



STANDARD TERMS AND CONDITIONS

FOR THE SUPPLY OF GOODS AND SERVICES

Woking Borough Council
Civic Offices
Gloucester Square
Woking
Surrey
GU21 6YL

Last Updated: March 2019

Standard terms and conditions for the supply of goods and services

These terms and conditions are the standard terms and conditions for when the Council purchases Goods and/or Services. They apply to all purchases of Goods and/or Services by the Council unless otherwise specifically agreed in writing that other terms apply.

1. Interpretation

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

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Commencement Date: has the meaning given in Condition 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with Condition 23.10.

Confidential Information: means information that is or ought to be considered as confidential (however it is conveyed or on whatever media it is stored and whether or not explicitly marked or designated as confidential), including without limitation trade secrets, Intellectual Property Rights and know-how of either Party, information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person;

Contract: the contract between the Council and the Supplier for the supply of Goods and/or Services in accordance with these Conditions.

Contract Price: means the price for Goods and/or Services as set out in the Order.

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer: take the meaning given in the GDPR.

Council: means Woking Borough Council.

Council Materials: means all materials, equipment and tools, drawings, specifications and data supplied by the Council to the Supplier.

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

Data Protection Legislation: (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of Personal Data and privacy.

Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

Data Subject Access Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

Default: any breach of the obligations of the relevant Party (including abandonment of this Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement.

(a) in the case of the Council, of its employees, servants, agents; or

(b) in the case of the Supplier, of any sub-contractor or any Supplier's Personnel,

in connection with or in relation to the subject matter of this Contract and in respect of which such Party is liable to the other.

Deliverables: all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Goods and/or Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

DPA 2018: Data Protection Act 2018.

EEA: means the European Economic Area, which shall be deemed, for the purposes of Condition 15 (Data Protection), to continue to include the United Kingdom, irrespective of any withdrawal of United Kingdom therefrom.

EIA: the Environmental Information Regulations 2004 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 that Act, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to that Act.

GDPR: the General Data Protection Regulation (Regulation (EU) 2016/679).

Goods: the goods (or any part of them) set out in the Order.

Goods Specification: any specification for the Goods, including any related plans and drawings that is agreed in writing by the Council and the Supplier.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, Confidential Information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Joint Controllers: where two or more Controllers jointly determine the purposes and means of processing.

LED: Law Enforcement Directive (Directive (EU) 2016/680).

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

Party: either the Council or the Supplier and **Parties** shall mean both of them.

Protective Measures: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

Services: the services, including any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.

Service Specification: the description or specification for Services agreed in writing by the Council and the Supplier.

Supplier: the person or firm from whom the Council purchases the Goods and/or Services as set out in the Order.

Supplier's Personnel: all employees, staff, other workers, agents and consultants of the Supplier and of any sub-contractors who are engaged in the provision of the Services or supply of the Goods from time to time.

Sub-processor: any third party appointed to process Personal Data on behalf of the Contractor related to this Agreement.

1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors and permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to **writing** or **written** includes email.

2. Basis of contract

2.1 The Order constitutes an offer by the Council to purchase Goods and/or Services from the Supplier in accordance with these Conditions.

2.2 The Order shall be deemed to be accepted on the earlier of:

- (a) the Supplier issuing written acceptance of the Order; 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 (**Commencement Date**).

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.

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 their description and 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 judgement;
- (c) where they are manufactured products, be free from defects in design, materials and workmanship and remain so for 12 months after delivery; and
- (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, 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 may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.

3.4 If following such inspection or testing the Council considers that the Goods do not comply or are unlikely to comply with the Supplier's undertakings at Condition 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 The Council may conduct further inspections and tests after the Supplier has carried out its remedial actions.

3.6 If following further inspection and tests after the Supplier has carried out its remedial actions, the Council reserves the right to terminate the contract in accordance with Condition 16.

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) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered (the "**Goods Delivery Note**");
- (c) it states clearly on the Goods Delivery Note any requirement for the Council to return any packaging material for the Goods to the Supplier. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier; and
- (d) where the Contract also includes the service of unpacking and/or installing the Goods, the Supplier shall remove all packaging, recycling it where possible, but otherwise in accordance with all legislation on the disposal of waste.

4.2 The Supplier shall deliver the Goods:

- (a) on the date specified in the Order or, if no such date is specified, then on such date as is agreed in writing between the Parties;
- (b) to the location as is set out in the Order or as instructed by the Council before delivery (**Delivery Location**); and
- (c) during the Council's normal hours of business on a Business Day, or as instructed by the Council.

