

TERMS AND CONDITIONS - SERVICES - FIXED PRICE

1. DEFINITIONS AND INTERPRETATIONS

1.1 In this Contract, unless the context requires otherwise, the following words and phrases shall have the following meanings:-

- (a) "Award Date" means the date of the award of the Contract by the Council to the Contractor;
- (b) "Contract" means the documents listed in the Council's acceptance letter, including these Conditions and the Specification. In case of discrepancy between these Conditions and other documents forming part of the Contract, these Conditions shall prevail unless otherwise agreed in writing;
- (c) "Contract Price" means the price or prices payable to the Contractor by the Council under the Contract for the full and proper performance by the Contractor of his part of the Contract as determined under the provisions of the Contract;
- (d) "Contractor" means the person appointed by the Council for the performance of the Services (including any successors);
- (e) "Contractor's Representative" means a competent person appointed by the Contractor to be his representative in relation to the performance of the Contract who will receive and act on any directions given by the Contract Manager;
- (f) "Contract Manager" means the official of the Council, or other person appointed by the Council to act on its behalf for the purpose of managing the Contract;
- (g) "Council" means Newry, Mourne & Down District Council;
- (h) "Council's Property" means anything issued or otherwise provided in connection with the Contract by or on behalf of the Council;
- (i) "Key Personnel" means any person who, in the Council's opinion, is fundamental to the performance of the Contract;
- (j) "month" means calendar month, unless otherwise defined;
- (k) any reference to a "person" shall, as the context may require, be construed as a reference to any individual, firm, company, corporation, Government Department, Agency or any association or partnership (whether or not having a separate legal personality);
- (l) "Premises" means any premises occupied, owned or leased by the Council, or as described in the Contract;
- (m) "Programme" means any programme or timetable agreed by the parties to the Contract which regulates or specifies the period or periods for the performance of the Services or any part of them, together with any activities ancillary to the performance of the Services or the preparation and submission of reports;
- (n) "Service(s)" or "Work" means all Services detailed in the Specification which the Contractor is required to carry out under the Contract;
- (o) "Specification" means the description of Services to be performed under the Contract;
- (p) "Commercially sensitive information" means the information listed by the Contractor in the "Freedom of Information Statement";
 - (i) which is provided by the Contractor to the Client in confidence for the period set out in that schedule; and/or
 - (ii) that constitutes a trade secret;
- (q) "Confidential information" means all information disclosed by either party to the other in any form or manner, provided that each such item of information would appear to a reasonable person to be confidential or is specifically stated by the disclosing party to be confidential;
- (r) "FOIA" means the Freedom of Information Act 2000.

1.2 Unless the context requires otherwise, the singular shall include the plural and vice versa, and words expressed in any gender shall include any other gender.

1.3 The headings are inserted for convenience only and shall not affect the interpretation of the Contract.

1.4 Reference to any legislative requirement or similar instrument shall be deemed to include reference to any subsequent amendment to them.

2. LAW

The Contract shall be governed by and interpreted in accordance with Northern Ireland and shall be subject to the jurisdiction of the Courts of Northern Ireland.

3. DURATION OF THE CONTRACT

Subject to the Council's rights of termination under these conditions, the Contract shall be in force from the Award Date and the Services shall be provided throughout the duration of the Contract in accordance with the dates and timetables specified in the Programme, or until the Services are completed to the satisfaction of the Council

4. ALTERATION OF REQUIREMENT

The Council reserves the right to alter the requirements of the Contract, as detailed in the Specification, should this at any time become necessary. In the event of any alteration of the contractual requirement, payment under the Contract shall be subject to fair and reasonable adjustment to be agreed between the Council and the Contractor and recorded in writing.

5. DUTY OF CARE

The Contractor shall perform the Services with all reasonable skill, care and diligence and in accordance with all relevant legislative and statutory requirements.

6. CONTRACTOR'S PERFORMANCE

6.1 The Contractor shall properly manage and monitor performance of the Services and immediately inform the Contract Manager if any aspect of the Contract is not being or is unable to be performed.

6.2 The Contractor shall provide all the necessary facilities, materials and any other equipment, and personnel of appropriate qualifications and experience to undertake the Services. All personnel deployed on work relating to the Contract shall have appropriate qualifications and competence, be properly managed and supervised and in these and any other respects be acceptable to the Council. If the Council gives the Contractor notice that any person is to be removed from involvement in the Services, the Contractor shall take immediate steps to comply with such notice. The decision of the Council regarding the Contractor's personnel shall be final and conclusive.

