



Ticketing system consultant

REQUEST FOR QUOTATION

PART 1 - INSTRUCTIONS TO CONSULTANTS

You are invited to submit a Quotation, by the deadline stated below and to the address specified below, for delivering the requirements in the Specification on the basis of the terms set out within this Request for Quotation.

CONDITIONS FOR SUBMITTING A QUOTATION

You are advised to ensure you are fully familiar with the nature and extent of the contract. If you have any queries in relation to this contract, please contact:

Sheryl McGregor
North East Museums (NEM)
Discovery Museum
Blandford Square
Newcastle upon Tyne
NE1 4JA

Tel: 0191 277 2311
Email: Sheryl.mcgregor@northeastmuseums.org.uk

Please note that no information whatsoever will be disclosed or discussed in relation to price.

In addition to providing a Quotation, consultants are invited to include a detailed pricing submission of the Quotation for consideration if they consider it appropriate to do so or where NEM has requested this as part of the Specification.

You are also invited to submit your proposals as to how you will perform the contract. NEM will evaluate your Quotation on the grounds of your proposals and price in accordance with the evaluation criteria listed below.

It is your responsibility as a consultant submitting a Quotation to obtain for yourself and, at your own expense, all information necessary for the preparation of their Quotation. NEM will not pay any fees or expenses whatsoever for submitting a Quotation.

In the event that you are successful in your Quotation submission, we will contract with you in accordance with our terms and conditions as attached. Please note that NEM will contract only on its own terms and conditions. Any amendments to these terms and conditions will be made only with the agreement of the Newcastle City Council's Legal Services Department.

Quotations must be submitted for the entire scope of the contract as detailed in the Specification. Quotations for only part of the Specification may be rejected as an invalid submission.

NEM may at its absolute discretion extend the closing date and time specified for the receipt of Quotations, or invite variations to the Specification but will do so in writing to all firms.

NEM reserves the right to reject any unrealistically low or high Quotations that it receives.

NEM reserves the right to award the contract in lots (if identified) or not award the contract at all.

NEM reserves the right to reject a Quotation where this form has not been correctly completed and returned.

An official Order will be sent in the event that we accept your Quotation.

By submitting this Quotation, you agree to keep your price at the amount stated below for at least ninety (90) days.

EVALUATION

NEM will evaluate the Quotations on the most economically advantageous terms which are as follows:-

- Strength of proposals to comply with NEM's Specification (50%)
- Acceptability of pricing proposals (25%)
- Demonstration of commitment, reliability and flexibility (15%)

- Previous sector experience, credibility and references (10%)

Please respond in writing or by email within 3 days of receipt of this letter to: sheryl.mcgregor@northeastmuseums.org.uk stating your intention to submit Quotation or otherwise.

QUOTATION SUBMISSIONS

Please return by email your Quotation including the following information to sheryl.mcgregor@northeastmuseums.org.uk:-

- Based on the information provided and the outputs stipulated in the Specification, explain how your organisation would propose to undertake this contract and the outline programme of delivery;
- A pricing proposal including **ALL** fees and expenses;
- Details of at least one recent contract held by you / your organisation that is of a similar size and nature to this contract;
- Details of the specific individual(s) who would undertake the work and the proportion of the contract to be carried out by them.

QUOTATIONS MUST BE RECEIVED NO LATER THAN 5pm on 19 September 2025

CHECKLIST

You should ensure that you have carried out the following tasks before submitting a Quotation:-

- You have read and understood the Specification and the terms and conditions. If you did not receive these, please contact the officer who issued this Request;
- You have signed and dated the Declaration below;
- You have submitted a price for performing the contract and, if requested, a detailed pricing schedule;
- You have submitted your firm's proposals for undertaking the contract.

DECLARATION

By signing this Quotation, by returning the completed Quotation to NEM in accordance with this Request for Quotation, I/we hereby agree to Newcastle City Council's terms and conditions of contract printed overleaf.

I/we have not fixed or adjusted the amount of the Quotation or the rates or prices quoted due to any discussions or arrangements with any other firm or organisation.

The Quotation submitted by my firm to comply with the Specification set out within the NEM' Request for Quotation is:-

£(excluding VAT)

Signed:

Date:

Status within Organisation:

Name and Address of Organisation:
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.....

APPENDIX 1 - SPECIFICATION

North East Museums:

North East Museums (formerly Tyne & Wear Archives & Museums) is a regional museum, art gallery and archives service.

We manage twelve museums and galleries across North East England and the Archives for Tyne and Wear, attracting around 1 million visits a year. We run these venues and services on behalf of the local authorities of Gateshead, Newcastle, Northumberland, North and South Tyneside, Sunderland City Council and Newcastle University.

We are partially funded by these partners and also by Arts Council England (as a National Portfolio Organisation). The rest of our income is generated through our commercial enterprises including our shops, cafes and venue hire, and via fundraising.

We care for over 1.1 million objects - many of international importance - in archives, art, science and technology, archaeology, military and social history, fashion and natural sciences.

For more information about North East Museums visit:

www.northeastmuseums.org.uk

Background – the scope of the project:

In April 2025 North East Museums took on the management of three more venues. This increased the number of venues it manages with admission ticketing to three, plus one venue that has admission ticketing for its exhibitions. We also deliver ticketed events across the full venue portfolio.

Ticketing and admissions are now a significant revenue stream and there is potential to grow this. We also have two capital developments planned at venues with admission tickets (Hexham Old Gaol and Segedunum Roman Fort) - both will lead to increased pressures on ticketing as we grow the audience.

We are currently using several platforms for different elements of ticket sales (online and at the till and across admissions and events) which is inefficient and doesn't provide a smooth user experience for the customer. We are also paying very high fees for the ticketing systems we are using.

We would like to procure a new ticketing system which could also potentially incorporate a CRM database to support marketing and fundraising. Our current CRM

database (Raiser's Edge) has very high annual support fees and doesn't integrate well with other systems e.g. website / current ticketing platform.

Benefits of a new ticketing system with integrated CRM could include:

- Financial resilience – reduced commission fees and subscription fees would mean we could increase ticket yield. We could also include a consistent donation ask increasing contributed income.
- Audience retention / customer experience – a better system would make it easier for visitors to purchase tickets both in venue and online.
- Communications – improved data capture would mean we could improve communications with visitors pre and post visit and upsell events and venues to increase ticket sales and income.
- Efficiency – using one system would lead to time savings for staff across several teams. It would also provide a more robust system to ensure GDPR compliance, avoiding the risk of human error when moving data between systems.
- Future sustainability – a new system would enable us to add new ticket options and experiences e.g. guided tours, a multi-venue pass, a membership scheme.

