



## CONTRACT CONDITIONS

# PROFESSIONAL CONSULTANCY SERVICES FRAMEWORK FOR HOUSING DEVELOPMENT

2020 - 2024

Date: November 2019

PROC/012/2019



INVESTORS  
IN PEOPLE | Silver



## **CONDITIONS OF CONTRACT**

The contract awarded by The Havebury Housing Partnership (the 'Employer') for the services shall be subject to the following terms and conditions:

### **1.0 DEFINITIONS AND INTERPRETATION**

1.1 In this Contract save where the context otherwise requires, the following expressions shall have the meanings hereby assigned to them.

"Anniversary Date" means the date as specified in the Contract Documents.

"Annual Sum" means the cost as stated in the Pricing Schedule for providing the required routine maintenance works over a twelve month period.

"Commencement Date" means the date from which the Service Provider is instructed to commence and to carry out the Services.

"Conditions" means these conditions, any supplementary conditions and any variation agreed between the Employer and the Service Provider.

"Contract" means any formal contract document entered into between the Employer and the Service Provider.

"Contract Administrator" (CA) means the person appointed by the Employer or any person duly authorised by him to act on his behalf .

"Contract Area" means all the sites within which the Service Provider is liable to carry out the Services.

"Contract Manager" means the person nominated by the Service Provider to manage the Services.

"Contract Standard" means such standards as appear in the Service Requirement and as comply in each and every respect with all the relevant provisions of the Contract and where no criteria are stated in the Contract the standard is to be the satisfaction of the Contract Administrator.

"Contract Term" means the term of this Contract as stated in the Information and Instructions To Tenderers section of this document.

"Contract Year" means a year commencing on the Commencement Date of Each Anniversary thereof during the Contract Period.

"Contractor" means the person, persons or company whose tender is accepted, and to which the Contract is awarded.

"Default Notice" means any Notice of Default issued under these conditions.

"Employer" means The Havebury Housing Partnership or any successor.

"Havebury" means The Employer

"HHP" means The Employer

“Instructions” means any direction either verbal, written or described in any other way by the Contract Administrator or any person duly authorised by him to act on his behalf.

“Method Statement” means the Service Provider’s method of carrying out the Services as defined in the Programme.

“Normal Working Hours” means between 8.00 a.m. and 6.00 p.m. during weekdays, bank and statutory holidays are excepted.

“Notice” means any written communication.

“Notice of Determination” means a Notice served by the Contract Administrator on the Service Provider which terminates the Contract.

“Notice of Failure” means a Notice served by the Contract Administrator on the Service Provider for failure to provide the Services in accordance with the Contract.

“Pricing Schedule” means the price schedules for routine maintenance works forming part of the Tender documents.

“Programme” means a programme of work submitted by the Service Provider in accordance with the requirements of the Tender documents.

“Rectification Notice” means a notice served on the Service Provider by the Contract Administrator for the Service Provider’s failure to perform Services in accordance with the Contract.

“Service Provider” the person named as Service Provider in the Conditions of Contract.

“Services” means the whole of the services to be executed by the Service Provider in accordance with the Contract and includes any Variations thereto made pursuant to these Conditions.

“Service Requirement” means the requirement detailing the Services to be provided by the Service Provider and any Variation thereto as may from time to time be approved in writing by the CA.

“Statement” means a statement of indebtedness of the Employer to the Service Provider.

“Statistical Information” means information required of the Service Provider by the Employer in accordance with the Conditions of Contract.

“Tender” means the offer to provide the Services in the form accompanying the Conditions together with all documents evidence and information required by the Employer in accordance with the Instructions to Tenderers.

“Tender documents” means the tender documents relating to the award of this framework agreement for consultant services.

“Variation” means any variation, addition, deletion or omission made to any part of the Contract.

“Variation Order” means Notice of any Variation.

“Week” means seven consecutive days starting on Monday and ending on the following Sunday.

“Work Equipment” means any vehicle, machine, powered or hand tool, or other item of equipment used by the Service Provider for the purposes of the Contract.

- 1.2 A reference to an Act of Parliament or any Order, Resolution, Statutory Instrument or the like shall include a reference to any amendment or re-enactment of the same.
- 1.3 Except where the context otherwise requires words denoting the singular includes the plural and vice versa; words denoting any gender include all genders; words denoting persons include firms and corporations and vice versa;
- 1.4 Unless otherwise stated a reference to a clause, sub-clause or schedule is a reference to a clause or sub-clause of or a schedule to this tender document.
- 1.5 Clause headings are for ease of reference only and do not affect the construction of this Contract.
- 1.6 Stipulations as to time of payments by the Employer to the Service Provider are not of the essence of the Contract. Other stipulations as to time are of the essence.
- 1.7 Reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to an enactment, order, regulation or instrument as amended or re-enacted by any subsequent enactment, order, regulation or instrument.
- 1.8 Reference to employees of the Service Provider shall be deemed to include the Service Provider's agents and sub-contractors and the employees and agents thereof unless the context otherwise requires.
- 1.9 The Contract shall be governed by and construed in accordance with English Law.

