



Calne Town Council

Invitation to Tender for the replacement of existing play provision by development of a new 'destination' play area with a ninja play theme at The Recreation Ground, Calne

Calne Town Council Reference No: CTC/RGP001

Deadline for Tenders to be received: 12:00 noon on Friday 4th April 2025

Company Name	
Main Contact	
Company Registration Number	

SECTION A – INSTRUCTIONS AND INFORMATION

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1 INTRODUCTION AND BACKGROUND

Calne Town Council (the "Council") is issuing this invitation to tender ("ITT") in connection with the competitive procurement of Invitation to Tender for the replacement of existing play provision by development of a new 'destination' play area consisting of a play area for toddlers and a second (adjacent) area for older children/adults with a ninja play theme at The Recreation Ground, Calne.

This ITT Section A contains further information about the procurement process.

1.1 ITT Section B contains the questions that Bidders must complete. Each Bidder's response ("Tender") should be detailed enough to allow the Council to make an informed award decision.

1.2 All Tenders must be returned no later than the deadline for receipt of Tenders specified on the front cover of this ITT.

1.3 The Council is using the www.gov.uk/contracts-finder to conduct the procurement process.

Contents of the ITT

1.4 This ITT document consists of:

Section A – Instructions and information	
1	Introduction and background
2	Tender timetable
3	Instructions to Bidders
4	Tender evaluation methodology and criteria
Annex A1	Calne Town Council Terms and Conditions
Section B – Tender Schedules (to be returned by Bidders)	
Annex B1	Eligibility questions and responses
Annex B2	Specification
Annex B3	Tender Response Document
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Introduction to the Procurement

Calne is a historic market town in Wiltshire, England, situated on the River Marden. Known for its strong links to the wool and bacon industries, it played a key role in the development of the Wiltshire cure for ham. With a blend of historic charm and modern amenities, Calne offers a welcoming community and easy access to the stunning countryside of the North Wessex Downs.

This brief has been prepared by Calne Town Council (CTC) to invite bids from suitably qualified and experienced Play Equipment Suppliers to provide, quotes, designs and proposals for the replacement of existing play provision by development of a new 'destination' play area with a ninja play theme at The Recreation Ground, Calne.

The Recreation Ground was gifted to Calne Town Council (CTC) by the Harris Family for use by the community. This is a popular site used by different groups and all ages.

As well as a large green space, the current Recreation Ground includes a dated children's play area, a Multi-Use Games Area (MUGA), and is home to the local rugby club, with an adult sized pitch present on site.

2.1 Full details of the Council's requirements are set out in the Specification in Annex B2 of Section B.

Purpose and scope of this ITT

1.5 This ITT:

- 1.5.1 Invites Bidders to submit their Tenders in accordance with the instructions set out in the remainder of this ITT;
- 1.5.2 Sets out the overall timetable and process for the procurement;
- 1.5.3 Provides Bidders with sufficient information to enable them to submit a compliant Tender;
- 1.5.4 Sets out the award criteria and Tender evaluation model that will be used to evaluate the Tenders; and
- 1.5.5 Explains the administrative arrangements for the receipt of Tenders.

1.6 The link below to the Cabinet Office website provides information on the Government's Crown Representative for SMEs, a link to the definition of an SME and details on the SME initiative: <https://www.gov.uk/government/policies/buying-and-managing-government-goods-and-services-more-efficiently-and-effectively/supporting-pages/making-sure-government-gets-full-value-from-small-and-medium-sized-enterprises>.

Questions about this ITT

1.7 You may submit, by no later than **12:00 noon on Friday 28th March 2025**, any queries that you have relating to this ITT. Please submit such queries via email to rmerc@calne.gov.uk.

1.8 Any specific queries should clearly reference the appropriate paragraph in the ITT documentation and, to the extent possible, should be aggregated rather than sent individually. The Council may decline to answer queries received after the above deadline.

1.9 Answers to the questions received by the Council will be circulated to all Bidders via the www.gov.uk/contracts-finder. Answers will not reveal the identity of the individual Bidder that asked a particular question. The Council may decide not to disclose answers, or parts of answers, which would reveal confidential or commercially sensitive information in relation to a particular Bidder.

TENDER TIMETABLE

Key dates

2.1 The procurement will follow a clear, structured and transparent process to ensure a fair and level playing field so that all Bidders are treated equally.

2.2 The key dates for this procurement are currently anticipated to be as follows:

Event	Date
ITT issued	Wednesday 5th March 2025
Deadline for the receipt of clarification questions	12 noon Friday 28 th March 2025
Deadline for receipt of Tenders	12 noon Friday 4 th April 2025
Evaluation of Tenders	Wednesday 9 th April 2025
Full Council Approval	Monday 14 th April 2025
Standstill Period	Wednesday 16 th April 2025 to 1 st May 2025
Contract award (following standstill period)	Friday 2 nd May 2025
Contract work starts	To be agreed with successful supplier

2.3 Whilst the Council does not intend to depart from the timetable, it reserves the right to do so at any stage.

Deadline for receipt of Tenders

2.4 Bidders must submit their Tenders in the manner prescribed in section 3 below no later than the date and time specified on the front cover of this ITT.

2.5 Any Tender received after the deadline or by any method other than via the www.gov.uk/contracts-finder may not be considered. The Council may at its discretion extend the deadline and in such circumstances the Council will notify all Bidders of any change.

2.6 Contract award is subject to the formal approval process of the Council. Until all necessary approvals are obtained and the standstill period completed, no contract(s) will be entered into.

2.7 Once the Council has reached a decision in respect of a contract award, it will notify all Bidders of that decision and provide for a standstill period in accordance with the Public Contracts Regulations 2015 before entering into any contract(s).

Site Visit

Site visits are possible on request. The onsite contact is Robert Mercer please email rmerc@calne.gov.uk to arrange a visit.

