

**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:

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 25.13;

**Contract:** the contract based on the Order between the Council and the Supplier for the supply of Goods and/or Services created in accordance with clause 2 and any agreed variations to such Contract documents;

**Council:** means Wiltshire Council;

**Council Materials:** has the meaning set out in clause 6.3(k);

**Data Protection Legislation:** unless and until it is no longer directly applicable in the UK, the General Data Protection Regulation (EU Regulation 2016/679) (the "GDPR"), the Data Protection Act (DPA) 2018 to the extent that it relates to processing of personal data and privacy, 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, in each case, to the extent in force, and as such are updated, amended or replaced from time to time, including any successor legislation to the GDPR or the Data Protection Act 2018.

**Data Controller, Data Processor, Data Subject, and Personal Data** take the meaning given in the Data Protection Legislation.

**Deliverables:** the documents, products and materials (in any form or media) that the Supplier is required to create, develop and/or deliver under the Contract, including without limitation draft and final drawings, maps, plans, designs, art, audio and/or visual recordings, software, data, specifications and reports;

**Effective 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);

**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:** where applicable, the specification for the Goods, including any 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;

**Losses:** means all actions, proceedings, costs, charges, claims, settlements, demands, damages, liabilities, losses, interest, fines and penalties, costs and expenses (including legal fees on an indemnity basis and any reasonable professional costs or disbursements arising in connection with the same together with any VAT thereon) whatsoever whether arising in tort (including negligence), contract, breach of law or otherwise;

**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 response to the Supplier's Proposal);

(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 and signing of a 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 the Contract;

(c) committing any offence:

(i) under the Bribery Act;

(ii) under legislation or common law concerning fraudulent acts;

(iii) defrauding, attempting to defraud or conspiring to defraud the Council;

(d) any activity, practice or conduct which would constitute one of the offences listed under limb (c) of this definition, if such activity, practice or conduct had been carried out in the UK;

**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 adults at risk shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006;

**Regulated Activity Provider:** as defined in section 6 of 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, the provision of 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 Commencement Date:** means the Effective Date or such other date as if specified for the commencement of the Services in the Order or Form of Agreement;

**Service Specification:** the requirements, specifications and/or standards describing the Services (including any Deliverables) included 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/tender and any Service Specification and/or Goods Specification or other documents;

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

**Whistleblowing:** means the reporting of suspected wrongdoing or dangers in relation to Council related activities, including bribery, fraud or other criminal activity, miscarriages of justice, health & safety risks, risk or damage to the environment and any breach of legal or professional obligations and "Whistleblower" shall be construed accordingly;

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

- 1.2 Clause headings shall not affect the interpretation of these Conditions.
- 1.3 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.
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 A reference to a party includes its personal representatives, successors or permitted assigns.
- 1.6 Words in the singular shall include the plural and vice versa and a reference to one gender shall include a reference to the other.
- 1.7 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.
- 1.8 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.
- 1.9 A reference to **writing** or **written** excludes faxes but includes e-mails unless otherwise stated.
- 1.10 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.
- 1.11 Any obligation in the Contract on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that its staff, agents, sub-contractors or advisers also do, or refrain from doing, such act or thing to the fullest extent applicable, unless the context otherwise requires.
- 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 the Contract) 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 date the Council receives the Supplier's unconditional written acceptance of the Order; or
  - (b) the date the Supplier commences fulfilling the Order, at which point 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 (including in the Supplier's Proposal or in any quotes or invoices submitted by the Supplier), or which are implied by trade, custom, practice or course of dealing other than as expressly provided for in the Order or any variation of the Contract under clause 25.13.
- 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. GENERAL WARRANTIES**

The Supplier warrants and represents that:

- (a) it has full capacity and authority and all necessary licences, permissions and consents to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Supplier;
- (b) it shall perform its responsibilities under this Contract in a manner that does not infringe, or constitute an infringement or misappropriation of, any Intellectual Property Right or proprietary rights of any third party;
- (c) in entering the Contract it has not committed any Prohibited Act;
- (d) as at the Effective Date, all information contained in the Supplier's Proposal or in any other information provided by the Supplier in

response to the Council's pre-qualification questionnaire / request for quotation / suitability assessment questions (as applicable) or other procurement documentation relating to the award of this Contract, remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to the coming into existence of the Contract.