Consultant's role:

We are seeking to appoint a consultant with relevant experience to work with us from the research phase through to implementation and initial delivery of a new ticketing system. The number of days / hours contracted is to be agreed within the scope of the budget.

The consultant will support North East Museums' Communications & Development Manager to:

- Consult with key internal departments about requirements for ticketing and CRM.
- Research cloud based platforms that meet those requirements to compile a list of companies to approach to invite to tender.
- Develop a brief and tender documents and co-ordinate the tender process (following North East Museums' procurement processes).
- Work with the appointed company and key North East Museums' staff to develop a strategy and process for ticketing / CRM and a plan for implementing the new system including integration with other North East Museums' systems / platforms e.g. website, epos etc.
- Ensure guidelines / training is in place for staff to embed the new system and processes.

Method & delivery timeline:

Once appointed, the successful consultant will work closely with North East Museums staff throughout the project. The following staff will play a key role in supporting the project, and facilitating communication and decision making:

1. Sheryl McGregor, Communications & Development Manager (project lead)
2. Hugh Stolliday, Commercial Manager (ticketing integration with epos, commercial events)
3. Jackie Reynolds, Head of Finance, Governance & Resources (finance and governance)

To ensure we can keep to our timetable for implementing a new ticket / CRM strategy and to meet the conditions of our grant funding, the process for procuring the new system will need to be complete by 30 January 2026.

The consultant will mostly be required to work remotely using their own equipment (e.g. IT etc.), but a desk and meeting rooms can be made available as and when needed at one of our venues.

Draft delivery timetable:

- **19 September 2025:** Deadline for consultant applications
- **Week commencing 22 September:** Shortlisted consultant interviews
- **30 September 2025:** Deadline for appointing consultant
- **Week commencing 29 September:** Project initiation meeting
- **31 October:** Complete scoping research with NEM and research into potential platforms
- **13 November:** Brief and tender documents finalised
- **Week commencing 16 November:** Issue new ticketing / CRM tender documents
- **Week commencing 7 December:** shortlist tender applications
- **Week commencing 4 January:** Ticketing system company interviews / new ticketing system selected
- **30 January 2026:** Ticketing strategy developed. Implementation plan and staff guidance / training developed (working with NEM and the appointed company).
- **1 February – 31 March:** Initial implementation period.

The consultant may need to be flexible about timescales, but this would be discussed to ensure any requests for extending the timeframe was reasonable and did not impact on their other work commitments.

The consultant will be required to supply a copy of all documentation in a digital format.

Budget:

You should provide a fixed price quotation for the work, not exceeding **£25,000** and including all fees and expenses. Please also provide a daily rate. We require the consultant to spread their time across the period to be able to oversee all project milestones outlined.

PART 2 – CONTRACTUAL TERMS AND CONDITIONS

**STANDARD TERMS AND CONDITIONS OF CONTRACT
FOR THE PURCHASE OF SERVICES**

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PART A - OPERATIVE PROVISIONS

A1. DEFINITIONS

The terms and expressions used in these Standard Terms and Conditions shall have the meanings set out below:

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| "Authorised Officer" | the person duly appointed by the Council and notified in writing to the Contractor to act as the representative of the Council for the purpose of the Contract in the Contract Particulars or as amended from time to time and in default of such notification the Council's |
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| | head of procurement or similar responsible officer. |
| “Assigned Employees” | In respect of Clause G4 an individual employed by the Contractor wholly or mainly in the performance of the Services |
| “Business Day” | any day other than a Saturday or Sunday or a public or bank holiday in England. |
| “Change in Law” | the coming into effect or repeal (without reenactment or consolidation) in England of any Law, or any amendment or variation to any Law, or any judgement of a relevant court of law which changes binding precedent in England in each case after the date of this Contract. |
| “Commencement Date” | the commencement date stated in the Contract Particulars. |
| “Confidential Information” | any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the Services, the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either party, all personal data and sensitive personal data (within the meaning of the DPA). |
| “Contract” | the agreement in respect of the provision of the Services consisting of the following listed documents which shall be read as one document. In the event of ambiguity, conflict or contradictions between these documents the conflict will be resolved according to the following order of priority: |

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| | <ol style="list-style-type: none"> 1. the Contract Particulars; 2. the Special Terms and Conditions; 3. the Standard Terms and Conditions; 4. the Tender except to the extent that any element of the Tender has been included in the Contract Particulars. |
| “Contractor” | the contractor and where applicable this shall include the contractor's Employees, sub-contractors, agents, representatives, and permitted assigns and, if the contractor is a consortium or consortium leader, the consortium members. |
| “Contract Manager” | the person named in the Contract Particulars as the contract manager and any replacement from time to time in accordance with clause B3.2. |
| “Contract Particulars” | the document detailing the specific core terms agreed between the parties with regard to the Services which shall include but not be limited to the Pricing Schedule, Delivery Instructions, Commencement Date, Authorised Officer, Contract Manager, Key Personnel, Contract Period, and the Specification and relevant contract specific details of the Tender included in the document. |
| “Contract Period” | the period of the contract as stated in the Contract Particulars (and any extension in accordance with clause B1). |
| “Control” | control as defined by section 416 of the Income and Corporation Taxes Act 1988. |

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| “Council” | the Council named in the Contract Particulars and where the context so admits includes any person which takes over or assumes the statutory functions or administrative responsibilities of the Council (whether in part or totally) or which is controlled by or is under common control with the Council (and the expression “control” shall mean the power to direct or cause the direction of the general management and policies of the person in question but only for so long as such control exists). |
| “DPA” | The Data Protection Act 1998. |
| “Delivery Instructions” | the instructions provided in the Contract Particulars and any other information that the Council considers appropriate to the provision of the Services. |
| “Employee” | any person employed by the Contractor to perform the Contract which will also include the Contractor's servants, agents, voluntary and unpaid workers and subcontractors and representatives or, in respect of clause G4 (TUPE and Re-Tendering) and any other TUPE obligation, an individual employed by the Contractor in the performance of the Services. |
| “EIR” | The Environmental Information Regulations 2004. |
| “FOIA” | The Freedom of Information Act 2000. |
| “Force Majeure” | any cause materially affecting the performance by a party of its obligations under this Contract arising from any act beyond its reasonable control and affecting either party, including without limitation: acts of God, war, industrial action (subject to clause H6.3), protests, fire, flood, storm, tempest, epidemic, explosion, acts of terrorism and national emergencies. |