6.3 The Contractor shall :-

- (a) give the Council, if so requested, full particulars of all persons who are or may be at any time employed on the Contract;
- (b) comply with any rules, regulations and any safety and security instructions from the Council, including completion of any additional clearance procedures required by the Council, and return of any passes as required.

6.4 The Contractor shall take all reasonable steps to avoid changes to any of the staff designated in the Contract as Key Personnel. The Contractor shall give at least one month's notice to the Contract Manager of any proposals to change Key Personnel and Condition 6.2 shall apply to the proposed replacement personnel.

6.5 Unless otherwise agreed by the Council, neither the Contractor nor any of his employees or agents shall carry out any business or trading activity within the confines of the Premises and no advertisement, sign or notice of any description shall be exhibited without prior approval, in writing, from the Council.

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

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

7. MEETINGS AND REPORTS

7.1 The Contractor shall attend all meetings arranged by the Council for the discussion of matters connected with the performance of the Services.

7.2 Without prejudice to the submission of reports as specified under the Contract, the Contractor shall render any additional reports as to the performance of the Services at such time or times, and in such form as the Contract Manager may reasonably require.

8. INSPECTION

During the course of the Contract the Council shall have the power to inspect and examine any of the Services on the Premises at any reasonable time. Where the Services are being performed on any other premises, the Contract Manager or the Council shall on giving reasonable notice to the Contractor be entitled to inspect and examine such Services. The Contractor shall provide free of charge all such facilities as the Council may reasonably require for such inspection and examination. In this Condition, Services includes planning or preliminary work for the Services.

9. INVOICES AND PAYMENT

9.1 The Contractor shall submit an invoice to the Council for the attention of the Accounts Department as specified in the Contract or within 28 days of the completion of the Services. All invoices shall quote the Contract number and, where appropriate, the purchase order number.

9.2 The Contractor shall submit with the invoice such records as the Council may reasonably require including, but not limited to time sheets, expenses incurred, invoices paid or any other documents which would enable the Council to verify the information and the amounts referred to in that invoice.

9.3 The Contractor shall provide to the Council the name and address of his bank, the account name and number, the bank sort code and any other details, in whatever format the Council may require.

9.4 The Council shall pay the Contractor in respect of the satisfactory performance of the Services in accordance with the Contract.

9.5 Except where otherwise provided in the Contract, the amount payable to the Contractor for the performance of the Services shall be inclusive of all costs of staff, facilities, equipment, materials and all other expenses whatsoever incurred by the Contractor in discharging his obligations under the Contract.

9.6 The Council is committed to prompt payment in accordance with statutory legislation and shall pay the Contractor within 30 days of the receipt of a valid invoice, provided that the Council is satisfied that the Services for which the invoice relates have been performed fully in accordance with the Contract.

9.7 The Contractor shall be bound by the Council's Standing Order 67 and Financial Regulation H.

9.8 The Contract is on a fixed price basis and does not allow for variation of pricing except in respect of VAT.

10. VALUE ADDED TAX

The Council shall pay to the Contractor the amount of any VAT chargeable in respect of the performance of the Services in accordance with Contract.

11. CORRUPT GIFTS AND PAYMENTS OF COMMISSION

11.1 The Contractor shall not receive or agree to receive from any person, or offer or agree to give to any person, or procure for any person any gift or consideration of any kind as an inducement or reward for doing or not doing anything, or for showing favour or disfavour to any person in relation to the Contract or any other contract with the Crown.

11.2 The Contractor shall not conspire with any person to do any of the acts mentioned in Condition 11.1.

11.3 Any:-

(a) breach by the Contractor of this Condition; or

(b) commission of any offence by the Contractor under the Prevention of Corruption Acts 1889 to 1916 or Sections 46 to 47 of the Local Government Act (NI) 1972 in relation to this or any other contract with the Council;

shall entitle the Council to terminate the Contract and recover from the Contractor the amount of any loss resulting from such termination and recover from the Contractor the amount of value of any such gift, consideration or commission.

11.4 The decision of the Council in relation to this Condition shall be final and conclusive.

12. THE FAIR EMPLOYMENT AND TREATMENT (NI) ORDER 1998

12.1 The Contractor shall not be an unqualified person for the purposes of Section 64 to 66 of the fair Employment and Treatment (NI) Order 1998 and shall sign the Declaration and Undertaking annexed hereto.

12.2 The Contractor shall not sub-contract any Services or Work to an unqualified person for the purposes of Section 64 to 66 of the Fair Employment and Treatment (NI) Order 1998.

13. DISCLOSURE OF INFORMATION

13.1 The Council reserves the general right to disclose information about this Contract, unless otherwise agreed in writing.

13.2 The Contractor shall not disclose the Contract or any provision thereof or any information resulting from, in connection with, or during the course of, the Contract, to any person unless it is strictly necessary for the performance of the Contract, and authorised in writing by the Council. The Contractor shall comply with any instructions regarding changes to authorisations and other instructions regarding disclosure or non-disclosure. This Condition does not apply in relation to information (a) which is in or enters the public domain otherwise than by a breach of an obligation of confidentiality (b) which is or becomes known from other sources without breach of any restriction on disclosure or (c) which is required to be disclosed by law or any professional or regulatory obligation.

13.3 Subject to Condition 13.2, the Contractor shall ensure that information about the Contract, or arising from or connected with the Contract:-

- (a) is divulged only to the minimum number of persons;
- (b) is divulged only to the extent essential to each person's action in carrying out (or in connection with) the Contract and that such persons do not further divulge such information;
- (c) is properly safeguarded.

13.4 Subject to the retention of proper professional records, the Contractor shall, on written request from the Council, return all documents containing any part of the Work carried out by the Contractor, including but not limited to, documents stored electronically.

13.5 The Contractor shall ensure that any contract with:-

- (a) any employee of his, and
 - (b) any contractor of his engaged in any way in connection with the Contract,
- contains a condition requiring that person to keep all information in relation to the Contract and its performance confidential, and shall draw their attention to the requirements of this condition and condition 13.2.

13.6 No information regarding the Services being provided under the Contract or facilities to photograph or film shall be given or permitted by the Contractor except with prior written permission of the Council, to whom any press or other enquiry or any such matter should be referred. This Condition does not apply in relation to information (a) which is in or enters the public domain otherwise than by a breach of an obligation of confidentiality (b) which is or becomes known from other sources without breach of any restriction on disclosure or (c) which is required to be disclosed by law or any professional or regulatory obligation.

13.7 The Contractor shall not, in connection with the Contract, communicate with representatives of the general or technical press, radio, television or other communications media unless specifically granted permission to do so in writing by the Council.

13.8 Except with the consent in writing of the Council the Contractor shall not make use of the Contract or any information issued or furnished by or on behalf of the Council otherwise than for the purpose of the Contract.

13.9 The decision of the Council regarding anything in this Condition 13 shall be final and conclusive.

14. DISCRIMINATION

The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations (NI) Order 1997, Sex Discrimination (NI) Order 1976 (as amended), Fair Employment and Treatment (NI) Order 1998, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations (NI) 2003 and the Employment Equality (Age) Regulations (NI) 2006 and shall take all reasonable steps to ensure that all servants,

employees or agents of the Contractor and all sub-contractors employed in the execution of the Contract do not unlawfully discriminate. This condition shall not in any way relieve the Contractor of his general obligations to comply with any legislative requirements as provided in Condition 5.

15. MERGER, TAKE-OVER OR CHANGE OF CONTROL

The Contractor shall forthwith inform the Council in writing of any proposal or negotiations which may or will result in a merger, take-over, change of control, change of name or status, or the Contractor (being a company as defined in the Companies (NI) Order 1986-1990) shall inform the Council of any such change as defined in section 416 of the Income and Corporation Taxes Act 1988. The Contractor shall comply with any request by the Council for information arising from this Condition.

16. UNSATISFACTORY PERFORMANCE

16.1 Where in the opinion of the Council the Contractor has failed to perform the whole or any part of the Services, with the standard of skill, care and diligence which a competent and suitably qualified person performing the same Services could reasonably be expected to exercise, or in accordance with the Contract (including the Specification and Programme), the Council may give the Contractor a notice specifying the way in which his performance falls short of the requirements of the Contract, or is otherwise unsatisfactory.

16.2 Where the Contractor has been notified of a failure in accordance with Condition 16.1 the Council may:

- (a) request from the Contractor that, at his own expense and as specified by the Council, he re-schedules and performs the Services to the Council's satisfaction within such period as may be specified by the Council in the notice, including where necessary, the correction or re-execution of any Services already carried out; or
- (b) withhold or reduce payments to the Contractor, in such amount as the Council deems appropriate in each particular case.

17. TERMINATION OF THE CONTRACT

Without prejudice to any other power of termination, the Council may terminate the Contract without notice, for any of the following reasons:-

- (a) the breach by the Contractor of any of Conditions 11 (Corrupt Gifts & Payments of Commission), 12 (Fair Employment and Treatment (NI) Order 1998), 13 (Disclosure of Information) of the Contract, or any other material breach of contract;
- (b) the failure by the Contractor to comply with a notice given under Condition 16 (Unsatisfactory Performance) within 14 days from the date of the notice;
- (c) the Contractor ceases or proposes to cease to carry on his business;
- (d) there is a change of control of the type referred to in Condition 15 (Merger, Take-over or Change of Control), and the Council has not agreed in advance in writing to the particular change of control, save that in this event the Council shall give one month's notice in writing to the Contractor.

18. BREAK

The Council shall in addition to its powers under any other of these Conditions have power to terminate the Contract at any time by giving to the Contractor one month's written notice. Upon the expiry of the notice the Contract shall be terminated without prejudice to the rights of the parties accrued to the date of termination.

19. CONSEQUENCES OF TERMINATION AND BREAK

19.1 Where the Contract is terminated under Condition 17 (Termination of the Contract), the following provisions shall apply:-

- (a) Any sum due or accruing from the Council to the Contractor may be withheld or reduced by such amount as the Council in either case considers reasonable and appropriate in the circumstances;
- (b) the Council may make all arrangements which are in its view necessary to procure the orderly completion of the Services including the letting of another contract or contracts;

(c) where the total costs reasonably and properly incurred by the Council by reason of such arrangements exceed the amount that would have been payable to the Contractor for the completion of the Services, the excess shall, subject to any overall limitation of liability contained in condition 22, be recoverable from the Contractor and the Council reserves the right to recover such excess by set-off against any amount withheld by the Council under Condition 19.1 (a) or as otherwise provided for under Condition 25 (Recovery of Sums Due).

19.2 Without prejudice to Condition 19.1, where the Contract is terminated under Condition 17 (d) or Condition 18 (Break), the Contractor shall have the right to claim from the Council reimbursement of all reasonable costs necessarily and properly incurred by him in relation to the orderly cessation of the Services, including any commitments, liabilities or expenditure which are reasonably and properly incurred, and would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract. For the avoidance of doubt the Council will not indemnify the Contractor against loss of profit.

The Council shall not in any case be liable to pay under the provisions of this Condition any sum which, when taken together with any sums paid or due or becoming due to the Contractor under the Contract, shall exceed the total Contract price.

19.3 Where the Contract is terminated under Condition 17 (Termination of the Contract) or Condition 18 (Break), the Council may, during any notice period:-

(a) direct the Contractor, where the Services have not been commenced, to refrain from commencing such Services or where the Services have been commenced, to cease work immediately;

(b) direct the Contractor to complete in accordance with the Contract all or any of the Services, or any part or component thereof, which shall be paid at the agreed Contract Price or, where no agreement exists, a fair and reasonable price.

20. ASSIGNMENT, SUB-CONTRACTORS AND SUPPLIERS

20.1 The Contractor shall not sub-contract or transfer, assign, charge, or otherwise dispose of the Contract or any part of it without the prior written consent of the Council.

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

20.3 Where the Contractor enters into a contract with a supplier or sub-contractor for the purpose of performing the Contract or any part of it, he shall cause a term to be included in such contract which requires payment to be made by the Contractor to the supplier or sub-contractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the Contract requirements.

21. INSURANCE

21.1 The Contractor shall effect and maintain insurance necessary to cover his liabilities under the Contract and, where the Contractor sub-contracts part of the Contract, he shall procure that any such sub-contractor effects and maintains insurance to cover its liabilities under the sub-contract.

21.2 Where in compliance with Condition 21.1 the Contractor effects, or is to procure that a sub-contractor effects, professional indemnity insurance, the requisite insurance shall cover liabilities under the Contract, or sub-contract as the case may be, from the commencement of the Services, or the services under the sub-contract as the case may be, until 6 years after:

(i) the completion of the Services; or

(ii) the termination of the Contract

whichever is the earlier.

