



Invitation
To
Tender

Skate/Bmx Provision in Macclesfield
South Park Skate/Bmx Area

Tender for Regeneration of South Park Skate/Bmx Area

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Part A

Section 1

Borough Area Map



Part A

Section 2

Standard Terms and Conditions

MACCLESFIELD BOROUGH COUNCIL
Standard Terms and Conditions
for the
Supply of Services

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Terms and Conditions for the Supply of Services

1 Commencement and Duration

- 1.1 This Agreement shall take effect on the date specified in the Invitation to Tender.
- 1.2 This Agreement shall expire on the date specified in the Invitation to Tender subject to;-
 - 1.2.1 the rights of termination contained herein
 - 1.2.2 Clause 3.3
 - 1.2.3 Clause 1.3
- 1.3 The Council may extend the Contract Period for a further period of twelve months beyond that stated in Clause 1.2 above, by giving written notice to the Supplier.

2 Scope

- 2.1 This Agreement shall comprise the following:-
 - 2.1.1 the Terms and Conditions;
 - 2.1.2 the Special Conditions, if any;
 - 2.1.3 the Specification, if any
 - 2.1.4 the Tender, if any
- 2.2 In the event of any conflict or inconsistency between any of the various documents forming part of this Agreement the following order of precedence shall apply:
 - 2.2.1 the Terms and Conditions;
 - 2.2.2 the Special Conditions, if any;
 - 2.2.3 the Specification
 - 2.2.4 the Tender
 - 2.2.5 the Order.
- 2.3 This Agreement together with any Order issued hereunder constitutes the entire understanding between the parties relating to the subject matter of this Agreement and, save as may be expressly referred to or referenced herein, supersedes all prior representations, writings, negotiations or understandings with respect hereto, except in respect of any fraudulent misrepresentation made by either party.

3 Supply and Delivery

- 3.1 The Council may at any time during the Contract Period order Services from the Supplier by serving an Order on the Supplier.
- 3.2 The Supplier shall perform the Services at its own expense in accordance with the provisions contained in the Contract Documents.
- 3.3 If the Agreement Period expires before the supply or delivery of any Services comprised in an Order, the Supplier shall remain liable for the completion of the Order. The terms and conditions of this Agreement shall continue in full force and effect until such completion occurs.
- 3.4 Clause 3.3 shall survive the termination or expiry of this Agreement.

4 The Services

- 4.1 Without prejudice to any higher standard required by the Agreement, the Supplier shall at its own cost ensure that all Services supplied to the Council pursuant to this Agreement shall be compliant with:-
 - 4.1.1 the Specification
 - 4.1.2 any requirement of any Legislation;
 - 4.1.3 any relevant European Union Specification or Code of Practice or British Standard Specification or British Code of Practice or European Union equivalents.
 - 4.1.4 any policies, rules, codes of practice, procedures and standards with which the Supplier is required to comply
- 4.2 The Services shall be carried out to the reasonable satisfaction of the Council and the Supplier shall use the highest standard of skill and care which is ordinarily exercised by experienced and competent contractors performing services of a similar nature to the Services performed under this Agreement.
- 4.3 Where Services include the provision of goods, materials or plant these shall be of satisfactory quality (within the meaning of the Sale of Goods Act 1979 (as amended)) and fit for any purpose held by the Supplier or made known to the Supplier in writing by the Council during the Agreement period.
- 4.4 The Services shall be delivered at the expense of the Supplier at the place or places specified in the Contract Documents or otherwise specified by the Council.

4.5 The Supplier shall

- 4.5.1 provide to the satisfaction of the Council such appropriately qualified and experienced staff as shall be necessary for the proper execution of the services and shall not remove or replace such persons without the prior written approval of the Council;
- 4.5.2 ensure that all persons involved in delivering the Services are sufficiently instructed with regard to the Services on all relevant provisions of the Agreement,
- 4.5.3 co-operate with such others as the Council may reasonably require,.
- 4.5.4 have informed himself fully and studied carefully the scope and all other information relating to and necessary for the performance of the Agreement and shall have obtained for himself a full understanding and knowledge of the nature and scope of the Agreement and of the prevailing conditions relevant thereto, under which the Agreement will operate,.
- 4.5.5 satisfy itself that the information, including documentation, provided by the Council is adequate and will not prejudice the performance of any of the Supplier's obligations under the Agreement. The Supplier shall inform the Council immediately of any inadequacy whereupon the Council shall make good the inadequacy to the reasonable satisfaction of the Supplier,.
- 4.5.6 work diligently to protect and promote the Council's interests,.
- 4.5.7 have due regard to the Council's policies and other matters which the Council has disclosed to the Supplier pursuant to Clause 8;
- 4.5.8 in all matters act loyally and faithfully to the Council; and
- 4.5.9 not describe itself as an agent or representative of the Council except as expressly authorised by this Agreement.

5 Rejection of Services

- 5.1 The Council shall have the power by notice to reject any Services which it does not consider to have been carried out in accordance with this Agreement and the Supplier shall, without prejudice to the Council's other rights, promptly and at its own expense, remedy the deficiency in the Services as required by the Council.
- 5.2 If the Supplier fails to remedy the deficiency promptly in accordance with the Council's notice, the Council may remedy or cause to be remedied any deficiency at the Supplier's cost.
- 5.3 Notwithstanding that the Services or any part thereof have been the subject of any instruction, review, approval, acknowledgement or inspection, the Supplier shall not be relieved from any liability or obligation under the Agreement.

- 5.4 Any costs associated with any audit that the Council is required to carry out as a result of the Supplier failing to carry out the service in accordance with the Agreement shall be borne by the Supplier.

6 Time of Delivery

- 6.1 The Supplier shall either:-
- 6.1.1 Perform the Services in accordance with any Programme of Work, required under the Specification/Invitation to Tender; or if none had been so stipulated for
 - 6.1.2 begin performing the Services on the date stated in the Agreement and shall complete the work by the date stated in the Agreement or continue to perform the work for the period stated in the Agreement (whichever is applicable).
- 6.2 For the purposes of this Clause, time is of the essence.

7 Programme of Work

- 7.1 If the Programme of Work has not been previously agreed the Supplier shall within 7 days of entering into the order submit to the Council's Representative for approval a detailed programme showing the number of days or weeks required for each separate stage to ensure that the Implementation Date is achieved.
- 7.2 On receipt of the detailed programme the Council's Representative shall:-
- 7.2.1 signify his/her approval in which event it shall form the Programme of Work or
 - 7.2.2 reject the programme stating his/her reasons for so doing and require that the programme be amended and resubmitted by the Supplier.
- 7.3 Approval, rejection and resubmission of the detailed programme (or amended programme) shall be effected without undue delay and in the event of rejection of the programme this shall be no later than 7 days from the date of receipt of the programme by the Council's Representative and the Supplier shall within a period of 14 days from the date of such rejection resubmit a further amended programme to the Council's Representative.

8 Policies etc.

- 8.1 The Council shall inform the Supplier of any, rules, codes of practice, procedures and standards with which the Supplier is required to comply. The Council shall throughout the Agreement Period ensure that any changes to any policies, rules, codes of practice, procedures and standards are brought promptly to the attention of the Supplier.

9 Legislative Change

- 9.1 The Supplier shall bear the cost of complying with all Legislation and any amendments thereto except that where any such amendment necessitates a change to the performance of this Agreement and provided that such amendment could not have reasonably been foreseen by the Supplier at the date hereof the parties shall enter good faith negotiations to make such adjustments to the Price as may be necessary to compensate the Supplier for such additional costs as are both reasonably and necessarily incurred by the Supplier in accommodating such amendments.

10 Disruption

- 10.1 The Supplier shall and shall procure that any of its staff or sub-contractors shall take reasonable care to ensure that in the execution of the Agreement it does not disrupt the operations of the Council, their employees or any other contractor employed by the Council.
- 10.2 The Supplier shall co-ordinate his activities in the provision of the Services with those of personnel and other contractors engaged by the Council.

11 Progress Reports and inspection

- 11.1 Where a progress report, or other information pertaining to the progress of the performance of either party of its obligations under this Agreement, is submitted in connection with this Agreement, the submission, receipt and acceptance of such a report, or other information, shall not prejudice the rights of either party under this Agreement.
- 11.2 The Council may inspect and examine the work being carried out on the Council's premises without notice at any time.
- 11.3 Where any part of the work is being carried out on premises other than the Council's premises, 7 days notice shall be given to the Supplier.
- 11.4 The Supplier shall give all such facilities as the Council may require for such inspection and examination.

12 REVIEW MEETINGS AND MANAGEMENT INFORMATION

- 12.1 The Supplier shall submit management information reports to the Council on a monthly basis unless otherwise agreed, covering the period since the date of the previous management information report.
- 12.2 The content of such reports shall be agreed between the Council and the Supplier following the award of Agreement.

- 12.3 The Supplier and the Council shall meet on a monthly basis, unless otherwise agreed, to review and discuss any issues relating to the performance of the Agreement.
- 12.4 Where a progress report, or other information pertaining to the progress of the Supplier of its obligations under this Agreement, is submitted in connection with this Agreement, the submission, receipt and acceptance of such a report, or other information, shall not prejudice the rights of either party under this Agreement.

