



**Standard Conditions  
Of Contract  
For The Supply Of  
Goods, Services And For The  
Performance Of Works**

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## **Mid Devon District Council Standard Conditions Of Contract For The Supply Of Goods, Services And For The Performance Of Works**

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

### **1. Contract Incorporation**

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

### **2. Definitions**

2.1 **'Commencement'** means the date the Service commences as set out in the Employer's Acceptance or, if there is none, the date performance of the Service under the Contract begins.

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

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

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

**'the Contract Price'** shall be construed in accordance with clause 4.1.

**'the Contract Term'** shall be construed in accordance with clause 4.10.

**'the Contractor'** shall mean the person, consultant, firm or company employed to carry out the Service for the Employer being either:

- (a) the person, consultant, firm or company having accepted an order or request from the Employer either by Employer's Acceptance or otherwise than in the pursuance of a tender, or
- (b) the person, consultant, firm or company whose tender or part of whose tender has been accepted, or in either case the expression shall where

the context so admits include, as the case may be, the personal representatives or permitted assigns of that person, the successors of the partners for the time being in the firm and their permitted assigns, and the permitted assigns of the company.

**'the Contractor's Personnel'** shall be construed in accordance with clause 8.1

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

**'the Employer's Acceptance'** shall mean either:-

- (a) a letter written by the Employer to the Contractor accepting the Contractor's offer to provide the Service subject to these Conditions or such other conditions as may be set out therein or agreed separately in writing; or
- (b) an Employer's official order namely the formal order form written by the Employer and given to the Contractor; as appropriate to the case, and in either case detailing the agreements made within the Contract and triggering the Employer's commitment to the Contract with the Contractor for the Service.

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

**'Necessary Consents'** means all approvals, certificates, authorisations, permissions, licences, permits and consents necessary from time to time for the performance of the Service

**'the Parties to the Contract'** shall mean the Employer of the first part and the Contractor of the second part.

**'Prevent Duty'** means the Employer's duty under the Counter-Terrorism and Security Act 2015 to have due regard to the need to prevent people from being drawn into terrorism

**'Prevent Lead'** means a named individual from Contractor's Personnel who has authority and responsibility for providing advice, support and training to the Contractor and the Contractor's Personnel on the Prevent Duty and who acts as the Contractor's main point of contact with the Employer in relation to the Prevent Duty and its relationship to any matter arising from the Service

**'the Service'** shall mean the supply of any services, goods or works (including all commodities and intellectual property), by the Contractor to the Employer, or the carrying out of works (including all operations or installations) or the carrying out

of surveys and the like and/or the supply of reports and other information and the like by the Contractor for the Employer in accordance with the terms of the Contract.

**'Working Day'** means 09.00 to 17.00 on any day excluding Saturdays, Sundays, Bank Holidays and any other public holiday declared from time to time.

- 2.2 Any reference to an Act or Statutory Instrument shall include reference to any amendment or re-enactment thereof.
- 2.3 Any reference to a day shall be to a Working Day.

### **3. Contractor's Obligation to Supply the Service**

- 3.1 Subject to and in accordance with these Conditions, and in consideration of the Contract Price, the Contractor shall supply to the Employer, or to whom the Employer may direct in accordance with clause 32.3 of these Conditions, and shall deliver at the place specified by the Employer, the Service specified in the Contract. The Service is to be of the quality and type and at the Contract Price and in the quantity all as specified in the Contract.
- 3.2 The Service shall be provided with reasonable skill and care and be of satisfactory quality and fit for its purpose and specifically fit for the particular purpose specified by the Employer to the Contractor, and the Contractor warrants that it has the required skill and judgement to be able to supply the Service appropriately in order to properly execute the Contract.
- 3.3 In performing the Service, the Contractor shall use reasonable endeavours to:
- (a) use working practices, equipment, material and consumables which minimise any harm to the environment;
  - (b) reduce consumption of and re-use, recycle or conserve energy, water, wood, paper and other resources;
  - (c) reduce waste; and
  - (d) have due regard to the possibility of creating social value benefits as part of the Service
- 3.4 The Contractor warrants that it has made sufficient investigations of the Facility, the reason why the Service is needed, and/or how the service is required to be delivered before either tendering or submitting a priced quotation, such as to have achieved an understanding of the nature and extent of the Service required and the circumstances in which the Service is required and any other matters connected with the Service and Facility. No claim by the Contractor for lack of knowledge of the Facility and/or the Service to be provided under the Contract will be accepted by the Employer.
- 3.5 The Employer reserves the right by notice to the Contractor to modify the quality or quantity of the Service and any alteration to the Contract Price or completion

date, arising by reason of such modification, shall be agreed by negotiation between the parties.