**4. SUPPLY OF GOODS**

- 4.1 The Supplier shall ensure that the Goods shall:
- (a) correspond with the description in the Order or Form of Agreement including the 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. The Supplier acknowledges and agrees that the approval by the Council of any designs provided by the Supplier shall not relieve the Supplier of any of its obligations under this sub-clause;
  - (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 including those relating to the design, quality, manufacture, testing, labelling, packaging, storage, handling and delivery of the Goods.
- 4.2 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.
- 4.3 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 raw materials, 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).
- 4.4 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 4.1, the Council shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 4.5 Notwithstanding such inspection or testing, the Supplier shall remain fully responsible for the Goods and 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.

**5. DELIVERY OF GOODS**

- 5.1 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 5.6), 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.

- 5.2 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 Effective Date;
  - (b) to the location or locations 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.
- 5.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 5.4 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.
- 5.5 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.
- 5.6 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 instalment on time or at all or any defect in any instalment shall entitle the Council to the remedies set out in clause 10.1.
- 5.7 Title and risk in the Goods shall pass to the Council on completion of delivery at the Delivery Location.
- 5.8 Notwithstanding clause 5.7 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.
- 5.9 The Supplier shall be responsible for and keep under its control all equipment and materials brought to the Delivery Location.
- 5.10 The Supplier shall immediately inform and notify the Council on becoming aware of any damage caused by the Supplier to the Delivery Location or any other property belonging to the Council or any third party in the course of delivering the Goods.
- 5.11 Notwithstanding clause 14, where the need to repair the Delivery Location or repair or replace any other 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.
- 6. SUPPLY OF SERVICES**
- 6.1 The Supplier shall from the Service Commencement Date and for the duration of this Contract provide the Services to the Council in accordance with the terms of the Contract.
- 6.2 The Supplier shall meet any performance dates or milestones for the Services specified in the Order or Form of Agreement or that are otherwise agreed in writing by the Supplier and Council or confirmed in writing.
- 6.3 In providing the Services, the Supplier shall:
- (a) co-operate with the Council in all matters relating to the Services, and comply with all reasonable instructions of the Council including any 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, using efficient business processes and ways of working having regard to the Council's obligation to ensure 'Best Value';
- (c) use personnel who are suitably skilled and experienced (and, as appropriate, vetted in accordance with clause 8 (Safeguarding children and safeguarding adults at risk)) 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 or required by law;
  - (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, and subject to the terms of the Order or Form of Agreement, if the Supplier is unable or unwilling to provide a suitable replacement for prior approval by the Council in writing (such approval not to be unreasonably withheld or delayed) 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 conform with the Service Specification;
  - (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 any tangible Deliverables, and all goods and materials supplied and used in the provision of 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 9 below and any other security requirements that apply at any of the Council's premises;
  - (k) hold all documents, 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 of 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) at all times comply with all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise) and not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination 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.
- 6.4 The Supplier shall inform the Council in writing, as soon as possible:
- (a) of any potential or actual conflict between this clause 6 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 23.1).
- 7. PERFORMANCE REVIEW**
- 7.1 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, attend performance review meetings, provide reports on performance, and permit testing and/or inspections by the Council during the period of the Contract.

7.2 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 any records of complaints received (where applicable to the Contract) and the parties shall discuss any complaints and feedback from third party users of the Services at performance review meetings.

