

STANDARD CONDITIONS OF CONTRACT FOR THE PROVISION OF SERVICES

1. Interpretation

1.1 In these conditions:

“Bribery Act”; means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation

“Contract”; means the Order together with these conditions

"the Council"; means the ISLE OF WIGHT COUNCIL of County Hall, High Street, Newport, Isle of Wight PO30 1UD

“Data Controller”; shall have the same meaning as set out in the Data Protection Legislation

“Data Processor”; shall have the same meaning as set out in the Data Protection Legislation.

“Data Protection Legislation”; up to but excluding 25 May 2018, the Data Protection Act 1998 and thereafter (i) unless and until the GDPR is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

“Data Subject”; shall have the same meaning as set out in the Data Protection Legislation.

“EIRs”; means 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

“Information”; has the meaning given under section 84 of FOIA

“Law”; any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply

“Necessary Consents”; all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Service

"Order"; means:

- (i) any invitation to tender; or
- (ii) any request for quotation; or
- (iii) any order placed; and
- (iv) the Suppliers response to any invitation to tender, request for quotation or order placed by the Council for the supply of services

including all special conditions, specifications, patterns, plans, drawings, reports and other documents which are incorporated or referred to therein

"Parties"; means the Council and the Supplier

"Personal Data"; shall have the same meaning as set out in the Data Protection Legislation

"Prohibited Act"; the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) committing any offence:
 - (i) under the Bribery Act;
 - (ii) under legislation 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 *condition (c)*, 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 vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006

"Regulated Activity Provider"; shall have the same meaning as set out 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 EIRs

"Services"; means the services described in the Order and shall, where the context so admits, include any materials, articles and goods to be supplied thereunder

"Special Conditions"; means any conditions which are supplementary to these standard conditions of contract for the provision of Services and which are specified in the Order

"Supplier"; means the person, firm or company to whom the Order is addressed

"Working Day"; Monday to Friday, excluding any public holidays in England and Wales

1.2. Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4. A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

- 1.5. Words in the singular shall include the plural and vice versa.
- 1.6. A reference to one gender shall include a reference to the other genders.
- 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. Where there is any conflict or inconsistency between these conditions of Contract and the Order, such conflict or inconsistency shall be resolved according to the following order of priority:
 - 1.8.1. This Document being the Councils Standard Condition or Contract for the Provision of Service
 - 1.8.2. Any Special Conditions
 - 1.8.3. The Order

2. Conditions of Purchase

- 2.1. These conditions shall apply to all contracts for the purchase of Services by the Council from the Supplier to the exclusion of all other terms and conditions including any terms or conditions which the Supplier may purport to apply under any sales offer or similar document or in correspondence.
- 2.2. These conditions, together with the Order shall constitute the entire understanding between the Council and the Supplier with respect to the subject matter covered by the Order and supersede all previous agreements and understandings between the parties
- 2.3. Any variation of these conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the parties.

3. Provision of the Services

- 3.1. The Supplier shall at all times provide the Services:
 - 3.1.1. in such a manner as to ensure that it satisfies the required service standards set out in the Order in respect of that Service;
 - 3.1.2. with all reasonable skill and care; and
 - 3.1.3. in accordance with all Applicable Laws and any UK government guidance and shall conform in all respects with any particulars specified in the Order or any variations thereto
- 3.2. The Supplier shall provide all staff, equipment, materials and other things whatsoever required for the provision of the Services
- 3.3. The Supplier shall provide the Council with such progress reports of its work at such intervals and in such form as is detailed in the Order or as otherwise agreed in writing from time to time
- 3.4. The Supplier shall complete the Services at the time(s) specified in the Order or as agreed by the parties in writing and in either event time shall be considered to be of

the essence. If no time is specified for completion of the Services then the Supplier shall complete the Services within a reasonable time

4. Compliance

- 4.1. The Supplier shall ensure that all Necessary Consents are in place to provide the Services and the Council shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 4.2. Where there is any conflict or inconsistency between the provisions of the agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Supplier has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services
- 4.3. The Supplier shall perform its obligations under this Contract (including those in relation to the Services) in accordance with:
 - 4.3.1. all applicable Law regarding health and safety; and
 - 4.3.2. the Councils Health and Safety Policy if the Service require the Supplier or its personnel to access Council Premises.
- 4.4. The Supplier shall (and shall procure that the Supplier's personnel shall):
 - 4.4.1. perform its obligations under this Contract (including those in relation to the Services) in accordance with:
 - 4.4.1.1. all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - 4.4.1.2. the Council's equality and diversity policy as provided to the Supplier from time to time; and
 - 4.4.1.3. any other requirements and instructions which the Council reasonably imposes in connection with any equality obligations imposed on the Council at any time under applicable equality law; and
 - 4.4.2. take all necessary steps, and inform the Council of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation)
 - 4.4.3. at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Contract. The Supplier shall also undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998