- 3.6 Clause 45 sets out further core principles which shall govern the Contract in order to ensure compliance with certain statutory and other legal duties which apply to the Council which may be relevant to the delivery of the Service.

#### **4. The Contract Price and Contract Term**

- 4.1 The Contract Price for the Service shall be as stated in the Employer's Acceptance, purchase order or similar and no increase will be accepted by the Employer before the execution of the Contract.

- 4.2 Unless otherwise agreed in writing by the Employer, where the Service comprises distinct parts or consignments, the Contractor shall render a separate invoice in respect of each of the parts or consignments unless otherwise agreed with the Employer.

- 4.3 The Employer will consider and verify all invoices submitted for the Service in a timely manner and in any event within 14 days of receipt.

- 4.4 The Employer shall pay the Contractor the sums due under each invoice within 30 days of the date the invoice is received by the Employer unless the Employer notifies the Contractor in writing within 14 days of receipt that all or any part of the invoice is disputed.

- 4.5 Where clause 4.4 applies, the Employer will pay the Contractor any sum not in dispute and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 35.

- 4.6 Where the Contractor enters into a Sub-Contract, the Contractor shall include in that Sub-Contract:

(a) provisions having the same effect as clauses 4.3 to 4.5 inclusive of these Conditions; and

(b) a provision requiring the Sub-Contractor to include in any Sub-Contract which the Sub-Contractor awards, provisions having the same effect as clauses 4.3 to 4.5 inclusive of these Conditions

and for the purpose of this Clause 4.6 and these Conditions, "Sub-Contract" means a contract between two or more suppliers (which may include the Contractor) made wholly or substantially for the purpose of performing (or contributing to the performance of) any part of the Contract and "Sub-Contractor" shall be construed accordingly.

- 4.7 Value added tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge, and the Employer shall be entitled to withhold payment of any invoice which does not constitute a valid VAT invoice so as to enable the Employer to reclaim the VAT from HM Revenue and Customs.

- 4.8 If deemed applicable to Service, the Contractor is deemed to have allowed in Contract Price and their tender/quotation for the Service:
- (a) for the provision of all barriers and lighting, either day or night, necessary for protection of any works , plant, materials and the like in the performance of the Service and for the prevention of injury to the public. Should the Service take place within or near an occupied building then the Contractor shall provide satisfactory arrangements to allow safe occupation and safe access and egress from the building.
  - (b) the Contractor all services required for the execution of any works and all charges and fees in connection therewith.
- 4.9 The Contractor, if deemed applicable to the Service, warrants that it is satisfied so far as is practicable, to site conditions, extent of the work required, means of access to and egress from the site or sites, storage and working space, position of existing services and any other matters that may affect the tender price and has included for the provision of such within the submitted tender/quotation.
- 4.10 Where the performance of the Service under the Contract takes place over a period of time, the Contract Term is to be construed in accordance with the Contract Documents and the Employer's Acceptance.
- 4.11 The Employer may, by agreement with the Contractor, extend the Contract Term by one or more further periods (cumulative) up to a period of extension which is equal to the Contract Term; for example, a Contract with a Contract Term of 1 year may be extended by 1 year, whether in a single extension or more than one extension which together amount to a 1-year extension period.
- 4.12 Clause 44 (Break Clause) applies where either party to the Contract wishes to terminate the Contract during the Contract Term in the absence of any default or breach on the part of the other party.

## **5. Contractor's Obligation to Meet Quality Standards**

- 5.1 Without prejudice to clause clause3.2 and 3.3 of these Conditions, the Service shall, unless otherwise directed in writing by the Employer, be in accordance with any specifications of the British Standards Institution (BSI) or the International Standard Organisation (ISO) or the European Committee for Standardisation (CEN) relating to the Service and current at the date of the tender or priced quotation.