**8. SAFEGUARDING CHILDREN, AND SAFEGUARDING ADULTS AT RISK**

8.1 Everyone has a responsibility for safeguarding and promoting the welfare of children, and safeguarding adults at risk. In the event that the Service Provider has concerns that a child, or adult at risk, is experiencing, or is at risk of, abuse (whether financial, physical, sexual, emotional or neglect) this should be reported in the following ways:

- (a) if a child, or adult at risk, is in immediate danger or left alone, contact the police or call an ambulance on 999;
- (b) in all other cases involving children, referrals should be made to Wiltshire social care services via the Council's 'Multi-Agency Safeguarding Hub' (MASH) on 0300 456 0108 (or out of hours via the 'Emergency Duty Service' on 0300 456 0100);
- (c) in all other cases involving adults, referrals should be made to the Council's Advice and Contact Team on 0300 456 0111 (or out of hours via the 'Emergency Duty Service'), e-mail [AdviceandContact@wiltshire.gov.uk](mailto:AdviceandContact@wiltshire.gov.uk)

*(In the event that a Regulated Activity is provided under this Agreement, the following provisions shall apply:-)*

8.2 The parties acknowledge that the Service Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006 (SVGA 2006).

8.3 The Service Provider shall (whether performing the agreement by itself and/or any Sub-Contractor):

- (a) comply at all times with the provisions of the SVGA 2006 and any regulations made thereunder 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) including 'Working together to safeguard children' (2018) and Care Act 2014, LGA Chapter 14 Guidance (published March 2016- 2nd Edition), with reference to the Wiltshire Safeguarding Adults Board (WSAB) "Safeguarding Adults in Wiltshire" Booklet. Revised Guidance for Staff.
- (b) comply with all relevant Council policies and procedures relating to safeguarding that are published on its website ([www.wiltshire.gov.uk](http://www.wiltshire.gov.uk) and [www.wiltshiresab.org.uk](http://www.wiltshiresab.org.uk)) or otherwise provided by the Council from time to time, "Policy and Procedures for Safeguarding Adults in Wiltshire" (<http://www.wiltshiresab.org.uk/wp-content/uploads/2016/12/WSAB-Policy-and-Procedures-safeguarding-adults-at-risk-in-Wiltshire-March-2017-1.docx>) and the "Safeguarding Framework for Children's Commissioned Services";
- (c) have due regard for and 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 SVGA 2006, Children Act 1989, section 11 of the Children Act 2004, the Care Act 2014, the policies and procedures referred to in Clause 8.3 and any other laws, enactments, orders or regulations relating to the protection, safeguarding and promotion of the welfare of children, and safeguarding adults at risk;
- (d) where applicable, operate a child protection policy that reflects and complements the Council's multi-agency and single agency child protection procedures (as provided by the Council and as may be amended from time to time);
- (e) where the provision of the Services results in contact with "adults at risk" (as defined in "Policy and Procedures for Safeguarding Adults in Wiltshire" (<http://www.wiltshiresab.org.uk/wp-content/uploads/2016/12/WSAB-Policy-and-Procedures-safeguarding-adults-at-risk-in-Wiltshire-March-2017-1.docx>)) the Service Provider shall report any concerns of "abuse" (including allegations of abuse by a member of staff or volunteer) in accordance with the policy and shall (at its own expense) co-operate and provide all reasonable assistance to the Council in respect of any investigations or enforcement actions;
- (f) operate recruitment and training policies and procedures (including in relation to potential staff and volunteers) having regard to the need to safeguard and promote the welfare of children, and the need to safeguard adults at risk 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, reprimands, final warnings, or bind overs, including those regarded as 'spent', should be declared unless otherwise "protected" from disclosure under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2013). The Service Provider (or Sub-Contractor) should also obtain a signed statement that the person is not disqualified from work with children, or adults at risk, or subject to sanctions imposed by any regulatory body, and either has no convictions, cautions, reprimands, final warnings, or bind overs, or has declared the details of such offences (unless protected from disclosure);