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| “Good Industry Practice” | the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor engaged in the supply of services similar to the Services under the same or similar circumstances as those applicable to the Contract. |
| “HRA” | The Human Rights Act 1998. |
| “Intellectual Property Rights” | patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off. |
| “Invitation to Tender” | the Council’s invitation to tender for the Contract. |
| “Key Personnel” | those persons named in the Contract Particulars as being key personnel and any replacement from time to time under clause B6.1.5. |
| “Law” | any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any regulatory body of which the Contractor is bound to comply. |
| “Liabilities” | all costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other |

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| | professional fees and expenses) whenever arising or brought. |
| “Order” | an order for Services to be provided where the Contract is identified in the Contract Particulars to be delivered by call off. |
| “Price” | the price of the Services as set out in the Contract Particulars. Unless otherwise stated, any reference to Price shall be regarded as being exclusive of properly chargeable VAT which shall be separately accounted for. |
| “Pricing Schedule” | the schedule from the Tender detailing the pricing as detailed in the Contract Particulars. |
| “Replacement Contractor” | any company, organisation or person who replaces the Contractor following termination or expiry of all or part of this Contract |
| “Services” | the services described in the Specification to be supplied by the Contractor in accordance with the Contract together with all equipment required and any associated goods provided by the Contractor in relation to those services. |
| “Special Terms and Conditions” | the additional terms and conditions attached which were set out in the Invitation to Tender. |
| “Specification” | the specification included in the Contract Particulars setting out the Council's detailed requirements in relation to the Services. |
| “Standard Terms and Conditions” | the terms and conditions set out in this document. |
| “Tender” | the Contractor's tender for the Services in response to the Council's Invitation to Tender. |

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| “TUPE” | The Transfer of Undertakings (Protection of Employment) Regulations 2006. |
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G.1 Any reference to a person shall include any natural person, partnership, joint venture, body corporate, incorporated association, government, governmental agency, persons having a joint or common interest, or any other legal or commercial entity or undertakings.

G.2 A reference to any statute, order, regulation or similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

A2. HEADINGS

G.3 The index and headings to the clauses and appendices to and schedules of this Contract are for convenience only and will not affect its construction or interpretation.

A3. NOTICES

G.4 Any notice required by this Contract to be given by either party to the other shall be in writing and shall be served personally, by fax or by sending it by registered post or recorded delivery to the appropriate address, fax number or email address notified to each other as set out in the Contract Particulars.

G.5 Any notice served personally will be deemed to have been served on the day of delivery; any notice sent by post will be deemed to have been served 48 hours after it was posted; any notice sent by fax will be deemed to have been served 24 hours after it was despatched and any notice sent by email before 5 p.m. will be deemed to have been served on the day of despatch and otherwise on the following day save where the deemed date of service falls on a day other than a Business Day in which case the date of service will be the following Business Day.

A4. ENTIRE AGREEMENT

G.6 The Contract constitutes the entire agreement between the parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause A4 shall not exclude liability in respect of any fraudulent misrepresentation.

PART B - PROVISION OF SERVICES

B1. CONTRACT PERIOD

- G.7 The Contract shall commence on the Commencement Date and subject to clause B1.2 shall continue for the Contract Period.
- G.8 If the Contract Period includes an option to extend and the Council intends to take up the option, the Contractor shall be notified in writing within the period stated in the Contract Particulars prior to the commencement of the extension. If no such notification is issued the Contract shall automatically expire after the initial Contract Period.

B1. PERFORMANCE

- G.9 The Services shall be provided by the Contractor in accordance with any Delivery Instructions. If no time for delivery is stated in the Delivery Instructions the Services shall be delivered between 9 a.m. and 5 p.m. on a Business Day.
- G.10 The time of the delivery of the Services is of essence to the Contract.
- G.11 The Council will have the right to observe the Contractor's performance of the Services if the Services are not being performed on the Council's premises.
- G.12 If the Contractor at any time becomes aware of any act or omission, or proposed act or omission by the Council which prevents or hinders, or may prevent or hinder the Contractor from performing the Services in accordance with the Contract, the Contractor shall inform the Council and the Council may, at its absolute discretion, extend the period of the Contract accordingly.
- G.13 If the Contractor at any time becomes aware of any material matter that could affect the performance of the Services in accordance with the Contract, the Contractor shall inform the Council immediately.
- G.14 If the Contractor has a change in Control, the Contractor shall inform the Council as soon as reasonably practicable.
- G.15 The Council retains the Contractor for the performance of the Services on a non exclusive basis.

B2. CONTRACT MANAGER

- G.16 The Contractor shall employ a competent and authorised Contract Manager empowered to act on behalf of the Contractor for all purposes connected with the Contract.
- G.17 The Contractor shall forthwith give notice in writing to the Council of any change in the identity, address and telephone numbers of the person appointed as Contract Manager. The Contractor shall give maximum possible notice to the Council before changing its Contract Manager.

B3. ORDERING PROCESS

- G.18 Where this Contract is identified as requiring Orders in the Contract Particulars the Contractor shall accept Orders made in writing by the Council under the provisions of this clause.
- G.19 Except where specified Orders are required to call off the Services the Council gives no guarantees whatsoever as to when any Order will be placed during the Contract Period or under the Contract.
- G.20 The Orders shall state the type of or part of the Services required including the Council's requirements with regard to timescale for delivery of those Services.

B4. RISK IN AND TITLE TO GOODS

- G.21 Risk in any goods provided as part of the Services shall pass to the Council upon delivery without prejudice to any rights of rejection which may accrue to the Council under the Contract or otherwise.
- G.22 Title in any goods provided as part of the Services shall pass to the Council upon delivery or earlier payment.

B5. WARRANTY

- G.23 The Contractor warrants to the Council that the Services will be provided:
- G.23 in a proper, skilful and workmanlike manner;
 - G.23 by a sufficient number of appropriately qualified, trained and experienced personnel with a high standard of skill, care and due diligence and in accordance with Good Industry Practice;
 - G.23 in accordance with the Contract and any descriptions provided by the Contractor;
 - G.23 to the reasonable satisfaction of the Authorised Officer;

- G.23 by Key Personnel (if any) who shall not be released from providing the Services permanently without the agreement of the Council, except by reason of sickness, maternity leave, paternity leave, termination of employment or because they have been requested to do so by the Council, or the element of the Services in respect of which the individual was engaged has been completed to the Council's satisfaction or other extenuating circumstances explained to the Council. Any replacements for the Key Personnel shall be subject to the agreement of the Council and such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services. The cost of effecting such replacement shall be borne by the Contractor; and
- G.23 in a way that the Contractor takes every reasonable precaution to safeguard the Council's property entrusted to the care of the Contractor.
- G.24 The Contractor warrants to the Council that to the extent that any goods, equipment or consumables are provided as part of the Services they will:
- G.24 be free from defects in design, material and workmanship; and
- G.24 be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health.
- G.25 Without prejudice to the Council's rights to terminate under clause D1 (Termination), if any of the Services supplied are not in accordance with the Contract, the Council shall be entitled to:
- G.25 require the Contractor to provide replacement Services in accordance with the Contract as soon as reasonably practicable and in any event within fourteen (14) days of a request to do so; or
- G.25 subject to clause E2 (Indemnity and Liability) require repayment of the proportion of the Price which has been paid in respect of such Services together with payment of any additional expenditure over and above the Price reasonably incurred by the Council in obtaining replacement Services.

B1. CONTRACTOR'S EMPLOYEES

G.26 The Council reserves the right under the Contract to refuse to admit to, or to withdraw permission to remain on, any premises occupied by or on behalf of the Council:

G.26 any member of the Contractor's Employees; and/or

G.26 any person employed or engaged by a sub-contractor, agent or servant of the Contractor

whose admission or continued presence would be, in the reasonable opinion of the Council, undesirable.

G.27 When directed by the Council, the Contractor shall provide a list of the names and addresses of all persons (if any) who it is expected may require admission in connection with the Contract to any premises occupied by or on behalf of the Council, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Council may reasonably desire.

G.28 The Contractor's Employees, engaged within the boundaries of any of the Council's premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at that establishment and when outside that establishment.

G.29 The decision of the Council as to whether any person is to be refused access to any premises occupied by or on behalf of the Council shall be final and conclusive.

G.30 The Contractor shall replace any of the Contractor's Employees who the Council reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Contractor's Employees for any reason, the Contractor shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

G.31 The Contractor shall bear the cost of or costs arising from any notice, instruction or decision of the Council under this clause.

G.32 B8 INDEPENDENT CONTRACTOR

G.33 B8.1 The Parties agree that the Contractor is an independent contractor and not an agent, employee or partner of the Council and therefore not eligible to participate in any benefit programmes of the Council. The Contractor will be responsible for payment of his/her own Income Tax and National Insurance Payments or similar contributions in respect of

his/her fees and the Contractor hereby indemnifies the Council against any claims that may be made against the Council for Income Tax or National Insurance or similar contributions relating to the provision of the Services by the Contractor. The Contractor shall in addition be responsible for any loss of benefits paid under his previous contract of employment, or additional tax liability incurred, by reason of his accepting a contract with the Council as a consultant which commences immediately after the termination of his employment with the Council and the Contractor shall indemnify the Council in respect of any additional tax liability, loss or demand that the Council may thereby occasion.

G.34 **B9 MEETINGS AND PROGRESS REPORTS**

G.35 B9.1 The Contractor Manager shall attend any meetings, including site meetings, as may reasonably be requested by the Council. The Contractor shall make all arrangements for sub-contractors and suppliers to be present as required by the Council.

G.36 B9.2 The Contractor shall submit written reports to the Council in connection with any material changes to the Tender submitted by the Contractor.

• **B10 LICENCE TO OCCUPY COUNCIL'S PREMISES**

G.1 "Premises" means any land or premises (including temporary buildings) made available to the Contractor by the Council in connection with the Contract.

G.2 B10.1 Any Premises shall be made available to the Contractor free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall have the non-exclusive use of such Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.

G.3 B10.2 The Contractor shall not use the Premises for any purpose or activity other than the provision of the Contract.

G.4 B10.3 Should the Contractor require modifications to the Premises, such modifications shall be subject to prior approval and shall be carried out by the Council at the Contractor's expense. The Council shall undertake approved modification work without undue delay. Ownership of such modifications shall rest with the Council.

G.5 B10.4 The Contractor shall (and shall ensure that their employees, servants, agents, suppliers or sub-contractors) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Council, and the Contractor shall pay the cost of making good any damage caused by the Contractor, his

Employees, servants, agents, suppliers or sub-contractors other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

- G.6 B10.5 The parties agree that there is no intention on the part of the Council to create a tenancy in respect of the Premises of whatsoever nature in favour of the Contractor or its Employees, servants, agents, suppliers or sub-contractors and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Council retains the right at any time to use in any manner the Council sees fit any premises owned or occupied by it.

PART C - PRICE AND PAYMENT

C1. PRICE AND PAYMENT

- G.7 The Council shall pay the Price for the Services to the Contractor.
- G.8 The Contractor shall submit a single VAT invoice to the Council no later than seven (7) days after the end of each calendar month detailing the Services provided during the calendar month and the amount payable.
- G.9 Payment of any undisputed invoice will be made no later than thirty (30) days following the date of receipt of the invoice by the Council.
- G.10 The Council reserves the right to withhold payment of the relevant part of the Price without payment of interest where the Contractor has either failed to provide the Services at all or has provided the Services inadequately and any invoice relating to such Services will not be paid unless or until the Services have been performed to the Council's satisfaction.
- G.11 Any overdue sums will bear interest from the due date until payment is made at 4% per annum over the Co-operative Bank plc base rate from time to time. The Contractor is not entitled to suspend provision of the Services as a result of any overdue sums.
- G.12 The Council will be entitled but not obliged at any time or times without notice to the Contractor to set off any liability of the Council to the Contractor against any liability of the Contractor to the Council (in either case howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency) and may for such purpose convert or exchange any sums owing to the Contractor into any other currency or currencies in which the obligations of the Council are payable under this Contract. The Council's rights under this clause will be without prejudice to any other rights or remedies available to the Council under this Contract or otherwise.

- G.13 Further details of payment, if any, are set out in the Pricing Schedule.
- G.14 **C2 CONTRACT REBATE**
- G.15 C2.1 The Contractor will pay the Council a contract rebate for all business received against this Contract where the level of such rebate and the method of payment are set out in the Contract Particulars.
- G.16 **C3 PRICE VARIATION**
- G.17 C3.1 The Contractor shall have the ability to propose to vary the Price, only if it is indicated in the Contract Particulars as being variable, by giving the Council not less than 3 months' written notice in advance of such variation effective at the end of the initial period specified in the Contract Particulars or annually and thereafter providing that:
- G.17 C3.1.1 such variation shall not exceed the annual Retail Price Index all items excluding mortgage interest payments (RPIX) ruling at the time of the increase and should not preclude the possibility of any reductions in charges; and
- G.17 C3.1.2 any notice of variation under this clause C3 will be limited to one request in any twelve (12) month period.
- G.18 C3.2 Changes to the Price will only become effective when agreed and accepted in writing by the Council's Authorised Officer.

