

STANDARD TERMS AND CONDITIONS FOR THE PROVISION OF GOODS AND/OR SERVICES

1. INTERPRETATION

1.1 The following definitions and rules of interpretation apply in these Conditions.

1.2 Definitions:

Commencement Date: the date that the Contract is deemed to come into existence under clause 2.2 or such other commencement date as may be expressly stated in the Order or Form of Agreement (where applicable);

Conditions: these terms and conditions as amended from time to time in accordance with clause 24.12;

Contract: the contract between the Council and the Supplier for the supply of Goods and/or Services in accordance clause 2 and the signed Form of Agreement or the Council's Order, and any agreed variations to such Contract documents;

Council: means Wiltshire Council;

Council Materials: has the meaning set out in clause 5.3(k);

Data Protection Legislation: the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;

Deliverables: all documents, products and materials developed by the Supplier or its staff, agents, sub-contractors or advisers as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);

Environmental Information Regulations: the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;

FOIA: the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

Form of Agreement: means any form of agreement prepared by the Council incorporating these Conditions, the Supplier's Proposal (where applicable) and any other documents and special conditions or amendments to the Conditions that may be applicable to the Order;

Goods: the goods (or any part of them) set out in the Order or Form of Agreement;

Goods Specification: any specification for the Goods, including any related plans and drawings, that are provided by the Supplier and referred to in the Order or Form of Agreement or otherwise agreed in writing by the Council and the Supplier;

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

Order: the Council's order for the supply of Goods and/or Services (as set out in the Council's purchase order form or other written acceptance of the Supplier's Proposal), as the case may be:

- (a) incorporating these Conditions, the Supplier's Proposal (where applicable) and any other documents and special conditions or amendments to the Conditions that may be applicable to the Order; or
- (b) made subject to the Supplier's acceptance of any Form of Agreement included with and forming part of the Order;

Prohibited Act: the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this agreement;
- (c) committing any offence:
 - (i) under the Bribery Act;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to this agreement or any other contract with the Council; or
 - (iv) defrauding, attempting to defraud or conspiring to defraud the Council;

Regulated Activity: in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006;

Request for Information: a request for Information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;

Services: the services to be provided by the Supplier under the Contract, as set out in the Service Specification, including, without limitation, any Deliverables together with any other services, functions and responsibilities (including any incidental services, functions or responsibilities) not expressly specified in the Contract as being within the scope of the Supplier's responsibilities but reasonably and necessarily required for, or related to, the proper performance and provision of the Services;

Service Specification: the description or specification for Services that is provided by the Supplier and referred to in the Order or Form of Agreement or otherwise agreed in writing by the Council and the Supplier;

Supplier: the person or firm referred to in the Order or Form of Agreement (as applicable), from whom the Council purchases the Goods and/or Services, including any of its staff, agents, sub-contractors or advisers;

Supplier's Proposal: any proposal provided by the Supplier to the Council in respect of the supply of Goods and/or Services including its quotation and any Service Specification and/or Goods Specification or other documents;

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246);

Working Day: Monday to Friday, excluding any public holidays in England and Wales and any other periods specified in the Contract;

- 1.3 Clause headings shall not affect the interpretation of these Conditions.
- 1.4 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 A reference to a party includes its personal representatives, successors or permitted assigns.
- 1.7 Words in the singular shall include the plural and vice versa and a reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

- 1.9 Any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.10 A reference to **writing** or **written** includes faxes and e-mails unless otherwise stated.
- 1.11 Any obligation in the Contract on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.12 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time.
- 1.13 Where there is any conflict or inconsistency between the provisions of the Contract, such conflict or inconsistency shall be resolved according to the following order of precedence:
 - (a) any order of precedence set out in the Form of Agreement (where applicable); or
 - (b) the provisions of the Order (excluding the Conditions and the Supplier's Proposal);
 - (c) these Conditions;
 - (d) the Supplier's Proposal (where applicable).

2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Council to purchase Goods and/or Services from the Supplier.
- 2.2 The Order shall be deemed to be accepted on the date the parties sign and date the Form of Agreement or, in the absence of any Form of Agreement, the earlier of:
 - (a) the Supplier issuing written acceptance of the Order to the Council; or
 - (b) any act by the Supplier consistent with fulfilling the Order,at which point and on which date the Contract shall come into existence.
- 2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing other than as provided for in the Order.
- 2.4 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

3. SUPPLY OF GOODS

- 3.1 The Supplier shall ensure that the Goods shall:
 - (a) correspond with the Order or Form of Agreement including any applicable Goods Specification;
 - (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Council, expressly or by implication, and in this respect the Council relies on the Supplier's skill and judgment;
 - (c) will conform in all respects with any samples approved by the Council;
 - (d) where applicable, be free from defects in design, materials and workmanship and remain so for 12 months after delivery (or such other period as

may be specified in the Order or Form of Agreement);

- (e) comply with all applicable statutory and regulatory requirements relating to the design, quality, manufacture, testing, labelling, packaging, storage, handling and delivery of the Goods.

3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

3.3 The Council shall, on giving reasonable notice, have the right to (as appropriate):

- (a) inspect and test the Goods;
- (b) inspect the manufacturing facilities and the equipment used by the Supplier in the manufacture of the Goods;
- (c) inspect and take samples of the raw materials, the packaging and the Goods;
- (d) inspect stock levels of the raw materials and packaging or Goods,

at the Supplier's premises at any time during the Supplier's business hours before delivery and in this regard the Supplier shall co-operate and provide reasonable assistance to the Council at its own expense (unless otherwise agreed in respect of clause (c) above).