- (ii) ensure that all Service Provider Personnel and Sub-Contractors engaged in the provisions of the Services are familiar with the legal requirements, policies and procedures referred to in this clause;
  - (g) ensure that all individuals carrying out Services are subject to valid standard or enhanced disclosure checks (in accordance with the legal eligibility requirements relating to the position and duties) undertaken through the 'Disclosure and Barring Service' (DBS), including enhanced disclosure checks with a check of the appropriate barred list for individuals providing a Regulated Activity;
  - (h) 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 or other recipients of the Services under this agreement;
  - (i) immediately notify and keep the Council advised of any person who subsequently receives a conviction or whose previous conviction(s) becomes known to the Service Provider where such conviction would prevent that person from providing any of the Services in accordance with Clause 8.3(h);
  - (j) treat all DBS disclosures as confidential and store and retain them in compliance with all applicable laws and guidance including Data Protection Legislation and any other guidance issued by HM Government;
  - (k) monitor the level, validity and frequency of the checks required under Clause 8.3(g) for each individual employed or engaged in the provisions of the Services;
  - (l) comply with Clauses 8.4 to 8.6 below.
- 8.4 The Service Provider warrants and represents that at all times for the purposes of the agreement it has no reason to believe that any person who is or will be employed or engaged by the Service Provider in the provision of the Services will be employed or engaged in breach of Clause 8.3(h).
- 8.5 The Service Provider shall promptly provide, at its own cost, any information or evidence that the Council reasonably requests to enable it to be satisfied that the obligations of this Clause 8 have been met. In particular, and without incurring any liability to the Service Provider, the Council may require the suspension of any person from carrying out the Services until written confirmation of the required checks and clearances is given in a form satisfactory to the Council.
- 8.6 The Service Provider 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 adults at risk.

**9. HEALTH AND SAFETY**

- 9.1 The Supplier shall promptly inform the Council of any health and safety hazards which exist or arise in connection with the performance of the Contract and the Council shall promptly inform the Supplier of any health and safety hazards that exist or arise at Council premises which may affect the performance of the Contract, and each party shall confirm in writing any information given orally.
- 9.2 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.
- 9.3 The Supplier shall notify the Council immediately in the event of any incident occurring in the performance of the Contract where that incident causes death or any personal injury or damage to property that could give rise to personal injury.
- 9.4 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.
- 9.5 The Supplier shall promptly make its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) available to

the Council on request.

**10. COUNCIL REMEDIES**

- 10.1 If the Supplier fails to deliver the Goods and/or perform the Services by the required date(s) or in conformity with any of the undertakings set out in clauses 4.1 and 6.3 the Council may, as applicable and at its sole discretion, without limiting its other rights or remedies under this Contract or law:
- (a) subject to any deemed acceptance of the Goods in accordance with clause 5, reject the Goods (in whole or in part) whether or not title has passed and return them to the Supplier at the Supplier's own risk and expense;
  - (b) terminate the Contract (in whole or part) with immediate effect by giving written notice to the Supplier;
  - (c) 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 10.1(d);
  - (d) 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, require the refund of such sums within 28 days of a written request by the Council and such sums shall be recoverable as a debt; and
  - (f) 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 including, without limitation, any increased costs reasonably incurred by the Council in obtaining substitute goods and/or services.
- 10.2 These Conditions shall extend to any substitute or remedial services and/or repaired or replacement goods supplied by the Supplier.
- 10.3 The Council's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

**11. 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 6.3) 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.

**12. PRICE AND PAYMENT**

- 12.1 The price for the Goods:
- (a) shall be the price set out in the Order or Form of Agreement, or if no price is included, the price set out in the Supplier's published price list in force at the Effective 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.
- 12.2 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.
- 12.3 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 or be supported by any information reasonably required by the Council to verify the accuracy of the invoice.
- 12.4 Subject to clause 12.5, in consideration of the supply of Goods and/or Services by the Supplier, the Council shall pay any valid and undisputed invoiced amounts due under the Contract within 28 days of the date of a correctly rendered invoice and such payment shall be made to a bank account nominated in writing by the Supplier.
- 12.5 The Council shall consider and verify any invoice submitted by the Supplier in a timely manner with a view to ascertaining whether the invoice is valid and undisputed. Where the Council believes, acting in good faith, that an invoice is invalid or contains errors it shall, without undue delay, inform the Supplier in writing. Any disputes over invoiced amounts shall be resolved in accordance with clause 22 (Disputes).

12.6 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), which shall be added at the prevailing rate as applicable and paid by the Council following delivery of a valid VAT invoice. The Supplier shall indemnify the Council against any liability (including any interest, penalties or costs incurred) which is levied, demanded 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.