13 Materials, plant, equipment etc

- 13.1 The Supplier shall make no delivery of nor commence any work on the Council's Premises without obtaining the Council's prior consent.
- 13.2 All equipment brought onto the Council's Premises shall be at the Supplier's own risk. The Supplier shall provide for the haulage or carriage thereof to such premises and the removal of equipment when no longer required.
- 13.3 The Council shall have the power at any time during the progress of the Services to order in writing:
- 13.3.1 the removal from the Council's Premises of any materials, plant, equipment etc which in the opinion of the Council are either hazardous, noxious or not in accordance with the Agreement, and/or;
- 13.3.2 the substitution of proper and suitable materials, plant, equipment.
- 13.4 On completion of the Services the Supplier shall remove the Supplier's plant, equipment and unused materials and shall clear away from the Council's Premises all rubbish arising out of the Services and leave the Council's Premises in a neat and tidy condition.

14 INTELLECTUAL PROPERTY

- 14.1 All patents, copyright and other intellectual property rights in all documents (including but not limited to drawings, working notes and books), transparencies, prints, photographs, negatives, tapes, discs, software information or other items created or supplied by the Council to the Supplier in connection to this Agreement shall remain in the Council. All originals and copies thereof shall be delivered to the Council on completion of the Services or earlier upon receipt of the Council's written notice to the Supplier and the Supplier shall be required to certify that none are retained in its possession.
- 14.2 All patents, copyright and other intellectual property rights relating to the Services shall vest in the Council and the Supplier waives in favour of the Council all moral rights therein.

- 14.3 The ownership of and sole right to the copyright in any document prepared by the Supplier in connection with this contract shall be vested in the Council from the outset.
- 14.4 The Supplier shall not have the right to use any data, reports, drawings, specifications, designs, inventions, plans, programs or other material referred to in clause 14.1 for its own commercial purposes except upon obtaining the prior written consent of the Council and then only upon such terms as may be imposed in connection therewith
- 14.5 It shall be a condition of the Agreement that, except to the extent that the Services/Services incorporate designs furnished by the Council, the Services/ Services will not infringe any patent, trade mark, registered design, copyright or other right in the nature of intellectual property of any third party and the Supplier shall indemnify the Council and the Crown against all actions, suits, claims, demands, losses, charges, costs and expenses which the Council or the Crown may suffer or incur as a result of or in connection with any breach of this Condition.
- 14.6 All intellectual property rights (including ownership and copyright) in any specifications, instructions, plans, drawings, patents, patterns, models, designs or other material:
- 14.6.1 furnished to or made available to the Supplier by the Council shall remain the property of the Council.
- 14.6.2 prepared by or for the Supplier for use, or intended use, in relation to the performance of this Agreement shall belong to the Council, and the Supplier shall not and shall procure that the Supplier's employees, servants, agents, suppliers and sub-contractors shall not (except when necessary for the implementation of the Agreement) without prior written consent of the Council, use or disclose any such intellectual property and intellectual property rights, or any other information (whether or not relevant to this Agreement) which the Supplier may obtain in performing the Agreement except information which is in the public domain.
- 14.7 The provisions of this Condition shall apply during the continuance of this Agreement and indefinitely after its expiry or termination..

15 Purchasing on behalf of the Council

- 15.1 In the event that the Supplier procures Goods or Services including equipment from third parties on behalf of the Council then they shall at all times do so in accordance with the provisions of the Public Regulations 2006 S.I. 5 and the as though the Supplier were a Contracting Authority within the meaning of the said Regulations.

16 Fraud

- 16.1 The Supplier must take all reasonable steps including all preliminary enquiries and investigations to prevent the risk of fraud to the Council.
- 16.2 Where such preliminary actions suggest the possibility of fraud or other irregularity affecting the resources of the Council the Supplier shall immediately inform the Council

17 Supplier's Personnel

- 17.1 The Council reserves the right under this Agreement to refuse to admit to any premises occupied by or on behalf of the Council any person employed or engaged by the Supplier, or by a sub-contractor, whose admission would be, in the opinion of the Council, undesirable.
- 17.2 If and when directed by the Council, the Supplier shall provide a list of the names and addresses of all persons who it is expected may require admission in connection with the performance of this Agreement to any premises occupied by or on behalf of the Council, specifying the capacities in which they are concerned with this Agreement and giving such other particulars as the Council may reasonably require.
- 17.3 The Supplier its sub-contractors and their staff or other representatives, 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 any Council establishment and when in the vicinity thereof.
- 17.4 The decision of the Council as to whether any person is to be refused admission to any premises occupied by or on behalf of the Council and as to whether the Supplier has failed to comply with Clause 17.2 shall be final and conclusive.
- 17.5 If the Supplier shall fail to comply with Clause 17.2 or fails to do so within a reasonable time of written notice so to do then the Council may terminate this Agreement in accordance with Clause 41 provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.
- 17.6 The Supplier acknowledges that each member of his staff engaged in the performance of the Services shall have full authority to act on behalf of the Supplier for all purposes in connection with this agreement provided always that if the Council shall at any time be dissatisfied for any reason with the performance of any person engaged in the carrying out of the Services, the Supplier shall, if the Council so requires, cease to engage such person in the execution of the Services and provide a competent substitute at no additional cost to the Council.

18 Industrial action

- 18.1 The Supplier shall immediately inform the Council of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect their ability at any time to deliver the Services in accordance with the requirements of the Agreement.
- 18.2 In the event of industrial action by the Supplier's staff, suppliers or sub-contractors, the Supplier shall seek the Council's written approval to their proposals to deliver the Services.
- 18.3 If the Supplier's proposals referred to in Clause 18.2 are considered insufficient or unacceptable by the Council, then the Order or the Agreement may be terminated.

19 National Minimum Wage

- 19.1 The Supplier shall ensure that, where appropriate, staff employed by it are paid at least the national minimum wage in accordance with the National Minimum Wage Act 1998 or any other Legislation making similar provision.

20 Access to Premises

- 20.1 Unless otherwise agreed use of any land or premises (including temporary buildings) made available to the Supplier by the Council in connection with this Agreement shall be made available to the Supplier free of charge (but without prejudice to the right of the Council to require reimbursement for any out goings arising from that occupation or expenditure incurred, including in respect of any fuel or telecommunications charges attributable to the Supplier) and shall be used by the Supplier solely for the purpose of performing this Agreement. The Supplier shall have the use of such land or premises as licensee and shall vacate the same upon the termination or expiry of this Agreement or at such earlier date as the Council may determine. Access to the Council's Premises shall not be exclusive to the Supplier but only such as shall enable the performance of the Services concurrently with the execution of work by others.
- 20.2 The parties agree that there is no intention on the part of the Council to create a tenancy of whatsoever nature in favour of the Supplier or its employees, servants, agents, suppliers or sub-contractors and that no such tenancy has or shall come into being and the Council retains the right at any time to use any premises owned or occupied by the Council.

- 20.3 The Supplier and Supplier's employees, servants, agents, suppliers or sub-contractors shall observe and comply with rules and regulations as may be in force at any time for the use of such premises determined by the Council, and pay for the cost of making good any damage caused by the Supplier, 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.
- 20.4 The Council shall be responsible for maintaining the security of such land or premises in accordance with its standard security requirements.
- 20.5 The Supplier shall comply with all reasonable security requirements of the Council while on the premises, and shall procure that all of its employees, agents and Sub-Suppliers shall likewise comply with such requirements. Where relevant the Council shall provide the Supplier upon request copies of its written security procedures and shall afford the Supplier upon request with an opportunity to inspect its physical security arrangements.
- 20.6 The Supplier shall at its own cost, provide its staff with a form of identification that is acceptable to the Council and which staff shall display on their clothing at all times when they are on the Council's premises.
- 20.7 The Supplier shall ensure that all requests and instructions of the Council whilst on Council owned premises are adhered to.
- 20.8 The Supplier shall ensure that all its staff have been instructed about fire risks and that there is a requirement for them not to smoke on the premises except where it is expressly permitted to do so.

21 Health and Safety

- 21.1 The Supplier shall
- 21.1.1 Comply with all relevant parts of the Health and Safety Regime;
- 21.1.2 in relation to all persons likely to be affected the Services take all such steps as may be reasonably practicable to ensure their health and safety; and
- 21.1.3 notify the Council of any health and safety hazards which may arise in connection with the performance of this Agreement.
- 21.1.4 not treat, keep or dispose of any waste produced and/or carried by the Supplier as a result of executing this Agreement in a manner likely to cause harm to the health and safety of any person or to the environment and shall comply with every statutory duty which is relevant;

- 21.1.5 notify the Council of any health and safety hazards of which it is aware (having made all reasonable enquiries) and which may arise in connection with the performance of this Agreement.
- 21.1.6 during the execution of the Agreement, take such steps as are reasonably practicable to avoid (or, where avoidance is not possible, to minimise) harm to the environment.
- 21.1.7 ensure that its staff, whilst on the Council's premises comply with all relevant provisions of the Health and Safety at Work Act 1974 and other relevant legislation, including regulations, codes of practice issued there under and with the Council's own policies and procedures.
- 21.1.8 ensure that in performing the Services that its employees, any appointed sub-contractors and any other persons acting on its behalf adopt safe methods of work in order to protect the health and safety of:
 - (a) the employees of the Supplier; and
 - (b) the employees of the Council; and
 - (c) the employees of any appointed sub-contractor or other person working on behalf of the Supplier; and
 - (d) any other persons including but without limitation, members of the public.
- 21.1.9 produce to the Council if requested its detailed safe working system for carrying out duties under this Agreement.
- 21.2 The Council shall notify the Supplier of any health and safety hazards which may exist or arise at any Council Premises and which may affect the Supplier. The Supplier shall draw these hazards to the attention of its employees and Sub-contractors or any persons engaged by the Supplier in the performance of this Agreement at the Premises.
- 21.2 The Supplier shall inform all persons engaged in the performance of this Agreement at the Premises of all such hazards and shall instruct such persons in connection with any necessary associated safety measures.
- 21.3 Nothing in this Clause 21 shall relieve the obligations of the Supplier to comply with its statutory duties.