3.4 If following such inspection or testing the Council considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1, the Council shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

3.5 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and the Council shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

4. DELIVERY OF GOODS

4.1 The Supplier shall ensure that:

- (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- (b) the Goods are supplied, as appropriate, with all manuals and user documentation and any safety data sheets or other product information required to be provided under all applicable law at the time of delivery;
- (c) each delivery of the Goods is accompanied by a delivery note which clearly identifies the Contract (e.g. by reference to the title and date of the Form of Agreement or the date of the Order and the Order number (if any)), the Council's purchase order number, the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage or other instructions (if any) and (subject to clause 4.6), if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- (d) if the Supplier requires the Council to return any packaging material for the Goods to the Supplier

(i.e. where it is not reasonable for the Supplier to remove such materials from the Delivery Location at the time of delivery), that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

4.2 The Supplier shall deliver the Goods:

- (a) on the date (or dates) specified in the Order or Form of Agreement or, if no such date is specified, as soon as reasonably possible and no later than 28 days after the Commencement Date;
- (b) to the Council's premises at such location (or locations) as is set out in the Order or Form of Agreement or as instructed by the Council before delivery (each such location being a "**Delivery Location**") and in doing so shall observe and comply with all health and safety rules and regulations and any access and security requirements relating to the Delivery Location including any reasonable directions given by Council staff;
- (c) during the Council's normal hours of business on a Working Day, or as instructed by the Council.

4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

4.4 Subject to any alternative requirements or any maximum and/or minimum tolerance in terms of the quantity (or other measure) of Goods specified as being acceptable in the Order or Form of Agreement, the Supplier shall deliver the precise quantity of Goods ordered by the Council and the Council may reject the Goods (or any excess Goods) and any rejected Goods shall be returnable at the Supplier's risk and expense.

4.5 Where the Order or Form of Agreement states a tolerance in terms of the maximum and/or minimum quantity (or other measure) of Goods that must be delivered and the Supplier:

- (a) delivers less than required minimum number or percentage of Goods ordered, the Council may reject the Goods; or
- (b) delivers more than the required maximum number or percentage of Goods ordered, the Council may at its sole discretion reject the Goods or the excess Goods,

and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and the Council accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.

4.6 The Supplier shall not deliver the Goods in instalments without the Council's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Council to the remedies set out in clause 9.1.

4.7 Title and risk in the Goods shall pass to the Council on completion of delivery at the Delivery Location.

4.8 Notwithstanding clause 4.6 and subject to any alternative provisions in the Order or Form of Agreement, the Council shall not be deemed to have accepted any Goods until it

has had a reasonable time to inspect them following delivery, or, in the case of a latent defect in the Goods, until a reasonable time after the latent defect has become apparent.

- 4.9 The Supplier shall be responsible for and keep under its control all equipment and materials brought to the Delivery Location.
- 4.10 The Supplier shall notify the Council immediately on becoming aware of any damage caused by the Supplier to the Delivery Location or any other property belonging to the Council or a third party in the course of delivering the Goods.
- 4.11 Where the need to maintain or repair the Delivery Location or other Council property arises directly from the act, omission, default or negligence of the Supplier the reasonable costs incurred in carrying out such maintenance or repairs shall be recoverable by the Council from the Supplier as a debt, payable within 28 days of the Council's relevant invoice.

5. SUPPLY OF SERVICES

- 5.1 The Supplier shall from the Commencement Date and for the duration of this Contract provide the Services to the Council in accordance with the terms of the Contract.
- 5.2 The Supplier shall meet any performance dates for the Services specified in the Order or Form of Agreement or notified to the Supplier by the Council.
- 5.3 In providing the Services, the Supplier shall (and shall procure that the Supplier's staff, agents, sub-contractors or advisers shall):
- (a) co-operate with the Council in all matters relating to the Services, and comply with all instructions of the Council including any reasonable directions regarding access to, use and the security of Council premises;
 - (b) perform the Services with reasonable, skill, care and diligence in accordance with good industry practice having regard to the Supplier's industry, profession or trade;
 - (c) use personnel who are suitably skilled and experienced (and, as appropriate, vetted in accordance with clause 7 (Safeguarding children and vulnerable adults)) to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
 - (d) maintain all accreditations and certificates referred to in the Order, Form of Agreement, Service Specification or otherwise agreed in writing by the parties;
 - (e) where the Supplier is providing a named individual whose qualifications, skill and experience is of primary importance to the provision of the Services (a "Key Individual") and the Key Individual ceases to be provided by Supplier, immediately provide a replacement individual of similar qualifications, skill and experience to the Key Individual, subject to the terms of the Order or Form of Agreement and approval by the Council, and if the Supplier is unable or unwilling to provide a suitable replacement or the Council is unable to approve a proposed replacement the Council may, without

prejudice to any of its other rights or remedies, terminate the Contract by notice in writing, such notice to have effect from the date specified in it;