5. Supplier's Status

- 5.1. In carrying out the Services the Supplier shall be acting as principal and not as the agent of the Council.
- 5.2. The Supplier shall not (and shall procure that its employees, servants and agents

do not) say or do anything that might lead any other person to believe that the Supplier is acting as the agent of the Council

- 5.3. nothing in the Order or these conditions shall impose any liability on the Council in respect of any liability incurred by the Supplier to any other person but this shall not be taken to exclude or limit any liability of the Council to the Supplier that may arise by virtue of either a breach of this Contract or any negligence on the part of the Council

6. Personnel

- 6.1. Each party shall nominate an individual as its Authorised Representative for the purpose of this Contract.
- 6.2. Each party shall notify the other with of the details of their Authorised representative including but not limited to their name, position within the organization, address, contract telephone numbers and email address.
- 6.3. Both Parties may replace their Authorised representative at any time by giving written notice to the other Party.
- 6.4. At all times, the Supplier shall ensure that:
 - 6.4.1. each of the Supplier's personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
 - 6.4.2. there is an adequate number of Supplier's personnel to provide the Services properly;
 - 6.4.3. only those people who are authorised by the Supplier (are involved in providing the Services
- 6.5. The Supplier shall replace any of the Supplier's personnel who the Council reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Supplier's personnel for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
- 6.6. The Supplier shall maintain up-to-date personnel records on the Supplier's personnel engaged in the provision of the Services and shall provide information to the Council as the Council reasonably requests on the Supplier's personnel. The Supplier shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.
- 6.7. The Supplier shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good at the prevailing industry norm for similar services, locations and environments

7. Safeguarding children and vulnerable adults

- 7.1. The parties acknowledge that where the Services being delivered under this Contract require the same, 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
- 7.2. The Supplier shall:
 - 7.2.1. ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service (DBS); and
 - 7.2.2. monitor the level and validity of the checks under this *condition 7.2* for each member of staff;
 - 7.2.3. 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 Individuals.
- 7.3. 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 Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 7.4. 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 have been met
- 7.5. 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 Individuals.
- 7.6. The Supplier shall ensure that it complies with the relevant Council adopted Safeguarding policy and guidance in delivering the Services

8. Payment

- 8.1. Payment of the price specified in the Order shall be made by the Council to the Supplier on such date or dates as may be specified in the Order or if not so specified shall be made within 20 Working Days of receipt of the appropriate VAT invoice, such invoice to be received no earlier than the date for the completion date of the Services
- 8.2. Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with condition 11. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of 30 days after resolution of the dispute between the parties

- 8.3. Subject to condition 8.2, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this Contract in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Supplier shall not suspend the supply of the Services if any payment is overdue
- 8.4. The Charges are stated exclusive of 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 this Contract.
- 8.5. The Supplier shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Council pursuant to this Contract. Such records shall be retained for inspection by the Council for 6 (six) years from the end of the Contract Year to which the records relate
- 8.6. Wherever pursuant to the Order any sum of money is recoverable from or payable by the Supplier, that sum may be deducted from any sum then due, or which at any later time may become due, to the Supplier under the Order or under any other agreement or contract with the Council

9. Service Monitoring

- 9.1. The Council or its Authorised Representative shall have the right to inspect and examine the work being performed on the Council's behalf at any reasonable time; where any part of the work is being performed on premises other than the Council's premises; reasonable notice shall be given to the Supplier. The Supplier shall give all such facilities as the Council or its Authorised Representative may reasonably require for such inspection and examination

10. Default

- 10.1. If the Supplier shall at any time fail to carry out any part of the Services in accordance with the specification set out in the Order then, without prejudice to any other right or remedy which the Council may possess in respect of such failure, the Council may:
 - 10.1.1. require the Supplier to remedy such default within such time as may be specified by the Council by providing or providing again (as the case may be) without further charges to the Council such part of the Services to the required standard; and/or
 - 10.1.2. without determining the Order in whole or in part, itself provide or procure the provision of such part of the Services until such time as the Supplier shall have proved to the reasonable satisfaction of the Council that such part of the Services will once more be provided by the Supplier to the