## **6. Default by Contractor and Employer's Remedies**

- 6.1 If the Service (including any goods supplied as part of it) shall not in every respect be of the quality contracted for, in the opinion of the Employer whose decision shall be final, or if it shall not be provided at the time required, or if the Contractor shall in any other way fail to comply with the terms of the Contract, then the Employer may reject the Service or goods (as the case may be).

- 6.2 In every such case the Employer, without prejudice to any other remedy for breach of contract, shall be entitled to purchase, at such prices and on such terms and conditions as the Employer determines, a new equivalent Service or any part thereof or employ any other person to provide the Employer with a similar Service during the remainder of the term of the Contract or any part of that term in the place of the Contractor, and in such cases the Contractor shall pay to the Employer or the Employer may deduct from any sum that is due or may become due to the Contractor under the Contract or otherwise, a sum equal to all costs, charges and expenses relating to such additional or replacement supply or arising from such failure to perform the Contract.
- 6.3 The Employer may retain or set-off any sums owed to it by the Contractor which have fallen due and are payable against any sums due to the Contractor under the Contract or any other contract pursuant to which the Contractor provides goods, services or works to the Council.
- 6.4 Without prejudice to clauses 6.1 and 6.2 and clause 44, if the Contractor shall have committed a material breach of this Contract and (if such breach is capable of remedy) shall have failed to remedy such breach within thirty days of being required by the Employer in writing to do so, the Employer shall be at liberty to determine this Contract forthwith by notice in writing, and arrangements as in clauses 20.2 and 20.3 shall apply.

#### **7. Contractor's Contract Status**

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

#### **8. Contractor's Personnel**

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



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

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

### **9. Contractor's Conduct in Carrying Out the Service**

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

### **10. Inconvenience to Employer**

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

### **11. Delivery**

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

**12. Damage in Transit**

- 12.1 On dispatch of any consignment of goods provided in relation to the Service, the Contractor shall, as requested by the Employer, send to the Employer at the address for delivery of the goods an advice note specifying the means of transport, the place and date of despatch, the number of packages and their weight and volume. The Contractor shall free of charge and as quickly as possible either repair or replace, as directed by the Employer and to the Employer's satisfaction, such of the goods as may either be damaged in transit or having been placed in transit fail to be delivered to the Employer provided that:
  - (a) in the case of damage to such goods in transit, that are provided in relation to the Service, the Employer shall within thirty days of delivery give notice to the Contractor that the goods have been damaged; and/or
  - (b) in the case of non-delivery of goods and, provided that the Employer has been properly advised of the dispatch of goods, the Employer shall within ten days of the notified date of delivery give notice to the Contractor that the goods have not been delivered.

**13. Labels and Packaging**

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

**14. Removal of Rejected Goods or Materials**

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

**15. Interruption to Supply of Service Delivery**

- 15.1 If owing to;
- (a) any strike or lockout or any working to rule,
  - (b) civil commotion,
  - (c) cessation or material interruption of traffic by air, road, rail or sea,
  - (d) force majeure, or
  - (e) exceptionally inclement weather,

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

**16. Time of Performance**

- 16.1 Unless otherwise agreed in writing or formally waived in writing by the Employer, time shall be of the essence of the Contract.
- 16.2 The Contractor shall begin performing the Service on the date stated in the Contract or otherwise agreed in writing between the parties, and shall work with due diligence from commencement until the Service has been completed and delivered properly to the Employer's satisfaction and all the Contractor's obligations under the Contract have been fulfilled and discharged. The Contractor shall complete the Service by the date stated in the Contract or continue to perform the Service for the period stated in the Contract or as otherwise agreed in writing.
- 16.3 The Employer may by written notice require the Contractor to execute the Service in such order as the Employer determines. In the absence of such notice the Contractor shall submit such detailed programmes of work and progress reports as the Employer may from time to time require.

## **17. Auditing of Records and Documents**

- 17.1 The Contractor shall keep and maintain, until twelve months from the 31<sup>st</sup> March following final payment of the Contract for the Service rendered, records to the satisfaction of the Employer of all expenditures which are reimbursable by the Employer and of the hours worked and costs incurred in connection with any employees of the Contractor paid for by the Employer.
- 17.2 The Contractor shall provide the Employer with such access to those records as the Employer may require in connection with the Contract.