- (f) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification (including any service standards), and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Council;
 - (g) unless otherwise provided for in the Order or Form of Agreement, provide all equipment, tools and vehicles and such other items as are required to provide the Services;
 - (h) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Council, will be free from defects in workmanship, installation and design;
 - (i) obtain and at all times maintain all necessary licences, permissions, authorisations, consents and permits and comply with all applicable laws and regulations;
 - (j) observe all health and safety rules and regulations in accordance with clause 8 below and any other security requirements that apply at any of the Council's premises;
 - (k) hold all materials, equipment and tools, drawings, specifications and data supplied by the Council to the Supplier (**Council Materials**) in safe custody at its own risk, maintain the Council Materials in good condition until returned to the Council, and not dispose or use the Council Materials other than in accordance with the Council's written instructions or authorisation;
 - (l) not do or omit to do anything which may cause the Council to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Council may rely or act on the Services;
 - (m) not do anything, nor permit anything to be done which is detrimental to the reputation or image of the Council;
 - (n) at all times comply with the provisions of the Human Rights Act 1998 in the performance of the Contract and the Supplier shall undertake, or refrain from undertaking, such acts as the Council may request so as to enable the Council to comply with its obligations under the Human Rights Act 1998; and
 - (o) not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination in employment including the Equality Act 2010 (as amended and superseded from time to time) and any relevant codes of practice and best practice guidance issued by the Government and the appropriate agencies in the performance of its obligations under the Contract.
- 5.4 The Supplier shall inform the Council in writing, as soon as is practicable:
- (a) of any potential or actual conflict between this clause 5 and any other provision of the Contract

and shall comply with the Council's decision on the resolution of such conflict; and

- (b) if it becomes aware that it has failed to comply with any of its material obligations under the Contract or where there is a material change in its circumstances for the purposes of the Contract (including in relation to the circumstances described in clause 22.1).

6. PERFORMANCE REVIEW

- 6.1 The Supplier shall use reasonable endeavours to secure and achieve continuous improvement in relation to the Goods and/or Services and shall comply with the Council's reasonable requests (at its own expense) to keep records, to attend performance review meetings, to make any reports and permit any tests and inspections that the Council may reasonably require during the period of the Contract.
- 6.2 Where the Supplier is providing all or part of the Services to third parties, the Supplier shall, on request, provide the Council with a copy of its complaints handling policy and procedures and (where applicable to the Contract) shall discuss any complaints and feedback from third party users of the Services at performance review meetings.

7. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS

- 7.1 Where the performance of the Contract may result in the Supplier (or any of its staff, agents, sub-contractors or advisers) carrying out a Regulated Activity Provider as a Regulated Activity Provider the Supplier shall (and shall, as appropriate, procure that its staff, agents, sub-contractors or advisers shall):
 - (a) comply at all times with the provisions of the Safeguarding Vulnerable Groups Act 2006 (SVGA 2006) and all related guidance issued by HM Government including government ministers, government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
 - (b) comply with all Council policies and procedures relating to safeguarding that are published on its website (www.wiltshire.gov.uk) or otherwise provided or brought to the Supplier's attention by the Council from time to time including the Council's own storage of disclosures policy as a Disclosure and Barring Service (DBS) registered body;
 - (c) operate recruitment and training policies and procedures having regard to the need to safeguard and promote the welfare of children and vulnerable adults and shall:
 - (i) use an application form that includes an explanation that the post is exempt from the Rehabilitation of Offenders Act 1974 and therefore that all convictions, cautions and bind-overs, including those regarded as 'spent', should be declared. The Supplier (or sub-contractor etc) should also obtain a signed statement that the person is not disqualified from work with children or vulnerable adults, or subject to sanctions imposed by any regulatory body, and either has no convictions, cautions, or bind-overs, or has declared the details of such offences;

- (ii) ensure that all staff, agents, sub-contractors or adviser engaged in the provisions of the Services are familiar with the legal requirements, policies and procedures referred to in this clause;

- (d) ensure that all individuals engaged in the provision of the Services are subject to a valid enhanced disclosure check undertaken through the DBS including a check against the adults' barred list or the children's barred list, as appropriate, and in accordance with any other reasonable requirements of the Council; and
- (e) monitor the level and validity of the checks required under clause 7.1(d) for each individual engaged in the provisions of the Services.

7.2 The Supplier shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users.

7.3 The Supplier warrants that at all times for the purposes of the Contract it has no reason to believe that any person who is or will be employed or engaged by the Supplier in the provision of the Services is barred from the activity in accordance with the provisions of the SVGA 2006 and any regulations made thereunder, as amended from time to time.

7.4 The Supplier shall ensure that the Council is kept advised at all times of any person who, subsequent to the commencement of the Services, receives a conviction or whose previous conviction(s) becomes known to the Supplier where that conviction is incompatible with the type of work being undertaken by the person supplying the Services or where that person is found to be barred from working or applying to work with children or vulnerable adults.

7.5 The Supplier shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 7 have been met and without liability the Council may require the suspension of any person from carrying out the Services until written confirmation of required clearances is given in a form reasonably satisfactory to the Council.

7.6 The Supplier shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to the service users, children or vulnerable adults.

8. HEALTH AND SAFETY

8.1 The Supplier shall promptly notify the Council of any health and safety hazards, which may arise in connection with the performance of the Contract. The Council shall promptly notify the Supplier of any health and safety hazards that may exist or arise at the Council's premises and that may affect the Supplier in the performance of the Contract.

8.2 While on the Council's premises, the Supplier shall comply with any health and safety measures implemented by the Council in respect of staff and other persons working on the Council's premises.

8.3 The Supplier shall notify the Council immediately in the event of any incident occurring in the performance of the Contract on the Council's premises where that incident causes any personal injury or damage to property that could give rise to personal injury.

8.4 The Supplier shall comply with the requirements of the Health and Safety at Work etc Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to staff and other persons working on the Council's premises in the performance of the Contract.

8.5 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Council on request.

9. COUNCIL REMEDIES

9.1 Without prejudice to clause 13 (Indemnity), if the Supplier fails to deliver the Goods and/or perform the Services by the applicable date(s) or in conformity with the undertakings set out in clause 3.1 or elsewhere in the Contract, the Council shall, at its sole discretion, acting reasonably and without limiting its other rights or remedies, have one or more of the following rights:

- (a) subject to any deemed acceptance of the Goods in accordance with clause 4, the right to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
- (b) the right to terminate the Contract (in whole or part) with immediate effect by giving written notice to the Supplier;
- (c) the right to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make other than where a replacement or repair is requested by the Council under clause 9.1(d);
- (d) the right to require the Supplier to repair or replace any rejected Goods (whether or not the Council has previously required the Supplier to repair or replace the rejected Goods) or to re-perform the defective Services to the Council's satisfaction at no additional cost to the Council;
- (e) where the Council has paid for Services that have not been provided by the Supplier and/or Goods which have not been delivered by the Supplier, the right to have such sums refunded, as a debt owed by the Supplier, within 28 days of a written request by the Council; and
- (f) to recover from the Supplier as a debt, any costs reasonably incurred by the Council in obtaining substitute goods and/or services from a third party and/or any reasonable additional costs, loss or expenses incurred by the Council which are in any way attributable to the Supplier's failure to meet such dates or to conform with the requirements of the Contract, provided the Council shall use reasonable endeavours to mitigate its losses, which shall be payable within 28 days of the Council's relevant invoice;
- (g) the right to claim damages for any other costs, expenses or losses resulting from the Supplier's failure to deliver the Goods and/or Services in accordance with the Contract.

9.2 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

9.3 The Council's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

10. COUNCIL'S OBLIGATIONS

The Council shall:

- (a) where necessary, provide the Supplier with reasonable access at reasonable times to the Council's premises (subject to the Supplier complying with its obligations in clause 5.3) for the purpose of providing the Services;
- (b) provide such information as the Supplier may reasonably request and the Council considers reasonably necessary for the purpose of performing the Contract.

11. PRICE AND PAYMENT

11.1 The price for the Goods:

- (a) shall be the price set out in the Order or Form of Agreement, or if no price is quoted, the price set out in the Supplier's quote or published price list in force at the Commencement Date; and
- (b) shall be inclusive of the costs of packaging, insurance and carriage of the Goods, unless otherwise agreed in writing by the Council. No extra charges shall be effective unless agreed in writing and signed by the Council.

11.2 The price for the Services shall be set out in the Order or Form of Agreement, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Council, the price shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

11.3 Subject to any alternative payment profile or invoicing requirements stated in the Order or Form of Agreement, in respect of Goods, the Supplier shall invoice the Council on or at any time after completion of delivery and in respect of Services, the Supplier shall invoice the Council on completion of the Services. Each invoice shall include such supporting information required by the Council to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.

11.4 In consideration of the supply of Goods and/or Services by the Supplier, the Council shall pay any undisputed invoiced amounts within 28 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.

11.5 All amounts payable by the Council under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Council, the Council shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services. The Supplier shall indemnify the Council against any liability (including any interest, penalties or costs incurred) which is levied,

demanding or assessed on the Council at any time in respect of the Supplier's failure to account for, or to pay, any VAT relating to payments made to the Supplier under the Contract.

- 11.6 Where the Supplier enters into a sub-contract with a supplier or contractor for the purpose of performing the Contract, it shall cause a term to be included in such a sub-contract that requires payment to be made of undisputed sums by the Supplier to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the sub-contract requirements.
- 11.7 If the Council fails to pay any amount properly invoiced and payable by it under the Contract, the Supplier shall have the right to charge interest on the overdue amount at the rate of four (4) per cent per annum above the base rate for the time being of the Bank of England accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment. This clause shall not apply to payments that the Council disputes in good faith in accordance with clause 21 (Disputes).
- 11.8 The Council may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier under the Contract against any amount payable by the Council to the Supplier under the Contract.

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 In respect of the Goods and any goods that are transferred to the Council as part of the Services under this Contract, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Council, it will have full and unrestricted rights to sell and transfer all such items to the Council.
- 12.2 Subject to clause 12.3, the Supplier hereby irrevocably, unconditionally and absolutely assigns to the Council, with full title guarantee, without restriction and free from all third party rights, all right, title and interest in and to all existing and future Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables. For the avoidance of doubt, the assignment under this clause 12.2 shall take effect from the date on which the relevant products were created, developed or produced.
- 12.3 Where under clause 12.2 an assignment of Intellectual Property Rights is not possible in relation to the products of the Services or any part thereof, the Supplier shall inform the Council in writing (unless already stated in the Order or Form of Agreement) and shall grant, or shall procure the direct grant, to the Council of a transferrable, irrevocable, sub-licensable, non-exclusive, royalty free licence to use and reproduce, without limitation, all such products of the Services by the Council.
- 12.4 The Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 12.5 The Supplier shall, promptly at the Council's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Council may from time to time require for the purpose of

securing for the Council the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned or licensed to the Council in accordance with clauses 12.2 and 12.3.