- 4.3** Delivery of the Goods shall be completed upon the signing of the Goods Delivery Note by an authorised representative of the Council following unloading (and unpacking/installing if agreed between the parties) of the Goods at the Delivery Location. A Goods Delivery Note that has been signed by a Council representative shall constitute evidence only that the delivery of the Goods has occurred and shall not constitute evidence as to the quantity, satisfactory quality or otherwise of the Goods.
- 4.4** Where any Goods delivered to the Council to the wrong place, the Supplier shall be solely responsible for and bear the costs incurred in redirecting such Goods to their correct destination.
- 4.5** 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 Condition 7.1.
- 4.6** The Council shall not be obliged to accept the delivery of any Goods or quantities of Goods varying from those specified in the Contract.
- 4.7** The Council shall be entitled to reject any Goods delivered without a Goods Delivery Note and the provisions of Condition 7.3 shall apply.
- 4.8** Title and risk in the Goods shall pass to the Council on completion of delivery.

5. Cancellation of Goods

The Council may cancel any written Order, whether or not accepted, or reduce the quantity of any Goods ordered by submitting to the Supplier a written notice which specifically refers to the relevant Order, stipulates the changes and is actually received by the Supplier not less than 14 days prior to the requested delivery date, and on every such case the Supplier shall have no claim in respect of any goods no longer required by the Council.

6. Supply of Services

- 6.1** The Supplier shall from the Commencement Date or such other date as may be set out in the Order for the duration of the Contract supply the Services to the Council in accordance with the terms of the Contract.
- 6.2** The Supplier shall meet any performance dates for the Services specified in the Order or that the Council notifies to the Supplier.

6.3 The Contract shall, unless terminated sooner in accordance with these Conditions or in accordance with common law or statute, remain in force until such date as is set out in the Order, or until completion of the Services in accordance with the Service Specification.

6.4 In providing the Services, the Supplier shall:

- (a) co-operate with the Council in all matters relating to the Services, and comply with all instructions of the Council;
- (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
- (d) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose that the Council expressly or impliedly makes known to the Supplier;
- (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (f) 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;
- (g) obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
- (h) comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services;
- (i) observe all health and safety rules and regulations and any other security requirements that apply at any of the Council's premises;
- (j) hold all 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;
- (k) 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; and
- (l) comply with any additional obligations as set out in the Service Specification.

6.5 If the Supplier fails to provide Services in accordance with this Condition 6, then the Council reserves the right to terminate the Contract in accordance with Condition 16.

7. Council remedies

7.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, the Council shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights:

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
- (c) to recover from the Supplier any costs incurred by the Council in obtaining substitute goods and/or services from a third party;
- (d) to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered; and
- (e) to claim damages for any additional costs, loss or expenses incurred by the Council which are in any way attributable to the Supplier's failure to meet such dates.

7.2 If the Supplier has delivered Goods that do not comply with the undertakings set out in Condition 3.1, then, without limiting or affecting other rights or remedies available to it, the Council shall have one or more of the following rights, whether or not it has accepted the Goods:

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to reject the Goods (in whole or in part) whether or not title has passed and:
 - (i) the Supplier shall promptly collect and remove the Goods from the Council's premises at the Supplier's own risk and expense within seven calendar days of a written request from the Council;
 - (ii) in the event that the Supplier does not collect the rejected Goods where so requested by the Council under Condition 7.3(b)(i) above, the Council may return them to the Supplier at the Supplier's own risk and expense.
 - (iii) If the Council requires the Supplier to remove the Goods pursuant to Condition 7.3(b)(i) above then the Council shall not be responsible for any damage occasioned whilst the Goods are at the Council's premises (howsoever occasioned) or caused in removing the Goods, nor for any delay.

- (c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- (d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- (e) to recover from the Supplier any expenditure incurred by the Council in obtaining substitute goods from a third party; and
- (f) to claim damages for any additional costs, loss or expenses incurred by the Council arising from the Supplier's failure to supply Goods in accordance with Condition 3.1.

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

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

8. Council's obligations

8.1 The Council shall:

- (a) provide the Supplier with reasonable access at reasonable times to the Council's premises for the purpose of providing the Services; and
- (b) provide such necessary information for the provision of the Services as the Supplier may reasonably request.

9. Charges and payment

9.1 The price for the Goods:

- (a) shall be the price set out in the Order; and
- (b) shall be inclusive of the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by the Council.