PART D - TERMINATION AND CONSEQUENCES OF TERMINATION

D1. TERMINATION

- G.19 Subject to the provisions of clause H6 (Force Majeure) the Council may terminate the Contract with immediate effect by notice in writing to the Contractor on or at any time if:
- G.19 the Contractor becomes bankrupt, insolvent, makes any composition with its creditors, has a receiver appointed under the Mental Health Act 1983 or dies; or
- G.19 the Contractor is convicted of a criminal offence; or
- G.19 the Contractor ceases or threatens to cease to carry on its business; or
- G.19 the Contractor has a change in Control which the Council believes will have a substantial impact on the performance of the Contract; or

- G.19 there is a risk or a genuine belief that reputational damage to the Council will occur as a result of the Contract continuing; or
- G.19 the Contractor is in breach of any of its obligations under this Contract that is capable of remedy and which has not been remedied to the satisfaction of the Council within 14 days, or such other reasonable period as may be specified by the Council after issue of a written notice specifying the breach and requesting it to be remedied; or
- G.19 there is a material or substantial breach by the Contractor of any of its obligations under this Contract which is incapable of remedy; or
- G.19 the Contractor commits persistent minor breaches of this Contract whether remedied or not; or
- G.19 D1.1.9 the Contractor uses personnel other than the Key Personnel as set out to perform the Services; or
- G.19 D1.1.10 a County Court Judgment is recorded against the Contractor.
- G.20 The Council reserves the right to terminate the Contract in part in the case of termination under clauses D1.1.6, D1.1.7 and D1.1.8.
- G.21 Where this Contract is subject to Orders as specified in the Contract Particulars the Council has the right to terminate any individual Order or Orders or the whole Contract under the provisions of this clause D1.
- G.22 The Council reserves the right to terminate the Contract at will, in whole or in part, at any time with or without notice except that it will give as much notice as possible in the circumstances.
- G.23 **CONSEQUENCES OF TERMINATION**
- G.24 If this Contract is terminated in whole or in part the Council shall:
 - G.24 be liable to pay to the Contractor only such elements of the Price, if any, that have properly accrued in accordance with the Contract or the affected part of the Contract up to the time of the termination; and/or
 - G.24 except for termination under clause D1.4, be entitled to deduct from any sum or sums which would have been due from the Council to the Contractor under this Contract or any other contract and to recover the same from the Contractor as a debt

any sum in respect of any loss or damage to the Council resulting from or arising out of the termination of this Contract. Such loss or damage shall include the reasonable cost to the Council of the time spent by its officers in terminating the Contract and in making alternative arrangements for the supply of the Services or any parts of them; and/or

- G.24 where termination arises under clause D1.4, pay to the Contractor any reasonable, direct and quantifiable costs reasonably incurred by the Contractor due to early termination subject to the maximum liability provision in clause E1.4; and/or
- G.24 in the event that any sum of money owed by the Contractor to the Council (the Contractor's debt) exceeds any sum of money owed by the Council to the Contractor (the Council's debt) under this Contract then the Council shall, at its sole discretion, be entitled to deduct the Contractor's debt from any future Council's debt or to recover the Contractor's debt as a civil debt.
- G.25 Upon the termination of the Contract for any reason, subject as otherwise provided in this Contract and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under the Contract.
- G.26 **DISPUTE RESOLUTION PROCEDURE**
- G.27 If a dispute arises between the Council and the Contractor in connection with the Contract, the parties shall each use reasonable endeavours to resolve such dispute by means of prompt discussion at an appropriate managerial level.
- G.28 If a dispute is not resolved within fourteen (14) days of referral under clause D3.1 then either party may refer it to the Chief Executive or appropriate nominated officer of each party for resolution who shall meet for discussion within 14 days or longer period as the parties may agree.
- G.29 Provided that both parties consent, a dispute not resolved in accordance with clauses D3.1 and D3.2, shall next be referred at the request of either party to a mediator appointed by agreement between the parties within 14 days of one party requesting mediation with the costs of mediation determined by the mediator.
- G.30 Nothing in this clause shall preclude either party from applying at any time to the English courts for such interim or conservatory measures as may be considered appropriate.

G.31 **SURVIVAL**

- G.32 The following clauses will survive termination or expiry of the Contract: Clause B5 (Risk in and Title to the Goods), Clause D2 (Consequences of Termination), Clause E2 (Indemnity and Liability), Clause F1 (Intellectual Property), Clause F2 (Confidentiality and Publicity), Clause F3 (Data Protection), Clause F4 (Freedom of Information), Clause F5 (Record Keeping and Monitoring), Clause G4 (TUPE and Re-Tendering), Clause G5 (TUPE Indemnity), Clause G6 (Post-Contract Monitoring), Clause H4 (Severance), Clause H10 (Non Solicitation and Offers of Employment) and Clause H12 (Law and Jurisdiction).

PART E - INSURANCE AND LIABILITIES

E1. **INSURANCE**

- G.33 The Contractor shall maintain insurance necessary to cover any liability arising under the Contract as set out in the Contract Particulars.
- G.34 The Contractor shall prior to the Commencement Date and on each anniversary of the Commencement Date and/or upon request provide evidence that all premiums relating to such insurances have been paid.
- G.35 If the Contractor does not maintain the necessary insurances under the Contract the Council may insure against any risk in respect of the default and may charge the Contractor the cost of such insurance together with a reasonable administration charge.

E1. **INDEMNITY AND LIABILITY**

- G.36 Neither party seeks to exclude or limit its liability for:
- G.36 death or personal injury caused by its negligence (but will not be liable for death or personal injury caused by the other party's negligence);
 - G.36 fraudulent misrepresentation; or
 - G.36 any other matter in respect of which, as a matter of Law, liability cannot be excluded or limited.
- G.37 Except as specifically provided, neither party shall in any event be liable to the other for any indirect or consequential loss (including loss of profit, loss of business opportunity, loss of business, loss of goodwill, loss of production and pure economic loss) however caused.
- G.38 Subject to clauses E2.1, E2.2 and E2.5, the Contractor's liability to the Council under the Contract whether in contract, tort (including

negligence) or otherwise shall be limited to 125% of the proportion of the Price which is paid and payable at the time that the liability arises.

G.39 Subject to clauses E2.1 and E2.2, the Council's liability to the Contractor under the Contract whether in contract, tort (including negligence) or otherwise shall be limited to 125% of the proportion of the Price which is paid and payable at the time that the liability arises.

G.40 E2.5 The Contractor shall indemnify the Council in full for any direct or indirect loss of or damage to the real or personal property of the Council or any third party, including Intellectual Property Rights, or injury claimed by any third party including any consequential loss (which shall include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) and against all Liabilities against or incurred by the Council (including legal expenses on an indemnity basis) arising from the Contractor's negligence, any defect or fault in the Services or any act or omission of the Contractor in delivering the Services.

PART F - PROTECTION OF INFORMATION

F1. INTELLECTUAL PROPERTY

G.41 All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:

G.41 provided to the Contractor by the Council shall remain the property of the Council;

G.41 prepared by or for the Contractor specifically for the use, or intended use, in relation to the performance of the Contract shall belong to the Council subject to any exceptions set out in the Contract Particulars.

G.42 The Contractor shall obtain necessary approval before using any material, in relation to the performance of the Contract which is or may be subject to any third party Intellectual Property Rights. The Contractor shall procure that the owner of the Intellectual Property Rights grant to the Council a non-exclusive licence, or if the Contractor is itself a licensee of those rights, the Contractor shall grant to the Council an authorised sub-licence, to use, reproduce, and maintain the Intellectual Property Rights. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-license, transfer, novate or assign to other Councils, the replacement Contractor or to any other third party providing services to the Council, and shall be granted at no cost to the Council.

- G.43 It is a condition of the Contract that the Services will not infringe any Intellectual Property Rights of any third party and the Contractor shall during and after the Contract Period on written demand indemnify and keep indemnified without limitation the Council against all Liabilities which the Council may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim relates to the act or omission of the Council.
- G.44 At the termination of the Contract the Contractor shall at the request of the Council immediately return to the Council all materials, work or records held in relation to the Services, including any back-up media.

F1. CONFIDENTIALITY AND PUBLICITY

- G.45 Any documents provided by the Council and information which the Contractor may acquire as a result of the Contract shall to the extent that they are not in the public domain or required to be disclosed by operation of Law remain confidential to the Council and shall not be disclosed disposed of or used for any purpose without prior written consent from the Council.
- G.46 All Confidential Information provided by the Council to the Contractor shall be returned to the Council at the end of the Contract.
- G.47 Without prejudice to the Council's obligations under the FOIA or EIR, neither party shall make any press announcements or publicise the Contract or any part thereof in any way, except with the written consent of the other party (such consent not to be unreasonably withheld or delayed).
- G.48 Both parties shall take all reasonable steps to ensure the observance of the provisions of this clause by all of their servants, Employees, sub-contractors, agents, professional advisors and consultants.

F2. DATA PROTECTION

- G.49 The Contractor shall (and shall procure that any of its Employees involved in the provision of the Services) comply with any requirements under the DPA.

F3. FREEDOM OF INFORMATION

- G.50 The Council is subject to the FOIA and the EIR ("the Acts"). As part of the Council's duties under the Acts, it may be required to disclose information forming part of the Contract to anyone who makes a reasonable request. The Council has absolute discretion to apply or not to apply any exemptions under the Acts.

- G.51 The Contractor shall assist and cooperate with the Council (at the Contractor's expense) to enable the Council to comply with the information disclosure requirements under the Acts and in so doing will comply with any timescale notified to it by the Council.

F4. RECORD KEEPING AND MONITORING

- G.52 In order to assist the Council in its record keeping and monitoring requirements including auditing and National Audit Office requirements, the Contractor shall keep and maintain for six (6) years (or such longer time period required in accordance with any specific legislation) after the Contract has been completed, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Contractor shall on request allow the Council or the Council's representatives such access to (and copies of) those records as may be required by the Council in connection with the Contract.
- G.53 The Contractor will at its own cost, provide any information that may be required by the Council to comply with the Council's procedures for monitoring of the Contract.

PART G - STATUTORY OBLIGATIONS

G1. HEALTH AND SAFETY

- G.54 The Contractor shall comply with all health and safety legislation in force and all health and safety policies of the Council.

G1. CORPORATE REQUIREMENTS

- G.55 The Contractor shall comply with all obligations under the HRA.
- G.56 The Contractor shall comply with all Council policies and rules, such as, but not limited to:
- G.56 equality and diversity policies;
 - G.56 sustainability;
 - G.56 information security rules;
 - G.56 whistleblowing and/or confidential reporting policies; and
 - G.56 all site rules relevant to the fulfilment of the Contractor's obligations in the performance of the Services.

G.57 The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether age, race, gender, religion, disability, sexual orientation or otherwise) in employment.

G.58 The Contractor shall comply with all relevant legislation relating to its Employees however employed including (but not limited to) the compliance in law of the ability of the Employees to work in the United Kingdom.

G.59 If the Contractor has a finding against it relating to its obligations under clause G2.4 it will provide the Council with:

G.59 details of the finding; and

G.59 the steps the Contractor has taken to remedy the situation.

G1. LAW AND CHANGE IN LAW

G.60 The Contractor shall comply at all times with the Law in its performance of the Contract.

G.61 On the occurrence of a Change in Law which has a direct effect upon the Price the parties shall meet within fourteen (14) days of the Contractor notifying the Council of the Change in Law to consult and seek to agree the effect of the Change in Law and any change in the Price as a result following the principle that this clause is not intended to create an artificial cushion from market forces for the Contractor. If the parties, within fourteen (14) days of this meeting, have not agreed the occurrence or the impact of the Change in Law, either party may refer the matter to dispute resolution in accordance with clause D3.

G.62 Any agreed additional sums payable as a result of the operation of clause G3.2 shall be included in the Price. For the avoidance of doubt nothing in this Contract is intended to allow the Contractor double recovery of any increase in costs.

G4. TUPE AND RE-TENDERING

G.63 G4.1 In the event of expiry or termination of this Contract or whenever reasonably requested by the Council in preparation for tendering arrangements the Contractor will provide the Council with such assistance as the Council may require and provide at no cost to the Council any information the Council (whether on its own account or on behalf of any potential or confirmed Replacement Contractor) may request in relation to the Employees including but not limited to, providing employee liability information as required under Regulation 11 of TUPE.

- G.64 G4.2 The Contractor authorises the Council to pass any information supplied to any Replacement Contractor or potential Replacement Contractor and the Contractor will secure all necessary consents from relevant Employees in order to do this.
- G.65 G4.3 The Contractor will keep the Council and any Replacement Contractor indemnified in full against all Liabilities arising directly or indirectly in connection with any breach of this clause or inaccuracies in or omissions from the information provided.

