* the Specification;
* the Construction Phase Plan;
* the Contract Drawings; and
* the instructions of the Supervising Officer; on or before the relevant Completion Date.
	1. To the extent that the quality of workmanship, materials and goods employed in the execution of the Commission is not indicated in the Specification, or the Contract Drawings, the Contractor will execute such Commission in a good and workmanlike manner using goods and materials of satisfactory quality to the reasonable satisfaction of the Supervising Officer.
	2. The property in any goods and materials intended for the Commission will vest in the Council upon delivery to the Site by the Contractor.
	3. The Contractor will give written notice to the Supervising Officer of any discrepancy in or divergence between the Specification, the Contract Drawings and statutory requirements and will take and follow the Supervising Officers instructions in this respect.
	4. To the extent the Contractor is responsible for the design of the Commission, the Contractor has the like liability to the Council, whether under statute or otherwise, as would an architect or, as the case may be, other appropriate professional designer holding itself out as competent to undertake such design, who acting independently under a separate contract with the Council, has supplied such design for or in connection with works to be carried out and completed by a building contractor who is not the Contractor of the design.
	5. No provision of the Order will operate to exclude or restrict the Contractor’s liability under statute or common law for any goods and materials that the Contractor supplies, or has supplied, for use on, or incorporation in to the Commission.
	6. The Contractor will provide all supervision, labour, materials, transport, plant, tools, equipment, and facilities necessary to perform the Commission in accordance with the Order except where the Order expressly provides otherwise.
	7. The Contractor will set out the whole of the Commission (including establishing all levels) and will be liable for any loss, or expense, occasioned through mistakes in setting out the Commission.
	8. Prior to the Date of Possession (or, if applicable, the Date of Possession for the first Section to be commenced) the Contractor will confirm to the Council the identity of the Contractor’s Representative. The Contractor will during the progress of the Commission keep and employ the Contractor’s Representative at the Site. The Contractor is to give ten (10) Working Days prior notice to the Supervising Officer of any change in the identity of the Contractor’s Representative.
	9. Unless stated otherwise in the Order, the Contractor will act as “**Principal Contractor**” for the purposes of the CDM Regulations. The Contractor will produce the Construction Phase Plan and make sure that it has all the features required by regulation 12 of the CDM Regulations. If the Contractor refines, revises or otherwise amends the Construction Phase Plan it must let the Council know immediately and provide the Council with a copy of any such changes.
	10. If the Contractor is the “principal contractor” for the purposes of the CDM Regulations, it will assist the Principal Designer with his task of compiling the health and safety file by responding promptly to any requests the Principal Designer may make for information in relation to the Commission. Any breach of **Condition 1.11** will entitle the Supervising Officer to postpone or withhold the issue of a Practical Completion Certificate, or (where applicable) Section Completion Certificate, under **Condition 5.1** until such time as the Contractor has remedied the breach.
	11. The Contractor warrants to the Council that it shall not specify for use in each Order products or materials which are generally known within the construction industry to be Deleterious Materials or Hazardous Substances at the time of specification in the particular circumstances in which they are used or those identified as potentially hazardous.
	12. The Contractor shall immediately notify the Council Representative if it becomes aware of any such use of any products or materials, which, at the time of use, are Deleterious Materials or Hazardous Substances.
	13. The Contractor shall be deemed to have satisfied itself as to the soil and rock strata comprising the site of the Works and notwithstanding any other provision of this Agreement, no matter arising from the state and condition of the soil and rock strata comprising the site Works shall give rise to any adjustments of the Charge, or to any extension of time, or to any entitlement on the part of the Contractor to terminate his employment under this Agreement.
	14. Contractor shall not transport to, use, generate, dispose of or install at the site of the Works any Deleterious Material or Hazardous Substances except in accordance with Environmental Laws applicable at the time of performing the Works. The Contractor shall use the Standard of Care not to cause any release of Deleterious Material or Hazardous Substances into, or contamination of the environment, including soil, the atmosphere, any water course or ground water, except in accordance with Environmental Laws applicable at the time of performing the Works. It is the Contractor’s responsibility to comply with this clause 1.15 based on the Environmental Laws in effect at the time its services are rendered.
	15. The Contractor shall fully comply with the CDM Regulations applicable to each Order.
	16. The Contractor is fully aware of its obligations arising as a result of the statutory requirements including but not limited to the CDM Regulations and possesses the requisite degree of competence and level of resources to meet those obligations; and that all sub-contractors employed by the Contractor (strictly in accordance with the Contract) are fully aware of their obligations arising as a result of the statutory requirement including but not limited to the CDM Regulations and possess the requisite degree of competence and level of resources to meet those obligations.
	17. Any ancient relics discovered on the Site are in all cases deemed to be the property of the Council. On discovery the Contractor must suspend all work immediately and take all steps that may be necessary to preserve the object in the exact position and condition in which it was found, and immediately inform the Supervising Officer, in writing, of the discovery and the precise location of the object.
	18. The Contractor is to make all applications, give all notices and pay all fees required by, and fully comply with, the provisions of any Act of Parliament, any instrument, rule, or order made under any Act of Parliament, or any regulation, or bye-law of any local authority, or of any statutory undertaker; or any conditions attached to any notices served under any such Act, instrument, rule or order, regulation or bye-law; or any codes of practice, guidance notes and recommendations for the time being in force and approved by the Health and Safety Commission or published by the Health and Safety Executive.