- 12.6 All Council Materials are the exclusive property of the Council. The Council hereby grants to the Supplier a non-exclusive, non-assignable licence to use any Council Materials made available by the Council under the Contract for the sole purpose of enabling the Supplier to provide the Goods and/or Services. Such licence includes the right to grant sub-licences to any permitted staff, agent, sub-contractor or adviser provided such person has entered into a confidentiality undertaking with the Supplier in accordance with clause 15 (Confidentiality).

13. INDEMNITY

- 13.1 The Supplier shall keep the Council indemnified in full against all actions, proceedings, costs, claims, expenses, damages, liabilities and losses, including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Council as a result of or in connection with:
- (a) any death, personal injury or damage to property (including Council property and property belonging to third parties) arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its staff, agents, sub-contractors or advisers;
 - (b) any breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its staff, agents, sub-contractors or advisers; and
 - (c) any claim made against the Council for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services.
- 13.2 Subject to clause 13.3, neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the Contract which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.
- 13.3 Neither party limits or excludes its liability for:
- (a) fraud or fraudulent misrepresentation;
 - (b) death or personal injury caused by its negligence;
 - (c) breach of any obligation as to title implied by statute; or
 - (d) any other act or omission, liability for which may not be limited under any applicable law.

- 13.4 This clause 13 shall survive termination of the Contract.

14. INSURANCE

- 14.1 Subject to any specific insurance requirements specified in the Order or Form of Agreement the Supplier shall:
- (a) effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Supplier,

arising out of the Supplier's performance of the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include, as appropriate, product liability cover, Goods in transit cover, public liability cover and cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier; and

- (b) hold employer's liability insurance in respect of its staff in accordance with any legal requirement for the time being in force.

- 14.2 The Supplier shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 14.3 If in the Council's reasonable opinion, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by the Contract the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 14.4 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract.
- 14.5 Where providing Services under the Contract, the Supplier shall hold and maintain professional indemnity insurance cover and shall ensure that all professional consultants or sub-contractors involved in the provision of the Services hold and maintain appropriate cover. To comply with its obligations under this clause, and as a minimum (unless otherwise required in the Order or Form of Agreement), the Supplier shall ensure professional indemnity insurance held by the Supplier and by any agent, sub-contractor or adviser involved in the performance of Services has a limit of indemnity of not less than 1,000,000 for any occurrences arising out of each and every event. Such insurance shall be maintained for a minimum of six years following the expiration or earlier termination of the Contract.

15. CONFIDENTIALITY

- 15.1 Each party undertakes that it shall not at any time disclose to any person any confidential information of the other party, including confidential information relating to the business, affairs, technical or commercial know-how, specifications, inventions, processes or initiatives, services or service users, clients or suppliers of the other party, except as permitted by clause 15.2.
- 15.2 Each party may disclose the other party's confidential information:
 - (a) to its staff, agents, sub-contractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that such staff, agents, sub-contractors or advisers to whom it discloses the other party's confidential information comply with this clause 14.1; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 15.3 No party shall use any other party's confidential information for any purpose other than to perform its

obligations under the Contract. This clause 14.1 shall survive the termination or expiry of the Contract.

16. PUBLICATION OF EXPENDITURE OVER £250

- 16.1 The Supplier hereby confirms that it:
 - (a) understands that the Council routinely publishes local spending data in relation to invoices, grant payments, expenses payments and other transactions over £250, including details of contracts and tenders over £250, in accordance with the Government's transparency programme and guidance; and
 - (b) agrees that the Council may therefore publish details (to the extent and in the manner required by the Government) of the Contract with the Supplier and will comply with any reasonable request from the Council in order to assist the Council in complying with its transparency obligations under this clause 16.

17. FREEDOM OF INFORMATION

- 17.1 The Supplier acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Council (at the Supplier's expense) to enable the Council to comply with these information disclosure requirements.
- 17.2 The Supplier shall and shall procure that its staff, agents, sub-contractors or advisers shall:
 - (a) transfer any Request for Information to the Council as soon as practicable after receipt and in any event within 2 Working Days of receiving a Request for Information;
 - (b) provide the Council with a copy of all information in its possession or power in the form that the Council requires within 5 Working Days (or such other period as the Council may specify) of the Council requesting that information; and
 - (c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 17.3 The Council shall be responsible for determining at its absolute discretion whether any information, including confidential or commercially sensitive information:
 - (a) is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations; and/or
 - (b) is to be disclosed in response to a Request for Information.
- 17.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 17.5 The Supplier acknowledges that the Council may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:

- (a) without consulting with the Supplier; or
- (b) following consultation with the Supplier and having taken its views into account,

provided always that where clause 17.5(b) applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

18. DATA PROTECTION

18.1 The Supplier shall (and shall procure that any of its staff, agents, sub-contractors or advisers involved in the provision of the Contract shall) comply with any notification requirements under Data Protection Legislation and both parties shall duly observe all their obligations under the Data Protection Legislation, which arise in connection with the Contract.