22 Goods and Materials of the Council

- 22.1 All Goods and Materials issued by the Council in connection with the Agreement shall remain the property of the Council and shall be used in the execution of the Agreement and for no other purpose whatsoever without the prior approval in writing of the Council.

- 22.2 Such Goods and Materials shall be deemed to be in good condition when received by or on behalf of the Supplier unless it notifies the Council to the contrary within fourteen (14) days or such other time as specified in the Agreement.
- 22.3 The Supplier shall keep all such Goods and Materials used in the performance of the Services in good, clean and serviceable repair for the proper performance of the Services and the Council shall be under no liability in respect thereof.
- 22.4 The Supplier shall return such Goods and Materials on demand and shall be responsible for all loss thereof or damage and the costs of repair or replacement thereto howsoever caused prior to their re-delivery to the Council.
- 22.5 The Supplier shall, following completion of the Services or in response to an earlier request by the Council, return the Goods, Materials work or records held, including any back up media, in good condition, fair wear and tear excepted.

23 Offers of Employment

- 23.1 For the duration of the Agreement and for a period of 12 months thereafter the Supplier shall not employ or offer employment to any of the Council's staff who have been associated with the provision of Services under this Agreement without the Council's prior agreement in writing.
- 23.2 If the Supplier commits any breach of clause 23.1 and, as a result of that breach any employee leaves the employment of the Council, the Supplier shall on demand pay to the Council by way of liquidated damages, a sum equal to one year's basic salary that was payable by the Council to that employee (such sum to be calculated as at the date the employee left the employment of the Council).

24 TUPE

- 24.1 The Parties recognise that the Transfer of Undertakings (Protection of Employment) Regulations 1981(TUPE) may apply to a change of contractor situation and in respect of the award of the Agreement, and that for the purposes of those Regulations, the undertaking concerned (or any relevant part of the undertaking) transfer from the current contractor to the incoming/replacement Supplier on the commencement of the Agreement.

- 24.2 During the period of three months preceding the expiry of the Agreement or after the Council has given notice to terminate the Agreement or the Supplier stops trading, and within 20 working days of being so requested by the Council, the Supplier shall fully and accurately disclose to the Council for the purposes of TUPE the following:
- 24.2.1 All information relating to its employees engaged in providing Services under the Agreement in particular, but not necessarily restricted to, the following:
- (a) the total number of personnel whose employment with the Supplier is liable to be terminated at the expiry of this Agreement but for any operation of law; and
 - (b) for each person, age and gender, details of their salary, and pay settlements covering that person which relate to future dates but which have already been agreed and their redundancy entitlements (the names of individual members of staff do not have to be given); and
 - (c) information about the other terms and conditions on which the affected staff are employed, or about where that information can be found; and
 - (d) details of pensions entitlements, if any.
 - (e) All details relating to the Supplier's method of service delivery
- 24.3 The Supplier shall permit the Council to use the information for the purposes of TUPE and of re-tendering. The Supplier will co-operate with the re-tendering of the contract by allowing the transferee to communicate with and meet the affected employees and/or their representatives.
- 24.4 The Supplier agrees to indemnify the Council fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of information under Clause 24.2.
- 24.5 In the event that the information provided by the Supplier in accordance with Clause 24.2 above becomes inaccurate between the date of submission and the end of the Agreement, whether due to changes to the employment and personnel details of the affected employees made subsequent to the original provision of such information or by reason of the Supplier becoming aware that the information originally given was inaccurate, the Supplier shall notify the Council of the inaccuracies and provide the amended information.

- 24.6 The Supplier undertakes not to change the personnel or service delivery structures, nor dismiss staff other than for bona fide or economic or operational reasons related to delivery of service under the contract, including but not limited to changes to preclude or promote the application of the Transfer of Undertakings (Protection of Employment) Regulations 2006 upon termination or expiry of the Agreement. By way of example, the Supplier shall not unreasonably allocate staff into particular contracts without organisational or economic justification not towards the expiry date of the contract with a view to discouraging other potential bidders.
- 24.7 The provisions of this Condition shall apply during the continuance of this Agreement and indefinitely after its termination

25 Conflicts of Interest

- 25.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any employee, servant, agent, supplier or sub-contractor is placed in a position where there is or may be an actual conflict, or a potential conflict between the pecuniary or personal interests of such persons and the duties owed to the Council under the provisions of the Agreement. The Supplier will disclose to the Council full particulars of any such conflict of interest which may arise.
- 25.2 The provisions of this special Condition shall apply during the continuance of this Agreement and indefinitely after termination.

26 Discrimination

- 26.1 The Supplier shall not unlawfully discriminate including within the meaning and scope of the Race Relations Act 1976 or any statutory modification or re-enactment thereof and any law, enactment, order, regulation or other similar instrument relating to discrimination (whether in race, gender, religion or otherwise) in employment.
- 26.2 The Supplier shall take all reasonable steps to ensure the observance of the provisions of Clause 26.1 by all servants, employees, agents and consultants of the Supplier and all sub-contractors.
- 26.3 The Supplier shall undertake the provision of any information reasonably requested by the Council relating to the performance of the contract to ensure that the Council meets its statutory obligations under Section 71 of the Race Relations Act 1976 (as amended).
- 26.4 The Supplier shall not contravene the provisions of the Disability Discrimination Act 1995.

27 Security of Confidential Information

- 27.1 In order to ensure that no unauthorised person gains access to any confidential information or any data obtained in the performance of the Agreement, the Supplier undertakes to maintain the security systems approved by the Council.
- 27.2 The Supplier will immediately notify the Council of any breach of security in relation to confidential information and all data obtained in the performance of the Agreement and will keep a record of such breaches. The Supplier will use its best endeavours to recover such confidential information or data however it may be recorded. This obligation is in addition to the Supplier's obligations under Clauses 28 and 30.
- 27.3 The Supplier will at its own expense co-operate with the Council in any investigation that the Council considers necessary to undertake as a result of any breach of security in relation to confidential information or data.
- 27.4 The Council may require the Supplier to alter any security systems at any time during the Agreement Period.

28 Protection of Personal Data

- 28.1 Each party shall comply with its respective obligations under the provisions of the Data Protection Act 1998.
- 28.2 Where the Supplier or any of its Sub-contractors, as part of the Services under this Agreement, processes personal data as a data processor on behalf of the Council, the Supplier shall, and shall procure its sub-contractors:
 - 28.2.1 act only on instructions from the Council as data controller; and
 - 28.2.2 comply with the Council's instructions in relation to the processing of personal data as such instructions are given and varied from time to time by the Council.

29 Human Rights

- 29.1 The Supplier shall not do or permit or allow anything to be done which is incompatible with the rights contained within the European Convention on Human Rights.
- 29.2 The Supplier shall not do or permit or allow anything to be done which may result in the Council acting incompatibly with the rights contained within the European Convention on Human Rights and the Human Rights Act 1998.

30 Confidentiality

- 30.1 The Supplier acknowledges that any Confidential Information obtained from or relating to the Council, its servants or agents is the property of the Council.
- 30.2 Both parties hereby warrant that:
- 30.1.1 any person employed or engaged by the parties (in connection with this Agreement in the course of such employment or engagement) shall only use Confidential Information for the purposes of this Agreement;
 - 30.1.2 any person employed or engaged by either the Supplier or the Council (in connection with this Agreement in the course of such employment or engagement) shall not disclose any Confidential Information to any third party without the prior written consent of the other party;
 - 30.1.3 both parties shall take all necessary precautions to ensure that all Confidential Information is treated as confidential and not disclosed (save as aforesaid) or used other than for the purposes of this Agreement by their employees, servants, agents or Sub-contractors;
 - 30.1.4 without prejudice to the generality of the foregoing neither party nor any person engaged by them whether as a servant or a consultant or otherwise shall use the Confidential Information for the solicitation of business from the other or by their servants or consultants or by any third party.
- 30.3 The provisions of Clauses 30.1 and 30.2 shall not apply to any information which:
- 30.3.1 is or becomes public knowledge other than by breach of this Clause 30; or
 - 30.3.2 is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party; or
 - 30.3.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
 - 30.3.4 is independently developed without access to the confidential information
 - 30.3.5 is disclosed for the purpose of:
 - (a) the examination and certification of the Council's or the Contractor's accounts; or
 - (b) any examination pursuant to the Local Government Act 1999 of the economy, efficiency and effectiveness with which the Council has performed its functions.

30.3.6 which is required to be disclosed by any law (including any order of a court of competent jurisdiction) (and including the Freedom of Information Act 2000, Environmental Information Regulations 2004 and any Parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of law.

30.4 Nothing in this Clause 30 shall be deemed or construed to prevent the Council from disclosing any confidential information obtained from the Supplier to any consultant, Supplier or other person engaged by the Council in connection herewith, provided that the Council shall have obtained from the consultant, Supplier or other person a signed confidentiality undertaking on substantially the same terms as are contained in this Clause 30 and the Council shall, on request by the Supplier, notify the Supplier of the identity of such consultant, Supplier or other person as soon as practicable.

30.5 Nothing in this Agreement shall prevent the Supplier or the Council from using data processing techniques, ideas and know-how gained during the performance of this Agreement in the furtherance of its normal business, to the extent that this does not relate to a disclosure of confidential information or an infringement by the Council or the Supplier of any Intellectual Property Right.

31 FREEDOM OF INFORMATION ACT 2000 AND ENVIRONMENTAL REGULATIONS 2004

31.1 The parties will provide any information within the statutory timescales as a result of a request under the Freedom of Information Act 2000 and Environmental Regulations 2004

32 OTHER APPLICABLE LEGISLATION

32.1 The Sex Discrimination Act 1975;

32.2 The Race Relations Act 1976;

32.3 The Disability Discrimination Act 1995 and the Codes of Practice issued under those Acts or any re-enactment thereof;

33 Environmental Requirements

33.1 The Supplier shall:-

33.1.1 have a sustainable approach to waste management and not treat, keep or dispose of any waste produced and/or carried by the Supplier as a result of executing this Agreement in a manner likely to cause harm to the health and safety of any person or to the environment and shall comply with every statutory duty which is relevant;

- 33.1.2 the Supplier shall perform the Agreement in such a way as to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- 33.1.3 during the execution of the Agreement, take such steps as are reasonably practicable to avoid (or, where avoidance is not possible, to minimise) harm to the environment.
- 33.2 Nothing in this Clause 32 shall relieve the obligations of the Supplier to comply with its statutory duties and good industry practice.

34 Charges

- 34.1 The charges payable by the Council in respect of Services the subject of an Order shall be determined by reference to the Price for Services comprised in the Order and rendered to the Council in accordance with the terms of this Agreement.
- 34.2 The charges are exclusive of Value Added Tax. The Council shall pay the Value Added Tax on the charges at the rate and in the manner prescribed by law, from time to time.
- 34.3 All invoices submitted by the Supplier to the Council shall be valid VAT invoices and shall contain the Order Number of the Order or Orders to which the invoice relates shall be denominated in sterling.
- 34.4 Payment shall be made within thirty (30) days of receipt by the Council (at its nominated address for invoices) or acceptance of the Services whichever is the later, of a valid invoice, from the Supplier.
- 34.5 The price of the Services shall include all royalties, licence fees or similar expenses in respect of making, use or exercise by the Supplier of any invention or design for the purposes of performing the Agreement.

35 Set off

- 35.1 The Council may retain or set off any amount owed to it by the Supplier whether under this Agreement or otherwise which has fallen due and payable against any amount due to the Supplier under this Agreement.

36 Compliance with VAT ETC. Requirements

- 36.1 The Supplier shall at all times comply with the Value Added Tax Act 1994 and all other statutes relating to direct or indirect taxes.
- 36.2 Failure to comply will constitute a material breach of this Agreement and the Council may exercise the rights and provisions conferred by Clause 41.

- 36.3 The Supplier shall furnish to the Council the name, and if applicable, the VAT registration number of any agent, supplier or sub-contractor of the Supplier prior to the commencement of any work under this Agreement by that agent, supplier or sub-contractor.
- 36.4 Upon a request by the Council, the Supplier shall not employ or will cease to employ any agent, supplier or sub-contractor which the Council believes is not complying with the Value Added Tax Act 1994 and all other statutes relating to direct or indirect taxes.

37 Warranties and Representations

- 37.1 The Supplier warrants and represents that:
- 37.1.1 the Supplier has full capacity and authority and all necessary consents (including but not limited to, where its procedures so require, the consent of its Parent Company) to enter into and to perform this Agreement and that this Agreement is executed by a duly authorised representative of the Supplier;
 - 37.1.2 the Services shall be supplied and rendered by appropriately experienced, qualified and trained personnel with all due skill, care and diligence;
 - 37.1.3 the Supplier shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Clause) in accordance with its own established internal procedures.

38 Limitation of Liability

- 38.1 Neither party excludes or limits liability to the other party for death or personal injury or fraud or fraudulent misrepresentation or any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.
- 38.2 Subject always to Clause 38.1, and notwithstanding any other provision contained herein, the parties have agreed in good faith that the total liability of the Supplier (whether under contract, tort or statutory provision) arising out of or in connection with this Agreement shall in no circumstances exceed five million (£5,000,000) pounds in respect of any one incident or series of related incidents and ten million (£10,000,000) pounds in the aggregate for any or all incidents (whether related or not) arising during the period of the Agreement.
- 38.3 Subject always to Clause 38.2, in no event shall either party be liable to the other for:
- 38.3.1 indirect or consequential loss or damage; and/or
 - 38.3.2 loss of profits, business, revenue, goodwill or anticipated savings.

- 38.4 The provisions of Clause 38.2 shall not be taken as limiting the right of either party to claim from the other party for:
- 38.4.1 additional operational and administrative costs and expenses; and/or
 - 38.4.1 any costs or expenses rendered worthless,
 - 38.4.3 anything resulting directly from the default of the other party.
- 38.5 The parties expressly agree that neither party shall be entitled to an order for specific performance to enforce any provision hereunder.
- 38.6 The parties expressly agree that should any limitation or provision contained in this Clause be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if any party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.

39 INSURANCE

- 39.1 The Supplier shall hold and maintain
- 39.1.1 Professional Indemnity
 - 39.1.2 Public Liability; and
 - 39.1.3 Employer's liability
- insurance cover and shall ensure that all professional consultants involved in the provision of the Services hold and maintain appropriate cover.
- 39.2 Such insurance to be held by the Supplier or by any agent, sub-contractor or sub-Supplier involved in the provision of Services may be limited in respect of any one claim (but shall not be limited in any other respect). PROVIDED THAT any such limit shall in any event be [£5,000,000 (five million pounds)].
- 39.3 Such insurance shall be maintained for a minimum of six years following expiration or earlier termination of this Agreement.

40 Force Majeure

- 40.1 For the purposes of this Agreement the expression "Force Majeure" shall mean any cause affecting the performance by a party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof) governmental regulations, fire, flood, or any disaster affecting a third party for which a substitute third party is not reasonably available. Any act, event, omission, happening or non-happening will only be considered Force Majeure if it is not attributable

to the wilful act, neglect or failure to take reasonable precautions of the affected party, its agents or employees.

- 40.2 For the avoidance of doubt, both parties agree that any acts, events, omissions, happenings or non-happenings resulting from the adoption of the Euro by the United Kingdom government shall not be considered to constitute Force Majeure under this Agreement.
- 40.3 Neither party shall in any circumstances be liable to the other for any loss of any kind whatsoever including but not limited to any damages or abatement of Charges whether directly or indirectly caused to or incurred by the other party by reason of any failure or delay in the performance of its obligations hereunder which is due to Force Majeure. Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform, or resume performance of, such obligations hereunder for the duration of such Force Majeure event.
- 40.4 If either of the parties shall become aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.
- 40.5 It is expressly agreed that any failure by the Supplier to perform or any delay by the Supplier in performing its obligations under this Agreement which results from any failure or delay in the performance of its obligations by any person, firm or company with which the Supplier shall have entered into any contract, supply arrangement or Sub-Agreement or otherwise shall be regarded as a failure or delay due to Force Majeure only in the event that such person firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or Sub-Agreement or otherwise as a result of circumstances of Force Majeure.
- 40.6 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay shall be any event qualifying for Force Majeure hereunder.

41 Termination

- 41.1 The Council may at any time by notice in writing terminate this Agreement as from the date of service of such notice if:
- 41.1.1 any of the circumstances detailed in Clause 17 or Clause 43 arise;
or

- 41.1.2 there is a change of control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, in the Supplier or its Parent Company provided that the Council shall only be permitted to exercise its rights pursuant to this Clause 41.1.2 for six (6) months after each such change of control and shall not be permitted to exercise such rights where the Council has agreed in advance in writing to the particular change of control and such change of control takes place as proposed; or
- 41.1.3 the Supplier, being a company, passes a resolution, or the Court makes an order that the Supplier or its Parent Company be wound up otherwise than for the purpose of a bona fide reconstruction or amalgamation, or a receiver, manager or administrator on behalf of a creditor is appointed in respect of the business or any part thereof of the Supplier or the Parent Company, or circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court otherwise than for the purpose of a bona fide reconstruction or amalgamation to make a winding-up order, or the Supplier or its Parent Company is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 (except where the claim is made under Section 123, 1(a) and is for an amount of not less than ten thousand pounds (£10,000)) or any similar event occurs under the law of any other jurisdiction; or
- 41.1.4 the Supplier, being an individual, or where the Supplier is a firm, any partner or partners in that firm who together are able to exercise direct or indirect control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, shall at any time become bankrupt or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or appears unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of Section 268 of the Insolvency Act 1986 or he shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985 as amended by the Bankruptcy (Scotland) Act 1993 or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors, or any similar event occurs under the law of any other jurisdiction.
- 41.1.5 the Supplier committing a breach of its obligations under this Agreement (other than as a consequence of a breach by the Council of its obligations under this Agreement) which breach results in the criminal investigation, prosecution and conviction of the Supplier or any Sub-contractor under the Health and Safety Regime (a **“Health and Safety Conviction”**)
- 41.1.6 The Supplier commits a breach of any of clauses 36, 23, 30, 29, 45
- 41.2 Without prejudice to Clause 41.1, the Council may at any time by notice in writing terminate this Agreement forthwith, if the Supplier:-

41.2.1 Commits a material breach of this Agreement and:

- (a) the material breach is capable of remedy and the Supplier shall have failed to remedy the material default within thirty (30) days of written notice to the Supplier specifying the material default and requiring its remedy; or
- (b) the material breach is not capable of remedy; or

41.2.2 the Supplier commits a series of breaches of this Agreement which when taken together amount to a material breach of this Agreement.