- required standard or, at the Council's option until such later time as the Council may specify as being reasonable notice in all the circumstances that the Supplier will once more so provide such part of the Services; and
- 10.1.3. without determining the whole of the Order, determine the Order in respect of such part of the Services only and thereafter itself provide or procure the provision of such part of the Services
- 10.2. The Council may charge the cost of any services provided or procured by it under condition 9 together with an administration charge equal to 10% of the cost of such Services, to the Supplier

11. Dispute Resolution

- 11.1. If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the procedure set out in this condition:
- 11.1.1. either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;
- 11.1.2. if the Authorised Representatives are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Council's Chief Executive Officer and the Supplier's Chief Executive Officer who shall attempt in good faith to resolve it (or nominate a person to do so on their behalf); and
- 11.1.3. if the process outlined in condition 11.1.3 is unsuccessful then within 30 days of it being referred to the Chief Executive Officers or their nominees, the parties will attempt to settle it by mediation 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 (ADR notice) to the other party to the Dispute, requesting mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 60 days after the date of the ADR notice
- 11.2. The commencement of mediation shall not prevent the parties commencing or continuing court or arbitration proceedings in relation to the Dispute under condition 27 which condition shall apply at all times.

12. Risk and Insurance

- 12.1. The Supplier shall at its own cost effect and maintain, with a reputable insurance company, a policy or policies of insurance providing the levels of insurance prescribed in the Order or if not so specified a policy or polices of insurance providing an adequate level of insurance for the Services being provided under this Contract.

- 12.2. The cover shall be 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 cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.
- 12.3. The Supplier shall give the Council, on request, copies of all insurance policies referred to in this condition or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies
- 12.4. If, for whatever reason, the Supplier fails to give effect to and maintain the insurance required in accordance with condition 12.1 and 12.2, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 12.5. The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the agreement.
- 12.6. The Supplier shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of the agreement

13. Assignment or Sub-Contracting

- 13.1. The Supplier shall not without the consent in writing of the Council assign or transfer the Order or any part thereof to any other person except as part of a company amalgamation or reconstruction
- 13.2. The Supplier shall not without the consent in writing of the Council sub- let the Order or any part thereof but this shall not prevent the Supplier sub-letting part of the Order to any company which is a member of the group to which the Supplier belongs or a company with whom the Supplier is associated (provided that the Supplier shall provide such evidence of proof as required by the Council). Any such consent shall not relieve the Supplier of any of his obligations under the Order

14. Bankruptcy/Liquidation etc.

- 14.1. In the event of the Supplier becoming bankrupt or making a composition or arrangement with its creditors or having a proposal in respect of its company for a voluntary arrangement for a composition of debts or scheme or arrangement approved in accordance with the Insolvency Act, 1986 or any statutory re-enactment or amendment thereof, or having an application made under the Insolvency Act, 1986 or any statutory re-enactment or amendment thereof in respect of its company to the Court for the appointment of an administrator, or having a winding-up order made or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding up passed or having a provisional liquidator, receiver or manager of his business or undertaking duly appointed or having an administrative receiver as defined in the Insolvency Act,

1986 or any statutory re-enactment or amendment thereof, appointed or having possession taken by or on behalf of the holders of any debentures secured by a floating charge, or any property comprised in or subject to the floating charge then in any and all of such eventualities the Council shall be at liberty:

14.1.1. to cancel the Order summarily by notice in writing without compensation to the Supplier, or

14.1.2. to give any receiver, liquidator, trustee or insolvency practitioner the option of carrying out the Order

PROVIDED THAT the exercise of the right under this condition shall be at the sole discretion of the Council and shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Council

15. Force Majeure

15.1. Neither party to this Contract shall be liable to the other for any delay or non-performance of its obligations the Order and/or these conditions if such delay or failure arises from any cause or causes beyond the reasonable control of the Supplier, including, but not limited to, labour disputes, lightning, shortages of materials, rationing, utility or commitments failures, earthquakes, blockages, actions, restrictions, regulations or orders of any Government, agency or subdivision thereof