G.66 **G5 TUPE INDEMNITY**

For the purposes of this clause G5, the following definitions shall take effect:-

- G.67 “Current Employer” the employer of the Transferring Employees immediately before the Commencement Date;
- “Employment Costs” remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees and including without limitation all wages, holiday pay, bonuses, commissions, payment of PAYE, national insurance contributions and pensions contributions;
- “Prohibited Act” include any of the following (i) termination of employment of any Employees; or (ii) the alteration or change of terms or conditions of any Employees; or (iii) the recruitment of any employees; or (iv) relocation or assignment to new duties of any Employees,
- G.68 “Transferring Employees” those employees employed wholly or mainly by the Current Employer in providing the Services described in the Specification prior to the Commencement Date.
- G.69 G5.1 The Council and the Contractor acknowledge that where as a result of TUPE the contracts of employment between the Current Employer and the Transferring Employees (except in so far as such contracts relate to any occupational pension scheme as defined in Regulation 10 of TUPE) transfer, they will have effect after the Commencement Date as if originally made between the Contractor and the Transferring Employees.
- G.70 G5.2 All Employment Costs in respect of the period:
- G.70 G5.2.1 up to and including the Commencement Date in relation to the Transferring Employees (whether or not due for payment at that date) will be borne by the Current Employer;

G.70 G5.2.2 after the Commencement Date will be borne by the Contractor;
and will if necessary be apportioned on a time basis between the Contractor and the Current Employer.

G.71 G5.3 The Contractor will keep the Council and any Replacement Contractor indemnified in full against all Liabilities arising directly or indirectly and whether incurred by the Council pursuant to an indemnity provided to the Replacement Contractor in connection with:

G.71 G5.3.1 the employment or termination of employment of any of the Employees (whether or not terminated by notice and, if so terminated, whenever that notice expires);

G.71 G5.3.2 any act, omission or default of the Contractor in respect of the employment of the Transferring Employees;

G.71 G5.3.3 the Contractor's failure to inform or consult as required under Regulation 13 of TUPE except to the extent that any such action or claim (or any part of such action or claim) arises from any failure by the Council or the replacement contractor to give the Contractor the information required from the Council or the Replacement Contractor to enable the Contractor to comply with its obligations under TUPE; and

G.71 G5.3.4 the Contractor's failure to provide the employee liability information under Regulation 11 of TUPE.

G.71 G5.3.5 any claim by a Transferring Employee that such person is entitled for any reason to take early retirement benefits pursuant to the terms of any pension scheme in which the Council or the replacement contractor is not then participating, or pursuant to the Transferring Employee's terms and conditions of employment;

G.71 G5.3.6 the Contractor's failure to comply with its obligations under Clause G5.4 below.

G.72 G5.4 The Contractor will not in the event of notice of termination of this Contract or from a date of (12) months before expiry of the Contract Period carry out a Prohibited Act.

G6. **SUSTAINABILITY**

G.73 G6.1 The Contractor is required to support and collaborate with the Council over the Contract Period to achieve continuous improvement in sustainability within the delivery of services which shall mean maximising

the benefits to the social, economic and environmental well-being of the Council's local area.

- **G7. COMMUNITY SAFETY**

- G.1 G7.1 The Council has a statutory duty to ensure that it does all that it reasonably can to prevent crime and disorder in its area under the Crime and Disorder Act 1998. The Contractor is requested to assist the Council in the provision of the Services, in order to enable the Council to comply with this obligation at no additional expense to the Council.

- G.2 **G8. BUSINESS CONTINUITY PLANNING**

- G.3 "Business Continuity Plan" means the plan setting out the Contractor's proposed methodology to ensure continuance of the Contract in the event of an emergency.
- G.4 G8.1 The Civil Contingencies Act 2004 requires the Council to maintain plans to ensure it can continue to perform all of its ordinary functions in the event of an emergency. Organisations providing services or goods which underpin the Council's service provision must be able to continue to provide in the event of an emergency. The Contractor shall use its reasonable endeavours:
 - G.4 G8.1.1 to prepare a robust Business Continuity Plan that ensures the continuation of this Contract; and
 - G.4 G8.1.2 upon request, to disclose to the Council the contents of its Business Continuity Plan (including any revisions made to it from time to time); and
 - G.4 G8.1.3 to allow the Council at its discretion from time to time to monitor the Contractor's business continuity arrangements; and
 - G.4 G8.1.4 to notify the Council if an incident occurs which activates the Contractor's Business Continuity Plan (such notification to be given prior to the issue of any notification to the press or other media); and
 - G.4 G8.1.5 to provide the Council with details of how the Contractor managed any incident which resulted in the activation of the Contractor's Business Continuity Plan and any consequential amendments made to the Contractor's processes and/or procedures thereafter.
- G.4 **G9. CRIMINAL RECORDS BUREAU CHECKS**

- G.5 G9.1 The Contractor shall, upon reasonable request by the Authorised Officer, at the Contractor's cost provide in good faith, details including full name, address, date of birth and place of birth of any employee or operative whether directly Employed by the Contractor or otherwise engaged by them to provide the Services and shall do so within 14 days of any such request for the purpose of enabling the Council to carry out an enhanced criminal records check at the Contractor's cost pursuant to the provisions of Part V of the Police Act 1997.
- G.6 G9.2 Where, following a check under clause G9.1 above, a criminal conviction certificate is obtained by the Council following the criminal records bureau check and the nature of the listed previous convictions leads the Council to the reasonable conclusion that the person who was checked is unsuitable to provide the Services, then upon the Council giving notice to the Contractor, they shall immediately upon receipt of that notice remove the person considered as unsuitable from the contract or where the person has not at that time started to provide the Services the Contractor shall act so as to stop that person from providing the Services. The Council is not under any obligation to disclose the results of any criminal records bureau check.
- G.7 **G10. SUSTAINABILITY**
- G.8 G10.1 The Contractor shall perform the Contract in accordance with the Council's environmental and sustainable procurement policies which includes the requirement to conserve energy, water, wood, paper and other resources, reduce waste, increase levels of recycling and phase out the use of ozone depleting substances. The Contractor shall also and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment ("Environmental Sustainability Requirements").
- G.9 G10.2 The Council reserves the right to require the Contractor to provide evidence as to how it is ensuring compliance with the Environmental Sustainability Requirements and how the Contract is being performed in a sustainable manner.
- G.10 G10.3 The Contractor shall perform the Contract in a manner which aims to continuously improve the social and economic well-being of Newcastle upon Tyne at every opportunity.
- G.11 **G11. WHISTLEBLOWING OBLIGATIONS**
- G11.1 The Contractor and/or its Employees shall report to the Council at no further cost to the Council any concerns which the Contractor has in relation to any aspects of the Council's behaviour or conduct of its staff, members or anyone acting on the Council's behalf, such concerns include but are not limited to:-

- (a) conduct which is an offence or a breach of law; and/or
- (b) disclosures related to miscarriages of justice; and/or
- (c) health and safety risks, including risks to the public as well as other employees; and/or
- (d) damage to the environment; and/or
- (e) the unauthorised use of public funds; and/or
- (f) fraud and corruption; and/or
- (g) sexual or physical abuse of clients; and/or
- (h) any attempt to prevent disclosure of any of the above; and/or
- (i) other conduct which gives the Contractor and/or its employees cause for concern; and/or
- (j) any conduct which is against the Council's standing orders and policies; and/or
- (k) any conduct which falls below established standards of practice or amounts to improper conduct ("Relevant Concerns").

