



THE ROYAL BOROUGH OF  
KENSINGTON  
AND CHELSEA

**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 this Contract.

**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 20.8;

**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;

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

**Council:** means the Council named in the Order.

**Council Materials:** has the meaning set out in Condition 6.4(j).

**Data Protection Legislation:** (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 (subject to Royal Assent) 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 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 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 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;

**Equalities Legislation:** all legislation which makes unlawful discrimination, harassment and/or victimisation on grounds of age, disability, marital or civil partnership status, sexual orientation, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation or temporary or part-time status in employment or otherwise including, without limitation, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 as amended, the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 and/or any preceding, successor or amending legislation concerning the same;

**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:** any and all patents, trademarks, service marks, copyright, moral rights, rights in design, know-how, and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto;

**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 fax and 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.

## **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 be collected by the Supplier at its sole cost and risk; 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 Council shall be entitled to reject any Goods delivered without a Goods Delivery Note and the provisions of Condition 7.2(b) shall apply.
- 4.3 The Council shall not be obliged to accept the delivery of any Goods or any quantities of Goods varying from those specified in the Contract.
- 4.4 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 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.
- 4.5 Delivery of the Goods shall be completed upon the signing of the Goods Delivery Note by an authorised representative of the Council following unloading of the Goods at the Delivery Location. A Goods Delivery Note that has been signed by a Council representative shall constitute evidence only that Delivery of the Goods has occurred and shall not constitute evidence as to the quantity, satisfactory quality or otherwise of the Goods.
- 4.6 Where any Goods delivered to the Council are delivered to the wrong place, the Supplier shall be solely responsible for and bear the costs incurred in redirecting such Goods to their correct destination.
- 4.7 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.
- 4.8 Title and risk in the Goods shall pass to the Council on completion of delivery.

## **5. Product Recall**

- 5.1 The Supplier shall immediately notify the Council, providing all relevant details, if the Supplier discovers:
- (a) any defect in any Goods delivered to the Council at any time (whether or not any such defect, error or omission represents a breach of any of these Conditions); or
  - (b) any error or omission in the instructions for the use, handling, storage and/or assembly of any Goods delivered to the Council at any time.

## **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 and for the duration of the Contract supply the Services to the Council in accordance with the terms of the Contract.
- 6.2 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.
- 6.3 The Supplier shall meet any performance dates for the Services specified in the Order or that the Council notifies to the Supplier and time is of the essence in relation to any of those performance dates.
- 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 materials, equipment and tools, drawings, specifications and data supplied by the Council to the Supplier (**Council Materials**) in safe custody at its own risk, maintain the Council Materials in good condition until returned to the Council, and not dispose or use the Council Materials other than in accordance with the Council's written instructions or authorisation;
- (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.

## **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 (which written notice shall not be by fax or by email) 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 (which written notice shall not be by fax or by email);
- (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 (7) 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 7.2(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 7.2(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 valued added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Council, the Council shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 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. The Parties agree that this Clause 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 This Condition 11 shall survive termination of the Contract.

## **12. Insurance**

During the term of the Contract, 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 The Supplier shall 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 prior written consent of the Council. 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 obligations of confidentiality under these Conditions); or
- (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 as may be required to enable the Council to comply with its obligations under the FOIA / EIR.

## **14. Safeguarding Children and Vulnerable Adults**

- 14.1 Where the Supplier is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006 (the “**SVGA 2006**”) the provisions of this Condition 14 shall apply.
- 14.2 The Supplier shall :
- (a) ensure that all individuals engaged in Regulated Activity (as defined in the SVGA 2006) are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service (“**DBS**”); and
  - (b) monitor the level and validity of the checks under this Condition 14.2 for each member of staff.
  - (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**

- 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 writing 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); and

- (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;
- (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 clauses 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 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 15 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 (which written notice shall not be by fax or by email) 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 (or any of the Supplier's Personnel):
    - (A) offer, give or agree to give to any person or solicit or accept from any person any gift, consideration, inducement or reward of any kind for not doing or doing any action in relation to this Contract or any other agreement or contract with the Council;
    - (B) commit any offence under the Bribery Act 2010;
    - (C) gives any inducement of which the receipt is an offence under section 117(2) of the Local Government Act 1972;
    - (D) commit an offence under the Enterprise Act 2002;
  - (iv) the Supplier commits a breach of Condition 6.4(h),
- (b) for convenience by giving the Supplier one (1) 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 (which written notice shall not be by fax or by email) 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 (thirty) 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. Compliance with General Law**

- 18.1 The Supplier shall at all times comply with the Equalities Legislation and ensure that the Supplier and any of the Supplier's Personnel do not unlawfully discriminate within the meaning and scope of the Equalities Legislation.

## **19. 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 notice (which written notice shall not be by fax or by email) to the affected party.

## **20. General**

### **20.1 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 without the prior written consent of the Council.

### **20.2 Notices.**

- (a) All notices required or permitted to be given under these Conditions between the Parties must be in writing and delivered by hand or sent by special delivery post to the official addresses for each Party set out in the Order. Service of notices by email will not be accepted.
- (b) Notices sent by special delivery post shall be deemed to have been received 2 calendar days after posting (excluding the day of posting). Notices delivered by hand shall be deemed to have been received on the day of delivery of the notice.



- 20.3 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.
- 20.4 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.
- 20.5 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.
- 20.6 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.
- 20.7 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.
- 20.8 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.
- 20.9 Dispute resolution.** The Parties shall in good faith attempt to settle any dispute arising out of or in connection with the Contract by negotiation or, where the Parties so agree, by mediation.
- 20.10 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.
- 20.11 Jurisdiction.** Each Party irrevocably agrees that the courts of England 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.