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| **2.**  | **Commencement & Delay**  |

* 1. The Council will give to the Contractor such access to such part or parts of the Site at such times and for such periods as may be reasonably necessary to enable the Contractor to execute and complete the Commission in accordance with the Order. The Contractor acknowledges that such access may (where indicated in the Order) be in common with other persons on the Site and may not be exclusive to the Contractor.
	2. The Contractor in executing and planning the Commission will consider the presence of other contractors employed by the Council, from time to time, on site or in the vicinity of the Commission. The Contractor must liaise with such other contractors and the Council at the request of the Supervising Officer and programme and plan its work considering the activities of those other contractors and the reasonable requests of the Council. The Contractor must comply with **Condition 2.2** at no additional cost to the Council.
	3. The Contractor will start the execution of the Commission on Site or a Section of the Commission on Site on the relevant Date of Possession stipulated in the Order and will thereafter proceed with the Commission or a Section of the Commission regularly and diligently and in accordance with the Programme so that the Commission or the relevant Section thereof are completed on the relevant Completion Date.
	4. As soon as it becomes reasonably apparent to the Contractor that it will be unable, for any reason, to complete the Commission or a Section of the Commission by the relevant Completion Date due to the occurrence of a Time Event or Time and Money Event the Contractor will:
1. take reasonable steps to prevent the occurrence arising from further affecting the progress of the Commission or the relevant Section thereof and mitigate the effects of such occurrence; and
2. issue to the Council a Delay Application.
	1. On receipt by the Supervising Officer of a Delay Application, the Supervising Officer will, within a reasonable period, decide whether it will:
3. adjust the relevant Completion Date and by what length of time; or •
4. agree to an addition to the Charge and the amount of such an addition; or
5. both of the above.

Whether or not the Contractor has complied with **Condition 2.4**, the Supervising Officer may only adjust the relevant Completion Date on the occurrence of a Time Event or Time and Money Events and may only adjust the Charge on the occurrences of Time and Money Events.

* 1. Any adjustment to the Charge will be made applying the same principles of valuation as apply to a Change under the Order.
	2. The Council reserves the right to:
1. reject any Delay Application;
2. require the Contractor to further substantiate a Delay Application that is not accompanied by documentary evidence supporting the reasons given for the delay, or reasonably substantiating the additional sums claimed as loss and expense; or
3. both of the above
	1. If the Contractor fails to complete the Commission or a Section of the Commission within the period for completion of the Commission or the relevant Section stated in the Order subject to any extension granted by the Supervising Officer under **Condition 2.5** and the Supervising Officer so certifies, the Contractor will pay, or allow to the Council, as liquidated damages, a sum calculated at the rate specified in the Order for the period during which the Commission or the relevant Section thereof are incomplete. Where no rate for liquidated damages for delay is stated in the Order, time for completion of the Commission or the relevant Section will be of the essence and the Council may claim damages for delay by due process of law.

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| **3.**  | **Works Insurances**  |

* 1. The Commission will be at the risk of the Contractor until completion of the Commission and the Contractor is to protect the Commission as may reasonably be necessary to prevent damage to the Commission until the date upon which the Supervising Officer issues the Practical Completion Certificate.
	2. The Contractor will take out and maintain **Public Liability and The Council’s Liability** Insurance for a level of indemnity of not less than **ten million pounds (£10,000,000.00)** for each and every claim, and **Professional Indemnity Insurance** with a level of indemnity of not less than **two million pounds (£2,000,000.00)** in the annual aggregate (“the **Required Insurance**”).
	3. The Contractor shall maintain the Required Insurance for such amount and on such basis stated in clause 3.2 (if stated) for a period beginning on the date of this Contract and expiring after the period of years stated in the Contract Particulars, provided that such insurance is available at commercially reasonable rates and terms. The Contractor shall maintain that Required Insurance:
1. with reputable insurers lawfully carrying on insurance business in the UK or EU;
2. on customary and usual terms and conditions prevailing for the time being in the insurance market; and
3. on terms that do not require the Contractor to discharge any liability before being entitled to recover from the insurers and that would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 1930.
	1. Where the Commission is being carried out to an existing structure if, because of any of the Insured Risks, any loss or damage is occasioned to the existing structure (or, to any contents owned by the Council or for which the Council is responsible), the Supervising Officer may issue instructions for the reinstatement and making good of such loss or damage as a Change.
	2. Where the Order so specifies, the Contractor will maintain Contractor’s All Risks insurance in the joint names of the Contractor and the Council as composite insured (and under which the insurers have no right of recourse against any person named or recognised as an insured) to provide cover against (inter alia) the Insured Risks for the full value of all work executed and all unfixed goods and materials intended for, delivered to, placed on or adjacent to the Commission and intended for incorporation in the Commission. In the event of loss or damage occurring which is covered by such insurance, the Contractor will with due diligence restore or replace the work, materials or goods lost, or damaged, and dispose of debris and proceed with and complete the Commission. The Contractor will not be entitled to payment for such work other than money received from the insurance and such money will be paid to the Contractor upon the certificate of the Supervising Officer issued for the same period and at the same intervals as apply to Payment Notices.
	3. Where the Order so specifies, the Contractor will maintain in the joint names of the Council and the Contractor as composite insured (and under which the insurers have no right of recourse against any person named or recognised as an insured) insurances for such amounts of indemnity as may be required by the Council in respect of any expense, liability, loss, claim or proceedings that the Council may incur or sustain by reason of damage to any property other than the Commission caused by the collapse, subsidence, vibration, weakening or removal of support or lowering of ground water arising in the course of or by reason of the carrying out of the Commission except where:
4. caused by the negligence, omission of default of the Contractor, its servant and agents;
5. attributable to error or omissions in the design of the Commission;
6. which can reasonably be foreseen as inevitable, having regard to the nature of the work and the manner of its execution; or
7. occasioned to the existing structure, or to any contents owned by the Council or for which the Council is responsible.

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| **4.**  | **Partial Possession by the Council**  |

**4.1** If at any time before the expiry of the period for the completion of the Commission, the Council agrees with the Contractor to take possession of part or parts of the Commission that are complete to the reasonable satisfaction of the Supervising Officer:

1. the Supervising Officer will issue a Section Completion Certificate for such part or parts and such certificate will state the value of the part, or parts, so completed;
2. the Supervising Officer will issue a Payment Notice for the value of the part, or parts, completed as stated in the Section Completion Certificate; and
3. from the date of the Section Completion Certificate the part, or parts of the Commission to which that certificate applies will be at the sole risk of the Council and the total value insured in accordance with **Condition 3.5** will be reduced by the value stated in such certificate.

**4.2** Where liquidated damages for delay are required under **Condition 2.8**, the rate of such damages will be reduced by the proportion that the value of the part, or parts, stated in the Section Completion Certificate bears to the Charge.

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| **5.**  | **Completion & Defects Rectification** |

**5.1** Subject to the Contractor having complied with **Condition 1.11**, when the whole of the Commission (or a relevant Section of the Commission) has been completed to the Supervising Officer’s reasonable satisfaction, he will issue to the Contractor a Practical Completion Certificate, or (where applicable) a Section Completion Certificate.

**5.2** Any Defects notified to the Contractor by the Council before the issue of the Making Good Defects Certificate must be made good by the Contractor (at its own expense) to the reasonable satisfaction of the Supervising Officer.

**5.3** The Supervising Officer may whenever he considers it necessary issue instructions pursuant to **Condition 2.4** requiring any such Defects to be rectified. No such instructions may be issued after the issue of the Making Good Defects Certificate.

**5.4** The Supervising Officer will issue a schedule of remaining Defects to the Contractor no later than 10 Working Days after the expiry of the Defects Correction Period. When, in the opinion of the Supervising Officer, all Defects notified to the Contractor have been made good to the Supervising Officer’s reasonable satisfaction, the Supervising Officer will issue to the Contractor a Making Good Defects Certificate.

**5.5** If the Contractor fails to make good Defects to the reasonable satisfaction of the Supervising Officer by the date stipulated by the Supervising Officer in writing, or in the absence of such stipulation within a reasonable time of being notified of their existence, the Council may employ other persons to make good the Defects. The cost and expense incurred by the Council in doing so will be ascertained and certified by the Supervising Officer and the Council may deduct such sum from the monies payable to the Contractor under the Order, or otherwise recover the same from the Contractor by due process of law.

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| **6.**  | **CIS, Retention & Final Account** |

**6.1** For the purposes of the Construction Industry Scheme (CIS), the status of the Council is a ‘contractor’ pursuant to section 59 (d) of the Finance Act 2004. The Contractor will provide with each tax invoice all information required by section 63 of the Finance Act 2004 and as may be required by H M Revenue & Customs from time to time, and the Income Tax (Construction Industry Scheme) Regulations 2005 and the Income Tax (Construction Industry Scheme) (Amendment) Regulations 2007.

**6.2** Each payment to be made it in accordance with **Condition 3** and (where applicable) **Condition 4** is subject to compliance with the requirements of **Condition 6.1** and conditional upon the Contractor having previously advised the Council of the Contractor’s Unique Taxpayer Reference Number as allocated to it by H M Revenue & Customs. The Contractor acknowledges that its failure to provide its Unique Taxpayer Reference Number will mean that no proper application for payment has been made by it in accordance with **Condition 3** and (where applicable) **Condition 4**.

**6.3** Where the Order specifies that Retention is to be deducted from interim payments, unless specified otherwise in the Order, it will be due for payment to the Contractor as follows:

1. 50% upon the issue of the Practical Completion Certificate for the whole of the Commission;
2. 25% upon the issue of the Making Good Defects Certificate; and
3. the remainder in accordance with **Condition 6.6**, subject always to the Contractor having provided sufficient supporting information as required by **Condition 6.4.**

**6.4** Within 10 Working Days of the issue of the issue of the Practical Completion Certificate for the whole of the Commission, the Contractor will deliver to the Council a draft final account indicating the total Charge adjusted in accordance with the terms of the Order and the basis on which that sum is calculated in the format stipulated in the preliminaries, together with all supporting documentation used in its preparation. The Contractor and the Supervising Officer will use reasonable endeavours to agree the content of the final account within six months of the delivery of the draft final account and supporting documentation, subject in the event of the Contractor or Supervising Officer being unable within that time to reach agreement, to either party’s right to refer the matter to be finally determined in accordance with the provisions of with **Condition 18**.

**6.5** The agreed final account will only be formalised for payment on the happening of all the following events:

1. the issuing of the issue of the Practical Completion Certificate for the whole of the Commission;
2. the issuing of the Making Good Defects Certificate; and
3. no dispute having been lodged in accordance with **Condition 18.**

**6.6** Within 10 Working Days of the final account being agreed between the parties or resolved in accordance with **Condition 19** and the conditions listed in **Condition 6.5** having been satisfied, the Supervising Officer will issue the Final Certificate to the Contractor. The difference between:

* 1. the total sum paid under all Payment Notices and any valid notice issued pursuant to **Condition 4;**
	2. the full value of the final account (as agreed or finally determined), will be indicated in the Final Certificate as the sum which the Supervising Officer believes to be due to or from the Contractor. Final payment of any sum due to or from the Contractor (as the case may be) will then fall due 10 Working Days after the date of issue of the Final Certificate;
	3. If a Payment Notice is not issued pursuant to **Condition 4** the Contractor may issue a notice, at any time after the date on which the Payment Notice was required to be given, specifying the sum that the Contractor considers is due on the date the notice is served and the basis on which that sum is calculated.

**6.7** The Contractor undertakes to the Council that all financial statements and invoices given to the Council under the Order will properly reflect the fact of all activities and transactions made, or undertaken by the Contractor in executing the Commission, and that such financial statements and invoices may be relied upon as being accurate and complete, in any further recording or reporting made by the Council. The Contractor will notify the Council of any error in any statement, application or invoice and correct the same in writing, promptly upon discovery of any such error.

**SCHEDULE 6: CHANGE CONTROL PROCEDURE**

**1. General Principles**

1.1 Where Oxford City Council or the Contractor sees a need to implement a Change, Oxford City Council may at any time request, and the Contractor may at any time recommend, such Change only in accordance with this Change Control Procedure.

1.2 Until such time as a Change is made in accordance with this Change Control Procedure, Oxford City Council and the Contractor shall, unless otherwise agreed in writing, continue to perform this Agreement in compliance with its terms before such Change.

1.3 Any discussions which may take place between Oxford City Council and the Contractor in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.

1.4 Any work undertaken by the Contractor, and the Contractor 's Staff which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Change Control Procedure, shall be undertaken entirely at the expense and liability of the Contractor .

**2. Procedure**

2.1 Discussion between Oxford City Council and the Contractor concerning a Change shall result in any one of the following:

(a) no further action being taken; or

(b) a request to change this Agreement by Oxford City Council; or

(c) a recommendation to change this Agreement by the Contractor .

2.2 Where a written request for an amendment is received from Oxford City Council, the Contractor shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Contractor to Oxford City Council within ten (10) Working Days of the date of the request.

2.3 A recommendation to amend this Agreement by the Contractor shall be submitted directly to Oxford City Council in the form of two copies of a Change Control Note signed by the Contractor at the time of such recommendation. Oxford City Council shall give its response to the Change Control Note within ten (10) Working Days.

2.4 Each Change Control Note shall contain:

(a) the title of the Change;

(b) the originator and date of the request or recommendation for the Change;

(c) the reason for the Change;

(d) full details of the Change, including any specifications;

(e) the price, if any, of the Change;

(f) a timetable for implementation, together with any proposals for acceptance of the Change;

(g) a schedule of payments if appropriate;

(h) details of the likely impact, if any, of the Change on other aspects of this Agreement including: (i) the timetable for the provision of the Change; (ii) the personnel to be provided; (iii) the Charges; (iv) the documentation to be provided; (v) the training to be provided; (vi) working arrangements; and (vii) any other contractual issues;

(i) the date of expiry of validity of the Change Control Note; and

(j) provision for signature by Oxford City Council and the Contractor .