G11.2 The Contractor and/or its Employees shall report any Relevant Concerns to the Council in accordance with the procedures detailed within its whistleblowing policy which is available at www.newcastle.gov.uk.

PART H - GENERAL PROVISIONS

H1. CONTRACT VARIATION

G.12 Subject to clause H1.2, no variation or modification to the Contract is valid unless it is in writing and signed by the Council and the Contractor.

G.13 The Council shall be entitled to issue to the Contractor in writing or, in case of urgency orally (provided the Council confirms oral instructions in writing as soon as it is practicable), variation orders requiring the addition, suspension, reduction or cessation of provision of any Services and/or the provision of emergency Services in accordance with revised Delivery Instructions. The Contractor shall charge for the impact of the variation order in accordance with the rates and prices used to calculate the Price in the Tender.

H1. THIRD PARTY RIGHTS

G.14 This Contract is enforceable by the original parties to it, by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Contract pursuant to The Contracts (Rights of Third Parties) Act 1999 are excluded.

H2. NO WAIVER

G.15 Failure by either party at any time to enforce any one or more of the provisions of this Contract or to require performance by the other party of

any of the provisions shall not constitute or be construed as a waiver of the provision or of the right at any time subsequently to enforce all terms and conditions of this Contract nor affect the validity of the Contract or any part of it or the right of the parties to enforce any provision in accordance with its terms.

- G.16 No waiver of any of the provisions of this Contract shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with clause A3 (Notices).

H3. **SEVERANCE**

- G.17 If any provision of the Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity shall not impair or affect any other provision all of which shall remain in full force and effect.

H4. **ASSIGNMENT, SUB-CONTRACTING AND RESPONSIBILITY**

- G.18 Subject to any express provision of this Contract, the Contractor shall not without the prior written consent of the Council, assign all or any benefit, right or interest under this Contract or sub-contract the provision of the Services.

- G.19 The Council shall be entitled to:

G.19 assign, novate or dispose of its rights and obligations under this Contract either in whole or part to any contracting authority (as defined in The Public Contracts Regulations 2006); or

G.19 transfer, assign or novate its rights and obligations where required by Law.

- G.20 The Contractor shall remain responsible and liable for the acts and omissions of any other members of a consortium arrangement, sub-contractors, servants, agents and Employees as though they were its own.

- G.21 H5.4 The Contractor shall identify each part of the Services that it intends to sub-contract and the proposed sub-contractor for each item identified prior to seeking the Council's consent to such sub-contracting.

- G.22 H5.5 The Council shall be entitled to impose conditions in relation to any consent to sub-contracting given including a requirement that a guarantee or other security be provided.

- G.23 H5.6 The Council requires as a condition precedent of consent the Contractor to obtain collateral warranties from any sub-contractor or

other member if part of a consortium arrangement in a form prescribed by the Council and duly executed in the presence of the Council.

G.24 FORCE MAJEURE

G.25 Neither party shall be liable for failure to perform its obligations under the Contract if such failure results from Force Majeure.

G.26 If the Council or the delivery location is affected by circumstance of Force Majeure, the Council shall be entitled to, totally or partially, suspend the date or dates for delivery of the Services until the circumstances of the Force Majeure have ceased. The suspension shall not give rise to any claim by the Contractor against the Council nor entitle the Contractor to terminate the Contract.

G.27 Industrial action by, or illness or shortage of the Contractor's Employees, agents or subcontractors, failure or delay by any of the Contractor's suppliers to supply goods, components, services or materials and breach of the Contractor's warranties under clause B6 shall not be regarded as an event of Force Majeure.

G.28 If the event of Force Majeure continues for more than two (2) months either party may give written notice to the other to terminate the Contract immediately or on a set termination date.

G.29 If the Contract is terminated in accordance with clause H6.4 neither party will have any liability to the other except that any rights and liabilities which accrued prior to termination will continue to exist.

G.30 INDUCEMENTS

G.31 The Contractor shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Council any gift or consideration of any kind as an inducement or reward for doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Council, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract. The attention of the Contractor is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916.

G.32 The Contractor warrants that it has not paid commission nor agreed to pay any commission to any Employee or representative of the Council by the Contractor or on the Contractor's behalf.

G.33 Where the Contractor engages in conduct prohibited by clauses H7.1 and H7.2 in relation to this or any other contract with the Council, the Council has the right to:

- G.33 terminate the Contract and recover from the Contractor the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the provision of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period; or
- G.33 recover in full from the Contractor any other loss sustained by the Council in consequence of any breach of this clause whether or not the Contract has been terminated.

G.33 **COSTS AND EXPENSES**

- G.34 Each of the parties will pay their own costs and expenses incurred in connection with the negotiation, preparation, execution, completion and implementation of this Contract.

G.35 **NO AGENCY OR PARTNERSHIP**

- G.36 Nothing contained in this Contract, and no action taken by the parties pursuant to this Contract, will be deemed to constitute a relationship between the parties of partnership, joint venture, principal and agent or employer and employee. Neither party has, nor may it represent that it has, any authority to act or make any commitments on the other party's behalf.

G.37 **NON SOLICITATION AND OFFERS OF EMPLOYMENT**

- G.38 The Contractor agrees that it will not, without the prior written consent of the Council, whether directly or indirectly, and whether alone or in conjunction with, or on behalf of, any other person and whether as a principal, shareholder, director, Employee, agent, consultant, partner or otherwise during the Contract Period or for a period of 12 months following termination of this Contract:

- G.38 solicit or entice, or endeavour to solicit or entice, away from the Council, any person directly related to the Services employed in a senior capacity in a managerial, supervisory, technical, sales or administrative capacity by, or who is or was a consultant to, the Council at the date of the termination of this Contract or at any time during the period of one month immediately preceding the date of termination; or
- G.38 attempt, or knowingly assist or procure any other person to do the above.

G.38 **INSPECTION OF CONTRACTOR'S PREMISES**

G.39 The Contractor shall permit the Council to make any inspections or tests which may reasonably be required in respect of the Contractor's premises in relation to the Contract.

G.40 **LAW AND JURISDICTION**

G.41 This Contract shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the English courts.

Signed on behalf of North East Museums

Date

Signed on behalf of the Contractor

Date