18.2 Notwithstanding the general obligation in clause 18.1, where the Supplier (and references in this clause to Supplier shall include each of its staff, agents, sub-contractors or advisers) is processing personal data as a data processor for the Council, the Supplier shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data), as required under the Seventh Data Protection Principle in Schedule 1 to the Data Protection Act 1998 (**DPA**); and

- (a) provide the Council with such information as the Council may reasonably require to satisfy itself that the Supplier is complying with its obligations under the DPA;
- (b) promptly notify the Council of any breach of the security measures required to be put in place pursuant to clause 18.2;
- (c) ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the DPA; and
- (d) not access, process or arrange access or the processing of personal data by any sub-contractor or third party or otherwise transfer or store personal data outside the European Economic Area or any country not deemed adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC without the prior written consent of the Council and then only in accordance with any corresponding requirements of the Council or Data Protection Legislation.

18.3 In this clause 18, 'data processor', 'personal data', and 'process' or 'processing' shall have the meanings given to them in the DPA.

18.4 The provisions of this clause shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

19. RECORDS AND AUDIT

19.1 The Supplier shall keep and maintain until six years after the contract has been completed, or as long a period as may be agreed between the parties, full and accurate records of the Contract including:

- (a) the Goods provided under it and/or the time and materials used by the Supplier in providing the Services; and
- (b) any records required by the Council to evidence compliance with the obligations in clause 5 (Supply of Services);
- (c) any records required by the Council pursuant to clause 6 (Performance Review);
- (d) any books of account kept by the Supplier in connection with the provision of the Goods and/or Services including all payments made by or to the Council.

19.2 The Supplier shall, at all reasonable times and on request, afford the Council or the Council's representatives such access to those records as may be required in connection with the Contract.

20. TUPE

20.1 The parties acknowledge and agree that any Services provided under the Contract are in relation to a single specific event or task of short-term duration and are unlikely to give rise to a 'relevant transfer' under TUPE either at the commencement of the Contract or on its expiry or termination.

20.2 In the event that TUPE is deemed to apply to the Services, the parties shall co-operate, share information in a timely manner and use all reasonable endeavours to ensure a smooth transition to/from the Services and transfer of relevant staff to the Supplier, Council or any replacement provider of similar services (as appropriate), in accordance with TUPE and all other applicable laws.

21. DISPUTES

21.1 If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Council's representative and Supplier's representative (including any other key personnel reasonably required by either party) shall attempt in good faith to resolve the Dispute;
- (b) if the Council's representative and Supplier's representative are for any reason unable to resolve the Dispute within 10 Working Days of service of the Dispute Notice, the Dispute shall be referred to the relevant senior managers of each party who shall attempt in good faith to resolve it;
- (c) if the senior managers of each party are for any reason unable to resolve the Dispute within 20 Working Days of it being referred to them, the Dispute shall be referred to the Council's relevant service director or other senior officer and the Supplier's relevant director who shall meet within 5 Working Days of any failure of the senior manager's to resolve the Dispute, and who shall attempt in good faith to resolve it. Such meeting shall be minuted and shall be chaired by the party who first called for the meeting (but the chairman shall not have a casting vote); and

- (d) if the Council's senior officer / director and the Supplier's relevant director are unable to settle the Dispute the parties shall (subject to any alternative dispute resolution procedures stated in any Form of Agreement) attempt to settle the Dispute either by:
- (i) mediation in accordance with clause 21.4; or
 - (ii) where appropriate and reasonable in the case of any disputes relating to technical issues concerning the Goods, by expert determination in accordance with clause 21.5.
- 21.2 During any Dispute, and without prejudice to any other provision of the Contract, it is mutually agreed between the parties that they shall continue their performance of the provisions of the Contract.
- 21.3 The parties shall bear their own legal costs in respect of the dispute resolution procedure in clauses 21.1(a) to 21.1(c).
- 21.4 Mediation
- (a) Where a Dispute is referred to mediation such mediation shall be conducted in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (**Mediation Notice**) to the other party to the Dispute, requesting a mediation. A copy of the Mediation Notice should be sent to CEDR Solve. The mediation will start not later than 28 days after the date of the Mediation Notice.
 - (b) Recourse to mediation shall be binding on the parties as to submission to the mediation but not as to its outcome. Accordingly all negotiations connected with the Dispute shall be conducted in strict confidence and without prejudice to the rights of the parties in any future legal proceedings. Except for any party's right to seek interlocutory relief in the courts, no party may commence other legal proceedings under the jurisdiction of the courts or any other form of arbitration until either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.
 - (c) If, with the assistance of the mediator, the parties reach a settlement, such settlement shall be reduced to writing and, once signed by the duly authorised representatives of each of the parties, shall be binding on the parties.
 - (d) The costs and expenses of the mediation procedure shall be borne by the parties equally.
- 21.5 Expert determination
- (a) An "**Expert**" is a person appointed in accordance with this clause to resolve a technical Dispute relating to the Goods.
 - (b) The parties shall agree on the appointment of an independent Expert and shall agree with the Expert the terms of his appointment.
 - (c) If the parties are unable to agree on an Expert or the terms of his appointment within seven days of either party serving details of a suggested expert on the other, either party shall then be entitled to request CEDR Solve to appoint an Expert with appropriate qualifications and experience in relations to the disputed technical issue and/or for CEDR Solve to agree with the Expert the terms of his appointment.
- (d) The Expert is required to prepare a written decision and give notice (including a copy) of the decision to the parties within a maximum of three months of the matter being referred to the Expert.
 - (e) If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause then:
 - (i) either party may apply to CEDR Solve to discharge the Expert and to appoint a replacement Expert with the required expertise; and
 - (ii) this clause applies in relation to the new Expert as if he were the first Expert appointed.
- 21.6 All matters under this clause must be conducted, and the Expert's decision shall be written, in the English language.
- 21.7 The parties are entitled to make submissions to the Expert including oral submissions and will provide (or procure that others provide) the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision.
- 21.8 To the extent not provided for by this clause, the Expert may in his reasonable discretion determine such other procedures to assist with the conduct of the determination as he considers just or appropriate, including (to the extent he considers necessary) instructing professional advisers to assist him in reaching his determination.
- 21.9 Each party shall with reasonable promptness supply each other with all information and give each other access to all documentation and personnel as the other party reasonably requires to make a submission under this clause.
- 21.10 The Expert shall act as an expert and not as an arbitrator. The Expert shall determine the disputed technical issue relating to the Goods. The Expert's written decision on the matters referred to him shall be final and binding on the parties in the absence of manifest error or fraud.
- 21.11 Each party shall bear its own costs in relation to the reference to the Expert. The Expert's fees and any costs properly incurred by him in arriving at his determination (including any fees and costs of any advisers appointed by the Expert) shall be borne by the parties equally or in such other proportions as the Expert shall direct.
- 21.12 All matters concerning the process and result of the determination by the Expert shall be kept confidential among the parties and the Expert.
- 22. TERMINATION**
- 22.1 Without limiting its other rights or remedies, the Council may terminate the Contract with immediate effect by giving written notice to the Supplier if:
- (a) the Supplier commits a material or persistent breach of the Contract and (if such a breach is