## **2.0 SUFFICIENCY OF TENDER**

- 2.1 Service Provider shall be deemed to have satisfied himself before submitting his tender as to the accuracy and sufficiency of the rates stated by him in his tender which shall (except insofar as is otherwise provided in the Contract) cover all his obligations under the Contract.
- 2.2 Except as otherwise expressly provided, the several documents comprising the Contract are to be taken as mutually explanatory of one another. In the case of ambiguities or discrepancies the same shall be explained and adjusted by the Contract Administrator (CA) who shall issue to the Service Provider appropriate instructions in writing and the Service Provider shall carry out and be bound by such instructions. If any such adjustment results in an addition, omission or other change to the Services it shall be treated as a Variation under Clause 6.0 hereto. In this respect the decision of the CA shall be final.
- 2.3 If there are any discrepancies between the Conditions and the rest of the Contract the Conditions will prevail.

- 2.4 The Employer has provided in the Contract Documents, inter alia, a detailed Service Requirement for the provision of the Services. The Service Provider be deemed to acknowledge that he has not entered into any contract in reliance on any statement contained in such particulars or documents he having satisfied himself as to the contents of each and every statement contained in the documents by inspection or otherwise and that no warranty or representation has been made by the Employer, its employees or agents in relation to or in connection with the Contract Documents.

### **3.0 ERRORS AND OMISSIONS**

- 3.1 Any error in description in the Contract or statement therein or omission therefrom shall not vitiate or invalidate the Contract nor release the Service Provider from the performance of the whole or any part of the Services or from all or any of his obligations or liabilities under the Contract or entitle him to compensation or damages. Any such error or omission shall be corrected by the CA and the correction shall be treated as a variation in accordance with clause 6.0 hereof.

### **4.0 CONFLICTS OF INTEREST**

- 4.1 Havebury may exclude any Tenderer if there is a conflict of interest which cannot be effectively remedied. The concept of a conflict of interest as set out in Regulation 24 of the PCR 2015 (4.3 reference), includes any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure.
- 4.2 Where there is any indication that a conflict of interest exists or may arise then it is the responsibility of the Tenderer to inform Havebury and provide details of the conflict. Please note that routine pre-market engagement carried out by Havebury should not represent a conflict of interest for a Tenderer, provided that the engagement has been carried out in a transparent manner.

### **5.0 CONFIDENTIALITY**

- 5.1 Service Provider's must treat all information supplied by Havebury in connection with this procurement process as confidential (and shall ensure that their employees, consultants, subcontractors, advisers, insurers and funders shall treat documentation supplied in relation to this Invitation to Tender as confidential).
- 5.2 Service Provider's shall not, without the prior written consent of Havebury, at any time make use of such information for its own purposes or disclose such information to any person, except:
- 5.2.1 Where the disclosure is required by law or any court, regulatory or government authority competent to require the same; or

- 5.2.2 to the extent where such information is brought within the public domain otherwise than by the breach of this paragraph by the relevant Tenderer; or
  - 5.2.3 to the extent that the information becomes available to a party otherwise than pursuant to this procurement process; or
  - 5.2.4 where such information is disclosed for the purposes of obtaining sign-off from insurers and legal advisers on the Contract, or for obtaining sureties, guarantees or commitments from proposed sub-contractors or suppliers and other information required to be submitted with their Tender.
- 5.3 Service Provider's must treat this Invitation to Tender (and all the documents forming part of or appended or scheduled to this Invitation to Tender) and all other information provided by or on behalf of Havebury as private and confidential. No Service Provider should disclose that it has been invited to submit a Tender to Havebury or release details of this Invitation to Tender (and all the documents forming part of or appended or scheduled to this Invitation to Tender) other than on a strictly confidential basis and to the extent strictly necessary to such parties as the Service Provider needs to consult in order to submit a Tender.
- 5.4 Service Provider's shall not at any time release any information concerning the Invitation to Tender and/or their Tender and/or any related documents and/or discussion with Havebury in this connection for publication in the press or on radio, television, screen or any other medium.
- 5.5 This Invitation to Tender is issued in confidence and remains the property of Havebury. The copyright in this Invitation to Tender is vested in Havebury and may not be reproduced, copied or stored on any medium without the prior consent of Havebury except in relation to the preparation of the Tender.

## **6.0 CONTRACT ADMINISTRATOR**

- 6.1 The functions, rights and powers conferred by this Contract upon The Employer shall be exercised by the CA. The Service Provider shall in no circumstances question the existence or extent of the authority of any person nominated by the CA to act on his behalf and the duties and extent of authority will be given in writing to the Service Provider.
- 6.2 The Employer shall ensure that the CA or any officer duly nominated to act on his behalf is available for consultation with the Service Provider at all reasonable times.
- 6.3 The CA and any duly nominated officer acting on his behalf shall have full power and authority to issue instructions on any matter in connection with the proper performance of the Services and the Service Provider shall be bound by the same.
- 6.4 The CA may at any time without invalidating the Contract instruct any Variations to any part of the Services, as he considers necessary, to include all or any of the following:

- 6.4.1 To omit and cease to perform any part of the Services for such period as the CA may specify.
- 6.4.2 To perform the Services or any part thereof in such manner as the CA may reasonably require.
- 6.4.3 To vary the Programme and to perform the Services in accordance with the Programme as so varied.
- 6.4.4 To perform such additional Services in addition to the Services as the CA may require for such period as the CA shall specify provided that such additional Services shall be of the same nature or similar to the Services under the Contract and for such period as shall be agreed between the CA and the Service Provider.
- 6.4.5 To perform such additional Services as the Service Provider has agreed in writing to undertake outside the scope of the Services which may not be of the same nature or similar to the Services under the Contract and for such period as shall be agreed between the CA and the Service Provider shall immediately carry out all such instructions.

## **7.0 PREMISES**

- 7.1 The Service Provider shall provide and maintain suitable premises within the contract area as are necessary for the proper performance of the Contract.

## **8.0 COMMUNICATIONS**

- 8.1 The Service Provider shall provide appropriate mobile technology for maintaining Employer contact.

## **9.0 SERVICE PROVIDER'S EMPLOYEES**

- 9.1 The Service Provider shall at all times during the Contract Period, employ or cause to be employed only such persons in and about the performance of the Contract as are properly and sufficiently qualified to current legislation competent, honest, experienced, instructed and supervised as necessary and appropriate for the proper performance of the Services. A copy of each employee Qualification Record should be submitted before commencement of the contract or during the contract when recruiting new employees.

The Service Provider shall at all times ensure that a sufficient reserve of persons is available to provide the Services during holiday periods, absences due to sickness and special events/emergencies.

- 9.2 The Service Provider shall provide a manned office during the Normal Hours of Work and shall notify the CA of the address and telephone number of the office before the Commencement Date. The Service Provider shall give Employer at least five working days' notice of any change to the address or telephone number of this office.

## **10.0 CUSTOMER CARE**

- 10.1 The Service Provider will comply in all respects with the duties and responsibilities falling upon the Service Provider (and upon any Sub-Contractor employed by the Service Provider in relation to the said Contract) and perform the Services/Works in accordance with Havebury Housing Partnership's 'Customer Care Policy HS004A (copy included with the tender documents).
- 10.2 Compliance will be monitored throughout the contract period via a variety of appropriate methods, including customer compliments and complaints.

## **11.0 PERFORMANCE MONITORING**

- 11.1 The Employer shall monitor and assess the Service Provider's performance by reference to any performance indicators stated or identified within the Tender documents.
- 11.2 The Service Provider shall provide to the Employer all information that he may reasonably require to monitor and assess the Service Provider's performance against the targets for those performance indicators.
- 11.3 Where the Employer considers that a target for any of those performance indicators may not be met, he may inform the Service Provider who shall submit his proposals for improving his performance against that target to the Employer.

## **12.0 REPORTING AND REVIEW MEETINGS**

- 12.1 The Service Provider shall attend monthly review meetings with the CA at The Employer's office to discuss KPI's and the performance of the service.
- 12.2 The Service Provider shall provide to the CA all information that he may reasonably require to monitor and assess the Service Provider's performance against the targets for those performance indicators.
- 12.3 The Service Provider shall provide all statistical information, which the Employer may from time to time reasonably require.
- 12.4 KPI's will be agreed upon between both parties at the Pre-Contract Meeting.

## **13.0 COMPLAINTS**

- 13.1 The Service Provider shall deal with any complaints received (whether received orally or in writing from residents, leaseholders or members of the public) in a prompt, courteous and efficient manner.
- 13.2 All complaints shall be brought to the attention of the CA within 24 hours of receipt.
- 13.3 Unresolved complaints received or referred to The Employer may be investigated by the CA. The CA may advise the Service Provider what remedial work if any, is to be



carried out as a result of the complaint and the time within which such work must be completed.

13.4 The Service Provider shall keep a written record of all complaints received (log) and the log shall include:

13.4.1 The nature of the complaint and whether it was in writing or otherwise;

13.4.2 The date the complaint came to the attention of the Service Provider;

13.4.3 The action taken to resolve the complaint;

13.4.4 The date the complaint was resolved;

13.4.5 The date the complainant was notified of the resolution of the complaint.

13.5 Such records shall be kept available for inspection by the CA at all reasonable times.

#### **14.0 PAYMENT AND BILLING**

14.1 The Service Provider shall submit to the CA, or his representative requesting or instructing the required services, an account Statement in an agreed format indicating the value of services completed up to the relevant work stage as stipulated in the agreed payment/drawdown schedule, or upon completion of fixed price instructions.

14.2 The CA or his representative shall have the power to amend any Statement in respect of:

- Errors in calculations.
- Any deduction in respect of a failure to perform in accordance with the Contract requirements.
- Previous payments paid on account.
- Any other sums owed by the Service Provider to the Employer under the terms of the Contract.

14.3 The Service Provider shall then issue the CA with a Value Added Tax Invoice for the certified sum. The final date for payment of the certified sum shall be 28 days from the date of receipt of the Service Providers invoice(s).

#### **15.0 REVIEW OF RATES/PRICES**

15.1 The rates as stated in the attached documents for Lots 2 and 3 are fixed for the first year of the contract period and shall be subject to an annual review on each anniversary date. Any price fluctuations to the rates in subsequent years will be based on the tendered percentage (plus or minus) indicated in the priced tenders.

15.2 Any price fluctuations to the rates (where contract has been extended) will be agreed by open book negotiation subject to a maximum increase equivalent to the percentage

movement in the Consumer Price Index (CPI) prepared by the Office of National Statistics.

- 15.3 The first annual review will be calculated on the indices published for February 2021 and subsequent annual reviews will be based on those indices published for each February. The results of the annual review will be implemented on the 1st April of the year following the review.
- 15.4 The pricing forming part of these documents subject to any percentage adjustment of the rates listed in that document will be used to value services instructed by the CA.
- 15.5 No adjustment will be made to the pricing, other than for the annual review, for items which may be performed in disadvantageous circumstances as these must be regarded as being offset by other items which may be performed in advantageous circumstances.

#### **16.0 VALUE ADDED TAX (VAT)**

- 16.1 Sums payable to the Service Provider pursuant to this Contract are exclusive of Value Added Tax ("VAT").
- 16.2 The Employer shall pay to the Service Provider in the manner hereinafter set out any VAT properly chargeable on the supply by the Service Provider of the Services at the appropriate rate.
- 16.3 The Service Provider must issue The Employer with a Value Added Tax invoice prior to any payment being made.

#### **17.0 FIXED PRICE OVERSPENDS**

- 17.1 The Service Provider will inform Havebury if they foresee a fixed price being exceeded, Havebury requires five working days' notice of potential overspends exceeding 10% of agreed price. Such overspends will have to be approved in advance and in writing by Havebury. Havebury are not liable for any fixed price overspend which has not followed the procedure.

#### **18.0 ENVIRONMENTAL REQUIREMENTS**

- 18.1 The Service Provider shall ensure that all persons employed in the performance of the Contract when carrying out the Services and/or working on the Employer's land or property, perform this Contract with a view to conserving energy, water, wood, paper and other resources to reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

## **19.0 HEALTH AND SAFETY**

- 19.1 The Service Provider shall in performing the Services adopt safe methods of work in order to protect the health and safety of his own employees, the employees of the Employer and of all other persons, including members of the public and shall comply with the requirements of the Health and Safety at Work Act 1974, The Management of Health and Safety Regulations 1992, Control Of Substances Hazardous to Health (COSHH) Regulations 1988 and 1994, and of the Road Traffic Act 1988 and of any other Acts, Regulations, Orders or any European Directive pertaining to the health and safety of employed persons.
- 19.2 The Service Provider shall review his health and safety policy and safe working procedures as often as may be necessary and in the light of changing legislation or working practices or the introduction of new Work Equipment and shall notify the CA in writing of any such revisions. The Contract Administrator may direct the Service Provider to review its health and safety policy and safe working procedures to ensure it complies with any change in legislation or working practices or required as a result of the introduction of new Work Equipment.

## **20.0 ETHICAL REQUIREMENTS**

- 20.1 The Employer requires that the Service Provider carry out the services in an ethical and sustainable manner. Relationships are based on fair and honest dealings at all times which will extend to all residents, employees and any other third parties that the Service Provider deals with and will extend to the local communities.
- 20.2 The Service Provider is expected to comply with all current and relevant legislation regarding the environment and the ethical treatment of people.

## **21.0 EQUALITY AND DIVERSITY**

- 21.1 The Service Provider will comply in all respects with the duties and responsibilities falling upon the Service Provider (and all subcontractors employed by the Service Provider in relation to the said contract works) within the provisions of The Equality Act 2010.

## **22.0 MODERN SLAVERY**

- 22.1 The Service Provider will comply in all respects with the duties and responsibilities falling upon the Service Provider (and all sub-contractors employed by the Service Provider in relation to the said contract) within the provisions of the Modern Slavery Act 2015.
- 22.2 Documentary evidence to be submitted for verification when requested by the Employer.

## **23.0 SOCIAL VALUE ACT 2010**

- 23.1 The Service Provider shall provide added Social Value for the benefit of either the environment, sustainability or economic welfare of those living within Havebury's area of operations and its local communities as required within the contract documents.

## **24.0 SMALL BUSINESS ENTERPRISE AND EMPLOYMENT ACT 2015**

- 24.1 Tenderers are to note that Havebury is subject to the Small Business Enterprise and Employment Act 2015 (SBEEA). Under SBEEA, the Government's Mystery Shopper service is empowered to investigate concerns raised on the Mystery Shopper website about public sector procurement exercises. Contracting authorities are required to assist all investigations and to provide relevant information and/or documents within 30 calendar days of a formal notice. This may require Havebury to disclose any information contained in any Tenders submitted by Tenderers.
- 24.2 By submitting a Tender, the Tenderer acknowledges and agrees that Havebury has complete discretion in deciding whether such documents and/or information should be disclosed under SBEEA (even where Tenderers have identified certain information in their submissions as confidential) and the Tenderer agrees to waive any contractual or other confidentiality rights and obligations associated with the disclosure of information under SBEEA.

## **25.0 COPYRIGHT**

- 25.1 By submitting a Tender each Service Provider agrees and acknowledges that it shall have granted to Havebury and its advisors for all purposes related to the Services a non-exclusive, irrevocable, perpetual, royalty free licence to use, copy, modify, adapt and translate any drawings, specifications, materials, data and other information relating to any element of any solution proposed by the Service Provider during the procurement process (together with the right to grant sub-licences).
- 25.2 Each Service Provider warrants to Havebury that no document that it prepares as part of its Tender Submission shall infringe any intellectual property rights.
- 25.3 Each Service Provider undertakes to indemnify Havebury and to keep Havebury indemnified against all actions, claims, demands, liability, proceedings, damages, costs, charges and expenses whatsoever arising out of or in connection with any breach of the provisions of these Instructions.
- 25.4 Copyright in the Contract Documents shall vest in The Employer, but the Contractor may obtain or make at his own expense any further copies required for use by the Contractor in performance of the Services.

## **26.0 INTELLECTUAL PROPERTY RIGHTS**

- 26.1 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "IP Materials"):
- 26.2 furnished to or made available to the Service Provider by or on behalf of Employer shall remain the property of Employer; and
- 26.3 prepared by or for the Service Provider on behalf of Employer for use, or intended use, in relation to the performance by the Service Provider of its obligations under the Contract shall belong to Employer;
- 26.4 in addition, the Service Provider and his employee's shall not (except when necessary for the performance of the Contract) without prior Approval, use or disclose any Intellectual Property Rights in the IP Materials.
- 26.5 The Service Provider hereby assigns to Employer, with full title guarantee, all Intellectual Property Rights, which may subsist in the IP Materials prepared in accordance with clause 26.1 This assignment shall take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Service Provider.
- 26.6 Employer shall notify the Service Provider as soon as reasonably possible in writing of any claim or demand brought against Employer for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Service Provider.
- 26.7 The Service Provider shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Service Provider, provided always that the Service Provider:
- 26.8 shall consult Employer on all substantive issues which arise during the conduct of such litigation and negotiations;
- 26.9 shall take due and proper account of the interests of Employer; and
- 26.10 shall not settle or compromise any claim without Employer's prior written consent (not to be unreasonably withheld or delayed).
- 26.11 Employer shall at the request of the Service Provider afford to the Service Provider all reasonable assistance for the purpose of contesting any claim or demand made or action brought against Employer or the Service Provider by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Service Provider's obligations under the Contract and the Service Provider shall indemnify Employer for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so.

## 27.0 DATA PROTECTION

### 27.1 Requirement:

Comply with the provisions of the General Data Protection Regulation (EU) 2016/679 (the GDPR) and any subordinate legislation made under the GDPR from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation. Where the GDPR is referenced, this would also apply to equivalent United Kingdom legislation derived from the Data Protection Bill 2017.

### 27.2 General processing:

- The Data Processor will only process personal data in accordance with the Written Instructions of the Data Controller, unless required to do so by law.
- The Data Processor needs to tell the Data Controller what they are required to do by law, before they do it (unless the law also prevents the Data Controller from being told for reasons of important public interest).

### 27.3 Appropriate measures:

- The Data Processor will ensure that persons processing the data are subject to a duty of confidence. The Data Processor must obtain a commitment of confidentiality from anyone it allows to process the personal data, unless they are already under such a duty by law. This covers the Data Processor's employees as well as any temporary workers and agency workers. Data Subjects must have protection against non-compliant disclosures.
- The Data Processor will take appropriate measures to ensure the security of processing, including adoption of security measures including encryption, pseudonymisation, resilience of processing systems and backing up personal data to be able to reinstate the system.

### 27.4 Sub-processors:

- The Data Processor will only engage sub-processors with the prior consent of the Data Controller under a written contract.
- The Data Processor should not employ a Sub-Processor without the prior specific or general written authorisation of the Data Controller.
- If a Sub-Processor is employed under the prior general written authorisation of the Data Controller, the Data Processor should let the Data Controller know of any changes it has made and give the Data Controller a chance to object to them.

- If the Data Processor employs a Sub-Processor, then it must impose the contract terms that are required by Article 28.3 of the GDPR on the Sub-Processor. If the Data Processor employs a Sub-Processor, then the Data Processor will still be liable to the Data Controller for the compliance of the Sub-Processor.

#### 27.5 Assisting the Data Controller:

- The Data Processor will assist the Data Controller in providing subject access and allowing Data Subjects to exercise their rights under the GDPR.
- The Data Processor will assist the Data Controller in meeting its obligations to Data Subjects under chapter III of the GDPR, by having appropriate technical and organisational measures.
- The Data Processor will assist the controller in meeting its GDPR obligations in relation to the security of processing, the notification of personal data breaches and data protection impact assessments.
- The Data Processor will assist the Data Controller in meeting its Article 32 obligation to keep personal data secure.
- The Data Processor will assist the Data Controller in meeting its Article 33 obligation to notify personal data breaches to its supervisory authority.
- The Data Processor will assist the Data Controller in meeting its Article 34 obligation to advise data subjects when there has been a personal data breach.
- The Data Processor will assist the Data Controller in meeting its Article 35 obligation to carry out data protection impact assessments (DPIAs).
- The Data Processor will assist the Data Controller in meeting its Article 36 obligation to consult with its supervisory authority where a DPIA indicates there is an unmitigated high risk to the processing.
- The Data Processor will delete or return all personal data to the Data Controller as requested at the end of the contract and submit to audits and inspections, provide the Data Controller with whatever information it needs to ensure that they are both meeting their Article 28 obligations, and tell the Data Controller immediately if it is asked to do something infringing the GDPR or other data protection law of the EU or a member state.

- The Data Processor must tell the Data Controller immediately if it thinks it has been given an instruction which doesn't comply with the GDPR, or related data protection law.
- The Data Processor will provide the Data Controller with all the information that is needed to show that both Data Processor and Data Controller have met the obligations of Article 28.
- The Data Processor will submit and contribute to audits and inspections that the Data Controller carries out, or another auditor appointed by the Data Controller carries out.

#### 27.6 End of Contract:

- At the end of the contract, The Data Processor will, at the choice of the Data Controller, either delete or return to the Data Controller all the personal data it has been processing on behalf of the Data Controller; an exception to this general rule applies if the processor is required to retain the personal data by law.

#### 27.7 Compliance:

- For these terms to become binding, authorised signatures are required from both Data Controller and Data Processor.
- Once signed, the terms will remain binding until the Data Processor has completed the deletion or return of all personal data to the satisfaction of the Data Controller.
- These terms may not be negotiated or amended in any way, or at any time.
- Indemnify: The Employer against all actions, costs, expenses, claims, proceedings and demands which may be made or brought against the Employer for any breach under the GDPR which arises from the use, disclosure or transfer of personal data by the Contractor and his servants or agents.

27.8 Written Instructions of the Data Controller (pro-forma included in Appendix J): Submit completed copy to CA at least fifteen working days before the contract commencement date stated in this document.

### 28.0 ASSIGNMENT AND SUB-CONTRACTING

28.1 The Employer shall be entitled to assign the benefit of this Contract or any part thereof to a statutory or other public body and shall give written notice of any assignment to the Contractor.



- 28.2 The Service Provider shall not assign the benefit of this Contract or any part thereof without the prior written consent of The Employer.
- 28.3 The Service Provider shall not sub-contract the provision of the Services or any part thereof to any person or company without the prior written consent of The Employer. Any such consent (if given) shall not relieve the Service Provider from any liability or obligation under the Contract and the Service Provider shall be responsible for the acts, defaults or omissions of any sub-contractor, agents or employees thereof in all respects as if they were the acts, defaults or omissions of the Service Provider or his agents or employees.
- 28.4 Any approvals given will be subject to the sub-contractor meeting the main Service Provider's liabilities and approved quality control procedures for the appointment of sub-contractors.
- 28.5 Where the Service Provider proposes to use one or more sub-contractors to deliver some or all of the contract requirements, the Service Provider shall provide details of the proposed bidding model that includes members of the supply chain, the percentage of work being delivered by each sub-contractor and the key contract deliverables each sub-contractor will be responsible for.
- 28.6 Havebury recognises that arrangements in relation to sub-contracting may be subject to future change and may not be finalised until a later date. However, Service Provider's should be aware that where information provided to Havebury indicates that sub-contractors are to play a significant role in delivering key contract requirements, any changes to those sub-contracting arrangements may affect the ability of the Service Provider to proceed with the procurement process or to provide the supplies and/or services required. Service Provider's should therefore notify The Employer immediately of any change in the proposed sub-contractor arrangements. The Employer reserves the right to deselect any Service provider prior to any award of contract, based on an assessment of the updated information.
- 28.7 In line with the Public Contract Regulations 2015, any sub-contracting awarded by the successful Service Provider following the written approval from the Employer must contain the same 30-day payment terms from the Service Provider to the sub-contractor. This requirement applies to every Contract in the supply chain no matter how far removed from the Employer.

## **29.0 AGENCY**

- 29.1 The Service Provider is not and shall in no circumstances hold himself out as being the servant or agent of the Employer unless specifically contracted to do so.
- 29.2 The Service Provider is not and shall in no circumstances hold himself out as being authorised to enter into any contract on behalf of the Employer or in any other way to bind the Employer to the performance, variation, release or discharge of any obligation.

- 29.3 The Service Provider has not and shall in no circumstances hold himself out as having the power to make, vary, discharge or waive any bylaw or regulation of any kind.
- 29.4 The Employees of the Service Provider are not and shall not hold themselves out to be and shall not be held out by the Service Provider as being servants or agents of the Employer for any purposes whatsoever.

### **30.0 EMPLOYEES**

- 30.1 The Service Provider shall at all times during the Contract Period, employ or cause to be employed only such persons in and about the performance of the Contract as are properly and sufficiently qualified to current legislation competent, honest, experienced, instructed and supervised as necessary and appropriate for the proper performance of the Services. A copy of each employee Qualification Record should be submitted before commencement of the contract or during the contract when recruiting new employees.
- 30.3 The Service Provider/Supplier shall provide a manned office during the Normal Hours of Work and shall notify the CA of the address and telephone number of the office before the Commencement Date. The Service Provider/Supplier shall give Employer at least five working days' notice of any change to the address or telephone number of this office

### **31.0 LIABILITIES OF THE SERVICE PROVIDER**

- 31.1 The Service Provider shall be liable for and shall fully and promptly indemnify the Employer, its officers, employees, agents and other contractors against all liabilities, damages, costs, losses, claims, expenses, demands and proceedings to any persons or property whatsoever arising whether in contract, tort or otherwise directly or indirectly out of or in the course of or in connection with the provision of or failure to provide the Services or the breach by the Service Provider of any provision of the Contract.
- 31.2 For the avoidance of doubt the Service Provider's liability to indemnify the Employer pursuant to this Condition on account of loss or damage to any property of any nature whatsoever includes a liability to reimburse the Employer all costs and expenses reasonably incurred by the Employer in the reinstatement or replacement of such property whether or not such reinstatement or replacement results in an improvement on or to the property so lost or damaged.
- 31.3 The Service Provider shall be liable for and shall fully indemnify the Employer, its officers, employees, agents and all other contractors in respect of any death or personal injury caused to any employee of the Service Provider or to any third party by any employee or agent of the Service Provider (whether such injury is caused by negligence or in any other way whatsoever).

- 31.4 The Service Provider's liability and indemnity to the Employer arising under this Condition shall be without prejudice to any other right or remedy available to the Employer.
- 31.5 Save as provided by clause 31.6 below, the Employer shall not under any circumstances be liable to the Service Provider whether in contract, tort or otherwise for any loss, damage or injury howsoever caused or arising out of or in the course of or in connection with the provision of the Services by the Service Provider, his agents or his permitted sub-contractors of the Services or the use of the Employer's property.
- 31.6 Clause 31.5 above shall not apply in relation to any failure by the Employer to make proper payment to the Service Provider in accordance with the terms of the Contract and any deliberate or negligent act or omission of the Employer or any of its employees and in particular any negligent act or omission giving rise to death or personal injury.
- 31.7 The Employer shall not in any event be liable to the Service Provider for any indirect or consequential loss whatsoever.

## **32.0 LIABILITIES OF THE EMPLOYER**

- 32.1 The Employer shall not be liable for any loss or damage howsoever arising except for loss or damage directly arising from negligent acts or omissions of the Employer, its servants or agents. Damages arising from such negligent acts or omissions shall be limited to direct and unavoidable losses and the Service Provider shall take all reasonable steps to mitigate such losses.

## **33.0 OBSERVANCE OF STATUTORY REQUIREMENTS**

- 33.1 The Service Provider will comply with all statutory and other provisions to be observed and performed in connection with the Services provided under the Contract and shall indemnify the Employer accordingly.
- 33.2 The Service Provider will immediately notify the Employer in writing of any legislative or regulatory changes which may affect the delivery or performance of either the Employer or the Service Provider in fulfilling their obligations within the contract or extending beyond it.

## **34.0 FEES**

- 34.1 Each party shall bear its own legal and other fees in relation to the preparation and submission of the Tender Documents and any formal Contract documents arising therefrom.

## **35.0 INSURANCE**

35.1 Without prejudice to its liability to indemnify the Employer under clause 31 the Service Provider shall at all times throughout the Contract Period maintain such policies of insurance with reputable insurers or underwriters approved by the Employer in accordance with law and in particular as are necessary to cover any liability to the Employer or any employee of the Employer or employee of the Service Provider or any other person arising under clause 31. Such insurance cover shall be not less than the values indicated below in respect of any one incident or such other sum as the Employer may determine from time to time and the Service Provider's insurance policy effecting such cover shall have the interest of the Employer noted thereon:

- Employer's Liability - £10,000,000
- Public Liability - £10,000,000
- Professional Indemnity Liability - £5,000,000

35.2 The Service Provider shall at least 14 days before the commencement of the Contract and thereafter upon request produce to the CA a copy of the policies effecting the insurances referred to above together with such documentary evidence as the CA may require that such insurances are properly maintained.

35.3 Should the Employer become aware of any default by the Service Provider in insuring or continuing to insure as provided above, without prejudice to the other rights of the Employer under the Contract (including rights under clause 35.1 hereof) the Employer may itself provide such insurances and may charge the cost of such together with all properly incurred administration costs to the Service Provider either by way of deduction from amounts payable the Employer to the Service Provider under the terms of the Contract or by recovering the same as a debt due to the Employer from the Service Provider.

## **36.0 BRIBERY AND CORRUPTION**

36.1 The Employer shall be entitled to terminate the Contract and to recover from the Service Provider the amount of any loss resulting from such cancellation if:

36.1.1 The Service Provider shall have offered or given or agreed to give any person any gift or consideration of any kind as inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the Contract or any other contract with the Employer or

36.1.2 The like acts shall have been done by any person employed by the Service Provider or acting on his behalf (whether with or without the knowledge of the Service Provider), or

36.1.3 In relation to any contract with the Employer the Service Provider or his Employees or person acting on his behalf shall have committed any offence under the Bribery Act 2010.

### **37.0 GRATUITIES**

37.1 The Service Provider shall not whether by himself or by any Employee or agent solicit any gratuity or tip or any other form of money making or reward, collection or charge for any of the Services save as provided for in this Contract.

### **38.0 LEGAL FEES**

38.1 Each party shall bear its own legal costs and other fees in relation to the preparation and submission of the Tender Documents and any formal Contract documents arising therefrom.

### **DEFAULT IN PERFORMANCE**

#### **39.0 RECTIFICATION NOTICE**

39.1 If at any time the Service Provider has failed to perform any or all of the Services in accordance with the Contract and agreed programme, the CA shall issue in writing a Rectification Notice.

39.2 The Rectification Notice shall identify the failure, omission, default or matter giving rise to such failure and the period allowed in which to remedy the failure.

39.3 The period allowed in which to remedy the failure shall commence on receipt by the Service Provider of the Rectification Notice and the Service Provider shall carry out whatever works are necessary to effectively remedy the failure detailed on each Rectification Notice within 2 working days.

39.4 The Service Provider shall not incur any amendment or a reduced payment from the monthly account statement if he fully complies with the Rectification Notice.

39.5 The Service Provider shall inform the CA of what actions have been taken to resolve failure(s) detailed on each Rectification Notice at the monthly review meeting.

#### **40.0 FAILURE NOTICE**

40.1 If the Service Provider fails to comply with a Rectification Notice, then the CA shall issue in writing a Failure Notice specifying the Service Provider's continued failure to comply with the Contract requirements.

40.2 The Failure Notice shall identify the failure, omission, default or matter giving rise to such failure and indicate whether:

40.2.1 The Works will/will not be completed by the Service Provider within timescale stated on the notice.

40.2.2 The Works will be completed by others directly employed by The Employer.

40.3 The issue of a Failure Notice shall entitle the CA to amend and deduct payments from the monthly account statement for the period and value of the services not carried out and recover from the Service Provider all or any of the following:

- 40.3.1 The additional cost of making alternative arrangements and employing others to undertake the Works not completed by the Service Provider in compliance with each Rectification Notice.
- 40.3.2 An administration fee of 15% of the final cost of making alternative arrangements.
- 40.3.3 Any direct, indirect and consequential loss suffered as a result of the Service Provider's failure to comply with the Rectification Notice.