Eligibility Questions and Responses

- 3.1 The Eligibility Questions is a self-declaration, made by you (the potential supplier), that you do not meet any of the grounds for exclusion¹. If there are grounds for exclusion, there is an opportunity to explain the background and any measures you have taken to rectify the situation (we call this self-cleaning).
- 3.2 A completed declaration of Part 1 and Part 2 of the Eligibility Questions provides a formal statement that the organisation making the declaration has not breached any of the exclusion's grounds. Consequently, we require all the organisations that you will rely on to meet the selection criteria to provide a completed Part 1 and Part 2 of the Eligibility Questions. For example, these could be parent companies, affiliates, associates, or essential sub-contractors, if they are relied upon to meet the selection criteria. This means that where you are joining in a group of organisations, including joint ventures and partnerships, each organisation in that group must complete one of these self-declarations. Sub-contractors that you rely on to meet the selection criteria must also complete a self-declaration (although sub-contractors that are not relied upon do not need to complete the self-declaration).
- Supplier Selection Questions: Part 3
- 3.3 This procurement document provides instructions on the selection questions you need to respond to and how to submit those responses. If you are bidding on behalf of a group (consortium) or you intend to use sub-contractors, you should complete all of the selection questions on behalf of the consortium and/or any sub-contractors.
- 3.4 If the relevant documentary evidence referred to in the Eligibility Questions is not provided upon request and without delay the Council reserves the right to amend the contract award decision and award to the next compliant bidder.
- Consequences of misrepresentation
- 3.5 If you seriously misrepresent any factual information in filling in the Eligibility Questions, and so induce the Council to enter into a contract, there may be significant consequences. You may be excluded from the procurement procedure, and from bidding for other contracts for three years. If a contract has been entered into you may be sued for damages and the contract may be rescinded. If fraud, or fraudulent intent, can be proved, you or your responsible officers may be prosecuted and convicted of the offence of fraud by false representation, and you must be excluded from further procurements for five years.
- Notes for completing the Eligibility Questions
- 3.6 "You" / "Your" refers to the potential supplier completing this standard Selection Questionnaire i.e. the legal entity responsible for the information provided. The term "potential supplier" is intended to cover any economic operator as defined by the Public Contracts Regulations 2015 (referred to as the "regulations") and could be a registered company; the lead contact for a group of economic operators; charitable organisation; Voluntary Community and Social Enterprise (VCSE); Special Purpose Vehicle; or other form of entity.
- 3.7 Please ensure that all questions are completed in full, and in the format requested. If the question does not apply to you, please state 'N/A'. Should you need to provide additional information in response to the questions, please submit a clearly identified annex.
- 3.8 The Council recognises that arrangements set out in section 1.2 of the Eligibility Questions, in relation to a group of economic operators (for example, a consortium) and/or use of sub-contractors, may be subject to change and will, therefore, not be finalised until a later date. The lead contact should notify the Council immediately of any change in the proposed arrangements and ensure a completed Part 1 and Part 2 of the Eligibility Questions is submitted for any new organisation relied on to meet the selection criteria. The Council will make a revised assessment of the submission based on the updated information.
- 3.9 For Part 1 and Part 2 of the Eligibility Questions every organisation that is being relied on to meet the selection must complete and submit the self-declaration.
- 3.10 **[All sub-contractors are required to complete Part 1 and Part 2 of the Eligibility Questions.]**

¹ For the list of exclusion please see https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/551130/List_of_Mandatory_and_Discretionary_Exclusions.pdf

- 3.11 For answers to Part 3 of the Eligibility Questions - If you are bidding on behalf of a group, for example, a consortium, or you intend to use sub-contractors, you should complete all of the questions on behalf of the consortium and/ or any sub-contractors, providing one composite response and declaration
- 3.12 The Council confirms that it will keep confidential and will not disclose to any third parties any information obtained from a named customer contact, other than to the Cabinet Office and/or contracting authorities defined by the regulations, or pursuant to an order of the court or demand made by any competent Council or body where the Council is under a legal or regulatory obligation to make such a disclosure

Formalities for submission of Tenders

- 3.13 Bidders must submit their Tenders by completing the Annexes to Section B of the ITT. Completed Tenders must be submitted using the. www.gov.uk/contracts-finder. Bidders should ensure that they allow plenty of time to upload the Tender response, particularly where there are large documents.
- 3.14 Bidders must adhere to the following standard requirements when submitting their Tenders:

- 3.14.1 Do not embed documents within other documents. Instead provide separate electronic copies of the documents, clearly labelled and referenced if necessary.
- 3.14.2 The Tender must be in English and drafted in accordance with the drafting guidance set out in this Invitation to Tender (ITT).
- 3.14.3 The Tender must be fully cross-referenced and include a table of contents.
- 3.14.4 The Tender must include a list of all supporting material.
- 3.14.5 Electronic copies of the Tender shall be in PDF format only with the Commercial Schedule being sent as a separate Excel spreadsheet.

3.15 Where a word count limit is specified, Bidders should state how many words their response contains. The Council reserves the right not to consider any part of a response exceeding the word limit. Words included within diagrams or other graphic representations will count towards the word limit.

3.16 The Tender must be clear, concise and complete. The Council reserves the right to mark Bidders down or exclude them from the procurement if their Tenders are ambiguous or lack clarity. Bidders should submit only such information as is necessary to respond effectively to this ITT. Unless specifically requested, do not include extraneous presentation materials.

3.17 Tenders will be evaluated on the basis of information submitted by the deadline. Where information or documentation submitted appears to be incomplete or erroneous or specific documents are missing, the Council reserves the right to request the Bidder to submit, supplement, clarify or complete the information or documentation.

3.18 The Tender must be signed by a duly authorised representative of the Bidder.

Modification and withdrawal of Tenders

3.19 Except as set out in paragraph 3.6, no Tender may be modified after the deadline for receipt of Tenders.

3.20 Tenders may be withdrawn at any time before the deadline for receipt of Tenders. Revised Tenders may be submitted up until the deadline for receipt of Tenders, provided such intention is notified to the Council using www.gov.uk/contracts-finder.

Terms and conditions

3.21 The contract will include the Calne Town Council Terms and Conditions set out in Annex A1. It is vital that the Bidder reviews these carefully, and takes account of all information such as TUPE, key performance indicators and insurance requirements and that the Tender fully takes account of these. By submitting a Tender, Bidders are agreeing to be bound by the terms of this ITT and the Calne Town Council Terms and Conditions without further negotiation or amendment.

Consortia and subcontractors

3.22 If the Bidder is a consortium or will rely on sub-contractors to deliver the contract, it must explain in its Tender precisely which entities will be the supplier.

3.23 For the purposes of this ITT, the following terms apply:

- 3.23.1 **Consortium arrangement** - Groups of companies come together specifically for the purpose of bidding for appointment as the supplier and envisage that they will establish a special purpose vehicle as the prime contracting party with the Council.
- 3.23.2 **Subcontracting arrangement** - Groups of companies come together specifically for the purpose of bidding for appointment as the supplier, but envisage that one of their number will be the supplier, the remaining members of that group will be subcontractors to the supplier.

3.24 If the Bidder intends to sub-contract any material parts of the contract, it must explain which parts will be sub-contracted, who the sub-contractor is, confirm the sub-contractor has agreed terms of supply and what contractual commitment it has from the sub-contractor to deliver.

Apprenticeships

3.25 Public procurement supports skills development and the commitment to apprenticeships. Bidders will compete on the basis of their contribution to apprenticeships and skills. This is applicable to all procurements advertised from September 2015, this action note builds on and replaces 'supporting sustainable skills development through major construction and infrastructure projects'

Warnings and disclaimers

3.26 While the information contained in this ITT is believed to be correct at the time of issue, neither the Council, its advisors, nor any other awarding authorities will accept any liability for its accuracy, adequacy or completeness, nor will any express or implied warranty be given. This exclusion extends to liability in relation to any statement, opinion or conclusion contained in or any omission from, this ITT (including its annexes) and in respect of any other written or oral communication transmitted (or otherwise made available) to any Bidder. This exclusion does not extend to any fraudulent misrepresentation made by or on behalf of the Council.

3.27 If a Bidder proposes to enter into a contract with the Council, it must rely on its own enquiries and on the terms and conditions set out in the contract(s) (as and when finally executed), subject to the limitations and restrictions specified in it.

3.28 Neither the issue of this ITT, nor any of the information presented in it, should be regarded as a commitment or representation on the part of the Council (or any other person) to enter into a contractual arrangement.

Freedom of Information Act 2000 and Environmental Information Regulations 2004

3.29 As a public body, the Council is subject to, and must comply with, the Freedom of Information Act 2000 ("**FOIA**") and the Environmental Information Regulations 2004 ("**EIR**"). The Council may therefore be required to disclose information submitted by the Bidder.

3.30 If a Bidder considers any part of its Tender to be confidential or commercially sensitive, it must complete Annex B5 to Section B of this ITT, with a statement of which exemptions are relevant under FOIA and/or the EIR.