- remediable) fails to remedy that breach within 28 days of receipt of notice in writing of the breach;
- (b) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
 - (c) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
 - (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
 - (e) the Supplier (being an individual) is the subject of a bankruptcy petition order;
 - (f) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier (being a company);
 - (h) a floating charge holder over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - (i) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
 - (j) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 22.1(b) to clause 22.1(i) (inclusive);
 - (k) the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business;
 - (l) the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation; or
 - (m) the Supplier (or its directors or any other person who has powers of representation, decision or control of the Supplier) has been convicted of one or more of the offences listed in regulations 23(1) and (4) of the Public Contracts Regulations 2006 (re mandatory and discretionary grounds for exclusion from tendering), irrespective of how the Contract was awarded to the Supplier.
- 22.2 The Council may terminate the Contract in accordance with the provisions of clause 5.3(e) (re provision of key individuals), clause 9 (Council remedies), clause 24.3 (Prevention of Bribery) and clause 24.4 (Force Majeure).
 - 22.3 Without limiting its other rights or remedies, and subject to any alternative provisions in the Order or Form of Agreement, the Council may terminate the Contract:
 - (a) in respect of the supply of Services, by giving the Supplier 3 months' written notice; and
 - (b) in respect of the supply of Goods, with immediate effect by giving written notice to the Supplier, in which case the Council shall pay the Supplier fair and reasonable compensation for any work in progress on any other Goods at the date of termination but such compensation shall not include loss of anticipated profits or any consequential loss.
 - 22.4 The Supplier may terminate the Contract by giving 30 days written notice to the Council in the event that at any time undisputed sums have been overdue for payment for a period of 30 days or more, provided that if the Council remedies such breach in the 30 days notice period, the Supplier's notice to terminate the Contract shall be deemed to have been withdrawn.
 - 22.5 In any of the circumstances in these Conditions in which the Council may terminate the Contract, where both Goods and Services are supplied, the Council may instead terminate part of the Contract in respect of the Goods, or in respect of the Services, and the Contract shall continue in respect of the remaining supply.
- ## 23. CONSEQUENCES OF TERMINATION
- On the expiry or termination of the Contract or any part of it for any reason:
- (a) the Supplier shall be entitled to invoice the Council for all outstanding properly incurred undisputed price up to the date of termination, which shall be payable by the Council in accordance with the provisions of clause 11 (Price and Payment). For the avoidance of doubt, the Council shall have no obligation to make any payment to the Supplier for services rendered after termination or expiry;
 - (b) the licence referred to in clause 12.6 and any sub-licence granted in accordance with clause 12.6 shall terminate automatically (except and to the extent that such licence is necessary to perform any Services that are to survive the part termination of the Contract), and the Supplier shall, except where otherwise required by law, promptly deliver to the Council or at the Council's written request destroy or erase all Council Material in the Supplier's possession or control and all Deliverables, whether or not then complete. If the Supplier fails to do so, then the Council may without limiting its other rights or remedies enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely

responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

- (c) the Council will, on reasonable notice from the Supplier, provide the Supplier with such access to the Council's premises as the Supplier may reasonably require to remove any of the Supplier's equipment or materials. All such equipment shall be promptly removed by the Supplier;
- (d) the Supplier shall execute any documents which the Council reasonably requests in order to formalise the end of the relationship between the Council and the Supplier (including releases, disclaimers and assignments)
- (e) the Supplier shall comply with any other provisions in the Order or Form of Agreement relating to expiry or termination; and
- (f) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

23.2 The provisions of clause 13 (Indemnity), clause 14 (Insurance), clause 15 (Confidentiality), clause 17 (Freedom of Information), clause 18 (Data Protection), clause 19 (Records and audit), clause 21 (Disputes), clause 22 (Termination), this clause 23 (Consequences of termination) and any other clauses which expressly or by implication should have effect after termination or expiry shall continue in full force and effect on the termination or expiry of the Contract.