## **18. Canvassing**

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

## **19. Inducements**

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

## **20. Bankruptcy / Insolvency**

- 20.1 If any bankruptcy petition shall be presented in respect of the Contractor, or if the Contractor shall become bankrupt or make any composition or arrangement with its creditors or commit any act of bankruptcy, or if the Contractor being a company passes any resolution of voluntary winding up or if a provisional liquidator, receiver or manager of the Contractor's business is duly appointed or possession is taken thereof by or on behalf of the holders of debentures or under a floating charge, or if the Contractor is dissolved, or, where the Contractor is an individual, if he shall die or be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983, clause 20.2 shall apply. Reference in clause 20.2 to the Contractor's representative shall include its trustee in bankruptcy, manager, liquidator, receiver or personal representatives as the case may be.
- 20.2 On the occurrence of any of the events described in the preceding clause, or in clause 6.4, the Employer shall be at liberty to determine this Contract forthwith by notice in writing. Thereupon, without prejudice to any other of the Employer's rights, the Employer may itself complete the Service or have it completed by a

third party, using for that purpose (making a fair and proper allowance therefore in any payment subsequently made to the Contractor or its representative) all materials, plant and equipment on the Facility belonging to the Contractor, and the Employer shall not be liable to make any further payment to the Contractor or its representative until the Service has been completed in accordance with the requirements of the Contract, and shall be entitled to deduct from any amount due to the Contractor or its representative the costs thereof incurred by the Employer. If the total cost to the Employer exceeds the amount, if any, due to the Contractor or its representative, the difference shall be recoverable by the Employer from the Contractor or its representative as the case may be.

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

## **21. Liability and Indemnity**

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

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

## **22. Insurance**

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

- (a) in respect of liability for personal injury or death of any person under a contract of service or apprenticeship with the Contractor and arising out of or in the course of such person's employment, where such insurance shall comply with all relevant legislation;

- (b) in respect of liability for personal injury or death of any other person, and loss or damage to real or personal property belonging to any person, such as is necessary to cover the liability of the Contractor and without prejudice to that requirement, where the Contractor is working at an Employer's facility, such cover shall be for not less than £5 million for any occurrence or series of occurrences;
- (c) in respect of the Service and any unfixed materials or goods intended to form an intrinsic part of the Service, including those delivered to or placed adjacent to the Facility until delivery is accepted by the Employer, against loss and damage by fire, lightning, explosion, storm, tempest, flood, bursting or overflowing water tanks or pipes, earthquake, aerial devices and articles dropped there from, theft, riot and civil commotion, for the full reinstatement value thereof plus 15% to cover professional fees, such insurance to be in the joint names of the Contractor and the Employer unless this requirement is waived in writing by the Employer;
- (d) where the Service is in the nature of consultancy or advice, professional indemnity insurance covering (without limitation) all liability under the Contract upon customary and usual terms and conditions prevailing for the time being in the insurance market, with the amount in cover being not less than one million pounds (or as otherwise agreed in writing by the Employer) for any occurrence or series of occurrences, for a period expiring no earlier than 12 years after the end of the Contract, provided always that such insurance is available at commercially reasonable rates in the insurance market at large. Any increased or additional premium required by insurers by reason of the Contractor's own claims record or other acts, omissions, matters or things particular to the Contractor shall be deemed to be within commercially reasonable rates.

### **23. Evidence of Insurance**

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

### **24. HM Revenue & Customs Requirements - Generally**

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

### **25. HM Revenue & Customs Requirements - Construction Work**

25.1 Where the Service involves construction work the Contractor shall satisfy the Employer that the Contractor has properly registered with HM Revenue and Customs for the Construction Industry Scheme (CIS) and holds a Unique Taxpayer Reference (UTR) number. The Contractor must present the Employer

with suitable evidence of registration with HM Revenue and Customs before any payment is made to the Contractor for construction work. The Contractor must similarly check the exemption of all sub-contractors before similar payment is made to them.