- 12.7 In the event that the Supplier enters into any sub-contract (at any stage of remoteness from the Council in a subcontracting chain) made wholly or substantially for the purpose of performing (or contributing to the performance of) the Contract it shall cause the following terms to be included in the sub-contract:
- (a) that any payment due from the Supplier to the sub-contractor under the sub-contract is to be made no later than the end of a period of 30 days from the date on which the relevant invoice is regarded as valid and undisputed (as defined by the sub-contract requirements and by reference to any relevant guidance issued by the Minister for the Cabinet Office);
  - (b) that any invoices for payment submitted by the sub-contractor are considered and verified by the Supplier in a timely fashion and that undue delay in doing so is not to be sufficient justification for failing to regard an invoice as valid and undisputed; and
  - (c) a requirement for the sub-contractor to include in any sub-contract which it in turn awards suitable provisions to impose, as between the parties to that sub-contract, requirements to the same effect as those required by this clause 12.7.
- 12.8 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 late payment of any undisputed sums properly invoiced under the Contract in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. This clause shall not apply to payments that the Council disputes in good faith in accordance with clause 22 (Disputes).
- 12.9 The Council may, without limiting its other rights or remedies, set off any amount owed to it by the Supplier under the Contract against any amount payable by the Council to the Supplier under the Contract or any other agreement with the Supplier.

**13. TITLE AND INTELLECTUAL PROPERTY RIGHTS**

- 13.1 In respect of the Goods and any other goods that are transferred to the Council in relation to the provision of Services, including any tangible Deliverables, 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 transfer such items to the Council.
- 13.2 The Supplier shall not, in connection with performing any obligations under the Contract, use, manufacture, supply or deliver any material, software or thing which would be an infringement of any Intellectual Property Rights.
- 13.3 Subject to clause 13.4, all Intellectual Property Rights in materials (including Goods and Deliverables) created or developed in the course of performing or exclusively for the purpose of performing the Contract (the "Contract-Specific IPRs") shall be considered "commissioned work" for the Council and shall be owned solely by the Council. To the extent that exclusive title and/or ownership rights may not automatically vest in the Council the Supplier hereby irrevocably assigns to the Council, with full title guarantee, title to and all present and future rights and interest in such Contract-Specific IPRs, or shall procure that the first owner of such rights assigns them to the Council on the same basis.
- 13.4 The parties acknowledge that:
- (a) there may be circumstances where:
    - (i) the parties agree that the Supplier or a third party shall own some or all of the Intellectual Property Rights in the Contract-Specific IPRs; and/or
    - (ii) the materials (including Goods and Deliverables) created or developed in the course of performing or exclusively for the purpose of performing the Contract incorporate the Supplier's or a third party's pre-existing Intellectual Property Rights and the parties agree that the Supplier or third party shall retain such rights,

and in such circumstances the Supplier shall grant or procure the grant of a perpetual, irrevocable, worldwide, royalty-free, and non-exclusive licence for the Council to use and sub-licence such rights: in relation to paragraph (i), for any purpose; or, in relation to paragraph (ii), for any purposes other than the commercial exploitation of such rights;
  - (b) where commercial "off the shelf" Goods and/or Deliverables are supplied the Supplier may supply such materials on the basis of its or a third party's relevant standard licence terms or such other terms as the parties may agree,

provided such agreement is expressly provided for in the Order or Form of Agreement.

13.5 All Intellectual Property Rights in any other materials provided by either party for the purposes of performing the Contract (excluding Intellectual Property Rights assigned or licensed under clauses 13.3 and 13.4) shall remain the property of the relevant party (or third party) but that party hereby grants the other party (or shall procure the grant of) a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Contract for the sole purpose of enabling the other party to perform its obligations under the Contract. Such license includes the right to grant sub-licences to any permitted staff, agent, sub-contractor or adviser provided such person is subject to suitable confidentiality undertakings in accordance with clause 16 (Confidentiality).

13.6 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 13.3 and 13.4.