3.31 In respect of any information submitted by a Bidder that it considers to be confidential or commercially sensitive the Bidder should:

- 3.31.1 Clearly identify such information as confidential or commercially sensitive;
- 3.31.2 Explain its reasons why disclosure of such information would be likely to prejudice or would cause actual prejudice to its commercial interests; and
- 3.31.3 Provide a reasoned estimate of the period of time during which the Bidder believes that such information will remain commercially sensitive.

3.32 Where a Bidder identifies information as commercially sensitive, the Council will take those views into account. Bidders should note, however, that, even where information is identified as commercially sensitive, the Council may be required to disclose such information in accordance with FOIA or the EIR. Accordingly, the Council cannot guarantee that it will withhold information marked 'confidential', 'commercially sensitive' or otherwise exempt.

Publicity

3.33 No publicity regarding the award of any contract will be permitted unless and until the Council has given express written consent to the relevant communication. For example, no statements may be made to the media regarding the nature of any Tender, its contents or any proposals relating to it without the prior written consent of the Council.

Bidders conduct and conflicts of interest

3.34 Any attempt by Bidders or their advisors to influence the contract award process in any way may result in the Bidder being disqualified. Specifically, Bidders shall not directly or indirectly at any time:

- 3.34.1 Devise or amend the content of their Tender in accordance with any agreement or arrangement with any other person, other than in good faith with a person who is a proposed partner, supplier, consortium member or provider of finance;
- 3.34.2 Enter into any agreement or arrangement with any other person as to the form or content of any other Tender, or offer to pay any sum of money or valuable consideration to any person to effect changes to the form or content of any other Tender;
- 3.34.3 Enter into any agreement or arrangement with any other person that has the effect of prohibiting or excluding that person from submitting a Tender;
- 3.34.4 Canvass the Council or any employees or agents of the Council in relation to this procurement; and/or
- 3.34.5 Attempt to obtain information from any of the employees or agents of the Council or their advisors concerning another Bidder or Tender (except for debrief information requests made through www.gov.uk/contracts-finder).

3.35 Bidders are responsible for ensuring that no conflicts of interest exist between the Bidder and its advisers, and the Council and its advisers. Bidders should notify the Council promptly of any possible conflict and the proposed steps that the Bidder believes can be taken to avoid the conflict. Any Bidder who fails to comply with these requirements may be excluded from the procurement at the discretion of the Council.

Council's rights

3.36 Subject to its obligations to act in a transparent, proportionate and non-discriminatory manner, the Council reserves the right to:

- 3.36.1 Waive or change the requirements of this ITT from time to time;
- 3.36.2 Seek clarification or documents in respect of a Bidder's submission;
- 3.36.3 Disqualify any Bidder that does not submit a compliant Tender in accordance with the instructions in this ITT;
- 3.36.4 Disqualify any Bidder that is guilty of serious misrepresentation in relation to its Tender or the Tender process;
- 3.36.5 Withdraw this ITT at any time, or re-invite Tenders on the same or any alternative basis;
- 3.36.6 Choose not to award any contract as a result of the current procurement process; and
- 3.36.7 Make whatever changes it sees fit to the timetable, structure or content of the procurement process.

Bid costs

3.37 The Council will not be liable for any bid costs, expenditure, work or effort incurred by a Bidder in proceeding with or participating in this procurement, including if the procurement process is terminated or amended by the Council.

Language

3.38 Tenders, all documents and all correspondence relating to the Tender must be written in English.

Transparency

3.39 In accordance with the Public Contracts Regulations 2015 and the Government's policy on transparency, Bidders should be aware that the Council intends to make the ITT and details of any subsequent contract publicly available, by publication on the Government's Contracts Finder portal www.gov.uk/contracts-finder

Governing Law and Jurisdiction

3.40 This ITT and any dispute concerning it (including non-contractual disputes or claims) shall be governed by English law and subject to the jurisdiction of the English Courts.

Government Security Classifications (GSC)

3.41 All potential suppliers are encouraged to make themselves aware of the GSC and identify any potential impacts in their tender submission, as the protective marking and applicable protection of any material passed to, or generated by, potential suppliers during the tender process or pursuant to any Contract awarded as a result of this tender process will be subject to the GSC.

The link below to the Gov.uk website provides information on the GSC:

<https://www.gov.uk/government/publications/government-security-classifications>

4 TENDER EVALUATION METHODOLOGY AND CRITERIA

Overview

- 4.1 This section of the ITT sets out the criteria that the Council will use to evaluate Tenders.
- 4.2 Bidders are required to submit a Tender strictly in accordance with the requirements set out in this ITT, to ensure the Council has the correct information to make the evaluation. If a Tender is equivocal or unclear, the Council may deduct marks when scoring it or it may treat the Tender as non-compliant and reject it.
- 4.3 The Council will award the contract to the Tender that scores the highest marks, applying the methodology below. Scoring will be carried out as follows:
- 4.3.1 The Bidder must pass all eligibility questions in Annex B1 of Section B (Annex of eligibility questions and responses) ("**Eligibility Questions**").
 - 4.3.2 The Council will then mark Annex B3 of Section B (Tender Response Document) ("**Scored Questions**") for all Bidders that pass all the Eligibility Questions.
- 4.4 The Council will mark Eligibility Questions as described in paragraphs 4.5 to 4.8 below. It will mark the Scored Questions as described in paragraphs 4.9 to 4.13.

Criteria – Eligibility Questions

- 4.5 The Council will score Eligibility Questions on the following basis:

Eligibility Questions	Selection criteria	Self-Certify
Section 1: Potential supplier information	For information only	N/A
Section 2: Grounds for mandatory exclusion	Pass or Fail	Yes
Section 3: Grounds for discretionary exclusion	Pass or Fail	Yes
Section 4 and 5: Economic and Financial Standing	Pass or Fail (Parent Companies and Guarantees – For information only)	Yes
Section 6: Technical and Professional Ability	Pass or Fail	Yes
Section 7: Modern Slavery Act 2015: Requirements under the Modern Slavery Act 2015.	Pass or Fail	Yes
Section 8.1: Insurance	Pass or Fail	Yes
Section 8.2: Quality Management	For information only	Yes
Section 8.3 Construction Industry Scheme (CIS)	For information only	Yes

Section 8.4 Safeguarding and Security	Pass or Fail	Yes
Section 8.5: Business Continuity / Disaster Recovery	For information only	Yes
Section 8.6 General Data Protection Right	Pass or Fail	Yes
Section 8.7 Compliance with Equality Legislation	Pass or Fail	Yes
Section 8.8 Environmental Management	Pass or Fail	Yes
Section 8.9 Health and Safety	Pass or Fail	Yes
8.10 NOT USED	-	-
Section 8.11 Credit Rating	Pass or Fail	Yes

Eligibility Questions ITT B1 1 – 7G

4.6 To score a "pass" for the Eligibility Questions, the Tender must adequately address all key points and include adequate supporting evidence / examples / information. It must give a reasonable degree of confidence that the Bidder has the capability, resource and experience to properly perform the contract.

4.7 Where a Bidder scores a "fail" for any question, the Council will treat the Tender as non-compliant and it will not award a mark for the Scored Questions.

4.8 The following process will be used to assess the financial standing of applicants:

Please provide 3 years financial accounts and parent company accounts if applicable. These should be audited accounts where audit is required and should be for the most recent periods available.

Calne Town Council will use the relevant financial accounts with relevant third parties in order to assess whether or not an applicant's overall financial standing is acceptable for a procurement of this size.

Where an organisation is excluded at section 5, we reserve the right to do further investigations using the annual accounts to review; liquidity, turnover and Auditor's going concern sign off to assess the financial suitability or otherwise of applicants. Applicants failing section 5 will be deemed to have failed the financial standing evaluation.

Criteria – Scored Questions

4.9 The tender will be evaluated on the following criteria:

Evaluation criteria	Weighting
Price	5%
Quality	95%
Quality will be assessed as follows: Environmental Play value/number and range of different activities Product Quality / Repairability Matching the brief	 20% 40% 20% 15%
Total	100%

Criteria – Scored Questions: Pricing Evaluation

4.10 The overall financial evaluation will be based on:

A credit check on the winning supplier	PASS/FAIL
Tender pricing	SCORED

4.11 Tender prices will be scored on a comparative basis, with the lowest compliant Tender (excluding any Tenders that the Council rejects as being abnormally low or non-compliant) receiving 100% of the available marks. All other Tenders will be compared against that lowest Tender using the formula:

$$(A / B) \times 100$$

A = price of lowest compliant Tender
B = price of the Tender being scored

4.12 If it appears to the Council that any Tender may be abnormally low then the Council may ask the Bidder to explain its price or costs. If, following the Bidder's explanations, the Council is not satisfied with the Bidder's account for the low level of price or cost in the Tender; the Council may treat the Tender as non-compliant and reject it.

Criteria – Scored Questions: Technical and Quality Evaluation

4.13 The technical evaluation will be scored in accordance with the table below:

Assessment	Score	Interpretation
Excellent	5	Exceeds the requirement. Exceptional demonstration by the Bidder of the relevant ability, understanding, skills, and resource & quality measures required to provide the supplies / services. Response identifies factors that will offer potential added value, with evidence to support the response.
Good	4	Satisfies the requirement with minor additional benefits. Above average demonstration by the Bidder of the relevant ability, understanding, skills, resource & quality measures required to provide the supplies / services. Response identifies factors that will offer potential added value, with evidence to support the response.
Acceptable	3	Satisfies the requirement. Demonstration by the Bidder of the relevant ability, understanding, skills, and resource & quality measures required to provide the supplies / services, with evidence to support the response.
Minor Reservations	2	Satisfies the requirement with minor reservations. Some minor reservations of the Bidder's relevant ability, understanding, skills, and resource & quality measures required to provide the supplies / services, with little or no evidence to support the response.
Serious Reservations	1	Satisfies the requirement with major reservations. Considerable reservations of the Bidder's relevant ability, understanding, skills, and resource & quality measures required to provide the supplies / services, with little or no evidence to support the response.
Unacceptable	0	Does not meet the requirement. Does not comply and/or insufficient information provided to demonstrate that the Bidder has the ability, understanding, skills, resource & quality measures required to provide the supplies / services, with little or no evidence to support the response.

ANNEX A1
Calne Town Council TERMS AND CONDITIONS

The Council intends to enter into a contract with the successful Bidder on the **Calne Town Council** Terms and Conditions for the Supply of Goods and Services.

This Annex A1 contains the **Calne Town Council** Terms and Conditions.

The Specification and Tender Response Document are set out in Annex B2 and B3 section of this ITT.

1 DEFINITIONS AND INTERPRETATION

- 1.1 **Commencement Date** means the date stated in the Specification.
- 1.2 **Conditions** mean these Conditions of Contract including any other documents annexed hereto.
- 1.3 **Contract** means the agreement entered into between the Council and the Supplier embodying the Articles of Agreement, these Conditions, the Specification, Pricing Schedule, any other Schedules in the Invitation to Tender, Tender and other documents referred to in those documents, including any Programme of Work, Supporting Information or proposals from time to time put forward by the Supplier and approved by the Council.
- 1.4 **Contract Documents** means the documents comprising the Contract.
- 1.5 **Contract Period** means the period stated in the Specification starting on the Commencement Date or such longer period as may be determined in accordance with these Conditions.
- 1.6 **Contract Standard** means, in relation to the performance and discharge of any part of the Contract and each and every Order forming a constituent part thereof:
 - 1.6.1 With the exercise of all reasonable and proper skill, care and diligence and in accordance with best professional practice and in a manner free from dishonesty and corruption;
 - 1.6.2 Such standard as complies in each and every respect with the relevant provisions of the Contract and any Order pursuant thereto and where and to the extent that no criteria are stated in the Contract and any Order pursuant thereto the standard is to be to the entire satisfaction of the Contract Manager;
 - 1.6.3 In compliance with all relevant legal requirements including those of Acts of Parliament, Statutory Regulations or Orders and Codes of Practice in operation from time to time, including but without prejudice to the generality of the foregoing, the Contract Procedure Rules, Financial Regulations and Scheme of Delegated Powers to the Director of Council Services and all other internal requirements and procedures of the Council.
 - 1.6.4 In absolute co-operation with the Council and their other suppliers.

- 1.7 **Council** means **Calne Town Council**
- 1.8 **Invitation to Tender** means the invitation to tender dated, means the Supplier's response to the Invitation to Tender.
- 1.9 **Order** means an official order in respect of the Services or any part or parts there of issued by the Council to the Supplier.
- 1.10 **Pricing Schedule** means the Schedule so entitled which incorporates the prices and rates for the supply of the Service.
- 1.11 **Service** means the Service as detailed in the Specification to be supplied in accordance with the Contract or any Order pursuant thereto and includes any variation thereto made.
- 1.12 **Specification** means the document so entitled which describes the Services to be supplied and installed by the Supplier to the Council and any variation or modification thereto made.
- 1.13 **Supplier** means the person, persons or company whose tender has been accepted by the Council and who accordingly enters into the Contract with the Council to supply the Services.
- 1.14 **Product** means as detailed in the specification to be supplied in accordance with the contract or any order pursuant thereto and include any variation thereto made pursuant to condition 8.
- 1.15 Reference to the Supplier shall be deemed to include the Supplier's partners, directors and employees and the Supplier's agents and sub-contractors unless the context otherwise requires.
- 1.16 Reference to time shall be construed, during the period of summer time, to be British Summer Time and otherwise to be Greenwich Mean Time.
- 1.17 The Contract shall be governed by and construed in accordance with English Law, and the English courts shall have jurisdiction over any dispute or difference, which shall arise out of or in connection with the Contract or any Order pursuant thereto.
- 1.18 A reference to any Act of Parliament, or to any Order, Regulation, Statutory Instrument or the like shall be deemed to include a reference to any amendment or re-enactment of the same.
- 1.19 To the extent that legislation permits any payment hereunder shall be made in Pounds Sterling.
- 1.20 The meanings of the words defined in the Specification shall also apply within these Conditions so far as applicable.

- 1.21 In the Contract, unless the contrary intention appears:
- 1.21.1 Words importing the masculine gender include the feminine gender; and
- 1.21.2 Words in the singular include the plural and vice-versa;
- 1.21.3 Words importing a written notice/order/instruction include information transmitted by electronic means.

2 FORM OF CONTRACT

2.1 Sufficiency of Information

The Supplier shall be deemed to have satisfied itself before submitting its quotation as to the accuracy and sufficiency of the prices stated by the Supplier in its quotation which shall (except in so far as is otherwise provided in the Contract) cover all the Supplier's obligations under the Contract and shall be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances which might reasonably influence or affect the Supplier's quotation.

