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**STANDARD TERMS & CONDITIONS  
FOR SERVICES**

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1. For the purpose of these Conditions of Contract the following meanings shall apply:
  - 1a. "The Council's Officer" shall mean the Director from time to time of the division of the Council for which the service shall be required and shall as regards to taking of any action or the giving of any order, instruction or notice by or on behalf of the Council include the Chief Executive for the time being of the Council;
  - 1b. "The Contractor" shall mean and include the company, body, person or persons and it's or their successors, executors and administrators whose tender is accepted by the Council and in the case of joint Contractors shall be deemed to bind them jointly and severally;
  - 1c. "The Contract Documents" shall mean collectively the tender accepted by the Council (and all documents annexed to or referred to in the form of tender).
  - 1d. "The Council" shall mean the "Wirral Borough Council" and any statutory authority which may succeed to, or replace the Council in the exercise of its statutory functions.
  - 1e. references to one gender include each and every gender and references to the singular include the plural unless the context otherwise requires
  - 1f. references to a particular Act of Parliament include all regulations orders instruments bye-laws and statutory guidance issued under them and any amendment modification replacement legislation or re-enactment of them
  - 1g. "Statutory Requirements" means all or any of the following (i) Acts of Parliament and any statutory instruments rules orders regulations notices directions bye-laws and permissions for the time being made under or deriving validity from an Act of Parliament (ii) European directives or regulations and rules having the force of law in the United Kingdom; and (iii) regulations orders bye-laws or codes of practice of any local or statutory authority having jurisdiction
2. The Contractor shall execute the services specified in the Contract Documents or in any order given by the Council's Officer in such manner and at the rates or prices respectively set out in the Contract Documents. The service shall be executed in accordance with this Agreement and at the Contractor's risk. The Contractor shall carry out its obligations described in the specification or contract proposals or any other of the Contract Documents promptly and with reasonable care and skill.
3. The rates or prices set out in the Contract Documents are to be on a fixed price basis for the duration of the Contract unless the Contract Documents provide otherwise and unless otherwise agreed no modifications or variations will be allowed during the period of validity of the Agreement. Exceptionally if the Contract Documents do not include a Price Indexation provision the Council reserves the right(acting reasonably) to reduce the rates or prices after consultation with the Contractor if it is satisfied that the Contractor's costs have decreased significantly( and other than temporarily) since the inception of the Contract
4. All the goods supplied in the execution of the services shall be fit for purpose, of the standard specified and free from all defects.
5. At the time of the execution of the service the Contractor must furnish the Council's Officer with an advice or delivery note containing particulars of the service executed

at the time. Should any costs be incurred by the Council in consequence of the neglect of the Contractor in this respect it shall be lawful for the Council to deduct and retain the amount of such costs from the amount of any monies due to the Contractor unless the Council shall exercise its right under Clause 6 or 7 hereof in which event the provisions of Clause 6 or 7 shall apply to such a breach.

6. The Council's Officer shall be at liberty to reject any work if the Contractor has not complied with all the provisions of Clause 2, 4 or 5 hereof.
- 7a. Without prejudice to all its other rights and remedies, the Council may terminate the contract with immediate effect, or at its absolute discretion, on the expiry of written notice served upon the Contractor:
  - i) If the Contractor has committed a material breach of the contract, or
  - ii) If the Contractor has failed to comply with a notice served upon him by the Council requiring him either to conform in future with any provision of the contract which he has broken or to remedy any breach of his obligations under the contract within such period as may have been specified by the Council in the said notice, or
  - iii) If the Contractor suffers an execution to be levied on his goods, or if the Contractor consists of one or more individuals, any such individual dies or enters into a composition or arrangements for the benefit of his creditors or has a bankruptcy order made against him or, if the Contractor consists of a body corporate, the Contractor has an administrator or administrative receiver or a receiver under the Law of Property Act 1925 appointed or is the subject of a resolution or order for winding up.
- 7b. The Contractor shall be liable forthwith to compensate the Council for any loss or damage it has sustained in consequence of any antecedent breaches of contract by the Contractor and for any loss that the Council sustains as a consequence of such termination. The Council may deduct such damages or loss from any sums owing to the Contractor under the contract.
- 7c. The termination of the contract is without prejudice to the rights, duties and liabilities of either party accrued prior to termination and either party shall be entitled to exercise any one or more of the rights and remedies given to it under the contract which is capable of surviving the termination of the contract.
8. The Council shall be entitled to cancel the contract and to recover from the Contractor the amount of any loss resulting from such cancellation if the Contractor shall have offered or agreed to give or given any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any such act in relation to the obtaining or execution of the contract or any other agreement with the Council, or for showing or forbearing to show favour or disfavour to any person in relation to the Agreement or any other Agreement with the Council, or if the like acts shall be done by any person employed by the Contractor or acting on its behalf (whether with or without the knowledge of the Contractor) or if in relation to any contract with the Council the Contractor or any person employed by it or acting on its behalf shall have committed an offence under the Bribery Act 2010 or any subsequent legislation enacted to replace it, 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.
9. The Contractor shall not transfer or assign directly or indirectly or subcontract or underlet to any company, partnership, incorporated, or unincorporated body, person or persons whatsoever this Agreement or any part of it without the written consent of the Council's Officer and in the event of the Council's Officer giving any such consent as a foresaid (which shall be in his absolute discretion) the Contractor shall be

responsible for all work done by such sub-contractor or sub-contractors and for such work being carried out under the same conditions as if executed by the Contractor and shall be responsible for the observance of this contract by such sub-contractor or sub-contractors.

10. The Council does not bind itself to consider any tender or to accept the lowest tender or any tender at all and reserves the right to accept the whole or part or parts of any tender. The Council shall not be responsible for any costs incurred by the Contractors in preparing the tender.
11. Canvassing Members of the Council is prohibited.
12. Any notice or instruction to be served on or given or delivered by the Council to the Contractor may be delivered at or sent through the post to the usual or last known address of the Contractor or to the Foreman or Agent of the Contractor and shall be deemed to have been received in the ordinary course of the post. All communications, advices of delivery and invoices from the Contractor in reference to the carrying out of the contract shall be sent to the Council's Supervising Officer. For the avoidance of doubt all communications to and from the Contractor during the procurement stage of the Contract shall be conducted through the Council's electronic sourcing portal( the Chest until further notice) and may continue to be so conducted if the Council so requires.after the commencement of the Contract
13. In the event of any claim being made or action brought against the Council for infringement of patents in respect of goods supplied to the Council under this Agreement the Council shall immediately notify the Contractor and the Contractor shall be at liberty (with the assistance of the Council is required) at the expense of the Contractor to conduct all negotiations for the settlement of the same or any litigation that may arise. Subject to the notification stated above and provided that no such goods shall be used for any purpose other than for which the Contractor supplied the same the Contractor shall indemnify the Council in respect of any such claim.
14. Nothing in this agreement shall be taken to prevent or restrict in any way whatsoever the rights of the Council to order a service of the same or a similar description to those specified in the Contract Documents from any other company, partnership, incorporated, or unincorporated body, or to execute or have executed on its behalf such service itself.
15. If the Contractor shall become bankrupt or insolvent or enter into liquidation whether compulsory or voluntary (except liquidation for the purpose of reconstruction) or shall suffer execution for debt in any Court of Law or shall propose any composition with creditors for the settlement of debts or shall enter into make or execute any Deed of Arrangement as defined by the Deeds of Arrangement Act 1914, or enter into the voluntary arrangement under Parts I and IX of the Insolvency Act 1986 or shall carry on or shall propose to carry on the business under an insolvency practitioner as defined by Section 388 of the Insolvency Act 1986 or shall commit any offence under the Insolvency Act 1986 the Council may require the service to be executed and if this requisition is not satisfactorily complied with within seven days from the date of the Council's notice to that effect the Council may by notice in writing to the Contractor and without prejudice to any other rights of the Council whether under this Agreement or otherwise rescind the contract whereupon this Agreement shall be at an end.
- 16a. All contractors for the supply of goods and services will uphold the principles of sustainable development and comply with all environmental legislation, to include but not be limited to the Environmental Protection Act 1990.
- 16b. The Council reserves the right to terminate any contract where a contractor is found to be in direct contravention of such principles and legislation.

16c. The Council maintains a list of prohibited environmentally damaging products which should not be used by contractors unless by prior agreement with the Council. Copies of the list of prohibited products are available upon request.

#### EQUALITY & NON DISCRIMINATION

17. In discharging its obligations under this contract, the Contractor will comply with all applicable Acts of Parliament, Regulations, Orders, Directives, Statutory Guidance, Codes of Practice and Byelaws that are in force or may come into force during this contract.
18. Without prejudice to, or limitation of, its obligations under Clause 17, the Contractor shall comply with the following requirements in discharging its obligations under this contract.
  - 18a. The Contractor shall not discriminate directly or indirectly against any person the grounds of gender, gender re-assignment, marriage or civil partnership, pregnancy or maternity sexuality, age, religion and belief, colour, race, nationality, national or ethnic origin, contrary to the Equality Act 2010.
  - 18b. The Contractor shall ensure that it complies with the requirements of the Equality Act 2010 in carrying out its obligations under this contract and carries out at its own cost and expense all such acts and things as are necessary to ensure that the Council is not placed in breach of any requirements imposed on it by the Equality Act 2010.
  - 18c. The Contractor shall notify the Council as soon as it becomes aware of any complaint or proceedings against the Contractor alleging any breach of the Equality Act 2010 or any investigation of the Contractor's performance of this agreement. In the event of any such complaint, proceedings or investigation the Contractor will co-operate fully and promptly with the body undertaking the investigation or bringing the proceedings, and will indemnify the Council against all costs, charges and expenses (including legal and administrative expenses and any compensation that the Council is required to pay) arising out of such investigation of proceedings.
  - 18d. The Contractor shall provide to the Council such information as the Council may reasonably request in respect of the impact of equality issues on the operation of the contract, and vice-versa.
  - 18e. In the event that the Contractor subcontracts any of its obligations under this contract it will impose obligations on its subcontractor that are substantially similar to those set out in this Clause.
  - 18f. The Council reserves the right to require the Contractor, by written request, to remove any person involved in the performance of the contract where in the Council's reasonable opinion such person is acting contrary to the requirements of this Clause.
  - 18g. The Contractor will discharge its obligations under this contract without infringing the human rights of any person, as defined by the Human Rights Act 1998.
19. The Contractor shall
  - 19a. At all times provide the service in accordance with the Council's obligations under the Equality Act 2010.
  - 19b. Make sure that no section of the community is denied access or receive a poorer service on the grounds of race, gender or disability.
  - 19c. Ensure that sufficient, instructed and competent staff are available to provide services to all sections of the community including those who do not speak English.