13.7 The Supplier waives or shall obtain waivers of all moral rights in the Contract-Specific IPRs which any individual is now or may be at any future time entitled to under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.

13.8 The Supplier shall indemnify the Council against all Losses of the Council arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Rights in the course of performing this Contract or due to the Council's use of such Intellectual Property Rights in accordance with the provisions of the Contract.

**14. INDEMNITY**

14.1 The Supplier shall indemnify and keep indemnified the Council against all Losses of the Council, to the extent that any Losses are due to any breach of contract, negligence, failure or delay in the performance of the Contract, willful default or fraud, damage to any property (whether arising out of or in connection with the manufacture, supply or use of the Goods, or the receipt of the Services), by the Supplier or any of its staff, agents, sub-contractors or advisers, save to the extent that the Council contributes to such Losses through its negligence, breach of this Contract or applicable law.

14.2 Subject to clause 14.3 and the Form of Agreement (where applicable), 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.

14.3 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.

14.4 This clause 14 shall survive termination of the Contract.

**15. INSURANCE**

15.1 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 at a level that meets or exceeds the minimum level required by law.

15.2 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.

15.3 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.

15.4 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract.

15.5 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.

**16. CONFIDENTIALITY**

16.1 Subject to clause 17 (Transparency requirements), 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 16.2 or where otherwise expressly agreed in writing.

16.2 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 16; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

16.3 No party shall use any other party's confidential information for any purpose other than to perform its obligations under the Contract. This clause 16 shall survive the termination or expiry of the Contract.

**17. TRANSPARENCY REQUIREMENTS**

17.1 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, the 'Local Government Transparency Code' and the Local Government (Transparency Requirements) (England) Regulations 2014 and is required to publish information on 'Contracts Finder' in accordance with Part 4 of the Public Contracts Regulations 2015 (together the "Transparency Requirements"); and
- (b) agrees that the Council may therefore publish details (in accordance with the Transparency Requirements) 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 17.

**18. FREEDOM OF INFORMATION**

18.1 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.

18.2 The Supplier shall:

- (a) transfer any Request for Information to the Council as soon as possible 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.

18.3 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.

18.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Council.

18.5 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 18.5(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.

**19. DATA PROTECTION**

- 19.1 Both parties shall comply with their individual obligations under all Data Protection Legislation.
- 19.2 Both parties, insofar as performance of the Contract gives rise to obligations under Schedule 3 to the Form of Agreement shall be compliant with the Data Protection Legislation in carrying out their duties.
- 19.3 Each party is individually responsible for notifying the other party should there be any additional requirements or amendments required to Schedule 3 to the Form of Agreement and obtain the other party's formal consent prior to acting on such additional requirements or amendments.
- 19.4 Both parties shall ensure that it does nothing knowingly or negligently which places the other party in breach of the Data Protection Legislation.

**20. RECORDS AND AUDIT**

- 20.1 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 6 (Supply of Services);
  - (c) any records required by the Council pursuant to clause 7 (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.
- 20.2 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.

**21. TUPE**

- 21.1 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.
- 22. 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.

**DISPUTES**

22.1 If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it (a "**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 (a "**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 15 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 managers 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 22.4; or
  - (ii) where appropriate and reasonable in the case of any disputes relating to technical issues, by expert determination in accordance with clause 22.5.

22.2 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.

22.3 The parties shall bear their own legal costs in respect of the dispute resolution procedure in clauses 22.1(a) to 22.1(c).

**22.4 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 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.

**22.5 Expert determination**

- (a) An "**Expert**" is a person appointed in accordance with this clause to resolve a technical dispute.
- (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 relation 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.
- 22.6 All matters under this clause must be conducted, and the Expert's decision shall be written, in the English language.
- 22.7 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.
- 22.8 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.
- 22.9 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.
- 22.10 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.
- 22.11 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.
- 22.12 All matters concerning the process and result of the determination by the Expert shall be kept confidential among the parties and the Expert.
- 23. TERMINATION**
- 23.1 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, in the reasonable opinion of the Council, 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 and put in place measures to ensure that such breach does not recur, in each case to the reasonable satisfaction of the Council;
  - (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 23.1(b) to clause 23.1(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;
  - (m) where applicable in accordance with the Public Contracts Regulations 2015 ("PCR 2015"):
    - (i) the Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of PCR 2015;
    - (ii) the Supplier has, at the time of 'contract award', been in one of the situations referred to in regulation 57(1) of PCR 2015, including as a result of the application of regulation 57(2), and should therefore have been excluded from the relevant procurement process;
    - (iii) the Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations under the 'Treaties' and the 'Public Contracts Directive' (as defined in PCR 2015) that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of TFEU; or
  - (n) serious misrepresentation in the Supplier's Proposal or in any other information provided by the Supplier in response to the Council's pre-qualification questionnaire / request for quotation / suitability assessment questions (as applicable) or other procurement documentation.
- 23.2 The Council may terminate the Contract in accordance with the provisions of clause 6.3(e) (re key individuals), clause 10 (Council remedies), clause 25.3 (Prohibited Acts) and clause 25.5 (Force Majeure).
- 23.3 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.
- 23.4 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.
- 23.5 In any of the circumstances in these Conditions in which the Council may terminate the Contract the Council may instead terminate part of the Contract, whether in relation to Goods and/or Services, and the Contract shall continue in respect of the remaining parts, provided always that the parts of the Contract not terminated can operate effectively to deliver the intended purpose of the Contract or a part thereof.
- 24. CONSEQUENCES OF TERMINATION**
- 24.1 On the expiry or termination of the Contract (or any part of it):
- (a) the Supplier shall be entitled to invoice the Council for all outstanding properly incurred undisputed sums payable under the Contract, which shall be payable by the Council in accordance with the provisions of clause 12 (Price and Payment) and, 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 unless otherwise agreed in writing;
  - (b) the licence referred to in clause 13.5 and any sub-licence granted in accordance with clause 13.5 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 (and/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 the Council may, without limiting its other rights or remedies, enter the Supplier's premises and take possession of them and 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 and 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.

24.2 The provisions of clause 14 (Indemnity), clause 15 (Insurance), clause 16 (Confidentiality), clause 18 (Freedom of Information), clause 19 (Data Protection), clause 20 (Records and audit), clause 22 (Disputes), clause 23 (Termination), this clause 24 (Consequences of termination) and any other clauses which expressly or by implication should have effect after termination or expiry shall survive termination or expiry of the Contract.

## 25. GENERAL

25.1 **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.

25.2 **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.

### 25.3 Prohibited Acts:

- (a) The Supplier represents and warrants that neither it, nor to the best of its knowledge any of its staff, agents, sub-contractors or advisers, have at any time prior to the Effective Date:
  - (i) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
  - (ii) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- (b) The Supplier shall not during the term of the Contract:
  - (i) commit a Prohibited Act; and/or
  - (ii) do or suffer anything to be done which would cause the Council or any of the Council's employees, consultants, contractors, subcontractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.
- (c) The Supplier shall during the term of the Contract:
  - (i) establish, maintain and enforce, and require that its subcontractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and
  - (ii) keep appropriate records of its compliance with its obligations under clause 25.3(c)(i) and make such records available to the Council on request.
- (d) The Supplier shall immediately notify the Council if it becomes aware of any breach of clause 25.3 and/or clause 25.3(b), or has reason to believe that it or any of its staff, agents, sub-contractors or advisers have:

- (i) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - (ii) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
  - (iii) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Contract or otherwise suspects that any person or party directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act.
- (e) If the Supplier makes a notification to the Council pursuant to clause 25.3(d), the Supplier shall respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit any books, records and/or any other relevant documentation in accordance with clause 20 (Records and audit).
  - (f) If the Supplier is in breach of the Contract under clause 25.3(a) and/or clause 25.3(b), the Council may by notice:
    - (i) require the Supplier to remove from performance of the Contract any of its staff, agents, sub-contractors or advisers whose acts or omissions have caused the breach; or
    - (ii) immediately terminate the Contract.
  - (g) Any notice served by the Council under clause 25.3(f) shall specify the nature of the Prohibited Act, the identity of the party who the Council believes has committed the Prohibited Act and the action that the Council has elected to take (including, where relevant, the date on which the Contract shall terminate).