## **26. Equal Opportunities**

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

## **27. Freedom of Information (FOI)**

27.1 The Contractor acknowledges that the Employer is subject to the requirements of the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR") and the Contractor shall:

- (a) provide all necessary assistance and cooperation as may be reasonably requested by the Employer to enable the Employer to comply with its obligations under FOIA and EIR;
- (b) transfer to the Employer all requests for information relating to the Contract and the Service that are received by the Employer and do so as soon as reasonably practicable and in any event within 3 days of receipt;
- (c) provide the Employer with a copy of all information (however held) which the Contractor holds on behalf of the Employer for the purpose of the Contract within 7 days of the Employer's request for such information; and
- (d) not respond directly to a request for information under FOIA or EIR unless authorised to do so in writing by the Employer

27.2 The Contractor acknowledges that the Employer may be required under FOIA or EIR to disclose information (including commercially sensitive information) without consulting, or obtaining the consent of, the Contractor. The Employer shall take reasonable steps to notify the Contractor of a request for information to the extent that it is permissible and reasonably practical for it to do so, but (notwithstanding any other provision in the Contract) the Employer shall be responsible for determining (in its absolute discretion) whether any commercially sensitive information and/or any other information should be disclosed or is exempt from disclosure under the provisions of FOIA or EIR (as the case may be).

## **28. Sustainability**

28.1 The Council strives to protect and enhance the environment of Devon so that it can make a major contribution to quality of life, support balanced economic growth and make a positive contribution to the global environment. The Council is therefore committed to the achievement of sustainable development that

minimises the environmental, economic and social impacts, either locally or globally, associated with the products, services and works it procures. In purchasing supplies, services or new development projects, the inherent sustainable qualities possessed by those purchases are of vital importance to the Council and such qualities therefore form a prime requirement in purchasing decisions to achieve best value for the Council.

- 28.2 The Contractor therefore is required, through its service delivery, to seek wherever practicable by design or supply to conserve energy, reduce waste, use more durable and upgradeable goods, use more sustainable products (i.e. those that minimise environmental, social and economic impacts) and influence their Suppliers to develop same and contribute to the establishment of better sustainable supply chains.

### **29. Health and Safety**

- 29.1 The Contractor represents and warrants to the Employer that the Contractor has satisfied himself that all necessary tests and examinations have been made or will be made prior to delivery of the Service to ensure that the Service is designed and constructed so as to be safe and without risk to the health or safety of persons using or affected by the same.
- 29.2 The Contractor shall undertake the Service with the proper regard to health and safety and shall comply with all statutory enactments, regulations (such as the Health and Safety at Work etc Act 1974 and, where applicable, the Construction (Design and Management) Regulations 2015) and by-laws applicable thereto or to the Facility, the cost of complying with the same being deemed to be included in the Contract Price.
- 29.3 Clause 45 makes further provision for compliance with health and safety legislation and related compliance matters.

### **30. Patents and Information**

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

### **31. Confidential Information**

- 31.1 The Contractor shall not make use of for its or their own purposes, divulge, disclose, dispose of or part with possession, custody or control of any



documents, material or other information (in whatever form) prepared, supplied or obtained for or pursuant to this Contract, unless prior written consent has been given by the Employer. The Contractor shall not refer to the Employer or the Contract in any advertisement without the Employer's prior written consent.

### **32. Assignment and Sub-Contracting**

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

### **33. Transfer of Contract**

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

### **34. Notices**

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

### **35. Settlement of Disputes - Mediation**

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

### **36. Settlement of Disputes - Arbitration**

- 36.1 If any dispute or difference arises between the Employer and the Contractor or any matter or thing arising out of or relating to the Contract which cannot be

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

### **37. Headings**

37.1 The headings to Conditions shall not affect their interpretation.

### **38. Applicable Law**

38.1 These Conditions shall be governed by English Law.

### **39. Contracting Out**

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

### **40. Access to Acts And Regulatory Information**

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

### **41. Data Quality**

41.1 Quality information is key to the Council's objectives. Subject to clause 42 at all times, where a contract involves the exchange of information and data, it is essential that such exchange is subject to adequate quality and assurance checks to establish the ownership of the data and that it is accurate and consistent, relevant and delivered on time.