2.2 Documents Mutually Explanatory

2.2.1 Except as otherwise expressly provided, the Contract Documents are to be taken as mutually explanatory of one another. Should the Supplier become aware of any ambiguities or discrepancies in or between the Contract Documents, the Supplier shall immediately inform the Council giving full details. Any such notified ambiguities or discrepancies or any ambiguities or discrepancies otherwise coming to the notice of the Council shall be resolved by the Council who shall issue to the Supplier any appropriate instructions. If any such instruction changes the basis upon which the Supplier quotation so as to render any price inappropriate, the said instruction shall be treated as a variation.

2.2.2 Any references in the Specification to contact with, liaison, reporting or other action in relation to various Directorates, Departments or divisions of the Council shall be deemed to refer to any successor assignee or contractor substituting therefore or replacing whether temporarily or permanently the same and so notified from time to time by the Council.

2.3 Variation of Conditions

Following the formation of a binding agreement, no deletion from, addition to, or variation of the Conditions shall be valid or of any effect unless agreed in writing and signed by the parties.

2.4 Copyright

Copyright in the Contract Documents shall vest so far as it lawfully can in the Council but the Supplier may obtain or make at its own expense any further copies required for use by the Supplier in the supply of the Services.

2.5 Exclusion of Rights and Third Parties

It is further agreed and declared that nothing herein contained or implied shall give or be construed as giving any rights, privileges, powers or enforceability other than to the specific parties executing this document as defined herein and their successors (if any) and the provisions of the Contracts (Rights of Third Parties) Act 1999 and any benefits or rights

which could arise therefrom are expressly excluded to the intent that no third party within the meaning of that Act shall have any rights of enforcement in respect of any matter herein contained.

3 CONTRACT MANAGER

- 3.1 The Council shall appoint a Contract Manager who shall be the person or persons named or such other person or persons nominated in writing by the Council from time to time to act in the name of the said Council for the purposes of the Contract or any constituent part thereof.
- 3.2 The relevant Contract Manager shall have power to issue instructions to the Supplier on any matter relating to the Contract and the Supplier shall comply therewith. If any such instruction is a variation within the meaning of Clause 8 it shall be valued pursuant thereto.
- 3.3 From time to time the relevant Contract Manager may appoint one or more representatives to act for the Contract Manager generally or for specified purposes or periods. Immediately any such appointment is made, the relevant Contract Manager shall give written notice thereof to the Supplier.

4 SUPPLY OF SERVICE

- 4.1 The Service will be in conformity with the Specification and terms of the Contract.
- 4.2 The Product shall also be within the normal limits of industrial quality and where a British Standard or the equivalent EC standard exists then the goods shall meet this standard.
- 4.3 The Product and risk shall remain in the Supplier until they are installed to the standard specified by the Contract Manager.
- 4.4 The Council shall advise the Supplier and the carrier (if any) in writing, by a qualified signature on any delivery note, of any loss or damage of goods within 6 weeks following installation.
- 4.5 The Supplier shall make good free of charge to the Council any loss of or damage to or defect in the Product arising from the installation process where notice is given by the Council of the same.
- 4.6 In the case of the Service delivered by the Supplier not conforming with the requirements of the Contract whether by reason of quality, or quantity or not being fit for the purpose for which the Service is required (where such purpose has been made known in writing to the Supplier), the Council shall have the right to reject such Service within a reasonable time of their delivery and to purchase elsewhere but without prejudice to any other right which the Council may have against the Supplier. The making of payment shall not prejudice the Council's right of rejection. Before exercising the said right to purchase elsewhere the Council shall give the Supplier reasonable opportunity to replace the Service or any elements thereof with a replacement which conforms to the Specification and terms of the Contract or any Order pursuant thereto.
- 4.7 Notwithstanding that the Specification contains detailed exemplification of individual elements of the Contract this shall not in any way detract from the overriding obligation to execute all such elements of the Contract in an integrated manner in accordance with best practice to best standards applicable to such elements and to the satisfaction of the relevant Contract Manager in the performance of such standards and practice.

- 4.8 Subject as otherwise contained in the Specification such instruction may state the type or part of the supply of the Service required including the Council's requirements with regard to timescale for delivery. For the avoidance of doubt, any such timescale may encompass any number of separate dates or times for the supply of the Service or any part thereof.
- 4.9 If at any time it appears to the Council that the Supplier's performance of the Contract does not conform to the Contract Standard the Council may without prejudice to any other right or remedy available to it, require the Supplier to return immediately to the agreed Contract Standard.
- 4.10 The Supplier shall make good within one week of its occurrence any damage resulting from or arising out of the supply of the Service. In the event of the Supplier failing to make good such damage, the relevant Council shall, two weeks after giving written notice to the Supplier or after such shorter time as may be reasonable if the proposed work is urgently needed, be entitled to arrange for making good of any damage and in this event, the cost shall be a debt from the Supplier and shall be recoverable accordingly.

5 THE SUPPLIER'S OBLIGATIONS

- 5.1 The Supplier shall supply the Service described in the Specification to the Contract Standard with reasonable and proper skill, care and diligence, with the utmost good faith and to the performance requirements set out therein in accordance with best professional practice, the written instructions of and, subject as aforesaid, to the satisfaction of the relevant Contract Manager and to such individual timescale or timescales as may be specifically prescribed or otherwise with all due diligence.
- 5.2 The Supplier shall forthwith comply with any and all written instructions issued to it by the Council in respect of any matter relating to the supply of the Service in respect of which the Contract Manager is empowered to issue instructions, save that:
- 5.2.1 Where, subject to the detailed requirements of the Specification, such instruction is one requiring a variation within the meaning of Condition 8, the relevant Contract Manager shall comply with the provisions of Condition 8;
- 5.2.2 Where such instructions cannot be complied with by reason of Act of God or Force Majeure (which shall include acts of government, fire, tempest, acts of war and related matters which are both beyond the control of the Supplier and are such that the Supplier with the application of all due diligence and foresight could not prevent) which causes the cessation of or substantial interference with the duty of the Supplier to perform its obligations under the Contract shall be suspended until such circumstances have ceased.
- 5.2.3 Any instruction to provide the requirements of the Contract or any part thereof to the Contract Standard shall not be held to be a variation within Condition 8 or otherwise.
- 5.3 The Supplier shall inform the Council promptly and confirm in writing if the Supplier is unable or fails to supply the Service or any part thereof, or if the Supplier is aware of anything of whatever nature and whether or not the result of any act or omission on the part of the Council which prevents or hinders or which may prevent or hinder the Supplier from complying with the Contract giving details of the circumstances, reasons and likely duration. The provision of information under this Condition shall not in any way release or excuse the Supplier from any of its obligations under the Contract.
- 5.4 The Supplier shall as may be necessary co-operate, liaise with, and co-ordinate its activities with those of any other supplier or sub-contractor employed directly or indirectly by the

Council and shall carry out the Contract or any Order pursuant thereto in harmony with no detriment to any other service provided by or on behalf of or to the Council. If the Supplier defaults in complying or fails to comply with this Condition then any costs, expenses, liabilities, or damages incurred by the Council as a consequence thereof, including the reasonable cost to the Council of the time spent by its officers as a result of the default or failure, may be deducted from any sums due or to become due to the Supplier under this Contract or shall be recoverable from the Supplier by the Council as a debt.