41.3 The Council may at any time by notice in writing terminate an Order as from the date of service of such notice if any of the circumstances detailed in Clause 43 or Clause 17 or Clause 6 arise.

42 Consequences of Termination

42.1 The termination or expiry of this Agreement or an Order shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party.

42.2 In the event of any termination of this Agreement pursuant to Clause 41.1 or Clause 41.2 any Orders which at the date of termination have yet to be discharged shall be terminated and the Council shall, in respect of any non-discharged Orders, be entitled without prejudice to the Council's other rights and remedies, to obtain a refund of any charges paid by the Council in respect of any Services which have not been performed by the Service Provider in accordance with the terms of the non-discharged Order.

42.3 In the event of the termination of this Agreement by the Council, the provisions of this Clause and Clauses 30, 35, 38, 42, 43, 61 and 63 shall survive the termination of this Agreement

42.4 In the event of the termination of this Agreement by the Supplier the provisions of this Clause and Clauses 30, 35, 38, 42, 43, 61 and 63 shall survive the termination of this Agreement

42.5 In the event of any termination of an Order pursuant to Clause 41 Council shall be entitled, without prejudice to the Council's other rights and remedies, to obtain a refund of any Charges paid by the Council in respect of any Services which have not been provided by the Supplier in accordance with the terms of the Order.

42.6 Where the Council re-let the Agreement or any part thereof pursuant to clause 41 the Supplier shall make good to the Council all loss damages and expenses they may incur or be liable to in consequence of such re-letting as aforesaid for the period for which this Agreement shall have been accepted by the Council

43 Corrupt Gifts and Payments of Commission

43.1 The Supplier shall neither:

- 43.1.1 offer or give or agree to give any person employed by the Council or acting on its behalf any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or performance of this Agreement or any other agreement with the Council or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement; nor
- 43.1.2 enter into this Agreement if in connection with it commission has been paid or agreed to be paid to any person employed by the Council or acting on its behalf by the Supplier or on the Supplier's behalf or to the Supplier's knowledge, unless before this Agreement is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Council.

43.2 In the event of any breach of this Clause 43 by the Supplier or by anyone employed by the Supplier or acting on the Supplier's behalf (whether with or without the knowledge of the Supplier) or the commission of any offence by the Supplier or by anyone employed by the Supplier or acting on behalf of the Supplier under the Prevention of Corruption Acts, 1889 to 1916 or under Section 117(2) and (3) of the Local Government Act 1972 in relation to this or any other contract with the Council, the Council may summarily terminate this Agreement or the relevant Order by notice in writing to the Supplier in accordance with Clause 40.1.1, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Council and provided always that the Council may recover from the Council the amount or value of any such gift, consideration or commission together with all costs to the Council of terminating and reletting. The Supplier shall be entitled to report any request for an inducement under the Council's Whistleblowing Policy.

43.3 The decision of the Council shall be final and conclusive in any dispute, difference or question arising in respect of:

- 43.3.1 the interpretation of this Clause (except so far as the same may relate to the amount recoverable from the Supplier under Clause 43.2 in respect of any loss resulting from such termination of this Agreement); or
- 43.3.2 the right of the Council under this Clause 43 to terminate this Agreement; or
- 43.3.3 the amount or value of any such gift, consideration or commission.

44 Publicity

- 44.1 Except with the written consent of the other party, such consent not to be unreasonably withheld or delayed, neither party shall make any press announcements or publicise this Agreement in any way.
- 44.2 Both parties shall take all reasonable steps to ensure the observance of the provisions of Clause 44.1 by all their servants, employees, agents and consultants and the Supplier shall take all reasonable steps to ensure the observance of the provisions of Clause 44.1 by its sub-contractors.
- 44.3 Notwithstanding the provisions of Clause 44.1, the Council shall be entitled to publicise this Agreement in accordance with any legal obligation upon the Council, including any examination of this Agreement by the Audit Commission and the Council's external Auditors and the provisions of the Freedom of Information Act.
- 44.4 The parties acknowledge that the Audit Commission has the right to publish details of this Agreement (including Confidential Information) in its relevant reports to Parliament to the extent permitted by Law.

45 Transfer and Sub-contracting

- 45.1 This Agreement is personal to the Supplier.
- 45.2 The Supplier shall not assign, novate, sub-contract or otherwise dispose of this Agreement or any part thereof without the previous consent in writing of the Council such consent not to be unreasonably withheld.
- 45.3 Notwithstanding any sub-contracting permitted hereunder, the Supplier shall remain primarily responsible for the acts and omissions of its sub-contractors as though they were its own.
- 45.4 Subject to Clause 45.5, the Council shall be entitled to:
 - 45.4.1 assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof to any contracting authority (as defined in Regulation 3.1 of the Public Contracts Regulations 2006) (a "Contracting Authority"); or
 - 45.4.2 novate this Agreement to any other body (including but not limited to any private sector body) which substantially performs any of the functions that previously had been performed by the Council;

provided that where such assignment, novation or other disposal increases the burden of the Supplier's obligations pursuant to this Agreement, the Supplier shall be entitled to such additional Charges as may be agreed between the parties to compensate for such additional burdens.

- 45.5 Any change in the legal status of the Council such that it ceases to be a Contracting Authority shall not, affect the validity of this Agreement. In such circumstances, this Agreement shall be binding on any successor body to the Council.
- 45.6 If this Agreement is novated to a body which is not a Contracting Authority pursuant to Clause 45.4.2 or if a successor body which is not a Contracting Authority becomes the Council pursuant to Clause 45.4 (in the remainder of this Clause both such bodies are referred to as the "Transferee"):
- 45.6.1 the rights of termination of the Council in Clause 41.1.2, Clause 41.1.3 and 41.2 shall be available, mutatis mutandis, to the Supplier in the event of the bankruptcy, insolvency or default of the Transferee;
- 45.6.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof with the previous consent in writing of the Supplier;
- 45.6.3 the rights acquired by the Transferee relating to the use of the specially written software shall not extend beyond the activities previously performed by the Council and, in particular, the Transferee shall not be entitled to perform any service bureau or facilities management Services utilising the specially written software for any third party.
- 45.6.4 the rights of the Council under Clause 17 shall cease; and
- 45.7 The Council shall be entitled to disclose to any transferee any confidential information of the Supplier, which relates to the performance of this Agreement by the Supplier. In such circumstances the Council shall authorise the Transferee to use such confidential information only for purposes relating to the performance of this Agreement and for no other purposes and, for the avoidance of doubt, the Transferee shall be bound by the confidentiality undertaking contained herein in relation to such confidential information.
- 45.8 In the event that the Supplier, in accordance with the terms of this Agreement, enters into a supply contract or a Sub-Contract in connection with this Agreement, the Supplier shall ensure that a term is included in the supply contract or a Sub-Contract which requires the Supplier to pay all sums due there under to the Sub-contractor within a specified period, not to exceed thirty (30) days, from the date of receipt of a valid invoice as defined by the terms of the supply contract or Sub-Contract (as appropriate).

However no additional charge may be charged if the Council transfer its Leisure Facilities to a Trust. In such circumstances the contract will continue with the Trust on the same terms as if it continued with the Council.

46 Damage

- 46.1 Where the Supplier causes damage to any thing in the performance of this Agreement the Supplier shall make good the said damage forthwith at the Supplier's own risk and expense to the Council's satisfaction.

47 Power of the Council in Default

- 47.1 Where the Council re-let the Agreement or any part thereof pursuant to clause 40 the Supplier shall make good to the Council all loss damages and expenses they may incur or be liable to in consequence of such re-letting as aforesaid for the period for which this Agreement shall have been accepted by the Council

48 Indemnity

- 48.1 The Supplier agrees to indemnify and keep indemnified the Council from and against all costs, claims, demands, liabilities, fines, expenses, damages or losses (including but not limited to any direct or indirect consequential losses and all interest or penalties) arising out of or in connection with the Supplier's breach of Clause 21 or Clause 27 or Clause 28 or Clause 29 of this Agreement. This indemnity does not limit any further compensation rights of the Council.

49 Audit

- 49.1 The Supplier shall keep and maintain until two years after the Agreement has been completed, or as long a period as may be agreed between the parties, full and accurate records of the Agreement, all expenditure reimbursed by the Council, and all payments made by the Council.
- 49.2 The Supplier shall on request afford the Council or the Council's representatives including the Audit Commission and the Council's external Auditors such access to those records as may be required in connection with the Agreement.

50 Scrutiny Assistance

- 50.1 If required by the Council to do so the Supplier shall throughout the period of this Agreement and for a period of six years after expiry of this Agreement give all reasonable assistance to the Council including but not limited to attending at meetings of any body of the Council discharging Overview and Scrutiny functions and/or of the Council's Executive in order to answer questions pertaining to this Agreement should the need arise.

- 50.2 In the event that the Council requires the Suppliers assistance after the expiry of this Agreement as referred to in Clause 50.1 the Council shall pay the reasonable expenses of the Supplier arising as a result of providing such assistance.

51 Best Value

- 51.1 The Supplier shall co-operate with the Council with the introduction and implementation of any requirements imposed on the Council in connection with Best Value and shall comply with the reasonable instructions and requests for information of the Purchasing Officer in respect thereof.

52 Mistakes in Information

- 52.1 Where appropriate the Supplier shall be responsible for the accuracy of drawings, documentation and information supplied to the Council and shall pay the Council any extra costs occasioned by any discrepancies, errors or omissions therein.

53 DESIGNATED REPRESENTATIVES

- 53.1 The Council shall appoint an Authorised Officer who shall have the authority to act on behalf of the Council for all purposes connected with the Agreement.
- 53.2 The Council shall also appoint an Authorised Representative to act should the Authorised Officer not be available.
- 53.3 The Supplier shall nominate a Supplier's Representative at the commencement of this Agreement who shall be empowered to act on behalf of the Supplier for all purposes connected with the Agreement which will include but not be limited to:
- 53.3.1 Managing the provision of the Services;
 - 53.3.2 Attending meetings with the Authorised Officer to review the provision of the Services;
 - 53.3.3 Providing all information and documentation reasonably required by the Council in respect of the Services for the performance of its duties.
- 53.4 The Council reserves the right to reject the appointment of any person as Supplier's Representative who does not in the opinion of the Council have appropriate experience in the management of services similar the Services or who is otherwise unsuitable for such appointment.

54 Communications

- 54.1 Except as otherwise expressly provided no communication from one party to the other shall have any validity under this Agreement unless made in writing by or on behalf of the Council or as the case may be by or on behalf of the Supplier.
- 54.2 The parties agree that e-mail will be considered a satisfactory form of communication for the purposes of Clause 54.1.
- 54.3 Any notice whatsoever which either party hereto is required or authorised by this Agreement to give or make to the other shall be given or made either by letter, delivered by hand or by post, or by facsimile transmission confirmed by post, or e-mail addressed to the other party in the manner referred to in Clause 54.4 below and if that letter is not returned as being undelivered that notice shall be deemed for the purposes of this Agreement to have been given or made upon delivery to the addressee, for a letter delivered by hand, after two days for a letter delivered by post or four hours for a facsimile transmission or e-mail.
- 54.4 For the purposes of Clause 54.3 above the address of each party shall be:

For the Council:

Town Hall, Market Square, Macclesfield, SK10 1EA

For the attention of: **Marianne Hodgkinson**

Telephone:01625-504523 E-mail:m.hodgkinson@macclesfield.gov.uk

For the Supplier:

(insert address)

For the attention of: **(insert name)**

Telephone: Facsimile: E-mail:

- 54.5 Either party may change its address for service by notice as provided in this Clause 54.4.

55 Severability

- 55.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been executed with the invalid illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Agreement, the

Council and the Supplier shall immediately commence good faith negotiations to remedy such invalidity.

56 Waiver

- 56.1 The failure of either party to insist upon strict performance of any provision of this Agreement, or the failure of either party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Agreement.
- 56.2 Waiver of any default shall not constitute a waiver of any subsequent default.
- 56.3 No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing in accordance with the provisions of Clause 54.

57 Remedies Cumulative

- 57.1 Except as otherwise expressly provided by the Agreement, all remedies available to either party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

58 Amendments to this Agreement

- 58.1 This Agreement shall not be varied or amended unless such variation or amendment is agreed in writing by a duly authorised representative of the Council on behalf of the Council and by a duly authorised representative of the Supplier on behalf of the Supplier.
- 58.2 Orders placed under this Agreement shall not be varied or amended unless such variation or amendment is agreed in writing by a duly authorised representative of the Council on behalf of the Council and by a duly authorised representative of the Supplier on behalf of the Supplier.

59 THIRD PARTY RIGHTS

- 59.1 No third party shall have any rights under the Agreements (Rights of Third Parties) Act 1999 in connection with this Agreement.

60 Dispute Resolution Procedure

- 60.1 The parties shall refer all matters in dispute arising out of or in connection with this Agreement for consideration and decision by directors or designated senior managers of each party, who shall use their reasonable endeavours to reach a solution to any such dispute within a period of twenty one (21) days, and failing which, unless the

- 60.2 If the dispute cannot be resolved by the parties representatives nominated under Clause 0 the dispute may be referred to effective dispute resolution (“EDR”) under the supervision of the Centre of Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU (“CEDR”). EDR shall commence by either party serving on the other written notice (“EDR Notice”) setting out in summary the issues in dispute and calling upon that other party to join in an approach to CEDR for the appointment of the Neutral.
- 60.3 EDR shall be conducted using a sole mediator (“Neutral”) in or substantially in accordance with CEDR’s recommended agreement for the time being in use. The Neutral should be a CEDR accredited mediator agreed between the parties, or in default of agreement within 14 days of notice of either party calling upon the other to engage in EDR, appointed by CEDR.
- 60.4 The parties agree to co-operate fully and promptly and in good faith with CEDR or the Neutral in the performance of their obligations under this Clause. Both parties will afford the Neutral all necessary assistance which the Neutral requires to consider the dispute including but not limited to full access to any documentation or correspondence relating to the Services.
- 60.5 Unless agreed otherwise in the course of the procedure each party shall bear its own costs of EDR.
- 60.6 If and to the extent that after engaging in good faith in EDR the parties do not resolve the matters in dispute, all matters remaining in dispute shall be referred to the Courts.
- 60.7 In the event that the process of EDR does not succeed in finding a resolution to the dispute within a period of 56 days, or such other time as the parties may agree, either party may take such action as is available to it under this Agreement or generally at law.
- 60.8 Work and activity to be carried out under this Agreement shall not cease or be delayed by this dispute resolution procedure.

61.1 This Agreement shall be considered as a contract made in England and according to English Law and, subject to Clause 60, shall be subject to the exclusive jurisdiction of the English Courts to which both parties hereby submit.

61.2 This Agreement is binding on the Council and its successors and assignees and the Supplier and the Supplier's successors and permitted assignees.

62 No Agency

- 62.1 The Supplier is not and shall not in any circumstances hold itself out as being the servant or agent of the Council. The Supplier shall not hold itself out as being authorised to enter in any contract on behalf of the Council or in any way bind the Council to the performance, variation, release or discharge of any obligation to a third party. The employees of the Supplier shall not hold themselves out to be and shall not be held out by the Supplier as being servants or agents of the Council.

63 DEFINITIONS AND INTERPRETATION

- 63.1 For the purposes of this Agreement except where expressly stated to the contrary, the following words shall have the following meaning:

Acceptance Criteria	Means any acceptance criteria for the purpose of Clause 4.5 set out in the Contract Documents
Confidential Information	Means all information designated as such by either party in writing together with all other information which relates to the business, affairs, products, developments, trade secrets, know-how, personnel, customers and suppliers of either party or information which may reasonably be regarded as the confidential information of the disclosing party.
Contract Documents	Means this Agreement and any Order placed thereunder
Contract Period	Means the period from this Agreement taking effect until its expiry in accordance with Clause 1.2 or its earlier termination
Council	Means Macclesfield Borough Council
Council's Premises	Means any premises owned by the Council or occupied by the Council as a tenant or licensee
Council Services	Means any Services supplied or to be supplied by the Supplier in accordance with this Agreement
Health and Safety Regime	Means the Food Safety Act 1990 (and associated regulations), the Health & Safety at Work etc. Act 1974 (and associated regulations), the Fire

Precautions Act 1971, the Environmental Protection Act 1998, the Water Industry Act 1991, the Water Resources Act 1991 and any similar or analogous health, safety or environmental legislation in force from time to time;

Holding Company

Shall have the meaning ascribed by Section 736 of the Companies Act 1985 or any statutory re-enactment or amendment thereto.

Invitation to Tender

Means the Invitation to Tender issued by the Council for the supply of the Services

Legislation

Means any Act of Parliament or subordinate legislation within the meaning of section 21(1) Interpretation Act 1978 or any exercise of the Royal Prerogative and any enforceable Community right within the meaning of the European Communities Act 1972 in each case having effect within the United Kingdom.

Order

Means an order for the Services placed by the Council in accordance with clause 3 of this Agreement

Order Number

Means the official number allocated by the Council to an Order

Parent Company

Means any company which is the ultimate Holding Company of the Supplier or any other company of which the ultimate Holding Company of the Supplier is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged in the same or similar business to the Supplier.

Programme of Work

Means the programme to be submitted by the Supplier under clause 7

Special Conditions

Means the special conditions attached to the Invitation to Tender

63.2 As used in this Agreement the masculine includes the feminine and the neuter and the singular includes the plural and vice versa.

- 63.3 A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.
- 63.4 A reference to any document other than as specified in Clause 63.3 shall be construed as a reference to the document as at the date of execution of this Agreement.
- 63.5 Each party shall comply with any express obligation in this Agreement to comply with any document, statute, enactment, order, regulation or other similar instrument that is referred to in this Agreement.
- 63.6 Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.
- 63.7 Except as otherwise expressly provided in this Agreement, all remedies available to the Supplier or to the Council for default under this Agreement are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not exclude the exercise of any other remedy.
- 63.8 Neither party shall be liable for any default of its obligations under this Agreement to the extent that such default is caused by a failure or delay by the other party in performing its obligations under this Agreement provided and to the extent, that the affected party notifies the other party of such failure or delay within thirty (30) days of the affected party becoming aware of its occurrence and of its likely impact.

Special Conditions of Contract

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1. GENERAL REQUIREMENTS

1.1 Insurance

The Contractor shall have and maintain

- Employers Liability Insurance. This should be a minimum of £10 million in respect of any one claim.
- Public liability (third party) insurance. This should be a minimum of £5 million in respect of any one claim.
- Professional liability insurance. This should be a minimum of £5 million in respect of any one claim.

Before a formal tender is accepted by the Authority, all insurance documents must be inspected and approved by the Council's Insurance Officer.

1.2 Guarantee

If the Contractor is a subsidiary company within the meaning of Section 736 of the Companies Act 1985, it shall also provide a guarantee in the form specified by the Authority by its holding company or companies, (as defined by the said Section 736), to secure the due performance by the Contractor of its obligations to the Authority. In certain circumstances, the Council reserves the right to request the provision of a bond, which subject to satisfactory performance would be repaid at the expiry of the contract period.

1.3 Contractors Obligations

Should the Contractor require any further instruction or information for or in connection with the performance of the service, the Contractor shall make a written application for the same to the Authorised Officer in which the requirement is stated in adequate detail.

The Contractor shall at all times during the Contract Period, allow the Authorised Officer and such persons as may from time to time be nominated by the Authorised Officer access to:

- all locations for the purpose of inspecting work being performed pursuant to the provision of the service.
- all locations for the purpose of inspecting records and documents in the possession of the Contractor in connection with the provision of the service.
- materials, stores and spare parts, in order to ensure that such items comply with manufacturers specifications and have been obtained from such suppliers as are specified in the Specification.
- any employee or agent of the Contractor for the purpose of interviewing him/her/them in connection with the carrying out of all or part of the service.

The Contractor shall not under any circumstances, use any premises of the Council to perform, either on its own behalf or on behalf of any person other than the Council, any work other than provided for in the Contract.

In the event of the Contractor being unable to perform the service or any part thereof, the Contractor shall immediately inform the Authorised Officer giving details of the circumstances, reasons and likely duration. Nothing in this Condition shall in any way alter, modify, relieve or in any other way vary the Contractor's obligation to provide the service.

The Contractor shall provide to the Authorised Officer a copy of each year's audited accounts within six months of the relevant accounting reference date and also as required in accordance with the tender process. In the event that the Contractor failing to provide such financial information, then without prejudice to any other rights or remedies available to the Authority, the Authorised Officer, or such persons as may from time to time be nominated by the Authorised Officer, shall be given access forthwith on request to the contractor all and any accounting documents and information in the possession, custody or control of the contractor that the Council reasonably requires.

The Contractor shall ensure at all times the safety of members of the public and staff who may be affected by their operations and/or method of working.

The Contractor will be given a copy of the Council's Health & Safety policy, and will be required to identify any specific requirements of the Contract that will breach such Council's policy.

The Contractor shall at the end of the Contract provide the Council with all information required under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE)

The contractor will be expected to complete the work within timescales agreed with the Authorised Officer.

2. FURTHER CONDITIONS

2.1 Inspection of work

If required to do so, the Contractor shall report to the Authorised Officer before work is commenced, and undertake an inspection of the service with the Authorised Officer on completion of the work.

2.2 Accounts

Accounts for services shall be rendered for payment to the Chief Financial Officer of the Council upon completion of the work and following satisfactory inspection reports. The Council may have to adopt a phased approach to the work due to funding limitations and this will be discussed with the successful contractor. Please note the Council will not accept the imposition of punitive interest charges for any delay in payment of the account and payment will be made within a maximum of 30 days from receipt of invoice.

2.3 References

The Contractor shall supply the name and address of three organisations with whom they are currently undertaking like work, giving details of any other local authority work in order that reference can be made to ascertain standard of work and reliability.

2.4 Acceptance of tender

The Council does not bind itself to accept the lowest or any tender, and reserves the right to accept any tender in part or whole.

2.5 Termination/suspension of Contract

The Council reserves the right to terminate the contract at any time by notice in writing to the contractor, in the event of unsatisfactory provision or failure to complete the work schedule in part or whole, or in the event of force majeure, emergency or operational reason in which case for temporary interruptions work shall be suspended wholly or in part until such time as they may be recommenced and in which case an appropriate pro rata reduction in charges shall be made.

2.6 Reimbursement of additional costs

If the Contractor fails to provide the Services to the entire satisfaction of the Authorised Officer/s, including being unable to provide immediate replacement staff to cover absence or sickness, the Council may itself provide or may employ and pay other persons to provide the Services and all additional costs incurred will be charged to the contractor.

2.7 Documentation / Proof of delivery

Samples of all documentation to be used in the provision of the service must be provided for assessment. Charges must only be levied when it can be proven that the service has been completed and documentary evidence a system.

2.8 Method Statement

The Contractor must provide a Method Statement detailing how their organisation intends to carry out the Service in accordance with the Contract requirement and explaining how it proposes to develop a customer lead trading relationship with the Council within a Best Value Philosophy.

The Contractor must in all respects comply with the Method Statements in the performance of the Service.

The parties agree that the Council will rely on the information provided in the Method Statements. Any material misrepresentation contained within the Method Statements shall be considered to constitute a material breach of contract for the purposes of the Conditions of Contract.

2.9 Prices

The rates and prices stated in the Pricing Schedules shall remain fixed for the period of the contracted work.

2.10 Contract monitoring

Monitoring will take place on an ad hoc basis. If necessary any Macclesfield Borough Council Officer has the authority to halt works should they have concerns regarding health and safety.

Authorised Macclesfield Borough Council Officers must be allowed on site at any time to monitor progress.

If for any reason work is halted on site due to officer intervention, work will not proceed unless an authorised officer gives prior approval.

On completion of the works an independent play inspector will be employed from ROSPA, at the Contractor's cost, to conduct a post-installation inspection. If the play area fails to meet the relevant British or European play standards, the Contractor will carry out all necessary alterations to bring the site in line with the standards at their own cost.

The Council will operate monitoring systems to ensure that the requirements of the Specification and Contract are being met. Monitoring will take a variety of forms including random checks, and regular inspections, and will cover all aspects of the Specification and the Method Statement.

Without prejudice to other rights and remedies available to the Council where the monitoring system shows that the Service has not been performed to the Contract Standard the Authorised Officer will notify the Contractor and shall be entitled to withhold payment for that part of the Service not performed.

Without prejudice to other rights and remedies available to the Council the Contractor will take any necessary action required to correct or pre-empt any problems or potential problems identified by the Authorised Officer as a result of his or her monitoring procedures.

Without prejudice to other rights and remedies available to the Council should the Contractor fail to supply immediate cover in respect of staff absences due to sickness etc., the Council shall be entitled to claim penalty payments if the refurbishment is delayed beyond the period agreed between the Council and contractor.

To assist with the operation and administration of the Contract, weekly review meetings will be held between representatives of the Council and the service provider. The dates and venues for these meetings will be agreed at a later date.

The Contract Manager must attend and other representatives of the Council may also be invited at the Authorised Officer's discretion.

Subjects for discussion at routine Contract performance meetings may include the following:

- general comments and conclusions on the overall standard of provision of the Service.
- results of the Authorised Officer's monitoring observations of quality achieved in providing the Service, reports of unsatisfactory performance and as necessary comments, queries and complaints received from the public service users.
- results of Contractor monitoring reports on Services carried/not carried out and comments queries and complaints received by the Contractor.
- the Contractor's details of services carried out, values and dates, location of service provision and any industry information relevant to the operation of the Contract
- the Contractor's strategy for improving the quality of the Service.
- changes in Contractor's personnel, methods of operation etc.
- any other items included at the Authorised Officer's discretion.
- Comments / Complaints from the Public

Ad hoc meetings may be convened by the Authorised Officer where considered necessary to ensure that the Service is performed in accordance with the Contract Standard.

2.11 Restrictions at Working Areas

All work is to be carried out in an efficient and effective manner with the minimum of disruption to the function of the establishment and its staff.

2.12 Defects

All defects or potential dangers to persons or property must be reported to the Authorised Officer immediately.

2.13 Building and Personnel Security

All Contractor's staff requiring access to any Council establishment must be clearly identifiable by the use of company clothing with company name and/or logo and a badge approved by the Council showing the wearer's name and photograph

2.14 Members of the Public

The Contractor shall be working in areas accessible to the public and shall at all times ensure the safety and well-being of the public. If, in the opinion of the Contractor, and following discussions with the Authorised officer, it is considered that the safety and well-being of the public cannot be assured, sections of the Park could be considered for closure to the public. This would need to be done at the expense of the Contractor for signage and barriers as approved by the Authorised Officer.

Use of equipment and vehicles in the Park shall be in agreement with the Authorised Officer and in a considerate manner acknowledging public access.

2.15 Quality Standards

The Contractor must institute and maintain a properly documented system of quality assurance to ensure that the Contract Standard is at all times properly maintained. The system shall be operated by the Contractor and shall not rely on completion of documentation by the Council's supervisory staff that should nevertheless be consulted by the Contractor. The system must be open to inspection by the Council and such inspection combined with observation shall be capable of indicating to the Council whether or not the Contract Standard is being met.

2.16 British standards or European equivalent

It is the Contractor's responsibility to comply with the appropriate British or equivalent European standard.

2.17 Equal Opportunities

The Council is an equal opportunities employer and the Contractor must comply at all times with the requirements of all relevant statutory obligations.

- the Sex Discrimination Act 1975
- the Race Relations Act 1976
- the Disability Discrimination Act 1995
- the Employment Equality (Age) Regulations 2006
- any Act, rule, statement, code of practice, manual or other instrument or document amending or replacing the Sex Discrimination Act 1975, the Race Relations Act 1976 and the Disability Discrimination Act 1995
- The Equality Act 2006
- any other statute, statutory instrument, rule, regulation, order, direction, bye-law or other instrument having the force of law and any contractual obligations (whether owed to the Company under this or any other Contract or to any other person) for preventing unlawful discrimination on the grounds of gender race or disability.