### **42. Data Protection**

42.1 Where the performance of the Service requires the processing of Personal Data (as defined in Schedule 1), Schedule 1 to these Conditions sets out the obligations of the Parties.

### **43. Good Faith**

43.1 By signing these Conditions, the Contractor agrees:

- (a) the Contractor's tender/quote is bona fide and intended to be competitive and that it has not been fixed or adjusted in accordance with any agreement or arrangement with any other person; and

- (b) that at no time before the hour and date specified for the return of the tender/quotation has the Contractor or any person employed by or working on behalf of the Contractor:
  - (i) indicated to any other person or the Employer the amount or approximate amount of the proposed tender/quote, except where the disclosure, in confidence, of the approximate amount of the tender/quote was necessary to obtain insurance premium or other quotations necessarily required for the preparation of the tender/quote;
  - (ii) enter into any agreement or arrangement with any other person that they shall refrain from tendering or as to the amount of any tender/quote to be submitted;
  - (iii) offer or pay or give or agree to pay or give any sum of money or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other tender or proposed tender for the Service. .

#### **44. Break Clause**

- 44.1 Subject to clause 44.2, and notwithstanding the duration of the Contract Term, , the employment of the Contractor under this Contract may be determined by either party at the following points:
  - (a) not earlier than the end of 6 months from the date of Commencement of the Contract;
  - (b) at the end of 12 months from the date of Commencement of the Contract; and/or
  - (c) at any stage, but not earlier than the end of 6 months from the date of Commencement of the Contract where for reasons of failure to secure sufficient financial resources or for any other circumstance whereby the Council finds itself unable to continue with the Service.
- 44.2 A party wishing to determine the Contract pursuant to clause 44.1 shall give no less than six (6) weeks' notice in writing to the other party.
- 44.3 The parties shall agree whether the Contractor shall be required to deliver all or any of the Service during the period from when notice is given under clause 44.2 and when the Contract determines pursuant to such notice.
- 44.4 When the Contract is determined in accordance with this Clause 44, the Contractor shall be paid by the Employer either the sums due up to and including the point of break relied upon under clause 44.1 as previously agreed in the tender or, if such sums have not been pre-tendered, any such reasonable costs due based on the percentage of the Service satisfactorily completed in the reasonable opinion of the Employer and also those costs already incurred or contractually committed by the Contractor where such costs cannot be mitigated, limited or reduced by lawful action of the Contractor.

#### **45. Compliance**

- 45.1 Unless otherwise agreed in writing with the Employer or specified in the Contract Documents, the Contractor shall ensure that all Necessary Consents are in place to provide the Service and the Employer shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 45.2 Where there is any conflict or inconsistency between the provisions of the Contract and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Contractor has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Service.
- 45.3 The Contractor shall perform its obligations under the Contract (including those in relation to the Service) in accordance with:
- (a) all applicable laws regarding health and safety; and
  - (b) the Employer's health and safety policy whilst at a Facility.
- 45.4 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at a Facility of which it becomes aware and which directly or indirectly relate to or arise in connection with the performance of the Service.
- 45.5 The Contractor shall instruct the Contractor's Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.
- 45.6 Without limiting the general obligation set out in clause 3.1, the Contractor shall (and shall procure that the Contractor's Personnel shall):
- (a) perform its obligations under this Contract (including those in relation to the Service) in accordance with:
    - (i) all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
    - (ii) the Employer's equality and diversity policies as provided to the Contractor from time to time; and
    - (iii) any other requirements and instructions which the Employer reasonably imposes in connection with any equality obligations imposed on the Employer at any time under applicable equality law; and
  - (b) take all necessary steps, and where requested inform the Employer of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).
  - (c) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Contract. The Contractor shall also undertake, or

refrain from undertaking, such acts as the Employer requests so as to enable the Employer to comply with its obligations under the Human Rights Act 1998.