2.5 For each Change Control Note submitted by the Contractor, Oxford City Council shall, within the period of the validity of the Change Control Note:

(a) allocate a sequential number to the Change Control Note; and

(b) evaluate the Change Control Note and, as appropriate:

(i) request further information;

(ii) arrange for two copies of the Change Control Note to be signed by or on behalf of Oxford City Council and return one of the copies to the Contractor ; or

(iii) notify the Contractor of the rejection of the Change Control Note.

2.6 A Change Control Note signed by the Authority and by the Contractor shall constitute an amendment to this Agreement.

**1. Change Control Note**

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| **Change Control Note** |
| **Agreement No:** |  |
| **Change Control Note No:** | **Date:** |
| **Raised by [                     ]:** |
| **Title of Change:** |
| **Reason for Change Control Note:** |
| **Outline Description of Change:** |
| **Implementation Timetable:** |
| **Acceptance Criteria (if applicable):** |
| **Signed** |

**2. Change Control Note Evaluation Response**

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| --- |
| **Change Control Note** |
| **Agreement No:** |  |
| **Change Control Note No:** | **Date:** |
| **Raised by [                     ]:** |
| **Title of Change:** |
| **Evaluation Response to Request:** |
| **Implementation Timetable:** |
| **Proposed Fee relating to the Change:** |
| **Signed** |

**3. Contract Amendment**

**AMENDMENT NUMBER [                ]**

**to the Agreement dated [ ] between Oxford City Council and [*the Contractor* ] (**the **“Original Agreement”)**

This **AMENDMENT** is made the [ ] day of [ ]

**BETWEEN**

(1) **Oxford City Council** and

(2) **[*Contractor* ]** whose registered office is at [●]

**INTRODUCTION**

1. The Council entered into an agreement with the Contractor on [**date of original agreement**] for the provision of Goods and/or Services relating to [**description of original agreement**] (the “Agreement”).
2. The parties now wish to amend the Agreement as set out in this Amendment (the “**Amendment**”).

**IT IS AGREED** as follows

1. Words, phrases and expressions defined in the Agreement have the same meaning in this Amendment. In this Amendment, references to clauses are references to the clauses of the Agreement. In the event of any conflict between the terms of the Agreement and the terms of this Amendment then the terms of this Amendment shall prevail.

2. With effect from **[insert date]** the Original Agreement shall be amended as follows

 **INSERT DETAIL OF CHANGES**

3. Save as otherwise provided in this Amendment the terms of the Agreement shall remain in full force and effect.

4. Any disputes arising under or in connection with this Amendment shall be settled in the manner specified in the Agreement.

5. This Amendment is governed by English law and is subject to the exclusive jurisdiction of the English Courts.

**SIGNED** on behalf of the parties.

Signed for and on behalf of [ ]

|  |  |
| --- | --- |
| Full name (capitals):Position:Date:FOR AND ON BEHALF OF**Oxford City Council** | …………………………………………………………………………………………………………………………………………………… |
| Full name (capitals):Position:Date:FOR AND ON BEHALF OF**[INSERT COMPANY NAME]** | …………………………………………………………………………………………………………………………………………………… |

**SCHEDULE 7: DISPUTE RESOLUTION PROCEDURE**

### In the event of a Dispute, either party may call a meeting of the parties by service of not less than five (5) days written notice. The Council’s Representative and the Contractor’s Representative shall attend such meeting together with any Key Personnel requested to attend by Oxford City Council (if any).

### The parties shall attempt to resolve the Dispute in good faith. If the Dispute referred is not resolved at the meeting referred to paragraph (a) above, either party, by notice in writing to the other, may refer the Dispute to the senior officers of both parties appointed by each party and notified to the other party from time to time (the “Senior Officers”).

### The Senior Officers shall co-operate in good faith to resolve the Dispute as amicably as possible within fourteen (14) days of service of the written notice referred to in paragraph (b) above. If the Senior Officers fail to resolve the Dispute in the allotted time, then the parties shall, within that period, on the written request of either party enter into an alternative Dispute Resolution Procedure with the assistance of a mediator agreed by the parties or, in default of such agreement within 7 (seven) days of receipt of such request, appointed, at the request of either party, by the Centre for Dispute Resolution or such other similar body as is agreed.

### The parties shall then submit to the supervision of the mediation by the Centre for Dispute Resolution or similar body for the exchange of relevant information and for setting the date for negotiations to begin.

### Recourse to this Dispute Resolution Procedure shall be binding on the parties as to submission to the mediation but not as to its outcome. Accordingly all negotiations connected with the Dispute shall be conducted in strict confidence and without prejudice to the rights of the parties in any future legal proceedings. Except for any party's right to seek interlocutory relief in the courts, no party may commence other legal proceedings under the jurisdiction of the courts or any other form of arbitration until 21 days after the parties have failed to reach a binding settlement by mediation (at which point the Dispute Resolution Procedure shall be deemed to be exhausted).

### If, with the assistance of the mediator, the parties reach a settlement, such settlement shall be reduced to writing and, once signed by the Senior Officers of each of the parties, shall remain binding on the parties.

### The parties shall bear their own legal costs of this Dispute Resolution Procedure, but the costs and expenses of mediation shall be borne by the parties equally.

**SCHEDULE 8: SPECIAL CONDITIONS 2021**

**DEFINITIONS (Applicable to Special Conditions)**

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| **Cessation Plan** | means a plan agreed between the Parties or determined by the Council pursuant to Special Condition clause 5.10: (a) to give effect to a Declaration of Ineffectiveness; or (b) to give effect to a Public Procurement Termination Event; |
| **Declaration of Ineffectiveness** | a declaration of ineffectiveness in relation to this Contract made by a Court of competent jurisdiction pursuant to Regulation 98 of the Public Contracts Regulations 2015 or Regulation 45J the Utilities Contracts Regulations 2006; |
| **Oxford Living Wage** | means the basic hourly wage of **£10.31** (before tax, other deductions and any increase for overtime) as may be updated from time to time by the Oxford City Council, or any successor body carrying out the relevant calculation. |
| **Modern Slavery Act 2015 (“MSA”)** | means the Modern Slavery Act 2015 together with any guidance or codes of practice issued by the relevant government department concerning the legislation;  |
| **MSA Offence**  | means any activity, conduct, or practice constituting an offence under the MSA;  |
| **Public Contracts Regulations Termination Event** | if a court determines that one or more of the circumstances described in regulation 73(1) of the Public Contracts Regulations 2015 or any equivalent provisions in regulations implementing the EU Utilities Directive 2014/25 has occurred;  |
| **TUPE** | the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended from time to time). |
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1. OXFORD Living Wage
2. It is a condition of this Agreement that for the duration of the Agreement and any extensions thereof the Contractor:

1.1         pays all Staff who are employed by the Contractor to perform the Commission not less than the Oxford Living Wage (unless otherwise directed by the Council) as set annually by the Oxford City Council (OCC);

1.2         agrees to increase the amount which it pays to Staff by the same amount as any increase to the Oxford Living Wage within twelve (12) months of the date on which any increase in the Oxford Living Wage is announced by the OCC (unless otherwise directed by the Council); and

1.3         co-operate and provide all reasonable assistance to the Council in monitoring the effect of the Oxford Living Wage on the quality of the Works provided under this Agreement.

**2.**       If the Contractor sub-contracts all or part of the provision of the Commission to a sub-contractor, the Contractor shall procure that the terms contained in Clause 1.1 to 1.3 shall apply to all Staff who are employed by the sub-contractor to perform the Commission (or part of them) provided the employment is based within the geographical limits of Oxford.

**3.**  **Modern Slavery Act 2015**

3.1 The Contractor shall comply in all respects with its obligations under the MSA, including the requirement to publish a statement under section 54 thereof to the extent that the Contractor qualify as a commercial organisation within the meaning of such section.

3.2 The Contractor warrants to the Council that, so far as the Contractor is aware, no MSA Offence is occurring within the Contractor’s business or within the business of the Contractor’s permitted sub-contractors and supply chain and the Contractor shall not (and shall require that the Contractor ’s staff, agents, representatives, and permitted sub-contractors shall not) commit any MSA Offence.

3.3 The Contractor acknowledges, understands, and accepts that the Council is subject to the requirements of section 52 of the MSA and, where so requested by the Council, The Contractor shall assist and co-operate with the Council at the Contractor’s own expense in order to enable the Council’s compliance with such requirements.

3.4 The Contractor shall not confiscate or withhold Staff identity documents or other valuable items, including work permits and travel documentation as a means to force Staff employment or to restrict their freedom of movement.

3.5 The Contractor warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world and that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offenses anywhere around the world.

3.6 The Contractor shall:

3.6.1 make reasonable enquires to ensure that its officers, employees and sub-contractors have not been convicted of slavery or human trafficking offenses anywhere around the world.

3.6.2 have and maintain throughout the term of the Agreement its own policies and procedures to ensure its compliance with the Modern Slavery Act and include in its contracts with its sub-contractors anti-slavery and human trafficking provisions where applicable;

3.6.3 implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under the Agreement;

3.6.4 not use, nor allow its employees or sub-contractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or sub-contractors;

3.6.5 not use the threat of physical abuse, sexual violence, harassment and intimidation against an employee’s or sub-contractor’s family members, or close associates.

3.6.6 not use or allow child or slave labour to be used by its sub-contractors.

## FORCE MAJEURE

4.1 "Force Majeure" means the occurrence of an event or circumstance (a "**Force Majeure Event**") that prevents a party from performing one or more of its contractual obligations under the contract, if and [only] to the extent that the party affected by the impediment (the "**Affected Party**") proves:

1. that such impediment is beyond its reasonable control;
2. that such impediment could not reasonably have been foreseen at the time of the conclusion of the contract; and

that the effects of the impediment could not reasonably have been avoided or overcome by the Affected Party [acting in a commercially reasonable manner].