24. GENERAL

24.1 Council's rights and duties: Nothing contained within the Contract shall be construed as prejudicing or restricting the exercise of any of the Council's rights, powers, duties or obligations as a local authority under all applicable law.

24.2 No exclusivity: Subject to any contrary provisions in the Order or Form of Agreement, the Supplier acknowledges that in entering into this Contract no form of exclusivity or volume guarantee has been granted by the Council in relation to the purchase of Goods or Services (or the future purchase of similar goods or services) from the Supplier and the Council is at all times entitled to enter into other contracts and arrangements with other providers for the provision of any or all services or goods which are the same as or similar to the Goods and/or Services provided under the Contract.

24.3 Prevention of Bribery:

- (a) The Supplier:
 - (i) shall not, and shall procure that all of its staff, agents, sub-contractors or advisers shall not, in connection with the Contract commit a Prohibited Act;
 - (ii) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of the Contract, excluding any arrangement of which full details have been disclosed in

writing to the Council before execution of the Contract.

- (b) If any breach of clause 24.3 is suspected or known, the Supplier must notify the Council immediately and must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation.
- (c) The Council may, in its absolute discretion, terminate the Contract by written notice with immediate effect if the Supplier, or its staff, agents, sub-contractors or advisers (in all cases whether or not acting with the Supplier's knowledge) breaches clause 24.3.
- (d) Any notice of termination under clause 24.3(c) must specify:
 - (i) the nature of the Prohibited Act;
 - (ii) the identity of the party whom the Council believes has committed the Prohibited Act; and
 - (iii) the date on which the Contract will terminate.
- (e) Any termination under clause 24.3(c) will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

24.4 Force majeure: Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Contract if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable. If such event or circumstances prevent the Supplier from supplying the Goods and/or Services for more than 30 days (or such other period of time as may be specified in the Order or Form of Agreement), the Council shall have the right, without limiting its other rights or remedies, to terminate the Contract (or any part of it) with immediate effect by giving written notice to the Supplier.

24.5 Assignment and subcontracting:

- (a) The Supplier shall not assign, transfer, charge, subcontract (except in relation to sub-contractors expressly provided for in the Contract) or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Council.
- (b) The Council may at any time assign, transfer, charge, subcontract, or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (c) In the event that the Supplier is permitted to enter into any sub-contract in connection with the Contract it shall:
 - (i) remain responsible to the Council for the performance of its obligations under the Contract notwithstanding the appointment of any sub-contractor and be responsible for the acts omissions and neglects of its sub-contractors;

- (ii) impose obligations on its sub-contractor in the same terms as those imposed on it pursuant to the Contract and shall procure that the sub-contractor complies with such terms; and
- (iii) provide a copy, at no charge to the Council, of any such sub-contract on receipt of a request for such by the Council.

24.6 Notices:

- (a) Any formal "notice" required to be given to a party under or in connection with the Contract shall be in writing, by letter on the relevant party's letter headed paper, signed by or on behalf of the party giving it and shall be delivered to the other party personally or sent by prepaid first-class post or recorded delivery or by commercial courier, to the address or fax number stipulated for service of notices in the Order or Form of Agreement or otherwise notified by the party from time to time, or, in the absence of such stipulation or notification, to the party's registered address (if a company) or (in any other case) its principal place of business or to its main fax number.
- (b) Any notice or communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post, at 9.00 am on the second Working Day after posting, or if delivered by recorded delivery or commercial courier, on the date and at the time recorded by the delivery service, or if sent by fax on the next Working Day after transmission.
- (c) For the purposes of this clause 24.6, "writing" shall not include e-mails and for the avoidance of doubt notices given under the Contract shall not be validly served if sent by e-mail.
- (d) This clause 24.6 shall not apply to the service of any proceedings or other documents in any legal action.

24.7 Publicity:

- (a) The Supplier shall not make any press announcement or publicise the Contract or the provision of the Goods and Services to the Council in any way except:
 - (i) with the prior written consent of the Council (not to be reasonably withheld or delayed); or
 - (ii) as otherwise expressly required by the Contract.
- (b) Nothing in this clause shall prevent the Supplier from making an announcement which is required by law or any governmental or regulatory authority, or by any court or other authority of competent jurisdiction, always provided that the Supplier shall promptly notify the Council and shall make all reasonable attempts to agree the contents of the announcement before making it.

24.8 Waiver and cumulative remedies:

- (a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any

other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

24.9 Severance:

- (a) If a court or any other competent authority finds that any provision (or part of any provision) of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

24.10 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

24.11 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.

24.12 Variation: Any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed (underhand) by the authorized representatives of the Council and Supplier.

24.13 Entire agreement:

- (a) The Contract and any documents referred to in it, shall constitute the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, collateral agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each of the parties acknowledges and agrees that in entering into the Contract it does not rely on and shall have no remedies in respect of any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether a party to the Contract or not) relating to the subject matter of the Contract, other than as expressly set out in the Contract.

24.14 Governing law and jurisdiction: The Contract, and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.