- 45.7 The Contractor shall at all times have due regard to the Employer's statutory obligations in relation to the Prevent Duty and provide the Employer with such information and assistance as it may reasonably require to satisfy those obligations and, but only where so requested by the Employer:
- (a) nominate or appoint a Prevent Lead;
  - (b) procure timely and sufficient training for the Prevent Lead and the Contractor's Personnel on the Prevent Duty;
  - (c) submit to the Employer for approval and thereafter implement a policy on the Prevent Duty, including but not limited to a procedure for raising concerns, sanctions and the maintenance of records; and
  - (d) disclose to the Employer on request copies of such records and any other information the Employer may reasonably require from the Contractor in the discharge of the Prevent Duty
- 45.8 The Employer has a statutory duty under Section 17 of the Crime and Disorder Act 1998 and the Police and Justice Act 2006 to prevent crime, disorder and the misuse of drugs, alcohol and other substances in the district of Mid Devon. The Contractor will take, where necessary in consultation with the Employer, reasonable and appropriate action to inhibit the causes and consequences of criminal, abusive, intimidatory and antisocial behaviour in the course of performing the Service.
- 45.9 The Contractor shall at all times during the Contract Term comply with its obligations under the Modern Slavery Act 2015 and shall provide the Employer with evidence of such compliance as the Employer may reasonably require within fourteen (14) days (or such longer period as the parties may agree) of receiving a request in writing

## **Schedule 1**

### **Data Protection**

#### **Part 1 - General**

- 1 In this Schedule, the following definitions shall apply:

Data Controller	has the meaning given in the Data Protection Legislation
Data Processing Conditions	conditions specifying and governing the scope, nature and purpose of processing of Personal Data in the performance of the Service by the Contractor, the duration of the processing and the types of Personal Data and categories of Data Subject.
Data Processor	has the meaning given in the Data Protection Legislation
Data Protection Legislation	up to but excluding 25 May 2018, shall be the Data Protection Act 1998 and thereafter (i) unless and until the GDPR is no longer directly applicable in England, shall be the GDPR and any national implementing statutes and secondary legislation, as amended or updated from time to time and then (ii) any successor legislation to the GDPR and the Data Protection Act 1998
Data Subject	has the meaning given in the Data Protection Legislation
GDPR	the General Data Protection Regulation ((EU) 2016/679)
Law	any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgement of a relevant court of law, or directives or requirements of any regulation body with which the Contractor is bound to comply
Personal Data	has the meaning given in the Data Protection Legislation
Personnel	all employees, staff, other workers, agents and consultants of the Contractor and of any Sub-Contractor engaged in the provision of the Service from time to time
Sub-Contract	has the meaning given in clause 4.6, but for the purposes of this Schedule shall include a contract between the Contractor and sub-processors to process Personal Data under the Contract

- Sub-Contractor has the meaning given in clause 4.6, but for the purposes of this Schedule shall include sub-processors that enter into a Sub-Contract with the Contractor
- 2 The Employer and the Contractor will comply with all applicable requirements of the Data Protection Legislation and this Schedule is in addition to, and does not relieve, remove or replace, obligations under the Data Protection Legislation.
  - 3 For the purposes of the Data Protection Legislation, the Employer is the Data Controller and the Contractor the Data Processor.
  - 4 Unless already specified in the Contract Documents, where the performance of the Service involves the processing of Personal Data by the Contractor on behalf of the Employer, the Employer will provide to the Contractor in writing, and the Contractor will comply with, the Data Processing Conditions applicable to the Contract.
  - 5 Without prejudice to the generality of paragraph 2 of this Schedule, the Employer will ensure that it has all Necessary Consents in place to enable lawful transfer of the Personal Data to the Contractor for the duration and purposes of the Contract.
  - 6 Without prejudice to the generality of paragraph 2, the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this Contract:
    - (a) process that Personal Data only on the written instructions of The Employer and/or as set out in the Data Processing Conditions, unless the Contractor is required by any Law applicable to the Contractor to process the Personal Data differently. Where the Contractor is so required, it shall promptly notify the Employer before processing the Personal Data, unless prohibited by Law from making such notification;
    - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Employer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its 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 technical and organisational measures adopted by it;
    - (c) in relation to Personnel, ensure that they:

- (i) are familiar and comply with the Contractor's obligations under this Schedule and the Data Processing Conditions;
  - (ii) are aware of the confidential nature of the Personal Data and are subject to appropriate confidentiality undertakings with the Contractor or, where applicable, a Sub-Contractor; and
  - (iii) have undergone suitable training in the care, protection and handling of Personal Data
- (d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Employer has been obtained and the following conditions are fulfilled:
  - (i) the Employer and the Contractor have provided appropriate safeguards in relation to the transfer;
  - (ii) the Data Subject has enforceable rights and effective remedies;
  - (iii) 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; and
  - (iv) the Contractor complies with the reasonable instructions notified to it in advance by the Employer with respect to the processing of the Personal Data;
- (e) notify the Employer immediately if it receives:
  - (i) a request from a Data Subject to have access to that person's Personal Data;
  - (ii) a request to rectify, block or erase any Personal Data;
  - (iii) any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
- (f) assist the Employer in responding to any request from a Data Subject and in ensuring compliance with the Employer's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (g) notify the Employer immediately (and in any event within 24 hours) on becoming aware of a Personal Data breach (within the meaning of the Data Protection Legislation) including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of the Contract;



- (h) at the written direction of the Employer and at no additional cost, delete or return Personal Data and copies thereof to the Employer on termination or expiry of the Contract unless required by the Law to store the Personal Data;
  - (i) maintain complete and accurate records and information to demonstrate its compliance with this Schedule and allow for audits by the Employer (or the Employers' designated auditor) pursuant to paragraph 9;
- 7 The Contractor shall indemnify the Employer against any losses, damages, cost or expenses incurred by the Employer arising from, or in connection with, any breach of the Contractor's obligations under this Schedule and this indemnity shall endure for a period of 12 years from the date the Contract ends.
- 8 Where the Contractor intends to engage a Sub-Contractor not named in the Data Processing Conditions or the Contract Documents and that Sub-Contractor will process Personal Data relating to the Service, it shall:
  - (a) notify the Employer in writing of the intended processing by the Sub-Contractor;
  - (b) obtain the prior written consent of the Employer to the processing by the Sub-Contractor;
  - (c) ensure that any Sub-Contract imposes obligations on the Sub-Contractor of equivalent effect to those set out in this Schedule, the Contract Documents and the Data Processing Conditions.
- 9 The Employer (or its designated auditor(s)) may conduct an audit of the Contractor to review the Contractor's compliance with the Data Protection Legislation and this Schedule, provided that:
  - (a) except where an audit is imposed on the Employer by a regulatory body or paragraph 6(g) applies, there shall be no more than two audits in any calendar year;
  - (b) the Employer shall use reasonable endeavours to ensure that the conduct of the audit does not unreasonably disrupt the Contractor or delay the provision of the Service;
  - (c) provided the Employer accepts its obligations of confidentiality, the Contractor shall provide the Employer with all reasonable co-operation and assistance in relation to each audit including:
    - (i) all information requested which is reasonably required and within the scope of the audit; and
    - (ii) reasonable access to Personnel and to any sites and to any equipment used (whether exclusively or non-exclusively) in the

performance of the Service

- (d) the Employer shall endeavour (but is not obliged to) provide at least 7 days' notice in writing of an intention or, where possible a regulatory body's intention, to conduct an audit;
- (e) the Employer and the Contractor shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this paragraph, unless the audit identifies a material failure by the Contractor to perform its obligations under this Schedule, in which case the Contractor shall reimburse the Employer its reasonable costs incurred in the course of the audit.

**Part 2 – Technical Requirements**

- 10 Unless otherwise agreed in writing, these paragraphs shall apply to the Contractor in the performance of the Service, in addition to the Contract Documents and/or the Data Processing Conditions.
- 11 All electronic data (email and media) must be encrypted in transit (this must be at least 256bit AES encryption or similar). The method of transmitting and receiving Personal Data must be specifically agreed with the Employer in advance of transmission.
- 12 All paper documentation containing Personal Data must be subject to clear desk policy and locked away when not attended.
- 13 All servers holding Personal Data must be held in secure rooms with strictly controlled access.
- 14 The Contractor shall ensure that good operations and network management controls are established. These controls must cover logical access; vulnerability analysis; firewall controls; lifestyle devices controls; and remote working.
- 15 A hierarchy of logical access control mechanisms shall be in place. These controls cover access to operations; systems; and applications containing Personal Data.
- 16 User passwords in relation to Personal Data shall comply with current good industry practice in terms of complexity and length; be changed every three months; and be unique to an individual member of the Personnel.