- 5.5 The Supplier shall not advertise the fact that it is supplying the Service to the Council under this Contract other than with the written permission of the Council

6 THE SUPPLIER'S PERSONNEL

- 6.1 The Supplier shall employ sufficient managers and appropriate personnel to ensure that the Service is provided at all times and in all respects in accordance with the Contract (including during holidays or absence through sickness or otherwise).
- 6.2 The Supplier shall ensure that such persons are properly and sufficiently instructed and supervised.

7 ACHIEVEMENT OF CONTRACT STANDARD

- 7.1 Without prejudice to each and every remedy of the Council in the event of a failure of the Supplier to provide the Service in accordance with the terms of the Contract and any Order pursuant thereto, the Supplier shall at all times during the performance of the Contract supply the Service in accordance with the Specification and to the Contract Standard.
- 7.2 The Supplier shall as soon as reasonably practicable provide the relevant Contract Manager with any information relating to the performance of the Contract which he may reasonably request.

8 VARIATIONS

- 8.1 The relevant Contract Manager may, at any time, by written notice, request the Supplier to make any reasonable alteration to the Contract or any Order pursuant thereto (herein referred to as a 'Variation'). In the event of a Variation being required, the Council shall instruct the Supplier to state in writing its ability to meet the requirements of the Variation and the effect such Variation will have on the cost of the Contract. The Supplier shall respond within fourteen (14) days from receipt of the relevant Contract Manager's instructions or such other period as may be agreed.
- 8.2 Notwithstanding any data with regard to the value and/or volume of the Service or commissions, whether set out in the Specification or otherwise (which is only given as a guide) the Council gives no guarantee and accepts no liability as to the actual values or volumes which will be placed with the Supplier. The Council shall in no circumstances be liable to the Supplier for any consequential or financial loss of any kind whatsoever arising therefrom.

9 CONFIDENTIALITY

- 9.1 The Supplier shall not, without written consent of the Council, make use of for its own purposes or disclose to any person (except as may be required by law), the Contract Documents or any information contained therein or in any material provided to the Supplier by the Council pursuant to the Contract or prepared by the Supplier pursuant to the Contract, all of which information shall be deemed to be confidential.

- 9.2 The Supplier shall indemnify and keep indemnified the Council against all actions, claims, demands, proceedings, damages, costs, losses, charges and expenses whatsoever in respect of any breach by the Supplier of this Condition.

10 HEALTH AND SAFETY

- 10.1 The Supplier shall at all times comply with the requirements of the Health and Safety at Work, etc. Act 1974, the Management of Health and Safety at Work Regulations 1992 (including the provision of the Supplier of copies of its risk assessments under these Regulations when requested by the Council), and of other Acts, Regulations, Orders, rules of law or Codes of Practice pertaining to health and safety.
- 10.2 The Supplier shall, so far as the same may impact on the Council, adopt safe methods of work in order to protect the health and safety of its own employees and, to the extent applicable, the employees of the Council and all other persons (including members of the public).
- 10.3 The Supplier shall indemnify the individual Council for any loss, costs or damage caused for breach of this Condition.

11 EQUALITY AND DIVERSITY

The Supplier shall at all times comply with its statutory obligations under the Equality Act 2010 and, accordingly, will not treat anyone less favourably because of a protected characteristic.

12 OBSERVANCE OF STATUTORY AND OTHER REQUIREMENTS

The Supplier shall comply with all statutory and other provisions to be observed and performed in connection with this Contract and shall indemnify the Council against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach of the Supplier of this Condition.

13 AGENCY

- 13.1 The Supplier shall not in any circumstances hold itself out as being the servant or agent of the Council otherwise than in circumstances expressly or impliedly permitted by the Contract.
- 13.2 The Supplier shall not in any circumstances hold itself out as being authorised to enter into any contract on behalf of the Council or in any other way bind the performance, variation, release or discharge of any obligation otherwise than in circumstances expressly or impliedly permitted by the Contract.
- 13.3 The Supplier shall not in any circumstances hold itself out as having the power to make any, discharge or waive any Byelaw or Regulation of any kind.

14 GRATUITIES

The Supplier shall not, whether itself or by any partner or by any person employed by it to supply the Service, solicit or accept any gratuity, tip or any other form of money taking or reward, collection or charge for the supply of the Service other than any charges properly approved by the Council in accordance with the provisions of the Contract or any Order pursuant thereto.

15 INDEMNITY AND INSURANCE

15.1 The Supplier shall be liable for and shall fully and promptly indemnify the Council, their officers, employees, agents and other suppliers against all liabilities, damages, costs, losses, claims, demands and proceedings whatsoever, howsoever arising, whether in contract, tort or otherwise directly or indirectly out of or in the course of or in connection with any provision of the Contract (or any Order pursuant thereto) or from any negligence, negligent act, negligent omission, default or breach of duty on the part of the Supplier or the breach by the Supplier of any provision of the Contract or any Order pursuant thereto. For the avoidance of doubt:

15.1.1 The Supplier's liability to indemnify the Council pursuant to this Condition on account of loss of or damage to any property of any nature whatsoever includes a liability to reimburse to the Council all costs and expenses reasonably incurred by the Council in the reinstatement or replacement of such property.

15.1.2 The Supplier's liability and indemnity arising under this Condition shall be without prejudice to any other right or remedy available to the Council.

15.2 The Supplier shall insure with a reputable insurance company against all loss of and damage to property and death of or injury to persons arising directly out of its obligations under the Contract or any Order pursuant thereto and against all actions, claims, demands, costs, charges and expenses in respect thereof. Documentary proof of such insurance cover shall be made available on demand by the Supplier.

15.3 Nothing in the Contract shall purport to exclude or restrict the liability of the Supplier for death or personal injury arising out of its acts or omissions, its agents, employees, servants and sub-contractors.

16 ROYALTIES AND PATENT RIGHTS

The Supplier shall not in connection with the Contract or any Order pursuant thereto use, manufacture, supply or deliver any process, article, matter or thing, the use, manufacture, supply or delivery of which would be an infringement of any patent or patent rights or any other intellectual property rights and the Supplier shall indemnify the Council against all actions, claims, demands, proceedings, damages, costs, charges and expenses which the Council may sustain, incur or be put to by reason or in consequence directly or indirectly of any breach of this provision (whether wilful or inadvertent) and against the payment of any royalties or other monies which the Council may have to make to any person or body entitled to patent rights or any other intellectual property rights in respect of any process, matter or thing used, manufactured, supplied or delivered by the Supplier in connection with the Contract or any Order thereto.

17 PAYMENT

17.1 The Supplier shall submit to the Contract Manager of the Council an invoice in respect of the Services supplied to the Council and valued in accordance with the Pricing Schedule and any provision as to payment contained within the Specification, and in the event of the Service being supplied in part or instalments (by prior arrangement with the Council), such invoices shall reflect the same.

17.2 Subject to the proper provision by the Supplier of the requirements of the Contract or any Order pursuant thereto the Council shall make due payment within 30 days of receipt of the invoice by the Council.

18 VALUE ADDED TAX

The Council shall be liable to pay to the Supplier such Value Added Tax (VAT) as may be properly chargeable on the Supplier in respect of the provision of the Contract to the Council except to the extent that any such Value Added Tax or penalties related thereto are so chargeable because of some breach of or non-compliance with any relevant statutory provisions by the Supplier.