9.2 The charges for the Services shall be set out in the Order, 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 charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

9.3 The price charged by the Supplier to the Council shall not exceed the usual price charged by the Supplier to any other customer purchasing goods and/or services identical or similar to the Goods and/or Services in similar quantities. The Council shall

be entitled to any discount for prompt payment, bulk purchase or volume of purchases customarily granted by the Supplier.

- 9.4** In respect of the Goods, the Supplier shall invoice the Council on or at any time after completion of delivery. 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. Any invoice submitted before completion of delivery shall be deemed to have been received on the date of delivery.
- 9.5** All invoices must be sent to the address specified by the Council in the Order.
- 9.6** In consideration of the supply of Goods and/or Services by the Supplier, the Council shall pay the invoiced amounts within 30 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
- 9.7** All amounts payable by the Council under the Contract are exclusive of amounts in respect of value 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.
- 9.8** If the Council fails to make a payment due to the Supplier under the Contract by the due date, then the Council shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Condition 9.8 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%. The Parties agree that this Condition constitutes a substantial remedy for the purposes of the Late Payments of Commercial Debts (Interest) Act 1998.
- 9.9** The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the Council to inspect such records at all reasonable times on request.
- 9.10** The Council may at any time, without notice to the Supplier, set off any liability of the Supplier to the Council against any liability of the Council to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. Any exercise by the Council of its rights under this Condition shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

10. Intellectual property rights

- 10.1** All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any Council Materials) shall be owned by the Supplier.
- 10.2** The Supplier grants to the Council, or shall procure the direct grant to the Council of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding Council Materials) for the purpose of receiving and using the Services and the Deliverables.
- 10.3** The Council grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy any materials provided by the Council to the Supplier for the term of the Contract for the purpose of providing the Services to the Council.
- 10.4** All Council Materials are the exclusive property of the Council.

11. Indemnity

- 11.1** The Supplier shall indemnify the Council against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Council arising out of or in connection with:
- (a) 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 (excluding the Council Materials);
 - (b) any claim made against the Council by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered, or the Deliverables; and
 - (c) any claim made against the Council by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services.
- 11.2** Where the Supplier is a subsidiary company within the meaning of the Companies Act 2006, the Supplier shall ensure that an agreement is entered into by the Supplier's holding company indemnifying the Council in respect of the Supplier's obligations under the Contract.
- 11.3** This condition 11 shall survive termination of the Contract.

12. Insurance

During the term of the Contract and for a period of three years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Council's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

13. Confidentiality and FOIA

13.1 Each Party undertakes to keep confidential all Confidential Information disclosed or obtained as a result of the relationship of the Parties under the Contract and shall not disclose the same save for the purpose of proper performance of the Contract or with the written consent of the Council. However this does not extend to:

- (a) any matter which the Supplier can show is in or has become part of the public domain, (other than as a result of the breach of the obligations of confidentiality under these Conditions);
- (b) was independently disclosed to it by a third party entitled to disclose the same; or
- (c) is required to be disclosed under any applicable law or by order of a court or governmental body or authority of competent jurisdiction.

13.2 The Supplier shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the Council's Confidential Information must comply with this Condition 13.

13.3 The Supplier shall not make any announcement or otherwise publicise the existence of or disclose to any person the provisions of the Contract without the prior written consent of the Council.

13.4 The Supplier acknowledges that the Council, as a public authority, may receive requests for information relating to this Contract and to the Goods and/or Services which (but for any right to claim commercial confidentiality or any other applicable exemption) the Council will be obliged to disclose under the FOIA or the EIR. The Council shall consult with the Supplier over any such request and the Supplier will provide such reasonable assistance and cooperation as may be required to enable the Council to comply with its obligations under the FOIA/EIR.

13.5 Neither party shall use the other party's Confidential Information for any purpose other than to perform its obligations under the Contract.

13.6 This Condition 13 shall survive termination of the Contract.

14. Safeguarding Children and Vulnerable Adults

14.1 Under the Safeguarding Vulnerable Groups Act 2006 (the “**SVGA 2006**”), where the Supplier is a Regulated Activity Provider (as defined in the SVGA 2006) with ultimate responsibility for the management and control of the Regulated Activity (as defined in the SVGA 2006) provided under this Contract, the provisions of this Condition 14 shall apply.

14.2 The Supplier shall:

- (a) ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service (“**DBS**”);
- (b) monitor the level and validity of the checks under this Condition 14.2 for each member of staff; and
- (c) 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.

14.3 The Supplier warrants that at all times for the purposes of this 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.

14.4 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 Condition 14 have been met.

14.5 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 children or vulnerable adults.