16. Infringement of Patents

16.1. Where applicable the Supplier shall fully indemnify the Council against any action, claim, demand costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of any letters patent, registered design, trademark, or trade name protected in the United Kingdom by the use or sale of the Goods and against all costs and damages which the Council may incur in any action for such infringement or for which the Council may become liable in any such action. Provided always that this indemnity shall not apply to any infringement which is due to the Supplier having followed a design or instruction furnished by the Council or to the use of the Goods in a manner or for a purpose not reasonably to be inferred by the Supplier or disclosed to the Supplier prior to the making of the Contract

16.2. In the event of any claim being made or action brought against the Council arising out of the matters referred to in this condition the Supplier shall be promptly notified thereof and at his own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom. The Council shall not, unless and until the Supplier shall have failed to take over the conduct of negotiations or litigation, make any admission which might be prejudicial thereto. The conduct by the Supplier of such negotiations or litigation shall be conditional upon the Supplier having first given to the Council such reasonable security as shall from time to time be required

by the Council to cover the amount ascertained or agreed estimated, as the case may be, of any compensation, damages, expenses and costs for which the Council may become liable. The Council shall, at the request of the Supplier, afford all available assistance for any such purpose and shall be repaid any expenses incurred in doing so

16.3. The Council on his part warrants that any design or instructions furnished or given by him shall not be such or cause the Supplier to infringe any letters patent, registered designs, trademarks or trade name in the performance of the Contract

17. Prevention of bribery

17.1. The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier's personnel, have at any time prior to the commencement of the Contract:

17.1.1. 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

17.1.2. 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

17.2. The Supplier shall not during the term of this Contract:

17.2.1. commit a Prohibited Act; and/or

17.2.2. do or suffer anything to be done which would cause the Council or any of the Council's employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.

17.3. The Supplier shall during the term of this Contract:

17.3.1. establish, maintain and enforce, and require that its sub-contractors 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

17.3.2. keep appropriate records of its compliance with its obligations under *condition 17.3.1* and make such records available to the Council on request.

17.4. The Supplier shall immediately notify the Council in writing if it becomes aware of any breach of *condition 17.1* and/or *condition 17.2*, or has reason to believe that it has or any of the Supplier's personnel have:

17.4.1. been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

17.4.2. 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

- 17.4.3. received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or Party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.
- 17.5. If the Supplier makes a notification to the Council pursuant to *condition 17.4*, 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.
- 17.6. If the Supplier is in Default under *condition 17.1* and/or *condition 17.2*, the Council may by notice:
- 17.6.1. require the Supplier to remove from performance of this Contract any Supplier's personnel whose acts or omissions have caused the Default; or
- 17.6.2. immediately terminate this Contract.
- 17.7. Any notice served by the Council under condition 17.6 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 this Contract shall terminate)

18. Data Protection

- 18.1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This condition 18 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 18.2. The parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the data controller and the Supplier is the data processor. The Order sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 18.3. Without prejudice to the generality of condition 18.1, the Council will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement.
- 18.4. Without prejudice to the generality of condition 18.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:
- (a) process that Personal Data only on the written instructions of the Council (as set out in the Order), unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union (Applicable Laws) applicable to the Supplier to otherwise process the Personal Data. Where the Supplier is so required, it shall promptly notify the Council before processing the Personal Data, unless prohibited by the Applicable Laws;
- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Council, to protect against unauthorised or unlawful

processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its 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 technical and organisational measures adopted by it);

(c) not transfer any Personal Data outside of the European Economic Area 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;

(ii) the Data Subject has enforceable rights and effective 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; and

(iv) the Supplier complies with the reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;

(d) notify the Council immediately if it receives:

(i) a request from a Data Subject to have access to that person's Personal Data;

(ii) a request to rectify, block or erase any Personal Data;

(iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);

(e) assist the Council in responding to any request from a Data Subject and in ensuring compliance with the Council's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

(f) notify the Council immediately and in any event within 24 hours on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this agreement;

(g) at the written direction of the Council, delete or return Personal Data and copies thereof to the Council on termination or expiry of the agreement unless required by the Applicable Laws to store the Personal Data;

