CONDITIONS OF CONTRACT – SERVICES

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 Service Provider;

(b) "Contract" means the documents listed in the Council's acceptance letter, including these Conditions and the entire Tender Documentation. In case of discrepancy between these Conditions and other documents forming part of the Contract, the Conditions shall prevail unless otherwise agreed in writing;

(c) "Contract Price" means the price or prices payable to the Service Provider by the Council under the Contract for the full and proper performance by the Service Provider of his part of the Contract as determined under the provisions of the Contract;

(d) "Service Provider" means the person appointed by the Council for the performance of the Services (including any successors);

(e) "Service Provider's Representative" means a competent person appointed by the Service Provider 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 officer 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 Antrim and Newtownabbey Borough 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 Tender Documents which the Service Provider 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 Service Provider in the "Freedom of Information Statement";

(i) which is provided by the Service Provider 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 item of information would appear to be 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.

(s) "'Force Majeure Event' means any circumstance not within a party's reasonable control including, without limitation:

- acts of God, flood, drought, earthquake or other natural disaster;
- epidemic or pandemic;
- terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- nuclear, chemical or biological contamination or sonic boom; and
- collapse of buildings, fire, explosion or accident;

but excluding any labour or trade dispute, strikes, industrial action or lockouts relating to the Service Provider or the Service Provider's personnel.

1.2 Unless the context required 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 right 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 Service Provider and recorded in writing.

5. DUTY OF CARE

The Contract shall perform the Services with all reasonable skill, care and

diligence and in accordance with all relevant legislative and statutory requirements.

6. SERVICE PROVIDER'S PERFORMANCE

6.1 The Service Provider 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 Service Provider 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 Service Provider notice that any person is to be removed from involvement in the Services, the Service Provider shall take immediate steps to comply with such notice. The decision of the Council regarding the Service Provider's personnel shall be final and conclusive.

6.3 The Service Provider 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 Service Provider shall take all reasonable steps to avoid changes to any of the workers designated in the Contract as Key Personnel. The Service Provider shall give at least one months' 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 Service Provider 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 Service Provider 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 Service Provider.

7. MEETINGS AND REPORTS

7.1 The Service Provider 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 Service Provider 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 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 Service Provider be entitled to inspect and examine such Services. The Service Provider 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 Service Provider shall submit an invoice to the Council as specified in the Contract or within 30 days of the completion of the Services.

9.2 Invoices **MUST** be emailed to accountspayable@antrimandnewtownabbey.gov.uk as a PDF attachment.

9.3 The invoice address is Antrim and Newtownabbey Borough Council, 50 Stiles Way, Antrim BT41 2UB.

9.4 The Service Provider 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.

9.5 The Council shall pay the Service Provider in respect of the satisfactory performance of the Services in accordance with the Contract.

9.6 All invoices **MUST** include a valid purchase order number on each invoice/credit note issued to the Council. Failure to provide a valid purchase order number will result in payment delay or the invoice being returned to you.

9.7 All payments will be made electronically. The Service Provider must ensure their bank details are submitted with their invoice if not already held on record by Antrim and Newtownabbey Borough Council.

9.8 Except where otherwise provided in the Contract, the amount payable to the Service Provider for the carrying out of the Services shall be inclusive of all costs of workers, facilities, equipment, materials and all other expenses whatsoever incurred by the Service Provider in discharging his obligations under the Contract.

10. VALUE ADDED TAX

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

11. CORRUPT GIFTS AND PAYMENTS OF COMMISSION

11.1 The Service Provider 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 contracts for the Council (Crown).

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

11.3 Any:-

(a) breach by the Service Provider of this Condition or;

(b) commission of an offence by the Service Provider under the Prevention of Corruption Act 1889-1916 or Section 46-47 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 Service Provider the amount of any loss resulting from such termination and recover from the Service Provider the amount or 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.

11A. THE BRIBERY ACT 2010

The Service Provider shall:-

(a) comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);

(b) not engage in any activity, practice or conduct which would constitute an offence under Sections 1,2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

(c) have and shall maintain in place throughout the term of this agreement its own policies and procedure, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and Clause 1.1 (b), and will enforce them where appropriate;

(d) promptly report to the Council any request or demand for any undue financial or other advantage of any kind received by the Service Provider in connection with the performance of this agreement;

(e) immediately notify the Council (in writing) if a foreign public official becomes an officer or employee of the Service Provider or acquired a direct or indirect interest in the Service Provider (and the Service Provider warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this agreement);

(f) within three months of the date of this Contract, and annually thereafter, certify to the Council if requested in writing, signed by an officer of the Service Provider, compliance with this Clause 1 by the Service Provider and all persons associated with it under Clause 1.2. The Service Provider shall provide such supporting evidence of compliance as the Council may reasonably request.

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

12.1 The Service Provider 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 and return the Declaration contained in the Tender Documents.

12.2 The Service Provider 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 Service Provider 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 Service Provider 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 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 Service Provider 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 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 Service Provider shall, on written request from the Council, return all documents containing any part of the Work carried out by the Service Provider, including but not limited to, documents stored electronically.

13.5 The Service Provider shall ensure that any contract with:-

(a) any employee of his, and

(b) any Service Provider 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 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 Service Provider except with prior written permission of the Council, to whom any press or other enquiry or such matter should be referred:-

(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 Service Provider 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 Service Provider 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 Service Provider 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 and the Disability Discrimination Act 1995 and shall take all reasonable steps to ensure that all servants, employees or agents of the Service Provider and all Sub-Contractors employed in the execution of the Contract do not unlawfully discriminate. This Condition shall not in any way relieve the Service Provider of his general obligations to comply with any legislative requirements as provided in the Contract.

15. MERGER, TAKEOVER OR CHANGE OF CONTROL

The Service Provider shall forthwith inform the Council in writing of any proposal or negotiations which may or will result in a merger, takeover, change of control, change of name or status of the Service Provider (being 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 Incorporation Taxes 1988. The Service Provider 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 Service Provider has failed to perform the whole or any part of the Contract, to the standard of skill, care and diligence which a competent and suitably qualified Service Provider performing the same contract could reasonably be expected to exercise, or in accordance with the Contract (including the Specification and Programme), the Council may give the Service Provider a notice specifying the way in which their performance falls short of the requirements of the Contract, or is otherwise unsatisfactory.

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

(a) request from the Service Provider 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 Service Provider, 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 Service Provider of any of Condition 11 (Corrupt Gifts & Payments of Commission), Condition 12 (Fair Employment and Treatment (NI) Order 1998), Condition 13 (Disclosure of Information) of the Contract, or any other material breach of Contract

(b) the failure by the Service Provider to comply with a Notice given under Condition 16 (Unsatisfactory Performance) within fourteen days from the date of that notice;

(c) the Service Provider ceases or proposes to cease to carry on business;

(d) there is a change of control of the type referred to in Condition 15

(Merger, Takeover 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 Service Provider.

18. BREAK

The Council shall in addition to any powers under any other of these Conditions have power to terminate the Contract at any time by giving the Service Provider 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 Service Provider 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 Service Provider for the completion of the Services, the excess shall, subject to any overall limitation of liability contained in Condition 22 (Loss or Damage), be recoverable from the Service Provider, 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 (Termination of the Contract (d) or Condition 18 (Break), the Service Provider shall have the right to claim from the Council reimbursement of all reasonable costs necessarily properly incurred by him in relation to the orderly cessation of the Services, including and commitments, liabilities or expenditure which are reasonably and properly incurred, and would otherwise represent an unavoidable loss by the Service Provider by reason of the Contract. For the avoidance of doubt the Council will not indemnify the Service Provider 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 Service Provider 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 Service Provider, where the Services have not been commenced, to refrain from commencing such Services or where the Services been commenced, to cease work immediately;

(b) direct the Service Provider 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 at a

fair and reasonable price.

20. FORCE MAJEURE

20.1 Subject to the remaining provisions of this clause 21, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (**'Affected Party'**), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

20.2 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

20.3 The Affected Party shall:

20.3.1 as soon as reasonably practicable after the start of the Force Majeure Event notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this Agreement; and

20.3.2 Use all reasonable endeavours to mitigate the effect of the Force Majeure Event.

20.4 Where the Supplier is the Affected Party, it shall not be entitled to claim relief to the extent that the consequences of the relevant Force Majeure Event should have been foreseen and prevented or avoided by a prudent provider of service similar to the Services.

20.5 The Affected Party shall notify the other party in writing as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.

20.6 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 4 weeks, the party not affected by the Force Majeure Event may terminate this Agreement by giving 1 week's notice to the Affected Party.

21. ASSIGNMENT, SUB-CONTRACTORS AND SERVICE PROVIDERS

21.1 The Service Provider 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.

21.2 The Service Provider 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 Service Provider of his obligations under the Contract.

21.3 Where the Service Provider 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 the terms to be included in such contract which requires payment to be made by the Service Provider 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.

22. INSURANCE

22.1 The Service Provider shall effect and maintain insurance necessary to cover his liabilities under the Contract and, where the Service Provider 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. Indemnity limits are specified in the Qualification Return.

22.2 Where in compliance with Condition 21.1 the Service Provider 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.

22.3. The Service Provider shall, whenever required by the Council, procure 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. If, for whatever reason, the Service Provider 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 Service Provider provided always that any overall limitation of liability contained in Condition 22 (Loss or Damage) shall not thereby be exceeded.

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

23. LOSS OR DAMAGE

23.1 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 without prejudice to the generality of foregoing, breaches of Condition 26 (Data Protection), Condition 28 (Royalties and Licence Fees), Condition 34 (Service Provider's Obligation in Connection with TUPE) and Condition 35 (Provision of TUPE and Other Contract Information).

23.2 The Service Provider 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.

23.3 If any loss or damage:-

(a) was not caused or contributed by the Service Provider's neglect or default, whether by act, or omission or otherwise (for the purposes of this Condition 22.3, "Service Provider" 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 the Service Provider'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 Service Provider's control and his reasonable contemplation; the Service Provider's ability under this Condition 22 shall, except in relation to any loss or damage arising out of the Service Provider's fraud or breach of Condition 11 (Corrupt Gifts and Payments of Commission) or Condition 12 (The Fair Employment and Treatment (NI) Order 1998)(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 Service Provider to pay.

23.4 In this Condition 22 loss or damage includes:-

(a) loss or damage to property;

(b) personal injury and death;

(c) loss of property or loss of use;

(d) any other loss.

24. CONFIDENTIALITY

24.1 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 the Contract.

24.2 The Service Provider shall take all necessary precautions to ensure that all Confidential Information obtained under or in connection with the Contract:-

(a) is given only to such of the Workers 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 Workers or such professional advisors or consultants otherwise than for the purposes of the Contract.

24.3 The Service Provider shall ensure that Workers or its professional advisors or consultants are aware of the Service Provider's Confidentiality obligations under this Contract.

24.4 The Service Provider shall not use any Confidential Information it received from the Council unless otherwise than for the purposes of the Contract.

24.5 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).

24.6 Nothing in this Condition shall prevent the Council:-

(a) disclosing any Confidential Information for the purposes 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 Service Providers-

(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 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.

24.7 Nothing in this Condition 23 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.

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

25. FREEDOM OF INFORMATION

25.1 The Service Provider 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 Service Provider's expense) to enable the Council to comply with these Information disclosure requirements.

25.2 The Service Provider 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).

25.3 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 Service Provider respond directly to a Request for Information, unless expressly authorised to do so by the Council.

25.4 The Service Provider 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 Service Provider; or

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

25.5 The Service Provider 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.

25.6 The Service Provider 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.

26. RECOVERY OF SUMS DUE

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

27. DATA PROTECTION

The Service Provider shall take such technical and organisational measures as are necessary to comply with the Data Protection Act 2018 and the principles relating to the processing of personal data as set out in Article 5 of the GDPR.

28. INSOLVENCY OF THE SERVICE PROVIDER

28.1 The Service Provider shall inform the Council:-

(a) if being an individual, or where the Service Provider 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 a 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 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.

28.2 If any of the events in Condition 27.1(a) or 27.2(b) occur (whether or not The Service Provider has informed the Council) the Council may at any time by notice in writing summarily terminate the Contract without compensation to the Service Provider. 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.

29. ROYALTIES AND LICENCE FEES

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

30. DRAWINGS, SPECIFICATION, SOFTWARE, DESIGNS AND OTHER DATA

Any drawings, specifications, 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 Service Provider in an agreed form.

31. RETENTION OF DOCUMENTATION

The Service Provider shall retain, produce and require (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 two years from the date of expiry or termination or such longer period as may be agreed between the Council and the Service Provider 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 Service Provider's premises and examine the records under this Condition.

32. 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 Service Provider's Representative, or

(b) sending it by first-class post to the Service Provider'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 Service Provider to the Council shall be sent to the Chief Executive of the Council.

33. 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 two persons, one to be appointed by the Council, one by the Service Provider, 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.

34. TRANSFER OF RESPONSIBILITY

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

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

35. SERVICE PROVIDER'S OBLIGATIONS IN CONNECTION WITH TUPE

35.1 The tenderer is to seek his/her own legal advice on the application of TUPE to this tender.

35.2 Where requested to do so the Service Provider shall provide such Information (including any changes to and interpretations thereof) in connection the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), 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.

35.3 During the 8 month period preceding the expiry of this Contract or within any period of notice of Condition 17 (Termination of the Contact) or Condition 18 (Break), the Service Provider 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.

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

36. PROVISION OF TUPE AND OTHER CONTRACT INFORMATION

36.1 The Council considers that the Service Provision Charge (Protection of Employment) Regulations (Northern Ireland) 2006 will not apply to the transfer of activities currently undertaken under the contracts mentioned in the Specification of Services and Evaluation Methodology which is the

subject of this procurement exercise.

36.2 During the 8 month period preceding the expiry of this Contract or within any period of Condition 17 (Termination of the Contract) or Condition 18 (Break), the newly appointed Service Provider shall not without the prior written agreement of the Council, which shall not be reasonably 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.

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

37. 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 Service Provider shall immediately commence negotiations in good faith to remedy the invalidity.

38. WAIVER

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

37.2 No waiver shall be effective unless it is communicated to either the Council or the Service Provider 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.

39. RIGHTS OF THIRD PARTIES

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

40. PRICING

The prices quoted in the Tender documents shall remain fixed (not subject to variation) for the initial period of the Contract.

41. PERFORMANCE MEASUREMENT

The appointed Service Provider will be required to meet the key performance Indicators set out by the Council. The Contract Manager in the Council will arrange regular meetings with the Service Provider to ensure the Service meets all agreed requirements.

42. HEALTH AND SAFETY REQUIREMENTS

The Services carried out by the Service Provider shall comply with the provisions of the Health & Safety (Northern Ireland) Order 1978 and all other relevant

legislation or codes of practice, including but not limited to the Management of Health and Safety Regulations (Northern Ireland) 2000, the Manual Handling Operations Regulations (Northern Ireland) 1992, the Personal Protective Equipment at Work Regulations (Northern Ireland) 1993, the Provision and Use of Work Regulations (Northern Ireland) 1999, the Lifting Operations Equipment Regulations (Northern Ireland) 1999, the Work at Height Regulations (Northern Ireland) 2005, the Control of Noise Regulations (Northern Ireland) 2006, and the Traffic Signs Manual Chapter 8 (2006) and the Street Works (Northern Ireland) order 1995. Methods of collection which present a risk to either Service Provider or public safety will not be acceptable e.g. leaving spillages, broken glass etc. at collection points; throwing recyclables or collection containers; not returning containers to collection points etc. The Council expects that the successfully appointed Service Provider or those acting directly or indirectly on their behalf meet their statutory obligations both in terms of their responsibilities to safeguard their own Workers and those who may be affected by these services. They will upon request furnish all relevant paperwork, including but not limited to Safety Statements, Method Statements, Risk Assessments, Relevant Competency, Training Records of Workers and the means by which they will manage all associated risks during this contract. Furthermore, failure to comply by act or omission with this contractual requirement or indeed any associated statutory obligations will be considered a breach of contract and acceptance by them for any and all associated costs (including litigation) that may be incurred. The Contract Manager shall be empowered to suspend the provision of the Service in the event of non-compliance by the Service Provider with the Health & Safety at Work (Northern Ireland) Order 1978 and relevant legislation or codes of practice; or the Service Provider's Health and Safety Policy as notified to the Council.

42.1 Service Providers must keep location-by-location electronic records of all incidents which take place. These must include details of date, time, names of people involved, nature of the incident and a record of action taken. This document should be available at each location for immediate inspection when required.

42.2 The Council may carry out random Health & Safety Audits at any of the sites within this Contract. The results from such audits will be used to access the Service Providers overall performance. A major or failure to rectify a persistent breach (3 occurrences, or the same one 3 times) may result in the Contract being Terminated.

42.3 The Service Provider must provide all Workers with suitable work wear and protective clothing, which will conform to all current Health & Safety legislation. Work wear must be worn at all times by Workers whilst on duty.

42.4 It is the successful Service Provider'(s) obligation to ensure that visual signs are used to inform Workers, visitors and service users of either, wet, slippery or dangerous floor surface conditions. These signs must be instantly recognisable and placed in and around the affected area(s) and comply with the relevant British Standards/Code of Practice.

42.5 The Service Provider must ensure the safe storage and security of all equipment, materials and consumables on the premises and must maintain the agreed storage area in a clean and tidy condition. All COSHH sheets must be held on site.

42.6 The Service Provider will not be expected to move items such as equipment etc. in order to clean surfaces. The full cleaning of these

surfaces should take place following the removal of the items by Officers of the Council.

42.7 The Service Provider must ensure that all treated surfaces are left in a safe condition for the time when they will next be operational, or if this is not possible then warning notices must be displayed and the area cordoned off. If any practice of the Service Provider is identified as representing any potential hazard, whilst on site, the Service Provider may be requested to cease work until the hazard is removed. The cost of any delays shall be borne by the Service Provider.

43. POLICY ON INSPECTION AND MAINTENANCE

Antrim and Newtownabbey Borough Council expects that the successfully appointed Service Provider (or those acting directly or indirectly on their behalf) meet their statutory obligations both in terms of their responsibilities to safeguard their own Workers and those who may be affected by the provision of these services. They should, upon request, furnish all relevant paperwork including, but not limited to, Safety Statements, Method Statements, Risk Assessments, relevant Competency/Training Records of Workers and the means in how they will manage all associated risks during this Contract. Furthermore, failure to comply by act or omission with this contractual requirement or indeed any associated statutory obligations will be considered a Breach of Contract and acceptance by the Service Provider for any and all associated costs (including litigation) that may be incurred as a result.

44. CURRENCY OF TENDERS

All prices shall be tendered in pounds sterling and shall be exclusive of VAT.

45. THE SERVICES

45.1 The Service Provider shall provide the Services during the Contract period in accordance with the Council's requirements as set out in the Tender Documentation and the provisions of the Contract in consideration of the payment of the Contract price. The Council may inspect and examine the manner in which the Service Provider supplies the Services during normal business hours on reasonable notice.

45.2 In the Council informs the Service Provider in writing that the Council Reasonably believes that any part of the Services does not meet the requirements of the Contract or differ in any way from those requirements, and this is other than as a result of a default by the Council, the Service Provider shall at its own expense reschedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Council.

45.3 Subject to the Council providing written consent in accordance with Condition 45.2 (Provision and Removal of Equipment), timely provision of the Services shall be of the essence of the Contract, including in relation to commencing the provision of the Services within the time agreed or on a specified date.

46. PROVISION AND REMOVAL OF EQUIPMENT

46.1 The Service Provider shall provide all the Equipment necessary for the provision of the Services.

46.2 The Service Provider shall not deliver any Equipment nor begin any work on site without prior approval.

46.3 All Equipment brought on site shall be at the Service Provider's own risk and the Council shall have no liability for any loss of or damage to any Equipment unless the Service Provider is able to demonstrate that such loss or damage was caused or contributed to by the Council's default. The Service Provider shall provide for the haulage or carriage thereof to the site and the removal of the Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought on site will remain the property of the Service Provider.

46.4 The Service Provider shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.

46.5 The Service Provider shall, at the Council's written request, at its own expense and as soon as reasonably practicable:-

(a) remove from the site, any Equipment which in the reasonable opinion of the Council is either hazardous, noxious or not in accordance with the Contract, and;

(b) replace such items with a suitable substitute item of Equipment.

46.6 On completion of the Services the Service Provider shall remove all Equipment together with any other materials used by the Service Provider to provide the Services and shall leave the site.

47. MANNER OF CARRYING OUT THE SERVICES

47.1 The Service Provider shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of Services has not been specified in the Contract, the Service Provider shall agree the relevant standard of the Services with the Council prior to the provision of the Services and, in any event, the Service Provider shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

47.2 The Service Provider shall ensure that all Workers providing the Services shall do so with all sue skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper provision of the Services.

48. SERVICE PROVIDER'S WORKERS

48.1 The Service Provider shall ensure that it engages at all times sufficient resource for the delivery of the Services, who are competent, suitably qualified or suitably trained and experienced including any specialist based training that is required for the proper delivery of the Services and contingency plans to ensure that sickness or absenteeism does not threaten or impact upon the operation of the Service.

48.2 The Service Provider shall notify all Workers about the Service Provider's obligations under the terms of this Contract and about any applicable legislation.

48.3 Upon receipt of a complaint against a member of the Service Provider's Workers, the Council may, to the extent reasonably necessary to protect the standards and reputation of the Council, in consultation with the Service Provider, request that the Service Provider investigates the complaint and provides the Council with all requested information in

relation to the investigation, in accordance with the Service Provider's own internal policy and procedures and Good Industry Practice.

48.4 In the event of industrial disputes or action by any Workers, it remains the Service Provider's responsibility to meet the requirements of this Contract. The Service Provider shall inform the Council immediately of impending or actual industrial disputes or action, which may affect the Service Provider's ability to deliver the Services of the Service Provider's contingency plans for dealing with such disputes or action.

48.5 The Council may, by written notice to the Service Provider, refuse to admit onto, or withdraw permission to remain on site:-

(a) any member of the Workers; or

(b) any person employed or engaged by any member of the Workers, whose admission or continued presence would, in the reasonable opinion of the Council, be undesirable.

48.6 At the Council's written request, the Service Provider shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the site, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Council may reasonably request.

48.7 The Service Provider's Workers engaged within the boundaries of the site, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the site.

48.8 If the Service Provider fails to comply with Condition 46.5 within 1 month of the date of the request and in the reasonable opinion of the Council, such failure may be prejudicial to the interests of the Council, then the Council may terminate the Contract, provided always that such termination shall not prejudice any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

48.9 The decision of the Council as to whether any person is to be refused access to the site and as to whether the Service Provider has failed to comply with Condition 47.5 shall be final and conclusive.

49. CHILD AND ADULT SAFEGUARDING

49.1 The Service Provider, as a minimum, should comply with the Council's Child and Adult Safeguarding Policy and Procedures, which can be found at http://antrimandnewtownabbey.gov.uk/safeguarding.

49.2 The Service Provider will confirm and ensure that workers employed or engaged by the Service Provider on the provision of the Services will have an up to date Access NI check undertaken, if appropriate to their work within the contract. The Service Provider shall ensure that no person who discloses that he/she has a relevant conviction, or is found by the Service Provider to have a relevant conviction (whether, as a result of a police check, or through an Access NI check or otherwise) is employed or engaged in the provision of any part of the Services.

50. VARIATION

50.1 Subject to the provisions of this clause, the Council may request a variation to the Specification provided that such variation does not amount to a material change to the Specification. Such a change is hereafter called a "Variation".

50.2 The Council may request a Variation by notifying the Contract in writing of the Variation and giving the Service Provider sufficient information to assess the extent of the Variation and consider whether any change to the Contract price is required in order to implement the Variation. The Council shall specify a time limit within which the Service Provider shall respond to the request for a Variation. Such time limits shall be reasonable having regard to the nature of the Variation. If the Service Provider accepts the Variation it shall confirm the same in writing.

50.3 In the event that the Service Provider is unable to accept the Variation to the Specification or where the parties are unable to agree a change to the Contract price, the Council:-

(a) allow the Service Provider to fulfil its obligations under the Contract without the Variation to the Specification;

(b) terminate the Contract, with immediate effect, except where the Service Provider has already delivered all or part of the Services or where the Service Provider can show evidence of substantial work being carried out to fulfil the requirements of the Specification; and in such case the parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure detailed in Condition 32 (Arbitration).

51. MONITORING AND CONTRACT PERFORMANCE

The Service Provider shall comply with the monitoring arrangements set out in the Tender Documentation including, but not limited to, providing such data as the Service Provider may be required to procure under the Contract.

51.1 Routine monitoring inspections will be completed and will be deemed to have either passed or failed.

51.2 The value of activities found to have been omitted or completed to an unsatisfactory standard as a result of site inspections/audits or following investigation of an official complaint will be deducted from the contract price. Any deductions will be based on full contract value including management and supervision costs.

51.3 If the Service Provider does not rectify any issues as a result of inspections within the specific timescale set by the Council or to the specification standard, the Contract Manager may make alternative arrangements to rectify the issue. The value of such action will be charged to the Service Provider. No additional charges for this work will be payable in these circumstances.

51.4 The Contract may be terminated, in accordance with Conditions of Contract if the percentage failure rate exceeds:-

(i) 10% in any charging period; or

(ii) 8% in any 3 consecutive charging periods.

Such failure shall be deemed to constitute material breach for the purpose of Condition 17 (Termination of the Contract).

52. ENVIRONMENTAL

The Service Provider will be required to comply with the Council's management controls in respect of waste management, energy consumption and pollution control. The Council is audited and externally certified to ISO 14001 standard. The Service Provider shall ensure that waste created in the delivery of services shall be kept to a minimum and disposed appropriately to meet legislative

requirements and to reduce impact on the environment.
The Service Provider shall ensure that harmful emissions (air, ground, water) are kept to a minimum by:-
(a) minimisation of frequency and number of deliveries to the sites;
(b) using fuel and energy efficient vehicles and machinery;
(c) ensure vehicles and machinery are driven appropriately and serviced regularly;
(d) clear action in case of chemical/oil spills.

53. THE WITHDRAWAL OF THE UNITED KINGDOM FROM THE EUROPEAN UNION
The Council is willing to pay the charges relating to the withdrawal of the United Kingdom from the European Union, should they become relevant, as long as the charges are a standard taxation cost appropriate to all manufacturers in your field.

54. COVID CLAUSE
In the event that the services do not proceed due to the COVID-19 Pandemic which restricts the delivery of the service, Clause 17 of the Terms and Conditions for Termination will apply. If the recipient has been already paid for unused services in the agreement, the Council reserves the right to clawback 100% of its contribution paid in respect of eligible costs.