19 PRICES AND RATES

19.1 The prices and rates shall be as stated in the Pricing Schedule.

19.2 Unless otherwise agreed in writing by the Contract Manager the Council shall not be liable for the cost of any work done or time spent or expense incurred in excess of that provided for by this Contract or any Order pursuant thereto.

20 ASSIGNMENT AND SUB-CONTRACTING

20.1 The Supplier shall not assign the Contract or any part thereof or the benefit or advantage of the Contract or any part thereof.

20.2 The Supplier shall not sub-contract the Contract or any part thereof or any Order pursuant thereto to any person or employ or agent to carry out the requirements of the Contract or any part thereof without the previous written consent of the Council (which, if given, shall not relieve the Supplier from any liability or obligation under the Contract). The Supplier shall be responsible for the acts, defaults, or neglect of any sub-contractor or agent or their employees or agents in all respects as if they were the acts, defaults or neglect of the Supplier, notwithstanding that the Council may require as a condition of giving consent to sub-contract or appoint an agent a direct warranty and undertaking from the sub-contractor or agent concerning the requirements of and compliance with the Contract in all respects.

20.3 Without prejudice to the provisions of this Condition it shall be the responsibility of the Supplier to maintain full control over and adequate liaison with any sub-contractor or agent in order to ensure compliance with the Contract Standard, and, in addition, full control and adequate liaison as between sub-contractors and agents.

21 LEGAL PROCEEDINGS

21.1 The Supplier, immediately upon becoming aware of the same, shall notify the Council of any accident, damage or breach of any statutory provision relating in any way to the provision of or connected with the Contract or any individual Order thereunder.

21.2 If requested to do so by the Council, the Supplier shall provide any relevant information in connection with any legal inquiry arbitration or court proceedings in which the Council may become involved or any relevant disciplinary hearing internal to the Council and shall give evidence in such inquiries or proceedings or hearings arising out of the provision of the Contract.

22 TERMINATION

22.1 If the Supplier shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or having done or forborne to do any action in relation to the obtaining of the Contract or any other contract with the Council or for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any contract with the Council or if the like acts

shall have been done by any person employed by the Supplier or acting on the Supplier's behalf (whether with or without the knowledge of the Supplier) or if in relation to the Contract or any other contract with the Council, the Supplier or any other persons employed by the Supplier or acting on the Supplier's behalf, shall have committed any offence under the Prevention of Corruption Act 1889-1916 or shall have given any fee or reward to any member or officer of any Council the receipt of which is an offence under Sub-Section (2) of Section 117 of the Local Government Act 1972, the Council shall be entitled at its option to rescind the Contract or to terminate the Supplier's employment under the Contract and without prejudice to Condition 22.4 to recover from the Supplier the amount of any loss resulting from such termination.

- 22.2 The Council has relied on the information provided by the Supplier contained in the quotation and any presentation submitted to the Council prior to its acceptance and prior to the Council entering into the Contract and any material misrepresentation contained therein shall entitle the Council to rescind or terminate this Contract at its option.
- 22.3 The Council shall be entitled forthwith upon the happening of any of the following events to terminate this Contract, such events being
- 22.3.1 Discovery of a material misrepresentation by the Supplier prior to the execution of this Contract.
 - 22.3.2 Any material breach or a series of persistent minor breaches by the Supplier of the Contract or any Order pursuant thereto which in the opinion of the Council justifies termination of the Contract.
 - 22.3.3 The Supplier becoming bankrupt or making a composition or arrangement with its creditors or has a proposal in respect of its company for voluntary arrangement for a composition of debts or scheme or arrangement approved in accordance with the Insolvency Act 1986.
 - 22.3.4 The Supplier having an application made under the Insolvency Act 1986 to the Court for the appointment of an administrative receiver.
 - 22.3.5 The Supplier having a winding up order made or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding up passed.
 - 22.3.6 The Supplier having a provisional liquidator, receiver or manager of its business or undertaking duly appointed.
 - 22.3.7 The Supplier having an administrative receiver, as defined in the Insolvency Act 1986, appointed.
 - 22.3.8 The Supplier having possession taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the floating charge.
 - 22.3.9 The Supplier being in circumstances which entitle the court or a creditor to appoint or have appointed a receiver, a manager or administrative receiver or which entitle the Court to make a winding up order.
 - 22.3.10 Then in any such circumstances the Council may, without prejudice to any accrued rights or remedies under the Contract, terminate the Contract by notice in writing having immediate effect.

- 22.4 If the Contract is terminated as provided in Condition 22.1 or 22.3 and is not reinstated, the Council shall:
- 22.4.1 Cease to be under any obligation to make further payment until the costs, loss and/or damage resulting from or arising out of the termination of the Supplier's employment shall have been calculated and provided such calculation shows a sum or sums due to the Supplier;
 - 22.4.2 Be entitled to employ and pay other persons to provide and complete the provisions of the Contract or any part thereof or any Order pursuant thereto;
 - 22.4.3 Be entitled to deduct from any sum or sums which would but for Condition 22.4.1 have been due from the Council to the Supplier under this Contract or any other contract or any Order pursuant thereto to be entitled to recover the same from the Supplier as a debt, any loss or damage to the Council resulting from or arising out of such termination. Such loss or damage shall include the reasonable cost to the Council of the time spent by its officers in terminating the Contract and in making alternative arrangements for the provision of the Contract, any individual Order or any part thereof.
 - 22.4.4 When the total costs, loss and/or damage resulting from or arising out of the termination of the Supplier's employment have been calculated and deducted so far as practicable from any such or sums which would but for Condition 22.4.1 have been due to the Supplier, any balance shown as due to any Council shall be recoverable as a debt.
- 22.5 The rights of the Council under this Condition are in addition to and without prejudice to any other rights they may have.
- 22.6 The provisions of Condition 15 shall continue in force notwithstanding the termination of this Contract.

23 RECOVERY OF SUMS DUE TO THE COUNCIL

The Council reserve their right at Common Law and in Equity to set off against their indebtedness to the Supplier any debt owed to them by the Supplier and any liability, damage, loss, costs, charges and expenses which they have incurred in consequence of any breach by the Supplier of this Contract or any other contract or any Order pursuant thereto.

24 WHOLE CONTRACT

The Contract constitutes the whole agreement and understanding of the parties as to the subject matter hereof and there are no prior or contemporaneous agreements between the parties with respect thereto.

25 AMENDMENTS

No amendments to the Contract or any Order pursuant thereto shall be binding unless in writing and signed by the relevant Contract Manager on behalf of the Council and by the duly authorised representative of the Supplier and expressed to be for the purpose of such amendment.

26 INCONSISTENCY

In the event of any patent inconsistency between the provisions of the Specification and any of the Conditions of Contract the Conditions shall prevail SAVE that in the event of the

Specification containing exemplification of any aspect of a particular Condition or Conditions then to the extent of such exemplification the same shall have force and effect and in the event of ostensible ambiguity or inconsistency the Council shall be the sole arbiter of the same and shall instruct the Supplier accordingly.

27 NOTICES

Any demand, notice or other communication required to be given hereunder shall be sufficiently served if served personally on the addressee or if sent by prepaid first class recorded delivery post, by telex, electronic mail or facsimile transmission to the last known address of the party to be served therewith and if so sent shall, subject to proof to the contrary, be deemed to have been received by the addressee on the second business day after the date of posting or on successful transmission as the case may be.

28 WAIVER

Forbearance, indulgence or failure by the Council or their Contract Managers at any time to enforce the provisions of the Contract or to require performance by the Supplier of any of the provisions of the Contract or any Order pursuant thereto shall not be construed as a permanent waiver of or as creating an estoppel in connection with any such provision and shall not affect the validity of the Contract or any part thereof or the right of the Council to enforce any provision in accordance with its terms.

29 ARBITRATION

Save in respect of Termination pursuant to Condition 22 (in respect of which the rights of the Council shall be absolute) or any other condition where the discretion of the same is stated to be absolute any dispute or difference which may arise between the Council and the Supplier in connection with or arising out of the Contract may, by agreement of both parties, be resolved by arbitration, in which event such dispute or difference shall be referred to a single arbitrator to be agreed between the Council and the Supplier or failing such agreement within fourteen (14) days to be nominated by the President for the time being of the British Chartered Institute of Arbitrators in accordance with the Arbitration Act 1996 or any statutory modifications or re-enactment of it.

30 OMBUDSMAN INVESTIGATION AND FREEDOM OF INFORMATION

- 30.1 The Council is under a legal obligation by virtue of the Local Government Acts to observe the rights and powers of the Local Government ombudsman who has independent and impartial powers and to require persons to provide information and/or produce documents for the purposes of carrying out investigations into relevant matters that may have been referred to him for consideration when maladministration has been alleged against the Council.
- 30.2 The Supplier shall at no additional cost to the Council make available any documentation or allow to be interviewed any of the Supplier's personnel and assist at all times the ombudsman or his personnel and will co-operate with any enquiries that are requested by the ombudsman or his personnel in investigating any complaint whatsoever relating to the Services.
- 30.3 Upon determination of any case by the ombudsman in which the Supplier has been involved or has been implicated, the Contract Manager shall forward copies of such determination to the Supplier for its comments before reporting details to the relevant Committees of the Council. Should the ombudsman make recommendations in his report that compensation should be paid for maladministration and this by implication has been

due wholly or in part to the failure, default, act, omission or neglect of the Supplier or its personnel or agents or sub-contractors to comply with the provisions of this Contract, the Council will recover such compensation from the Supplier and the same may be deducted from any payment to be made by the Council pursuant to the Contract.

- 30.4 Should the ombudsman make recommendations relating to procedural matters which will result in changes or alterations which will require implementation, the Council will enter into discussions with the Supplier to agree a suitable procedure to resolve such matters. Any cost implications relating to any changes will be calculated in accordance with Condition 8 where they arise from altered or revised requirements by the Council.
- 30.5 The Supplier hereby acknowledges the statutory obligations on the Council imposed by the Freedom of Information Act 2000 in respect of the disclosure of information held by the Council generally, and to the intent that the same impacts on this Contract such obligations shall have affect and take precedence notwithstanding anything otherwise contained or referred to in the tender submitted or any Conditions of Contract relevant to such tender and the Supplier shall use its reasonable endeavours to assist the Council to ensure compliance with the same.

32 WHISTLEBLOWING

- 32.1 The Council is committed to the highest possible standards of openness probity and accountability when conducting its affairs. In line with that commitment, it is expected that employees of the Council, elected Members, Contractors working for the Council on council premises as well as suppliers and those providing services under a contract with the Council, will come forward and voice any serious concerns they may have about any aspect of the Council's work. A copy of the Councils' Whistleblowing policy is available on request.

33 ANTI-BRIBERY

- 33.1 The Council operates an anti-fraud and anti-corruption policy. The Supplier shall comply with the Council's anti-fraud and anti-corruption policy. Additionally, the Supplier shall comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act ("the Financial Regulations").
- 33.2 The Supplier shall not engage in any Prohibited Act or any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act, if such activity, practice or conduct has been carried out in the UK.
- 33.3 The following constitutes Prohibited Acts:-
- 33.3.1 To directly or indirectly offer, promise or give any person working for the Council or engaged by the Council, a financial or other advantage to
- (i) Induce that person to perform improperly a relevant function or activity or
 - (ii) Reward that person for improper performance of a relevant function or activity
- 33.3.2 To directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this contract.
- 33.3.3 **Committing any offence**
- (i) Under the Bribery Act 2010

- (ii) Under legislation creating offences concerning fraudulent acts
- (iii) At common law concerning fraudulent acts as relating to this

Contract or any other contract with the Council, or

- (iv) Defrauding, attempting to defraud or conspiring to defraud the Council

- 33.4 The Supplier shall have and shall maintain throughout the term of this agreement its own policies and procedures, including but not limited to an adequate procedure under the Bribery Act, to ensure compliance with the Relevant Policy and will enforce them where appropriate. The Supplier shall disclose the policies and procedures the Council upon request.
- 33.5 The Supplier shall ensure that any offer or provision of any form of gift or gratuity or hospitality complies with the Relevant Policy and, where relevant, the Council's Gifts and Hospitality Protocol.
- 33.6 The Supplier shall promptly report to the Council any request or demand for any undue financial or other advantage, of any kind, received by the Supplier in connection with the Bribery Act.
- 33.7 For the purpose of this agreement the meaning of adequate procedures and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act (and any guidance issued under section 9 of that act) sections 6(5) and 6(6) of that act and section 8 of that act respectively.

34 THE EQUALITY ACT

- 34.1 The Equality Act (2010) (the Act) sets out anti-discrimination law in the UK. It identifies 'protected characteristics', age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, pregnancy and maternity and marriage and civil partnerships.
- 34.2 The Act sets out the public sector equality duty (PSED) which applies to most public authorities in England, such as local authorities, police, schools, universities and central government departments. It also applies to organisations carrying out a public function. It therefore includes private companies or voluntary sector organisations that have been contracted to carry out public functions on behalf of a public Council. The duty only applies in respect of the public function being carried out and not the wider business of the contracted body.
- 34.3 The PSED requires public authorities to have due regard to the need to:
- 34.3.1 Eliminating unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
 - 34.3.2 Advance equality of opportunity between people who share a protected characteristic and those who do not, and
 - 34.3.3 Foster good relations between people who share a protected characteristic and those who do not.
- 34.4 The Act also explains that advancing equality of opportunity involves having due regard to the need to:

- 34.4.1 Remove or minimise disadvantages suffered by people due to their protected characteristics.
- 34.4.2 Take steps to meet the needs of people with certain protected characteristics where these are different from the needs of other people, and
- 34.4.3 Encourage people with certain protected characteristics to participate in public life or in other activities where their participation is disproportionately low.
- 34.5 The Supplier shall comply with the requirements of the Act whilst performing the Services.

35 SAFEGUARDING

The Supplier/Contractor must comply with the Council's Safeguarding Policy or, if the Supplier has their own policy, this must have been approved as an adequate substitute by the Council.

36 COUNTER-TERRORISM AND EXTREMISM

The Supplier/Contractor shall have due regard to the need to prevent people from being drawn into terrorism in accordance with the provisions of Section 26 of the Counter-Terrorism and Security Act 2015. In this respect the Supplier/Contractor shall ensure that its staff have the relevant training in order to understand:

- 36.1 What radicalisation means;
- 36.2 Why people may be vulnerable to being drawn into terrorism;
- 36.3 What is meant by "extremism";
- 36.4 The relationship between extremism and terrorism;
- 36.5 The measures that are available to prevent people from becoming involved in terrorism and how to challenge the extremist ideology that may be associated with it; and
- 36.6 How to obtain support for people who may be being exploited by radicalising influences