21.3 The Contractor shall, whenever required by the Council, produce to the Council documentary evidence showing that the insurance required by Conditions 21.1 and 21.2 has been taken out and is being maintained.

21.4 If, for whatever reason, the Contractor fails to maintain, or fails to procure that any sub-contractor maintains, the insurance required by this Condition 21, the Council may make alternative arrangements necessary to protect its interests and recover the costs thereof from the Contractor, provided always that any overall limitation of liability contained in Condition 22 shall not thereby be exceeded.

21.5 The terms of any insurance or the amount of cover shall not relieve the Contractor or his sub-contractors or consultants of any liabilities under the Contract, their sub-contracts or their terms of commission.

21.6 Without prejudice to any rights or remedies of the Council (including the Council's rights and remedies under the Contract) the Contractor shall indemnify the Council against all actions, suits, claims, demands, losses, charges, costs and expenses which the Council or any third party may suffer or incur as a result of or in connection with any damage to property or in respect of any injury (whether fatal or otherwise) to any person or in respect of any consequential loss which may result directly or indirectly from the provision of the service or the negligent or wrongful act or omission of the Contractor.

21.7 The Contractor shall effect with a reputable insurance company a policy or policies of insurance at the level stated in the Schedule hereto covering the matters which are the subject of indemnities under these conditions and shall at the request of the Council produce the relevant policy or policies together with receipts or other evidence of payment of the latest premium due thereunder.

22. LOSS OR DAMAGE

22.1 Condition 22 applies to any loss or damage which arises out of or is in any way connected with the performance of the Contract and shall include, for the avoidance of doubt and without prejudice to the generality of the foregoing, breaches of Conditions 26.1, 28 and 34.

22.2 The Contractor shall, without delay and at his own expense, replace or make good to the satisfaction of the Council, or, if the Council requires, compensate the Council for, any loss or damage.

22.3 If any loss or damage:-

(a) was not caused or contributed to by the Contractor's neglect or default, whether by act, omission or otherwise (for the purposes of this condition 22.3, "Contractor" shall include his servants, agents or sub-contractors) , he shall be under no liability under this condition 22;

(b) was in part caused or contributed to by the Contractor's neglect or default, whether by act, omission or otherwise, and in part by:-

(i) the act, neglect or default of any other person; and/or

(ii) circumstances outside both the Contractor's control and his reasonable contemplation the Contractor's liability under this condition 22 shall, except in relation to any loss or damage arising out of the Contractor's fraud or breach of condition 11 or 12 (to which this condition 22.4(b) shall not apply), be limited to the proportion of the loss or damage which it is just and equitable for the Contractor to pay.

22.4 In this condition 22 loss or damage includes:-

(a) loss or damage to property;

(b) personal injury and death;

(c) loss of profit or loss of use;

(d) any other loss.

23. CONFIDENTIALITY

23.1 Each Party:-

(a) shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and

(b) shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Contract or except where disclosure is otherwise expressly permitted by the provisions of this Contract.

23.2 The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from the Council under or in connection with the Contract:-

(a) is given only to such of the Staff and professional advisors or consultants engaged to advise it in connection with the Contract as is strictly necessary for the performance of the Contract and only to the extent necessary for the performance of the Contract;

(b) is treated as confidential and not disclosed (without prior Council approval) or used by any Staff or such professional advisors or consultants otherwise than for the purposes of the Contract;

23.3 The Contractor shall ensure that Staff or its professional advisors or consultants are aware of the Contractor's Confidentiality obligations under this Contract.

23.4 The Contractor shall not use any Confidential Information it receives from the Council otherwise than for the purposes of the Contract.

23.5 The provisions of Clauses 23.1 to 23.4 shall not apply to any Confidential Information received by one Party from the other:-

- (a) which is or becomes public knowledge (otherwise than by breach of this Condition);
- (b) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- (d) which is independently developed without access to the Confidential Information; or
- (e) which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, or the Environmental Information Regulations pursuant to Condition 24.3 (Freedom of Information).

23.6 Nothing in this Condition shall prevent the Council:-

- (a) disclosing any Confidential Information for the purpose of:-
 - (i) the examination and certification of the Council's accounts; or
 - (ii) any examination pursuant to Section 6(1) of the National Audit Act 1983, or any other Statutory provision, of the economy, efficiency and effectiveness with which the Council has used its resources; or
- (b) disclosing any Confidential Information obtained from the Contractor:-
 - (i) to any government department or any other Contracting Authority. All government departments or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority; or
 - (ii) to any person engaged in providing any services to the Council for any purpose relating to or ancillary to the Contract:

provided that, in disclosing information under sub-paragraph (b), the Council discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

23.7 Nothing in this Condition shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

23.8 In the event that the Contractor fails to comply with this Condition 23, the Council reserves the right to terminate the Contract by notice in writing with immediate effect.

24. FREEDOM OF INFORMATION

24.1 The Contractor acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Council (at the Contractor's expense) to enable the Council to comply with these Information disclosure requirements.

24.2 The Contractor shall and shall procure that its sub-contractors shall:

- (a) transfer the Request for Information, as defined in the FOIA or the Environmental Information Regulations, to the Council as soon as practicable after receipt and in any event, within [two] Working Days of receiving a Request for Information;
- (b) provide the Council with a copy of all Information in its possession or power in the form that the Council requires within [five] Working Days (or such other period as the Council may specify) of the Council requesting that Information; and
- (c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA [or regulation 5 of the Environmental Information Regulations].

24.3 The Council shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other information:-

(a) is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations;

(b) is to be disclosed in response to a Request for Information, and in no event shall the Contractor respond directly to a Request for Information, unless expressly authorised to do so by the Council;

24.4 The Contractor acknowledges that the Council may be obliged under the FOIA, or the Environmental Information Regulations, or any regulations or guidelines made thereunder, to disclose Information:-

(a) without consulting with the Contractor, or

(b) following consultation with the Contractor and having taken its views into account.

24.5 The Contractor shall ensure that all information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

24.6 The Contractor acknowledges that any lists or schedules provided by it outlining Confidential Information or Commercially Sensitive Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information or Commercially Sensitive Information in accordance with Clause 24.4.

25. RECOVERY OF SUMS DUE

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

26. DATA PROTECTION

26.1 The Contractor shall take such technical and organisational measures as are necessary to comply with the seven data protection principles set out in Part I, and amplified in Part II, of Schedule 1 to the Data Protection Act 1998.

27. INSOLVENCY OF THE CONTRACTOR

27.1 The Contractor shall inform the Council:-

(a) if being an individual, or where the Contractor is a firm, any partner in that firm, shall at any time become bankrupt, or shall have a receiving order or administration order made against him, or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or if in Scotland he shall become insolvent or notour bankrupt, or any application shall be made under any bankruptcy Act for the time being in force for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors; or

(b) if being a company, he passes a resolution, or the Court makes an order, that the company be wound up otherwise than for the purpose of reconstruction or amalgamation, or if a receiver or manager on behalf of a creditor shall be appointed, or if circumstances shall arise which entitle the Court, otherwise than for the purposes of amalgamation or reconstruction, to make a winding-up order.

27.2 If any of the events in the conditions 27.1 (a) or 27.1 (b) occur (whether or not the Contractor has informed the Council) the Council may at any time by notice in writing summarily terminate the Contract without compensation to the Contractor. Such termination shall not prejudice or affect any right of action or remedy which shall have accrued before that date or shall accrue thereafter to the Council.

28. ROYALTIES AND LICENCE FEES

The Contractor shall ensure that all royalties, licence fees or similar expenses in respect of all intellectual property used in connection with the Contract have been paid and are included within the Contract Price.

29. DRAWINGS, SPECIFICATIONS, SOFTWARE, DESIGNS AND OTHER DATA

Any drawings, specification, software, designs or other data (including working documents, maps and photographs) completed or provided in connection with the Contract shall become or, as the case may be, remain the property of the Council and be delivered up to the Council on completion or termination of the Contract, subject to the retention of proper professional records.

Where the Council has agreed to accept modern storage media, drawings and other documents shall be supplied by the Contractor in an agreed form.

30. RETENTION OF DOCUMENTATION

The Contractor shall retain, produce when required (and explain as necessary) such accounts, documents (including working documents) and records as the Council, or the Contract Manager, may request, in connection with the Contract, at any time during the Contract and for a period of 2 years from the date of expiry or termination or such longer period as may be agreed between the Council and the Contractor in writing at or before the commencement of the Contract; and afford such facilities as the Council may reasonably require for his representatives to visit the Contractor's premises and examine the records under this Condition.

31. SERVING OF NOTICES

Any notice required to be given or served under this Contract by the Council shall be in writing and shall be served by either:-

- (a) delivery to the Contractor's Representative, or
- (b) sending it by first-class post to the Contractor's last known place of business or registered office, when it shall be deemed to be served on the day when in the ordinary course of the post it would have been delivered. Any notice required to be given by the Contractor to the Council shall be sent to the Chief Executive of the Council.

32. ARBITRATION

All disputes, differences or questions between the parties to the Contract with respect to any matter or thing arising out of or relating to the Contract (other than a matter or thing as to which the decision of the Council is under the Contract to be final and conclusive, and except to the extent to which special provision for arbitration is made elsewhere in the Contract), shall be referred to either:-

- (a) the arbitration of 2 persons, one to be appointed by the Council and one by the Contractor, or
- (b) their Umpire

in accordance with the provisions of the Arbitration Acts 1950, 1996 or any statutory modification or re-enactment thereof for the time being in force.

33. TRANSFER OF RESPONSIBILITY

33.1 In the event that a different organisation is required to take over the Services at the expiry or termination of the Contract, the Contractor shall co-operate in the transfer, under arrangements to be notified to him by the Council.

33.2 The transfer shall be arranged between the Council and the Contractor so as to reduce to a minimum any interruption in the Services.

34. CONTRACTOR'S OBLIGATIONS IN CONNECTION WITH TUPE

34.1 Where requested to do so the Contractor shall provide such information (including any changes to and interpretations thereof) in connection with The Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended (TUPE) and / or the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006, as the Council may require, to the Council and/or to any other person authorised by the Council who is to be invited to submit a tender in relation to the provision of similar Services, within 10 days of the request.

34.2 During the 8 month period preceding the expiry of this Contract or within any period of notice of Termination or notice of Break, the Contractor shall not without the prior written agreement of the Council, which shall not be unreasonably withheld or delayed:-

- (a) materially amend the terms and conditions of employment of any employee whose work, wholly or mainly falls within the scope of this Contract; or
- (b) materially increase the number of employees whose work (or any part of it) is work undertaken for the purposes of this Contract.

34.3 The Contractor shall not knowingly do or omit to do anything which may adversely affect an orderly transfer of responsibility for provision of the Services.

35. USE OF COUNCIL FACILITIES

The Council shall make available to the Contractor all facilities under the Council's control and information and give such assistance as shall reasonably be required for the carrying out by the Contractor of the services under the contract.

36. SEVERABILITY

If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Council and the Contractor shall immediately commence negotiations in good faith to remedy the invalidity.

37. WAIVER

37.1 The failure of the Council or the Contractor to exercise any right or remedy shall not constitute a waiver of that right or remedy.

37.2 No waiver shall be effective unless it is communicated to either the Council or the Contractor in writing.

37.3 A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

38. RIGHTS OF THIRD PARTIES

Nothing in this Contract confers or purports to confer on any third party any right to enforce any term of this Contract.

STANDING ORDER 67 - ENGAGEMENT OF CONSULTANTS

67 (a) It shall be a condition of the engagement of any architect, engineer, surveyor or other consultant (who is not an officer of the Council) who is retained to supervise a contract on behalf of the Council that he/she will -

- (i) comply with these Standing Orders;
- (ii) produce for inspection to the Chief Officer on request all records kept by him/her in relation to the contract.

FINANCIAL REGULATION H - ORDERS FOR WORK, GOODS AND SERVICES

- H.1 Official orders shall be in a form of an approved electronic order issued by the Procurement & Logistics dept. which will clearly identify the Purchase Order, Requirement and price/cost.
- H.2 Official orders shall be issued for all work, goods or services to be supplied to the Council, except for supplies of public utility services, for periodic payments such as rent or rates, for petty cash purchases or such other exceptions as the Director of Corporate Services may approve.
- H.3 No order may be given unless the expenditure that will arise from it is in accordance with Standing Orders and Financial Regulations.
- H.4 The Standing Orders relating to contracts have been made by the Council under the terms of Section 99 of the Local Government Act (Northern Ireland) 1972 and are therefore of statutory effect and their terms must be carefully observed.
- H.5. All invoices are only to be forwarded to Accounts Department, O'Hagan House, Monaghan Row, Newry, BT35 8DJ.

- H.6.