- 19d. If required, attend regular meetings with equal opportunities staff and local community groups to discuss the service and improvements to it.
- 19e. Provide any information and submit written documentation as required regarding the delivery of services to ensure the Council meets its statutory obligations under the Equality At 2010.
- 19f. Support and co-operate with council initiatives aimed at improving services (and/ or access to services) to different groups in the community.
20. The Contractor shall be liable for and shall indemnify the Council against all costs claims expenses and liabilities in respect of personal injury or death which arises out of the Contractor's performance of the contract and which is due to the Contractor's negligent act or omission or breach of contract.
21. The Contractor shall be liable for and shall indemnify the Council against any economic loss or damage to the Council's property or any other person's property which arises out of the Contractor's performance of the contract and which is due to the Contractor's negligent act or omission or breach of contract and for the purposes of this clause any act or omission of a sub-contractor shall be deemed to be that of the Contractor.
- 22a. The Contractor shall comply with all Statutory Requirements to be observed and performed in connection with the fulfilment of his obligations under the contract and shall indemnify the Council accordingly against any loss or damage caused by non-compliance with the same.
- 22b. Carry out such risks assessment as are appropriate and retain, an adequate record of the assessment for the duration of the contract for all hazards identified.
- 23a. The standard terms of payment will be 28 days from the date of receipt of a valid invoice, unless otherwise agreed, which is subject to the Council's right to deduct from any sum due to the Contractor the amount of any loss which the Council has sustained as a consequence of any antecedent breach of contract by the Contractor.or the amount of any prior overpayment The Council reserves the right to return or reject any invoice which is received but does not refer to an official purchase order number which has been issued by the Council
- 23b. If the services to be supplied by the Contractor are such that the terms of the Housing Grants, Construction and Regeneration Act 1996 apply to the contract then notice of any amount to be withheld by the Council from sums due to the Contractor or any amount not paid shall be given to the Contractor within 21 days of the Council's receipt of the invoice together with the reasons for withholding the amount.
24. The Contractor shall be entitled to terminate the contract if:
- i) The Council has failed to comply with its obligations under Clause 23 above, and
  - ii) The Contractor has served notice upon the Council by recorded delivery specifying the default and requiring the Council to pay the amount properly due to the Contractor within 21 days thereof and
  - iii) The Council has not paid the amount properly due to the Contractor within the 21 days specified in the said notice.
25. The Contractor shall insure against its liability to the Council under clauses 20 and 21 above in the sum of at least £5 million in respect of any one occurrence or series of occurrences arising out of one event. The Contractor shall produce to the Council

satisfactory evidence of the relevant insurance policy or policies required under the contract and the premium receipts as and when required by the Council. The insurances must be in force throughout the Contract and notice of any changes must be immediately notified to the Council in accordance with Clause 12

26. The Contractor shall retain for production as required by the Council all accounts, vouchers and documents relating to the contract until it has received notification from the appropriate officer of the Council that the accounts relating to the contract have been audited by the Council.
27. The Council may at any time upon reasonable notice conduct audits for the following purposes:-
  - (a) to verify the accuracy of any invoices or demands submitted by the Contractor to the Council for payment;
  - (b) to review the Contractor's compliance with its obligations under the contract;
  - (c) to carry out the audit and certification of the Council's accounts;
  - (d) to review the effectiveness of the Council's arrangements for the management of the contract.
28. The Contractor shall, on demand, provide the Council's auditors with all reasonable co-operation and assistance in relation to each audit including:-
  - (a) all information requested by the Council's auditors within the permitted scope of the audit;
  - (b) reasonable access to any sites controlled by the Contractor and used by the Contractor in the performance of the contract;
  - (c) reasonable access to the employees of the Contractor.
29. The terms and conditions of the contract as stated herein override any terms and conditions specified by the Contractor in submitting his tender.
30. The Contractor acknowledges that this contract has not been entered into wholly or partly in reliance on any statement promise or representation made by or on behalf of the Council other than any statements promises or representations to which the Contractor has drawn attention in writing to the Council before the commencement of the contract. Nothing in this clause will exclude any liability which the Council would otherwise have to the Contractor in respect of any statements made fraudulently.
31. If any sum payable under the contract is not paid when due then without prejudice to a party's other rights and remedies under the contract, that sum will bear interest from the due date until payment is made in full at 4% per annum over the base rate of the Council's bank at the date of this contract.
32. Copyright in the materials produced for the Council by the Contractor in the performance of the contract shall vest in the Council and the Contractor shall not reproduce or disseminate the said materials except with the prior written permission of the Council which shall not be unreasonably withheld.
33. Nothing in this contract confers on any third party any benefit or any right to enforce any term of this contract.
34. Throughout the duration of the contract the Contractor shall be an independent contractor and not the employee of the Council. Subject to his obligations under the

contract, the Contractor shall determine the manner in which he performs the contract.

35. The failure by the Council to enforce at any time or for any period any one or more of its rights or remedies under the contract shall not be a waiver by it of its right at any time subsequently to do so on reasonable notice being given to the Contractor.
- 36 (a) On receiving a request from the Council, the Contractor shall within seven days' supply in writing any information on his employee's engaged on the contract which is required by the Council for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE). Such information may include (without limitation) the number of employees employed upon the contract, the employees age, gender, salary, length and conditions of service, contractual notice period any pay settlement agreed by the Contractor but not implemented, details of any relevant collective agreements and any outstanding or potential liability for any breach of an employee's contract of employment and any outstanding or potential statutory liability which a new Contractor or the Council may be required to meet in respect of employee's transferred to it under TUPE as a result of a transfer of any part of the services on the termination or expiry of this contract. The information thereby obtained may be disclosed in an anonymised form by the Council to any person or organisation that the Council has grounds to believe may tender for a contract relating to all or part of the goods or services which are to be supplied for and on behalf of the Council after the expiry of this contract.
- (b) The Contractor shall warrant to the Council that all information supplied pursuant to this clause is full and accurate in all respects and shall indemnify the Council in respect of its losses arising from any claim by any party as a result of the Contractor failing to provide any of the information or the result of any material inaccuracy in such information.
- (c) Where notice to terminate this contract has been given by the Council or the Contractor (for whatever reason) or the contract is due to expire within the following six months, the Contractor shall not prior to the termination or expiry date alter the terms and conditions of employment of any employees employed upon the contract other than to make reasonable wage or salary awards that shall align with those offered generally to employees on a similar status within the Contractors work force or as required by law unless the Contractor has the Council's prior written consent such consent not to be unreasonably withheld.
- (d) In the circumstances set out in Clause 36(c) above, the Contractor shall not recruit an employee after notice of termination has been given or within six months of the date on which the contract is due to expire, who would if recruited be employed in the performance of the services unless the Contractor has the Council's prior written consent (such consent not to be unreasonably withheld) nor shall the Contractor without the Council's prior written consent assign to the performance of the contract any additional employee's from within his workforce. This sub clause shall apply where the Council reasonably believes that the employees of the Contractor may transfer under TUPE on the termination or expiry date of the contract.
- 37 (a) The Contractor acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 (FOIA) the Transparency Code 2015 (TC) and the Environmental Information Regulations 2004 (EIR) and will assist and co-operate with the Council to enable the Council to comply with its disclosure obligations under the FOIA TC and the EIR.

- (b) If the Contractor receives a request for information under the FOIA or the EIR, it will not respond to such request and within two business days transfer the request to the Council;
- (c) The Council may disclose information concerning the Contractor and this contract either without consulting with the Contractor or following consultation of the Contractor and having taken his views into account;
- (d) The Contractor shall provide copies of all information requested by the Council within five business days of such request and without charge.
- (e) The Contractor acknowledges a decision on whether any information shall be disclosed under the FOIA TC or the EIR shall be a decision solely for the Council.
38. To the extent that the Contractor is acting as a data processor on behalf of the Council under the General Data Protection Regulation 2016(GDPR) and the Data Protection Act 2018 (the DPA), the Contractor shall comply with the provisions of the GDPR and DPA and in particular shall:-
- (a) Only process such personal data that are necessary to perform obligations under this contract and only in accordance with any instructions given by the Council in the Schedule attached or subsequently in writing.
- (b) Put in place appropriate technical and organisational measures against any unauthorised or unlawful processing of such personal data and against the accidental loss or destruction of/or damage to such personal data and promptly provide the Council on request with a written description of the measures it has taken together with copies of all relevant documentation for the Council's approval.
- (c) Take reasonable steps to ensure the reliability and integrity of its personnel (including staff of agents or sub- contractors) who have access to such personal data and ensure that such personnel are aware of the confidential nature of the personal data, are properly trained in protecting and processing personal data and do not process or otherwise disclose to third parties personal data except in accordance with the Council's written instructions or the Schedule.
- (d) Provide the Council with such information that the Council may reasonably require to satisfy itself that the Contractor is complying with its obligations under the GDPR and DPA;
- (e) Promptly notify the Council and in any event within 5 working days of any request it receives from a data subject or third party for disclosure of or access to the personal data or to rectify, block or erase such data or if it receives any complaint relating thereto from any person including the Information Commissioner or if it becomes aware of any loss, destruction, or unauthorised processing of personal data.
- (f) Promptly notify the Council of any breach of the security measures required to be put in place pursuant to this clause and of any steps it intends to take to remedy such breach or prevent its recurrence;
- (g) Ensure that it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the DPA.
- (h) Supply to the Council any personal data which it is either holding or processing on behalf of the Council in connection with the contract whenever so requested by the Council within the timescales specified by the Council in