40.4 The CA reserves the right to invoke all or any aspect of the default in performance procedure depending on the seriousness of the failure to perform the Services.

#### **41.0 WAIVER**

41.1 Failure by the Employer at any time to enforce the provisions of the Contract or to require performance by the Service Provider of any of the provisions of the Contract shall not be construed as a waiver of any such provision and shall not affect the validity of the Contract or any part thereof or the right of the Employer to enforce any provision in accordance with its terms.

#### **42.0 DISPUTE RESOLUTION**

42.1 If any dispute arising out of or concerning or touching upon this Contract shall arise between the parties, the parties shall first attempt in good faith to resolve any such dispute promptly through negotiations between respective senior executives of the parties or through the parties' legal representatives who have authority to settle the same.

42.2 If the dispute is not resolved through negotiation or if either or both parties require the dispute to be referred to adjudication such parties may give written notice to the other and such dispute shall then be referred to a person ("the Adjudicator") who will resolve the dispute acting as an Adjudicator in accordance with the Housing Grants, Construction and Regeneration Act 1996. The Adjudicator would be appointed on the application of either party by the President or Vice-President of the Royal Institution of Chartered Surveyors

#### **43.0 TERMINATION**

43.1 The Employer shall be entitled forthwith upon the happening of any of the following events outlined below to terminate the whole or part or parts of this Contract such events being:

- 43.1.1 Failure by the Service Provider without reasonable excuse to commence the provision of Services or to suspend provision or to abandon the provision of the Service;
  - 43.1.2 If the Service Provider suspends payment to or convenes or holds a meeting of creditors, or commits an act of bankruptcy or (being a Company) shall have a receiver appointed pursuant to the Insolvency Act 1986 or by the Court or any debenture holder or shall have an administrator appointed pursuant to the Insolvency Act 1986 or shall go into liquidation (other than for the purpose of amalgamation or reconstruction) or shall make any arrangements with creditors or any arrangements for the benefit of such creditors or if distress or execution shall be believed or threatened upon any of his goods or any judgement against the Service Provider shall remain unsatisfied for more than fourteen days; or
  - 43.1.3 Should there be any change in control of the Service Provider or (where the Service Provider is a subsidiary company) it's holding company or companies.
  - 43.1.4 Where the Service Provider is persistently or seriously in breach of any of the obligations under this Contract.
  - 43.1.5 Where the Service Provider has received a second Health and Safety warning from The Employer.
- 43.2 Upon the occurrence of any event contained in these clauses or elsewhere in the Contract entitling the Employer to terminate the Contract and without prejudice to any of its remedies under the Contract and without prejudice to any rights of action which shall accrue or shall have already accrued to the Employer, the Employer may at its option do any or all of the following:
- 43.2.1 Suspend payment of any monies due to the Service Provider and retain any payment due the Service Provider howsoever arising until the Service Provider has paid in full to the Employer all sums due under this Contract or to deduct therefrom any such sums due from the Service Provider under this Contract;
  - 43.2.2 Where a part or parts of the Contract have been determined (whereupon a corresponding reduction in the payment to be made to the Service Provider shall be made as if such determination was a Variation) to provide or procure a third party to provide such part of the Services.
- 43.3 Upon such termination by the Employer in accordance with the Contract and in addition to such consequences as are set out elsewhere in this Contract, the Service Provider shall:
- 43.3.1 Cease to perform any of the Services as appropriate forthwith;
  - 43.3.2 Fully and promptly indemnify the Employer in respect of the cost of causing the performance of such Services as would have been performed by the

Service Provider during the remainder of the Contract Period to the extent that such cost exceeds such sums as would have been lawfully payable to the Service Provider for the performance of the Services. the Employer shall be at liberty to have such Services performed by any persons (whether or not employees of the Employer) as the Employer shall in its discretion think fit and shall be under no obligation to employ the least expensive method of having such Services undertaken.

- 43.4 The Service Provider shall be entitled to terminate the contract in the event that the Employer:
- 43.4.1 Has failed to instruct the Service Provider in the carrying out of the services;
  - 43.4.2 Has failed to make payment to the Service Provider in accordance with the Contract;
  - 43.4.3 Is otherwise in serious breach of its obligations to the Service Provider and the Employer has failed to satisfy the Service Provider within 14 days of receipt from him of a notice specifying the failure that the Employer is taking steps necessary to remedy the failure. Provided always that this right of termination is without prejudice to any other right or remedy, which the Service Provider may possess.
- 43.5 Either party shall be entitled to terminate this Contract on giving the other party not less than twenty-six weeks' notice in writing. The notice of intention to terminate under this clause cannot be given earlier than twenty-six weeks from the date for commencement of the Contract.
- 43.6 If the Service Provider's employment is terminated under clause 43.5, neither the Employer nor the Service Provider shall have any claims against the other in respect of any resulting loss or damage.
- 43.7 No notice to be served upon the Employer shall be valid and effective unless it is sent by recorded delivery post or delivered by hand to the Employer or to such other address as the CA may notify the Service Provider in writing. If a notice is delivered by hand a receipt must be obtained.
- 43.8 Any notice to be served upon the Service Provider shall be valid and effective if it is sent by Recorded Delivery post or delivered by hand, obtaining a receipt, to its last known registered office or its principal place of business or to the premises referred to in the Tender Documents or such other address as the Service Provider may notify the Employer of in writing.