The Contractor shall achieve best practice in equal opportunities and shall provide information at the review meetings about the diversity of his workforce.

2.18 Human Resources Policy and Training

The Council requires all its Contractors and Suppliers of Services to set out their Human Resources Policies and through these policies tenderers must demonstrate a commitment to the development and fair treatment of their employees.

The Council will provide initial familiarisation training for the Contractor's employees. This will include basic statutory training on security fire and emergency procedures.

It is considered essential that the Contractor's Staff are properly trained in order that the high standards, which are required, are achieved and maintained. Therefore the Contractor will be responsible for initiating an induction-training programme for all its staff including newly employed staff. All staff must receive training covering:

- the standards and specification requirements of the contract.
- operations correct use and care of equipment.
- market orientation and familiarisation.
- Health and Safety at Work Act requirements.

It is expected that all contractors comply with the minimum wage legislation and shortlisted companies will be requested to provide proof.

It is expected that all Contractors personnel will adhere to Council policies whilst on its premises.

2.19 Health and Safety

The Contractor must comply with the requirements of the Health & Safety Commission 'workplace' (Health, Safety & Welfare) Regulations 1992 (Reg 16) and/or any other relevant codes/legislation subsequently enacted.

The Contractor will be required to make COSHH assessments and product data sheets for all materials used in the execution of the service available to the Council.

The Contractor will be responsible for the observance, by himself and his employees, of all safety precautions necessary or desirable for the protection of himself, his employees and any other person including all precautions required to be taken by any Act of Parliament already or hereinafter to be passed or any regulation or by-law of any local or other Authority already in force or to be enacted during this Contract.

The Contractor will be required to comply with any statutory regulations, which govern the storage of explosives petrol or other combustible materials brought on to the premises. Flammable materials stored on-site shall be kept in a fire resisting storage cabinet outside and COSHH regulations must be adhered to. The Authorised Officer of the Council must first approve storage of chemicals/solvents on-site.

The Council shall be entitled to inspect the Contractor's premises at any time during the Contract Period and shall if deemed necessary or appropriate call for independent assessment via recognised professional agencies.

The Contractor must ensure that proper safeguards are in place to prevent accidents when providing the Service.

All vehicles used under this Contract shall be fitted with audible reversing warning systems and in accordance with any prevailing legislation.

Service vehicles, containers and protective clothing of the Contractor's employees shall be kept in a clean condition and all chemicals be adequately protected during transportation.

The Contractor shall prior to the Commencement Date nominate a person to be responsible for health and safety matters and advise the Council in writing of the appointment.

While at any establishment owned or occupied by the Council the Contractor shall at all times have regard to and shall ensure that its employees comply with the Council's general statement of safety policy and with the lawful requirements of the Council's Safety Officer.

The Contractor shall ensure that its employees engaged in the carrying out of the Service are competent to perform their specific tasks and have received on site induction training on health and safety requirements.

The Authorised Officer shall be entitled immediately to suspend the carrying out of the Service or part thereof in the event of non-compliance by the Contractor with its statutory duties in respect of health and safety matters and its obligations under this Contract. The Contractor shall not resume the carrying out of the Service or part thereof until the Authorised Officer is satisfied that the non-compliance has been rectified. In respect of any such period of suspension the Council's rights under this Contract with regard to employing and paying other persons to carry out the Service or part thereof shall apply.

2.20 Environmental requirements

The Council is anxious to promote the use of products which are less damaging to the environment and to use companies who are able to demonstrate they have appropriate environmental policies and procedures.

The Contractor is required without prejudice to the requirements of the Specification to fulfil obligations under this Contract by using materials and processes that cause minimum damage to the environment and take all reasonable steps necessary to minimise any pollution of the environment, and to work with the Council and its agents to meet waste minimisation and recycling targets.

Part A

Section 3

Information and Instructions to Tenderers

1. Information for Tenderers

- 1.1 Tenders are invited for the Provision of the Skate/Bmx Area at South Park Macclesfield.
- 1.2 The contract comprises the regeneration of the Borough Council owned and operated South Park Skate/Bmx Area. The Council in partnership with the Friends of South Park wish to create a new, larger community concrete Skate/Bmx area, befitting of a major town centre park.
- 1.3 The Council will not reimburse any expense incurred by Applicants in preparing their responses to this tender.
- 1.4 The Council does not bind itself to accept the lowest or any tender submitted and reserves the right to divide the contract between two or more suppliers. Tenderers are requested to state that their prices remain constant irrespective of this possible division.
- 1.5 In giving consideration to tenders, the Council will take into account aspects of the assessment criteria stated within the documentation and reserves its right to request any further relevant information from the applicant.
- 1.6 In the event of a satisfactory tender not being received then the Council shall be entitled to re-offer the contract.
- 1.7 The Council will endeavour to notify the outcome of the submission as soon as possible following receipt of offers.
- 1.8 Any queries regarding the invitation to tender must be submitted by email to M. Hodgkinson, Macclesfield Borough Council, M.Hodgkinson@macclesfield.gov.uk. A copy of all questions and responses will be circulated to all potential contractors who have expressed an interest in submitting a tender.
- 1.9 The proposed schedule for the procurement/works is as follows: -

	Date	
Release of advert	17 th December 2008	
Submission of ITT Proposal	35 days from above	
Evaluation	26 th January 2009	
Shortlisted supplier meetings	30 th January 2009	
Contract award	9 th February 2009	Works on site to commence on 6 th April 2009

2. Instructions to Tenderers

2.1 If this tender is not received by the due time it will be left out of consideration.

2.2 Failure to follow any of the following instructions will result in the tender being ignored.

2.3 Potential contractors are informed that a contract performance bond may be required from the successful contractor.

3. Site Visits

3.1 Potential contractors must carry out site visits to enable them to reply to the specification where necessary.

3.2 To make an appointment to conduct site visits potential contractors must contact:

- M. Hodgkinson Macclesfield Borough Council
e-mail m.hodgkinson@macclesfield.gov.uk Tel 01625 504523.

4. Performance Bond

4.1 A Performance Bond may be required for all Contracts over £75,000 in value. The Contractor shall provide sureties for the performance of the Contract either by way of:

- A deposit with the Council or their bankers of a sum of money equal to 10% of the Contract Sum
or
- A guarantee of an Insurance Company, Joint Stock Bank or Guarantee Corporation where liability shall be equal to 10% of the Contract Sum secured by the Council's Form of Bond.

4.2 In the case of the second option mentioned in clause 3.1 above the cost of the premium due in respect of the Guarantee Bond will be paid direct by the Council and the Contractor must not, therefore, include any amount in his Tender Sum.

4.3 The Bond will be released upon the expiry of the period agreed with the Council's Legal Department.

In all cases the Contractor shall provide the name of his Banker and appropriate Bank address as required by the Form of Tender.

5. Accuracy of Price

5.1 The Contractor shall be deemed to have satisfied itself as to the accuracy and sufficiency of any prices submitted.

5.2 The Contract price must cover the Contractor's obligations and the contractor shall be deemed to have obtained all the necessary information regarding the specification, tasks to be undertaken, all risks and contingencies and any other circumstances, which might reasonably effect the formulation of any formal contract agreement.

6. Tender Completion

6.1 Potential contractors must state in their method statement how they will comply with the specification.

6.2 Potential contractors must demonstrate in their responses any expertise in Provision of Concrete Skate/Bmx Areas.

6.3 Potential contractors should note that the Council reserves the right to ask the contractor to undertake other similar work at other Council sites.

7. Tender Return

7.1 Two copies of the completed tender document together with supporting documents must be returned in loose leaf format, to reach

M.Hodgkinson
Technical Officer
Macclesfield Borough Council
Town Hall
Macclesfield
SK10 1DT

No later than 12.00 noon on the 26th January 2009 in a plain envelope marked "Tender for Provision of South Park Skate/Bmx Area". The outer envelope must be sealed and should not bear any distinguishing mark/s, which could identify your company in any way. A CD replicating the details contained in the loose-leaf format should also accompany the submission.

7.2 The Council is unable to accept emailed tender documents and all potential contractors should ensure that their documentation is returned in the correct manner by the appropriate time.

8. Assessment Criteria

Tenders will be assessed on the following criteria items. The weighting to be applied to each evaluation item shall be as follows:

Status of company	15%
Operational considerations	15%
Goods and services offered	30%

Cost of Acquisition

Initial price	40%
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The Council will award the tender to the company which offers the most economically advantageous option, most closely meets the assessment criteria and specification and represents Best Value for the Authority.

All responses to the specification will be scored by a panel using a weighted scoring system based on a 60%/40% split between price and Best Value criteria.

A site visit may be made by a small team to assess the suitability of the service provider prior to contract award.

The Council and Friends of South Park will form a shortlist of a maximum of five, minimum of three suppliers based on the response to the specification and how well and imaginatively the contractor has interpreted them. Additional information may be requested and the Contractor may also be required to present their scheme to the Council and FOSP before the final decision is made.

The successful Contractor will be required to present the final scheme to Friends of South Park Committee Members and appropriate MBC Staff.

9. Acceptance of Tender

9.1 On receipt of a letter or e-mail accepting his Tender the Contractor shall, if so required, within seven days, forward to the Head of Legal and Democratic Services the completed Form of Bond referred to above. Following approval the Contractor will be required to complete the formal Contract, which will then be sealed by the Council.

9.2 The Contractor shall, immediately upon notification that his tender is being processed for acceptance, contact the Contract Administrator to arrange a pre-contract meeting.