15. Data Protection and GDPR

15.1 Each Party shall fully comply with its respective obligations under the Data Protection Legislation.

- 15.2** The Parties acknowledge that for the purposes of the Data Protection Legislation, unless otherwise specifically agreed by the Parties in writing, the Council is the Controller and the Supplier is the Processor. The only processing that the Supplier is authorised to do is as instructed by the Council in Schedule 1 to these Terms and Conditions, and may not be determined by the Supplier.
- 15.3** The Supplier shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.
- 15.4** The Supplier shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 15.5** The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- (a) process that Personal Data only in accordance with Condition 15.2, unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Council before processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Council as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - (c) ensure that:
 - (i) the Supplier's Personnel do not process Personal Data except in accordance with this Agreement (and in particular Condition 15.2);

- (ii) it takes all reasonable steps to ensure the reliability and integrity of any Supplier's Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Supplier's duties under this Condition;
 - (B) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EEA unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
 - (i) the Council or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Council;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Council in meeting its obligations);
 - (iv) the Supplier complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data; and
 - (v) at the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the Agreement unless the Supplier is required by Law to retain the Personal Data.

15.6 Subject to Condition 15.7, the Supplier shall notify the Council immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - (e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (f) becomes aware of a Data Loss Event.
- 15.7** The Supplier's obligation to notify under Condition 15.6 shall include the provision of further information to the Council in phases, as details become available.
- 15.8** Taking into account the nature of the processing, the Supplier shall provide the Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Condition 15.6 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:
- (a) the Council with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Council following any Data Loss Event;
 - (e) assistance as requested by the Council with respect to any request from the Information Commissioner's Office, or any consultation by the Council with the Information Commissioner's Office.
- 15.9** The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this Condition. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:
- (a) the Council determines that the processing is not occasional;
 - (b) the Council determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - (c) the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 15.10** The Supplier shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor.

- 15.11** The Supplier shall designate a data protection officer if required by the Data Protection Legislation.
- 15.12** Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Supplier must:
- (a) notify the Council in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Council;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Condition 15 such that they apply to the Sub-processor; and
 - (d) provide the Council with such information regarding the Sub-processor as the Council may reasonably require.
- 15.13** The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.
- 15.14** The Council may, at any time on not less than 30 Business Days' notice, revise this Condition by replacing it with any applicable controller to processor standard Conditions or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 15.15** The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than 30 Business Days' notice to the Supplier amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 15.16** Where the Parties identify in writing that they are Joint Controllers in accordance with Article 26 of the GDPR, the Parties shall enter into a Joint Controller Agreement which outlines each Parties responsibilities for:
- (a) providing information to data subjects under Article 13 and 14 of the GDPR;
 - (b) responding to data subject requests under Articles 15-22 of the GDPR;
 - (c) notifying the Information Commissioner (and data subjects) where necessary about data breaches maintaining records of processing under Article 30 of the GDPR;
 - (d) carrying out any required Data Protection Impact Assessment;
- and specifying who is the point of contact for data subjects.
- 15.17** The Supplier shall indemnify and keep indemnified the Council against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by it in respect of any breach of this Condition 14 by the Supplier and/or any act or omission of any Subcontractor. For the avoidance of doubt, the indemnity contained in this

Condition 15.7 is not subject to any limit on the Supplier's liability as may be set out elsewhere in the Agreement.

15.18 The provisions of this Condition 15 shall apply during the continuance of the Contract and indefinitely after its Termination.

16. Termination

16.1 Without affecting any other right or remedy available to it, the Council may terminate the Contract:

- (a) with immediate effect by giving written notice to the Supplier if:
 - (i) there is a change of control (within the meaning of section 1124 of the Corporation Tax Act 2010) of the Supplier; or
 - (ii) the Supplier's financial position deteriorates to such an extent that in the Council's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
 - (iii) the Supplier commits a breach of condition 6.4(h),
- (b) for convenience by giving the Supplier one months' written notice.

16.2 Without affecting any other right or remedy available to it, either Party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other Party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (b) the other Party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business; or
- (c) the other Party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

17. Consequences of termination

17.1 On termination of the Contract, the Supplier shall immediately deliver to the Council all Deliverables whether or not then complete, and return all Council Materials. If the Supplier fails to do so, then the Council may 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 the Contract.