its request and provide the Council with full co-operation and assistance in relation to any request made by a data subject or third party for access to, or rectification or erasure of, personal data (or a complaint relating thereto).

- (i) Provide all reasonable assistance to the Council in the preparation of any data protection impact assessments prior to beginning any processing of personal data .
  - (j) Not transfer personal data outside of the UK or European Union except with the written consent of the Council and in accordance with any conditions or requirements contained in that consent.
  - (k) Maintain complete and accurate records of any data processing it carries out under the Contract and allow the Council to audit its data processing in accordance with Clauses 27 and 28.
  - (l) Agree to vary this Clause to take account of any relevant statutory requirements and guidance issued by the Information Commissioner. at no additional cost to the Council.
  - (m) Designate a data protection officer if this is a statutory requirement.
  - (n) Not allow any sub-processors to process any personal data on behalf of the Council except with the prior written consent of the Council and in accordance with a written agreement to be approved by the Council in writing.
  - (o) Return, transfer or delete ( as may be required by the Council) personal data processed under the Contract at its termination or expiration.
39. The parties shall keep confidential all matters relating to this contract which they reasonably believe to be commercially sensitive but this obligation shall not apply to any disclosure of confidential information which;
- (a) is required by any applicable law;
  - (b) is reasonably required by a party for the performance of that party's obligations under this contract;
  - (c) where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of this clause;
  - (d) is by the Council of any documents to which it is a party which the Council reasonably believes contains no commercially sensitive information or no information disclosure of which would constitute an actionable breach of confidence;
  - (e) enables a determination to be made of any dispute between the parties including legal proceedings;
  - (f) is by the Council to any departmental office or agency of the government;
  - (g) is by the Council relating to this contract and in respect of which the Contractor has given its prior consent to disclosure (which shall not be unreasonably withheld);
  - (h) is by the Council in order to comply with any governmental policy on transparency and in particular the Contractor shall consent to disclosure of information by the Council in respect of monthly expenditure over £500.00 in

relation to this contract, such information to include the Contractor's name and the monthly charge paid.

- 40 The Contractors total liability to the Council in contract tort or misrepresentation arising in connection with the performance of this contract shall in all circumstances be limited to three times the price to be paid by the Council for the services to be provided under the contract (if properly performed) but this limitation of liability shall not apply to;
- (a) the Contractors liability for death or personal injury;
  - (b) any liability for damage to the Council's property or the property of a third party;
  - (c) any liability to the Council which is the result of fraud or fraudulent
  - (d) any liability arising from any breach by the Contractor of his statutory duties or the property rights of the Council or any other person.
- 41 The Contractor represents and warrants that all written statements made by it or on its behalf as part of the procurement process or in its tender remain true and accurate including(in particular but without limitation) its statements regarding non collusive tendering .. .
- 42 This contract constitutes the entire agreement and understanding of the parties and supersedes any previous agreements between the parties relating to the subject matter whether written or oral.