25.4 **Whistleblowing:** the Council is committed to conducting its business with honesty and integrity and expects all staff (including the Supplier's staff) to maintain high standards. The Council requires the Supplier to encourage openness and support any Whistleblowers who raise genuine concerns, even if they turn out to be mistaken. The Supplier must not subject Whistleblowers to any detrimental treatment (including threats or retaliation) as a result of raising a genuine concern. However, if the Supplier reasonably concludes that a Whistleblower has made false allegations maliciously or with a view to personal gain, the Whistleblower may be subject to disciplinary action. Any breach of this clause shall be considered a material breach.

25.5 **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.

### 25.6 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, 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 subcontract 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) observe the requirements of clause 12.7;
  - (iv) notify the Council of the name, contact details and, unless waived by the Council in accordance with clause 25.9, the legal representatives of the sub-contractor, and the Supplier shall notify any changes to such information during the course of the Contract;
  - (v) where requested by the Council, provide a copy of such sub-contract to the Council without charge.

**25.7 Notices:**

- (a) Any requirement to “notify” or give “notice” under or in relation to the Contract:
  - (i) shall be in writing and shall be given by letter, wherever possible using the relevant party’s letter headed paper;
  - (ii) shall be signed by or on behalf of the party giving it;
  - (iii) shall be sent to the party for the attention of the contact(s) and at the postal address, DX address and/or email address/addresses referred to in clause 25.7(b);
  - (iv) subject to clause 25.7(b), shall be sent by a method listed in clause 25.7(d); and
  - (v) unless proved otherwise is deemed received as set out in clause 25.7(d) if prepared and sent in accordance with this clause.
- (b) Each party’s address and contact details shall be those stipulated in the Order or Form of Agreement unless otherwise notified under clause 25.7(c). In the absence of such stipulation or notification, to the party’s registered address (if a company) or the address (including DX) of its principal place of business and the option of notice by email shall be excluded.
- (c) A party may change its contact details under Clause 25.7(b) by giving notice, and such change shall take effect at 9.00 am on the later of:
  - (i) the date, if any, specified in the notice as the effective date for the change; or
  - (ii) the date 5 Working Days after deemed receipt of the notice.
- (d) Subject to clause 25.7(e), the following table sets out the method by which notices may be served under the Contract and the respective deemed time and proof of service provided that all other requirements in this clause have been satisfied:

Delivery method	Deemed delivery time*	Proof of Service
Delivery by hand.	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day.	Properly addressed and delivered as evidenced by signature of a delivery receipt.
Pre-paid: first class recorded delivery post or other next Working Day delivery service providing proof of delivery; airmail providing proof of delivery, each “recorded delivery” for the purposes of Clause 25.7(f) below.	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt.
Next working day Document Exchange (DX), providing proof of delivery.	As per pre-paid post or other next Working Day delivery service above.	Properly addressed, delivered and signed for by the recipient, as evidenced by the DX service.
Email.	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address / addresses without any error message.

\* All references to time are to local time in the place of deemed receipt.

- (e) The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by hand or recorded delivery or DX in the manner set out in the table in clause 25.7(d):
  - (i) any termination notices served pursuant to clause 23 (Termination) or otherwise in relation to the Contract;
  - (ii) any notice served pursuant to clause 25.5 (Force Majeure); and
  - (iii) any notices served pursuant to clause 22 (Disputes).

- (f) Failure to send any original notice by personal delivery, recorded delivery or DX in accordance with clauses 25.7(d) and 25.7(e), shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery, recorded delivery or DX (as set out in the table in clause 25.7(d)) or, if earlier, the time of response or acknowledgement by the other party to the email attaching the notice.
- (g) This clause 25.7 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution other than as provided for under the Contract.

**25.8 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.

**25.9 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 other rights provided by law.

**25.10 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.

**25.11 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.

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

**25.13 Variation:** Any variation, including any supplementary 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.

**25.14 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.

**25.15 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.