- (h) maintain complete and accurate records and information to demonstrate its compliance with this condition 18 and allow for audits by the Council or the Council's designated auditor;
 - (i) indemnify the Council against any loss or damage suffered by the Council of its obligations under this condition 18.
- 18.5. Where the Supplier intends to engage a Sub-Contractor pursuant to Clause 20 and intends for that Sub-Contractor to process any Personal Data relating to this agreement, it shall:
 - (a) notify the Council in writing of the intended processing by the Sub-Contractor;
 - (b) obtain prior written consent to the processing;
 - (c) ensure that any Sub-Contract imposes obligations on the Sub-Contractor to give effect to the terms set out in this condition 18.
- 18.6. Either party may, at any time on not less than 30 Working Days' written notice to the other party, revise this condition 18 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).
- 18.7. The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

19. Freedom of Information

- 19.1. The Supplier acknowledges that the Council is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
 - 19.1.1. provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and EIRs;
 - 19.1.2. transfer to the Council all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - 19.1.3. provide the Council with a copy of all Information belonging to the Council requested in the Request For Information which is in its possession or control in the form that the Council requires within 5 Working Days (or such other period as the Council may reasonably specify) of the Council's request for such Information; and
 - 19.1.4. not respond directly to a Request For Information unless authorised in writing to do so by the Council.
- 19.2. The Supplier acknowledges that the Council may be required under the FOIA and EIRs to disclose Information (including commercially sensitive information) without consulting or obtaining consent from the Supplier. The Council shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public

Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) the Council shall be responsible for determining in its absolute discretion whether any commercially sensitive information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs

20. Confidentiality

- 20.1. Subject to condition 20.2, the parties shall keep confidential all matters relating to this Contract and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to any person of any matters relating hereto.
- 20.2. Condition 20.1 shall not apply to any disclosure of information:
- 20.2.1. required by any applicable law, provided that condition 19 shall apply to any disclosures required under the FOIA or the EIRs;
 - 20.2.2. that is reasonably required by persons engaged by a party in the performance of such party's obligations under this Contract;
 - 20.2.3. where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of condition 20.1;
 - 20.2.4. by the Council of any document to which it is a party and which the parties to this Contract have agreed contains no commercially sensitive information;
 - 20.2.5. to enable a determination to be made under condition 11;
 - 20.2.6. which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
 - 20.2.7. by the Council to any other department, office or agency of the Government;
and
 - 20.2.8. by the Council relating to this Contract and in respect of which the Supplier has given its prior written consent to disclosure
- 20.3. On or before the expiry or termination of the Contract the Supplier shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the Council's employees, rate-payers or service users, are delivered up to the Council or securely destroyed

21. Indemnity

- 21.1. The Supplier shall indemnify and keep indemnified the Council against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of this Agreement, to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself or of its employees or of any of its Representatives or sub-contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of this Agreement or applicable law by the Council or its

Representatives (excluding any Supplier's Personnel)

22. Termination for Breach

22.1. The following obligations are conditions of the Order and any breach of them shall be deemed a fundamental breach which shall determine the Order immediately and the rights and liabilities of the party not at fault shall then be determined

22.1.1. Failure on the part of the Supplier to observe any obligation(s) under the Order or these conditions

22.1.2. The levying of any distress or execution against the Supplier or the making by him of any composition or arrangement with creditors or being a company in bankruptcy/liquidation in accordance with the terms of condition 14

23. Termination on Notice

23.1. This Contract may be terminated:

23.1.1. at any time and without notice by the agreement of both Parties; or

23.1.2. by the Council giving not less than six months' notice in writing for reasons of convenience.

24. Severance

24.1. If any provision or part-provision of this 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 this Agreement.

24.2. If one party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision

24.3. If in the Council's reasonable opinion the effect of such a declaration is to defeat the original intention of the parties the Council shall be entitled to terminate the Order by 14 days' written notice to the Supplier

25. Notice

25.1. Any notice given to a party under or in connection with this contract shall be in writing marked for the attention of the party's Authorised Representative and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); as

detailed in the Order.

25.2. Any notice shall be deemed to have been received:

25.2.1. if delivered by hand, on signature of a delivery receipt;

25.2.2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service

25.3. For the purpose of this condition 'writing' shall not include email.

26. Third Parties

26.1. The parties hereby declare that no term of the Contract or Order is intended by the parties to confer a benefit on any third party (as defined by the Contracts (Right of Third Parties) Act 1999) nor is intended to be enforceable by any third party. The provisions of the said Act are hereby excluded

27. Law and Jurisdiction

27.1. This Contract and any dispute or claim 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 the law of England and Wales.

27.2. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims)