



Appendix A – Procurement Terms and Conditions of Participation

The provision of **insert**

Open Procedure

Procurement Act 2023

Contract Reference: **insert**

Procurement Lead: **Insert**

Document Dated: **MonthYear**

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1. Procedural Requirements

- 1.1 These Terms and Conditions of Participation should be read in conjunction with all the other associated Procurement Documentation Schedules published in connection with this Procurement. They contain procedural requirements which Suppliers must follow and regulate the conduct of the Supplier and the Council throughout the procurement exercise.
- 1.2 By participating in the procurement process and/or by submitting a Tender, the Supplier agrees and accepts to abide and be bound by these Terms and Conditions of Participation given and follow any other procedural requirement given in all the other associated procurement documentation and comply with all applicable laws, codes of practice and statutory guidance and agrees to ensure that any of its directors, office holders, staff, contractors, subcontractors, consortium members and advisers involved or connected with the procurement abide by the same. Failure to comply with or follow any procedural requirement may result in the exclusion of the Supplier from the Procurement at the Council's sole discretion.
- 1.3 Tender submissions should be on the basis and strictly in accordance with these terms and the associated procurement documentation.

2. Central Digital Platform

Suppliers that wish to participate in this Procurement are responsible for ensuring that the Central Digital Platform "CDP" contains complete, accurate and up-to-date information about their organisation and any Associated Suppliers which are relevant for the purposes of this Procurement. Suppliers must notify the Council immediately if it is unable to register on the Central Digital Platform and/or provide accurate and up-to-date information via the Central Digital Platform. The CDP is available at www.gov.uk/find-tender

3. Transparency

The Council is committed to being transparent and accountable. In support of its commitment to transparency suppliers should note that;

- 3.1 In accordance with general transparency obligations and procurement law obligations under the Act, the Council routinely publishes details of its procurement processes and awarded contracts. This includes, but is not limited to, the contract value, the identity of the successful Supplier, compliance with payment obligations and contract performance. Compliance with these obligations may involve the Council taking steps without consultation with Suppliers. Where required under the Act, a copy of the contract will be published (subject to making any reasonable and proportionate redactions permitted under the Act). Such data may be made publicly available via the Council's website, and that any data published is further subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.
- 3.2 The Council reserves the right to provide information about the successful Tender(s) to unsuccessful Suppliers as part of debriefing obligations arising in the conduct of the competition in accordance with Section 50 of the Procurement Act 2023 and during the standstill period in accordance with Section 51 of the Public Procurement Act 2023 (including but not limited to the financial or price score of the successful Tender).
- 3.3 Where required, the Council will disclose on a confidential basis any information it receives from Suppliers during the Procurement to any third party engaged by the Council for the specific purpose of assessing or assisting the Council in assessing the Supplier's submission. In providing such information the Supplier consents to such disclosure.

4. Modifying the Procurement

Neither the Tender Notice, this document, nor any information given as part of the Procurement shall be regarded as a commitment or representation on the part of the Council (or any other person) to enter into a contractual agreement.

The Council reserves the right at any point, giving all interested parties as much notification as is possible and at its discretion to:

- issue amendments, modifications or additional information to any documentation which forms part of this Procurement, including the Procurement proposed Contract contained in Appendix D;
- require a Supplier and/or a member(s) of its consortium to clarify their proposal(s) and/or tender submission in writing and/or provide additional information (failure to respond adequately, may result in their tender submission being rejected and as a result a Supplier being unsuccessful);
- alter the Procurement Timetable for this Procurement [including the right to award different lots at different times];
- not to consider Tenders other than those specified:
- rewind and re-run any part of the Procurement on the same or alternative basis;
- not to conclude a contract for some or all of the goods and services (as applicable) and/or lot(s) for which responses are invited;
- cancel or withdraw from the procurement process at any stage;
- not to award the contract.

Any such changes shall be accepted by any Supplier without reservation.

Should the Council require more substantial changes to the documentation, then the Council reserves the right to make such changes and will be entitled to evaluate the price of any such changes using submitted prices applied on a quantum meruit basis. Should the Supplier not agree to the revised price structure, they may withdraw notwithstanding these instructions.

Suppliers will remain responsible for all costs and expenses incurred by them, their staff, and their advisers or by any third party acting under their instructions in connection with this Procurement. Under no circumstances will the Council be liable for any costs or expenses incurred by Suppliers or any of a Supplier's supply chain, partners or advisers in this Procurement process. This is the case even where the Council abandons the Procurement Process for any reason.

5. Switching to direct award option

In accordance with the section 43 of the Act, the Council reserves the right to switch from this competitive tendering procedure to the direct award of a contract, to a **non-excluded supplier**, if;

- there be a circumstance where no or no suitable tenders or requests to participate have been received in respect of the contract; and that cannot be rectified by the republication of revised competitive tendering documentation for the contract, and;
- the award of a contract using a competitive tendering procedure under section 19 of the Act is not possible in the circumstances.

Should the Council switch to a direct award option it will publish the relevant notices in accordance with the Act.

6. Confidentiality

Save to the extent made publicly available by the Council, all the information supplied in this document, (together with all attachments and any other information communicated to Suppliers during the Procurement), either in writing or orally, is made available on the condition that it must be treated in confidence and not disclosed, copied, reproduced, distributed or passed to any other person at any time except in order to comply with legal obligations or save to professional advisers, consortium members and/or sub-contractors strictly for the purposes only of enabling a submission to be made to the Council, provided that such person has given an undertaking prior to the receipt of the relevant information (and for the benefit of the Council) to keep such information confidential.

Where a Supplier is a consortium, the Supplier shall ensure that each member of their consortium who receives any of the Procurement Information is made aware of, and complies with, the confidentiality obligations and provisions of this section as if they were a Supplier in their own right.

Suppliers may disclose, distribute or pass the Confidential Information to another person (including, but not limited to, for example, employees, consultants, sub-contractors or advisers, the Tender's insurers or the Tender's funders if either:

- a) this is done for the sole purpose of enabling a Tender to be made and the person receiving the Confidential Information undertakes in writing to keep the Information confidential on the same terms as set out in this document; or
- b) the Tender obtains the prior written consent of the Council in relation to such disclosure, distribution or passing of the Information

The Council may disclose detailed information relating to submissions to the Council members, directors, officers, employees, agents or advisers and they may make the key Tender documents available for private inspection by Council members, officers, employees, agents or advisers to the Council. The Council reserves the right to disclose all documents relating to this procurement process, including without limitation the Tender, to any employee, third party agent, adviser or other third party involved in the procurement in support of, and/or in collaboration with the Council.

The Council also reserves the right to disseminate information that is materially relevant to all Suppliers, even if the information has only been requested by one Supplier, subject to the duty to protect any Supplier's commercial confidence in its submission. Should Suppliers wish to avoid such disclosure (for example, on the basis that the request contains, or the likely response will contain, commercially confidential information or may give another Supplier a commercial advantage), the request must be clearly marked "In confidence - not to be circulated to other Suppliers" and the Council will act reasonably as regards the protection of Supplier's Confidential Information, subject to the Council's duties under the Procurement Legislation, the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 (see paragraph 16 below) and any other associated transparency duties.

Supplier must set out the reason or reasons for the request for non-disclosure to other Suppliers. The Council will act reasonably as regards the protection of commercially sensitive information relating to the Supplier, subject to its duties under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and any other transparency duties.

The Council reserves the right to publish the Contract once awarded and/or disclose information in connection with Supplier performance under the Contract in accordance with any public sector transparency policies or as required under the Procurement Act 2023. By participating in this

procurement process, the Supplier agrees to such disclosure and/or publication by the Council in accordance with such rights reserved by it under this paragraph.

7. Publicity

Suppliers must not undertake at any time, whether at this stage or after the contract has been entered into, any publicity activities with any part of the media in relation to the Contract or this procurement process without the express prior written consent of the Council. This includes the agreement on the format and content of any publicity. When requesting prior written agreement, Suppliers are required to detail the proposed media coverage including format and content of any publicity.

The word 'media' in the context of this paragraph includes (but without limitation) radio, television, newspapers, trade and specialist press, the Internet and email accessible by the public at large and the representatives of such media.

8. Requirements on Sub Contractors and consortium

If requested to do so by the Council, a Supplier will be required to enter into a legal arrangement with other members of a consortium or with any parties which are relied on in order to satisfy the conditions of participation relating to this Procurement (in accordance with section 72 of the Act). Acceptance of this request shall be considered a mandatory requirement and failure to accept the same may result in the Supplier's exclusion from the Procurement.

9. Parent Company guarantee or other securities

- 9.1 The Council reserves the right to require a parent company guarantee or alternative equivalent form of security should the Supplier be successful in this Procurement. **A draft guarantee is included in the proposed Contract (Appendix D) at Schedule 23.**
- 9.2 Where the Supplier's parent company is incorporated outside the United Kingdom, the Council will require a legal opinion from an independent firm of lawyers practising in that jurisdiction (at the Supplier's own cost and expense) as to the capacity/authority of the parent company to enter into the parent company guarantee and the enforceability of the terms of the parent company guarantee in the relevant overseas jurisdiction.
- 9.3 Notwithstanding the above, the Council may specify minimum contractual financial security requirements as appropriate having regard to the financial assessment undertaken during this Procurement. Where the Council specifies any financial security requirements, acceptance of the requirements shall be considered a mandatory condition and failure to accept the same may result in the Supplier's exclusion from the Procurement.

10. Non-Collusion, Non-Canvassing

The Council reserves the right to disqualify any attempt by a Supplier or their advisers to influence the Procurement in any way (without prejudice to any other civil remedies available to the Council and without prejudice to any criminal liability which such conduct by a Supplier or Consortium Member (as the case may be) may attract any Supplier or Consortium Member (or its directors or any other person who has powers of representation, decision or control of the Supplier or Consortium Member).

Specifically, Suppliers **must** not directly or indirectly at any time in connection with this procurement:

- devise or amend the content or the amount of their submissions in accordance with any agreement or arrangement with any other person, other than in good faith with a person who is the proposed partner, subcontractor, consortium member, insurance provider or provider of finance;
- enter into any agreement or arrangement with any other person, that has the effect of prohibiting or excluding that person from submitting a response in this procurement and/or aimed at distorting the outcome of the procurement;
- causes or induces any person to enter such agreement as is mentioned in either of the two preceding paragraphs or to inform the Supplier or member of that Supplier's consortium of the amount or approximate amount of any rival Supplier;
- offers or enters into any agreement or arrangement with any other person to pay a sum of money or valuable consideration (inducement) to any person to effect changes to the form of content of any other submission or in connection with this document;
- communicates to any person other than the Council the amount or approximate amount of its proposed Tender price (except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of a Tender);
- does anything which would constitute an offence within the meaning of section 1(2) of the Public Bodies Corrupt Practices Act 1889 or section 1 of the Prevention of Corruption Act 1906, where the offence relates to active corruption;
- does anything which would constitute the offence of bribery, where the offence relates to active corruption;
- does anything which would constitute bribery within the meaning of section 1 or 6 of the Bribery Act 2010;
- canvasses any member, officer or any person acting as an agent or advisor for the Council in connection with this procurement, the procurement documents, and/or offers any inducement, fee or reward;
- contacts any officer of the Council prior to the Contract being entered into about any aspect of the without limitation contact for the purposes of discussing the possible transfer to the employment of the Supplier of such officer);
- canvasses in an attempt to obtain any information from any of the employees, members, or agents of the Council or their advisors concerning another Supplier or Submission.
- undertakes to unduly influence the decision-making process of the Council; or
- undertakes to obtain confidential information that could confer upon it an undue advantage in the award of the Contract.

Suppliers are required to complete and return with their submission the Certificate of non-collusion and non- canvassing in the Tender Response Document (Section C) noting that the Council will be entitled to reply on the information provided in the certificate.

11. Conflicts of Interest

Suppliers are responsible for ensuring that no actual, potential or perceived conflicts of interest (within the meaning of the Act) exist between themselves and the Council or its advisers. Suppliers **must** notify the Council immediately of any actual, potential, or perceived conflict of interest.

The Council requires all actual or potential conflicts of interest to be declared and resolved to the Council's satisfaction prior to the delivery of a Tender. In the event of any actual, potential or perceived conflict of interest, the Council shall in its absolute discretion decide on the appropriate course of action. The Council reserves the right to:

- exclude any Supplier that fails to notify the Council of an actual, potential or perceived conflict of interest, or where an actual conflict of interest exists;
- request further information from any Supplier and require any Supplier to take reasonable steps to mitigate a conflict of interest. This may include requiring any Supplier to enter into a specific conflict of interest agreement with the Council. Failure to do so may result in the Supplier being excluded from participating in, or progressing as part of, the Procurement process.

The Council strongly encourages Suppliers to contact the Council as soon as possible via the [EastMidsTenders](#) portal should it have any concerns regarding actual, potential or perceived conflicts of interest.

Failure to declare such conflicts (including new conflicts which may arise during the Procurement Process) and/or failure to address such conflicts to the reasonable satisfaction of the Council could result in a Tender being disqualified at the sole discretion of the Council.

12. Conflict Assessments

The Council confirms that, prior to the issue of the Tender Notice in this Procurement, a conflict assessment has been prepared in accordance with the Procurement Act.

13. Intellectual Property

Suppliers are reminded that all intellectual property rights, including copyright, in the documents and materials supplied by the Council and/or its advisers in this Procurement, in whatever format, belong to the Council, its advisers or the relevant owner/licensor. Suppliers shall not copy, reproduce, distribute or otherwise make available any part of these documents to any third party (except for the purpose of preparing a submission) without the prior written consent of the Council. All documentation supplied by the Council in relation to this Procurement must be returned or destroyed on demand, without any copies being retained by Suppliers.

14. Liability of the Council and its Advisors

In the Procurement Documents, "the Council" includes all or any of the Council and its members, officers and Advisers, and the directors, officers, members, partners, employees, other staff, agents or advisers of any such body or person.

The Procurement Documents have been prepared by and on behalf of the Council for the purposes of:

- providing an application procedure for individuals or organisations interested in submitting a Tender for the Procurement; and
- to assist persons interested in submitting a Tender for the Procurement in making their own evaluation of the potential opportunity.

The Procurement Documentation sets out the Council's current requirements in respect of the Contract and is believed to be correct at the time of issue. In the event of any inconsistency or conflict between these and any communication previously issued by the Council (including any market engagement documentation or sessions), these documents will take priority over such communication to the extent of any inconsistency.

The Procurement Documents have been prepared by the Council in good faith but does not purport to be comprehensive or to have been independently verified. Nothing in the Procurement

Documentation is, or should be construed as a promise, or representation as to the future. The Procurement Documents should not be relied on as an investment recommendation of the Procurement made by the Council to Suppliers.

The Council and its Advisers:

- do not make any representation or warranty (express or implied) as to the accuracy, reasonableness or completeness of the Procurement Documents provided. Any persons considering entering into a contractual relationship with the Council should make their own investigations and independent assessment of the Council and its requirements for this Procurement and should seek their own professional technical, financial and legal advice; and
- exclude all liability for any loss or damage whether caused by contract, tort (including negligence), misrepresentation or otherwise (other than in respect of fraud or fraudulent misrepresentation or personal injury or death) in relation to the Procurement Documents and/or arising as a result of reliance on the information in the Procurement Documents or any subsequent information made available to Suppliers. Any and all liability is expressly excluded to the maximum extent permissible by law.

Only the express terms of any document contract relating to the Procurement (as and when it is entered into) shall have any contractual effect in connection with this Procurement Process.

The publication of the Procurement Documents in no way commits the Council to award any contract to deliver the Procurement. The Council reserves the right to vary or change all or any part of the procedures for the Procurement Process at any time or not to proceed with the Procurement for any reason.

For the purposes of the Procurement and the Procurement Process, all advisers referred to in this document are acting exclusively as the advisers to the Council and will not be responsible or owe any duty of care to anyone other than the Council.

15. Anti-competitive behaviour

Suppliers are reminded of their obligations under applicable competition laws. The Council may require evidence from Suppliers that their arrangements are not anti-competitive and reserves the right to require any Supplier to comply with any reasonable measures which may be needed to verify that no anti-competitive arrangements are in place.

Any evidence of anti-competitive behaviour may result in a Supplier being disqualified from the Procurement. The Council also reserves the right to refer any suspected breaches of applicable competition laws to the relevant authorities including, but not limited to, the Competition and Markets Council and the Serious Fraud Office.

Suppliers should note that anti-competitive behaviour may result in the Supplier being excluded from bidding for contracts under Schedule 7, Paragraph 7 of the Act. Where a relevant decision has been made by the Competition and Markets Council under the Competition Act 1998, the Supplier may also be excluded from bidding for contracts under Schedule 6, paragraph 41 and may be added to the debarment list and/or be liable for civil and/or criminal penalties.

16. Freedom of Information and environmental information

The Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR") impose duties of openness on the Council which will have an effect upon how they treat

information received under a Tender. Accordingly, all information submitted to it may need to be disclosed by the Council in response to a request under either the Act or the EIR (a "Request").

In making any submission during this Procurement Process, each Supplier acknowledges and accepts that information contained therein may be disclosed by the Council under the Act or EIR without consulting the Supplier, although the Council will endeavour to consult with the Supplier and consider its views before doing so, unless the Council decides one of the statutory exemptions under FOIA or EIR applies.

Suppliers should satisfy themselves as to the implications of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and seek legal advice as necessary.

If you wish to designate information supplied as part of your tender response as confidential, you must provide clear and specific detail as to;

- clearly identify the precise elements which are considered confidential and/or commercially sensitive in the Declaration of Commercially Sensitive Information in the Tender Response Document (Section C);
- explain the potential implications of disclosure of such information;
- why you consider an exemption would apply;
- the estimate length of time which the exemption would apply; and
- relevant contact in case the Council wishes to subsequently release information you consider confidential before the indicated time period.

The use of blanket protective markings of whole documents as being "Commercial in confidence" will not be acceptable. In addition, marking any material as "confidential" or "commercially sensitive" or equivalent should not be taken to mean the Council accepts any duty of confidentiality and does not bind the council to any duty or confidentiality by virtue of such marking.

The Council will endeavour to;

- hold confidential all information submitted by a Supplier that it identifies as being commercially sensitive;
- consult with a Supplier about commercially sensitive information before making a decision on any FOIA requests and EIR requests received.

Exemptions to disclosure pursuant to a Request do exist and the Council reserves the right to determine (acting in its sole discretion) whether there is any available exemption and whether to disclose any information made available to it by Suppliers pursuant to any Request. If you are unsure as to the Council's obligations under the Act or EIR regarding the disclosure of sensitive information please seek independent legal advice.

Note: the final decision on any FOIA request and EIR request rests with the Council, subject to applicable law. Even where information is identified as commercially sensitive, unless an exemption/exception provided for under the FOIA/EIR is applicable, the Council will be obliged to disclose that information in response to a request. Accordingly, the Council cannot guarantee that any information marked 'commercially sensitive' will not be disclosed.

17. National Minimum Wage and Modern Slavery Act 2015 Compliance

Suppliers will be required to ensure that all staff employed or workers otherwise contracted or sub-contracted in relation to this Contract, who are based in or posted to the United Kingdom, shall be paid at rates no less favourable than those laid down by the National Minimum Wage Act 1998 as amended by The National Minimum Wage (Amendment) Regulations 2016 (as these may be updated by United Kingdom law).

Suppliers will be required to comply and ensure that their sub-contractors comply with the Modern Slavery Act 2015.

18. Contract

A tender submission is an offer to enter a contract on the terms and contents of the submission. Notification of an award does not constitute acceptance by the Council. Any document submitted by a Supplier shall only have contractual effect when it is contained within an executed written contract.

The supplier submission must remain valid for acceptance for a period of **90 Days** from the date of its submission or until any procurement challenge/s have been resolved.

19. Supplier Withdrawal

- 19.1 Suppliers may withdraw from the Procurement at any time by providing written notification to the Council via the [EastMidsTenders](#) portal.

20. Supplier Material Changes

If, at any time during the Procurement Process before the contract is awarded there are any material changes to the information provided by a Supplier during the tender stage (including any changes to the composition of a relevant consortium, or changes in the Supplier's underlying ownership), that Supplier must advise the Council in writing as soon as practicable, and in any event within 14 (fourteen) days of the occurrence of the material change, providing full details of the change. Upon receipt of such information, the Council shall be entitled to revisit the selection and/or evaluation of the Supplier and exclude the Supplier or adjust its score if necessary, as a result of that process.

21. Modifying your tender

Suppliers may modify their submitted response prior to the submission deadline but they must delete their previous response and resubmit their modified version. The Council will not open final tenders until after the submission deadline set out in the Procurement Timetable.

22. Supplier Eligibility

Suppliers are reminded that eligibility requirements in this document, Tender notice and all other associated tender documents apply to this procurement at all times.

- 22.1 Whilst reserving the right to request information at any time throughout the Procurement process, the Council may enable the Supplier to self-certify that there are no mandatory/ discretionary grounds for excluding their organisation. When requesting evidence that the Supplier can meet the specified requirements (such as the questions in Part 3 of the PSQ the Council may choose to obtain such evidence after the final Tender evaluation decision (i.e. from the successful Supplier only).
- 22.2 The Council reserves the right (but is not obliged) to seek clarification of any aspect of a Supplier's Tender during the evaluation phase where necessary for the purposes of carrying out a fair

evaluation. Suppliers are asked to respond to such requests promptly. Vague or ambiguous answers are likely to score poorly or render the Tender non-compliant. All communication shall be through the [EastMidsTenders](#) portal.

- 22.3 The Council must be notified in writing via the portal promptly of any changes in the information that the Supplier has provided in its response to this Procurement (including but not limited to arrangements in relation to any Associated Supplier(s) at any point before entry to the Contract so that the Council may assess whether the Supplier continues to satisfy the relevant conditions of participation and should continue to qualify for the participation in this Procurement. For the avoidance of doubt, the Council reserves the right to take such action as it deems appropriate in the light of the assessment of updated information, including (but not limited to) excluding the Supplier concerned from the Procurement.

23. Supplier's Warranties

In submitting its response, the Supplier warrants, represents and undertakes to the Council that:

- it understands and has complied with the conditions set out in this document;
- All information, representations and other matters of fact communicated (whether in writing or otherwise) to the Council by the Supplier, its staff or agents, in connection with or arising out of the Procurement are true, complete and accurate in all respects, both at the date communicated and as set at the date of submission of the response and acceptance of award of contract by the Supplier;
- It has made its own investigations and undertaken its own research and due diligence and has satisfied itself that it has sufficient information and understands all aspects to make the offer in respect of all matters (whether actual or contingent) relating to the Tender and has not submitted in response in reliance of any information, representation or assumption which may have been made by or on behalf of the Council with the exception of any information which is expressly warranted by the Council;
- It understands any queries arising must be submitted via the [EastMidsTenders](#) portal prior to the clarification closing date documented in the procurement timetable and it is their responsibility to visit the portal during the tender period to access any responses that have been posted;
- It has full power and authority to respond to this procurement, enter into the contract and perform the obligations specified in the call off Terms & Conditions of Contract and will, if required, produce evidence of such to the Council.

Suppliers should note that the potential consequences of providing incomplete, inaccurate or misleading information include that:

- the Council may exclude the Supplier from participating in this Procurement;
- the Supplier may be excluded from bidding for contracts under Schedule 7, Paragraph 13 of the Act;
- the Council may rescind any resulting contract under the Misrepresentation Act 1967 and may sue the Supplier for damages;
- if fraud or fraudulent intent can be proved, the Supplier may be prosecuted and convicted of the offence of fraud by false representation under section 2 of the Fraud Act 2006, which can carry a sentence of up to 10 years or a fine (or both). If there is a conviction, then the Supplier may be excluded from bidding for contracts under Schedule 6, Paragraph 15 of the Act and may be added to the debarment list.

24. Supplier's Conduct

The Council is relying on the information provided by Suppliers during the response stage (including but not limited to, information concerning the members and structure of a consortium.

Each Supplier:

- Must submit one Tender [in respect of each Lot that the Supplier has been invited to respond to by the Council and for which it wishes to submit a Tender.]
- [May submit one or more Tenders in respect of one or more combinations of Lots showing any financial benefits accruing to the Council if the Supplier were to win more than one Lot.]
- [May submit Variant Bids, subject to the conditions set out below.]

Each Tender must meet the Council's minimum requirements, operate as a standalone bid and not be dependent on any other bid or any other factors external to the Tender itself. That is, each Tender must be capable of being accepted by the Council in its own right.

[Variant Bids]

Suppliers are permitted to submit [[NUMBER] OR any number of] Variant Bids (Variant Bids) to the Council (subject to the requirements of a Variant Bid set out in this paragraph).

A Variant Bid must meet the minimum requirements applicable to a Reference Bid, except for any changes made in respect of the following options (a Supplier may choose to include any or all of these variant options in a Variant Bid):

- [SET OUT OPTIONS (FOR EXAMPLE, SERVICE LEVEL OPTION, PAYMENT MECHANISM OPTION OR ADDITIONAL SERVICE COMPONENT OPTION).]

A Variant Bid will only be considered once the Council has determined that the Supplier has submitted a compliant Reference Bid [in respect of each of the relevant Lots covered by the Variant Bid].

A Variant Bid must not be used for the purposes of imposing the Supplier's own conditions of service provision.

If a Supplier is in any doubt about the acceptability of any proposed Variant Bid, it may request clarification from the Council before formal submission.

Suppliers must:

- State which of the variants or which combination of the variants above applies to the Variant Bid.
- Provide any information requested regarding the particular type(s) of Variant Bid.
- Provide a summary of the costing and solution differences.
- Detail the benefits to the Council of those differences against the relevant Reference Bid(s).

25. Financial Provision

The Council will not reimburse any costs incurred by any Supplier in connection with the preparation (collation and generation) and/or submission of a Tender. Suppliers therefore will make financial allowance for the provision of all costs associated with this tender process. To include but not limited to;

- the procurement is cancelled, shortened or delayed for any reason (including where such action is necessary due to non-compliance or potential non-compliance with procurement rules and regulations;
- all or any part of the procurement documentation is at any time amended, clarified, added to or withdrawn for any reason;
- a contract for some or all of goods and/or services (as applicable) for which responses are invited is not concluded; or
- a potential Supplier and/or its response is disqualified from participation in the procurement for any reason.

Suppliers accept that by participating in this procurement, including without limitation the submission of a tender response that it will not be entitled to claim from the Council any costs, expenses or liabilities that maybe incurred in tendering for this procurement irrespective of whether or not the tender response is successful.

26. Third parties

Nothing in these terms is intended to confer any rights on any third party under the Contracts (Rights of Third Parties) Act 1999. This does not affect any right or remedy of any person which exists or is available apart from that Act.

27. Data Protection Legislation & General Data Protection Regulation

The Data Protection Act 2018 came into force in the UK on the 25th of May 2018, and the UK GDPR Regulation as of the 31st of December 2020. These two laws specify how personal data is collected and processed. The laws apply to all organisations processing and handling personal data.

The Contract will be subject to Data Protection Legislation (as defined in the Contract terms) and Supplier's attention is drawn to the Contract terms (available at Appendix D) and the provisions regarding data protection. All Suppliers must therefore ensure that they are familiar with the new legislation and of their data protection obligations. General information regarding data protection can be found on the Information Commissioner's website.

As a data processor, your company will personally be liable for any fines or court claims when processing data on our behalf, in the event of a breach.

All organisations are required to comply with the new Data Protection Legislation. You may incur costs in doing so, especially where new systems or processes are required, however, as these costs are attributable to conducting business generally in the UK and not supplying the UK public sector specifically, you will need to manage your own costs in relation to compliance and cannot be passed onto the Council as part of your tender.

In the event that you become aware of an actual or suspected loss of personal data during the course of delivery or maintenance of the contract, you should immediately notify the Council by telephone and in writing. The Council reserves the right to report such a breach known to the Information Commissioners Office and to other relevant parties as appropriate. In the event you

intend to self-report the matter yourself, you should advise the Council in writing of this before doing so.

You may not transfer data related to this contract outside of the United Kingdom “UK” without the express permission of the Council.

28. Governing Law

UK Procurement Law and all associated regulations will apply to this procurement.

Tenders must be prepared in the English language. This procurement process and any subsequent contract awarded will be subject to English law and the exclusive jurisdiction of the English courts.

Suppliers must agree to submit to the exclusive jurisdiction of the Courts of England and Wales in relation to any dispute arising out of or in connection with this Procurement

EXAMPLE