* 1. In the absence of proof to the contrary, the following events affecting a Party to the Agreement shall be presumed to fulfil conditions (a) and (b) under clause 4.1 of this Agreement, and the Affected Party only needs to prove that condition (c) of clause 4.1 is satisfied.
	2. For the purposes of clause 4.1 and 4.2 above a Force Majeure Event shall be one of more of the following:
1. war (whether declared or not), hostilities, invasion, acts of foreign enemies, extensive military mobilisation;
2. civil war, riot, rebellion and revolution, military or usurped power, insurrection, acts of terrorism, sabotage or piracy;
3. currency and trade restriction, blockade, embargo, sanction;
4. act of [government] authority whether lawful or unlawful, compliance with any Law or governmental order, expropriation, seizure of works, requisition, or nationalisation;
5. plague, epidemic, pandemic, natural disaster, extreme natural event, extreme weather event, nuclear, chemical or biological contamination;
6. explosion, fire, destruction of equipment, prolonged break-down of transport, telecommunication, information system or energy;
7. [general labour disturbance such as boycott, strike and lock-out, go-slow, occupation of factories and premises].
	1. Provided it has complied with clause 4.5, if a Party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (Affected Party), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
	2. The Affected Party shall:
		1. as soon as reasonably practicable after the start of the Force Majeure Event but no later than [five (5)] Working Days from its start, notify the other Party [in writing] of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement. Where the Contractor is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure event in accordance with accepted industry practice; and
		2. use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
	3. The Contractor cannot claim relief if the Force Majeure Event is one where a reasonable Contractor should have foreseen and provided for the cause in question.
	4. The Affected Party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
	5. The Council may, during the continuance of any Force Majeure event, terminate this agreement by written notice to the Contractor if a Force Majeure Event occurs that affects all or a substantial part of the Works and which continues for more than twenty (20) Working Days.
	6. For the avoidance of doubt, a Force Majeure Event shall not include any labour dispute between the Contractor and its employees or failure to provide the Works by any of its agents, contractors or sub-contractors.

**5.0 Declaration of Ineffectiveness and Exit**

5.1 In the event that a court makes a Declaration of Ineffectiveness, the Council shall as soon as reasonably practicable notify the Contractor and in any event within a period of seven (7) days notify the Contractor of any such action. The Parties agree that the provisions of this clause 5.2.9 shall apply as from the date of receipt by the Contractor of the notification of the Declaration of Ineffectiveness, from the Council and it shall:

* 1. confirm whether the Contractor is to be relieved of any obligations contained within this Agreement;
	2. may pursuant to the provisions of Clause 5.1 terminate the Agreement forthwith upon notice;
	3. If a determination or order is made on an application for a declaration of ineffectiveness (within the meaning of the Public Contracts Regulations 2015), the parties agree that the contents of this clause shall, to the maximum extent permitted by law, apply to any declaration or determination pursuant to;
	4. Regulation 101(3) relating to the implications and any consequential matters arising from the determination; or
	5. Regulations 101(4) relating to the shortening of this Agreement; and
	6. the parties further agree that notwithstanding the cancellation of the Agreement pursuant to Regulation 101(3) or a shortening of the Agreement pursuant to Regulation 101(4) of the Public Contracts Regulations 2015 the following provisions will survive termination of this Agreement as specified therein.

5.2 Termination of the Agreement on a declaration of ineffectiveness

5.2.1 A declaration of ineffectiveness pursuant to Regulation 98(2)(a) shall not prejudice or affect any right, liability or remedy which has occurred or shall accrue to either Party prior to or after such declaration.Where this Agreement is declared ineffective pursuant to Regulation 98 of the PCR 2015 the parties agree that unless specific issues are addressed pursuant to Regulations 101(3) the provisions contained in Clause 5.2.2 shall apply.

5.2.2 As from the date of receipt by the Contractor of the notification of the Declaration of Ineffectiveness, the Parties (acting reasonably and in good faith) shall agree or in the absence of such agreement, the Council shall reasonably determine an appropriate Cessation Plan with the object of achieving:

(i) an orderly and efficient cessation of the Commission or (at the Council ’s request) a transition of the Commission to the Council or such other entity as the Council may specify; and

(ii) minimal disruption or inconvenience to the Council in accordance with the provisions of this clause 5.2 and to give effect to the terms of the Declaration of Ineffectiveness.

5.2.3 Upon agreement or determination by the Council, of the Cessation Plan the Parties will comply with their respective obligations under the Cessation Plan.

5.2.4 The Council shall pay the Contractor’s reasonable costs in assisting the Council in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or charges agreed as part of this Agreement or as otherwise reasonably determined by the Council. provided that the Council shall not be liable to the Contractor for any loss of profit, revenue, goodwill or loss of opportunity as a result of the early termination of this Agreement.

5.2.5 Without prejudice to the Council ’s rights of termination implied into the Agreement by regulation 73(3) of the Public Contracts Regulations 2015 or any equivalent provisions in regulations implementing the EU Utilities Directives 2014/25, in the event of a Public Contracts Regulations Termination Event, the Council shall promptly notify the Contractor and the parties agree that the provisions of this clause 5.10 shall apply as from the date of receipt by the Contractor of the notification of the Public Contracts Regulations Termination Event.

5.2.6 The Public Contracts Regulations Termination Event shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to either party prior to or after such Public Contracts Regulations Event.

5.2.7 As from the date of receipt by the Contractor of the notification of the Public Contracts Regulations Termination Event, the Parties (acting reasonably and in good faith) shall agree or in the absence of such agreement, the Council shall reasonably determine an appropriate Cessation Plan with the object of achieving:

(a) an orderly and efficient cessation of the Commission or (at the Council ’s request) a transition of the Commission to the Council or such other entity as the Council may specify; and

(b) minimal disruption or inconvenience to the Council or to the Service users, in accordance with the provisions of this clause 5.2 and to give effect to the terms of the Public Contracts Regulations Termination Event.

5.2.8 Upon agreement, or determination by the Council, of the Cessation Plan the parties will comply with their respective obligations under the Cessation Plan.

5.2.9 The Council shall pay the Contractor’s reasonable costs in assisting the Council in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or charges agreed as part of this Agreement or as otherwise reasonably determined by the Council . provided that the Council shall not be liable to the Contractor for any loss of profit, revenue, goodwill or loss of opportunity as a result of the early termination of this Agreement pursuant to this clause 5.2.

6. **Contractor to prevent nuisance and indemnify Council**

6.1 The Contractor shall prevent any [unlawful] nuisance (including any [unlawful] noisy working operations) or other [unlawful] interference with the rights of any adjoining owner, tenant or occupier or any statutory undertaker, of which the Contractor is or ought reasonably to have been aware, arising out of the carrying out of the Commission . The Contractor shall assist the Council in defending any action or proceedings in relation to any such nuisance or interference. The Contractor shall be responsible for and shall indemnify the Council from and against any and all expenses, liabilities, losses, claims and proceedings resulting from any failure or default by the Contractor in performing its obligations under this clause 6.1.

6.2 **Contractor to prevent trespass to neighbours**

 Without prejudice to clauses 6.1, the Contractor shall ensure that there is no trespass by the Contractor or the Contractor's Staff (including the over sailing of tower crane jibs) on or over any adjoining or neighbouring property arising out of the Commission and shall take all reasonable safety and other measures to prevent damage or injury to any persons including the occupiers of adjoining or neighbouring property and members of the public. If carrying out the Commission or any obligation pursuant to clause 6.1 would otherwise be an act of trespass, the Contractor shall, at no cost to the Council, obtain the prior written agreement of the owners or occupiers of any adjoining or neighbouring property to that act. That agreement shall be subject to the Council’s approval before its completion, such approval not to be unreasonably withheld or delayed. The Contractor shall comply with any conditions contained in that agreement, at no cost to the Council and shall not be entitled to any extension of time as a result of any condition contained in that agreement.

# 7. TUPE

## 7.1 The parties envisage that, subsequent to the commencement of the Agreement, the identity of the Contractor of the Services (or any part of the Services) may change (whether as a result of termination of the Agreement or part, or otherwise) resulting in a transfer of the Services in whole or in part (“Service Transfer”). The parties do not envisage that any Service Transfer will be a relevant transfer for the purposes of TUPE.

##  7.2 In the event of any Service Transfer, the Contractor shall indemnify and keep indemnified Council and any Replacement Contractor fully against all claims, proceedings, actions, damages, demands, legal costs, losses, expenses and any liabilities whatsoever arising from or connected with:

## (a) any claim by or in connection with any employee or former employee of the Contractor or any Contractor Party where it is alleged that liability in respect of the claim has transferred to Council and/or the Replacement Contractor as a result of the application of TUPE to the Service Transfer

## (b) any claim by any person (including any claim by any appropriate representatives (as defined in Regulation 13(3) of TUPE) of any person) alleging any breach of regulations 13 and/or 14 of TUPE, whether by the Contractor , the Council, the Replacement Contractor or otherwise.

## 7.3 If any contract of employment has effect as if originally made between Council and any person, or a Replacement Contractor and any person, as a result of the application of TUPE to a Service Transfer:

## (a) the Council or, as the case may be, any Replacement Contractor may terminate such contract (provided that it does so within 28 days of becoming aware of the application of TUPE to such contract); and

## (b) the Contractor shall indemnify and keep indemnified Council and the Replacement Contractor fully against all claims, proceedings, actions, damages, demands, legal costs, losses, expenses and any other liabilities whatsoever that Council and/or the Replacement Contractor may suffer, incur, sustain, pay or be put to:

## (i) by reason of or on account of or arising out of or connected with such termination; or

## (ii) arising from or connected with such contract, whether before on or after the Service Transfer.