17.2 Termination or expiry of the Contract shall not affect the Parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

17.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

18. Corruption

The Council may immediately determine the Contract and exercise its rights under Condition 16 if the Supplier or any person on its behalf whether employed by the Supplier or not and whether acting with or without the knowledge of the Supplier:

- (i) shall have agreed with any third party to fix or adjust either Party's prices or to refrain from issuing a proposal;
- (ii) shall have communicated to any person, except the Council, the amount or approximate amount of its proposal otherwise than in confidence to obtain premium quotations for insurances;
- (iii) shall have given, agreed to give, offered to give or promised any person (directly or indirectly for the benefit of that person or any other) any gift, loan, fee, reward or other consideration or conferred any advantage as an inducement to, reward for, or otherwise in return for such person having done, agreed or forborne to do, anything in relation to any other proposal or for any contract;
- (iv) shall have directly or indirectly canvassed any Member or Officer of the Council in order to obtain or attempt to obtain entry to any lists of persons approved by the Council to carry out works on its behalf, or information concerning any other tenderer or any proposal submitted by any other tenderer, or any advantage or benefit to the disadvantage of other tenderers;
- (v) shall show favour or disfavour to any person in relation to any contract with the Council; or
- (vi) shall otherwise have committed any offence under the Bribery Act 2010 or shall have given any fee or reward the receipt of which is an offence under Section 117(2) and (3) of the Local Government Act 1972.

19. Insolvency

Where the Supplier makes a composition or arrangement with his creditors, or becomes bankrupt, or being a company, makes a proposal for a voluntary arrangement for a composition of debts or scheme of arrangement to be approved in accordance with the Companies Act 1985 or the Insolvency Act 1986 as the case may be or any amendment or re-enactment thereof, or has a provisional liquidator appointed, or has a winding-up order made, or assess a resolution for voluntary winding-up (except for the purposes of amalgamation or reconstruction), or under the Insolvency Act 1986 or any amendment or re-enactment thereof has an administrator or an administrative receiver appointed, the Council may require the Goods to be delivered and if this requisition is not satisfied within seven days from the date of the Council's notice to that effect the Council may by written notice, and without prejudice to any other rights or remedies of the Council, immediately terminate the Contract.

20. Recovery of Money

Whenever under the Contract any sum of money is due from the Supplier, the Council may deduct that sum from any sum then due or which at any later time becomes due to the Supplier under the Contract or under any other contract with the Council.

21. Sub-Contractors

No part of the Services or supply of Goods shall be sub-contracted unless formally agreed in writing by the Parties. Notwithstanding such consent, the Supplier shall not be relieved from any liabilities or obligations under the Contract and shall be responsible for the acts, omissions and breaches of any sub-contractor as fully as if they were the Contractor's own and shall ensure that the sub-contractor is familiar with the Contract and will perform the Service fully in conformity with the Contract.

22. Force Majeure

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure results from events, circumstances or causes beyond its reasonable control (a "**Force Majeure Event**"). Provided that such Party uses all commercially reasonable endeavours to mitigate the effect of such Force Majeure Event the party not affected may suspend or terminate this Contract by giving written to the affected party.

23. General

23.1 Assignment and other dealings.

- (a) The Council may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under the Contract.
- (b) The Supplier shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

23.2 Notices.

- (a) Any notice or other communication given to a Party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service to the address for each Party set out in the Order.
- (b) A notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 12:00 pm on the second Business Day after posting. In this Condition 23.2(b), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This Condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

23.3 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Condition shall not affect the validity and enforceability of the rest of the Contract.

23.4 Waiver. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

23.5 No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute either Party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other Party.

- 23.6 Entire agreement.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 23.7 Third party rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 23.8 Variation.**
- (a) Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Parties or their authorised representatives.
 - (b) Where as a consequence of a variation, the Contract Price should be varied, the Parties shall agree a revised Contract Price based on the original Contract Price and the Council shall cancel the original Purchase Order and issue a new one.
- 23.9 Observance of statutory requirements including health and safety.** The Supplier shall comply with all statutory and other provisions to be observed and performed in connection with the Goods and Services provided under this Contract with particular regard to the health and safety of employees and of the public and shall indemnify and keep indemnified the Council accordingly.
- 23.10 Discrimination.** The Supplier shall not unlawfully discriminate directly or indirectly on such
- 23.11 Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 23.12 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

Schedule I

Schedule of Processing, Personal Data and Data Subjects

1. The Supplier shall comply with any further written instructions with respect to processing by the Council.
2. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	<i>Include details</i>
Duration of the processing	<i>Duration of contract</i>
Nature and purposes of the processing	<i>Include details</i>
Type of Personal Data	<i>List type of Personal Data</i>
Categories of Data Subjects	<i>List Categories of Data Subjects</i>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data.	<i>Include details</i>