



ADUR & WORTHING
COUNCILS

COUNCIL

**Terms and conditions for the purchase of goods and services
("Conditions")**

These Conditions are the standard terms and conditions for when the Council purchases Goods and/or Services. They apply to all purchase 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 agreement (unless the context requires otherwise).

1.1 Definitions:

Authorised Representative: such person as may be authorised by the Council from time to time

Applicable Laws: means

- i. any Act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation act 1978;
- ii. any exercise of the Royal Prerogative; and
- iii. any enforceable right within the meaning of Section 2 of the European Communities Act 1972,

in each case in the United Kingdom

Bribery Act: 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.

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

Charges: the charges which shall become due and payable by the Council to the Supplier in respect of the Goods and Services in accordance with the provisions of this Contract.

Commencement Date: has the meaning given in Condition 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 28.9.

Confidential Information: information in whatever form (including without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, customers, products, affairs and finances of the Council for the time being confidential to the Council and trade secrets including, without limitation, technical data and know-how relating to the Business of the Council its suppliers, customers, agents, distributors, shareholders, management or business contacts, whether or not such information (if in anything other than oral form) is marked confidential.

Council: the Council named in the Order.

Council Materials: has the meaning set out in clause 7.4(l).

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: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018); and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended; and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the Information Commissioner or other relevant data protection or supervisory authority and applicable to a party

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

Delivery Location: has the meaning given in clause 4.4(b) and the premises where associated Services are to be supplied.

Environmental Information Regulations (EIRs): 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.

Financial Regulations: the regulations providing the governing framework for managing the Council's financial affairs.

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.

Force Majeure Event: any cause affecting the performance by a party of its obligations under this agreement arising from:

- (i) a withdrawal of Funding; or
- (ii) acts, events, omissions or non-events beyond its reasonable control, being:
 - (a) pandemics;
 - (b) acts of God;
 - (c) riots;
 - (d) war;
 - (e) acts of terrorism;
 - (f) fire;
 - (g) flood; and
 - (h) storm or earthquake and any disaster,

but excluding: any industrial dispute relating to the Supplier, the Supplier's Personnel; or any other failure in the Supplier's supply chain (not itself caused by a Force Majeure Event).

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

Good Industry Practice: reasonable skill and care and in accordance with good industry practice prevailing in the particular industry for which the parties have contracted, as is prevailing from time to time.

Goods Specification: any specification for the Goods, including any related plans and drawings that are set out by the Council to the Supplier and any modification or addition as may be approved in writing by the Authorised Representative.

Information: has the meaning given under section 84 of FOIA.

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

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.

Personal Data: shall have the same meaning as set out in the Data Protection Act 2018.

Prohibited Act: the following constitute Prohibited Acts:

to directly or indirectly offer, promise or give any person working for or engaged by the Authority 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;

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;

committing any offence:

- (i) under the Bribery Act;
- (ii) under legislation creating offences concerning fraudulent acts;
- (iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Authority; or
- (iv) defrauding, attempting to defraud or conspiring to defraud the Authority.

Services: any services agreed in the Contract to be purchased by the Council from the Supplier (including any part or parts of them).

Specification: the description of the Goods and/or Services to be provided under the Contract.

Supplier: the person, company 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.

Termination Date: the date of termination of this Contract, howsoever arising whether by effluxion of time or earlier termination in accordance with this Contract.

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, consolidated, modified, extended 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 but not email.

2. Basis of contract

2.1 These Conditions are the only conditions upon which the Council is prepared to deal with the Supplier and they shall govern the Contract to the entire exclusion of all other terms or conditions that the Supplier seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

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

2.3 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). The Contract shall expire automatically on the date specified in the Order unless it is terminated in accordance with these Conditions or otherwise lawfully terminated.

- 2.4** The Council appoints the Supplier on a non-exclusive and independent contractor basis to provide the Goods and Services in accordance with the terms and conditions of this Contract.
- 2.5** 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.
- 2.6** **The Council would like to bring the following Conditions to the Supplier's attention as they may be considered onerous conditions which may affect the Supplier and the Supplier is to ensure that it has carefully read and understood them: Condition 5 (Acceptance); Condition 9 (Council remedies); Condition 13 (Indemnity); Condition 14 (Liability); Condition 23.1(c) (Termination for convenience).**

3. Supply of Goods

3.1 The Supplier shall ensure that the Goods shall:

- (a) be new and free from defects in design, material and workmanship, and correspond with their description and any applicable Goods specification and shall remain so for 24 months after delivery;
- (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; and
- (c) comply with all applicable statutory and regulatory requirements, including those relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

3.2 The Supplier warrants to the Council that the Goods will be provided:

- a) in a proper, skilful and workmanlike manner;
- b) by a sufficient number of appropriately qualified, trained and experienced personnel with a high standard of skill, care and due diligence and in accordance with Good Industry Practice;

- c) in accordance with the Contract; and
- d) to the reasonable satisfaction of the Authorised Representative.

- 3.3** The Supplier warrants that to the extent that associated services (including any training to the Council's Officers as may be detailed in the Council's specification) are performed, they shall be performed by appropriately qualified, trained and experienced personnel with a high standard of skill, care and diligence and in accordance with Good Industry Practice.
- 3.4** The Supplier will to the extent it is legally able to do so, hold on trust for the sole benefit of the Council, all warranties and indemnities provided by third parties or any sub-contractor in respect of any Goods and, where any warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Council may notify from time to time to the Supplier.
- 3.5** The Supplier will, unless it is unable to do so, assign to the Council on Council's written request and at the cost of the Supplier any such warranties and/or indemnities as are referred to in clause 3.4.
- 3.6** 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.
- 3.7** The Council may inspect the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection and any such inspection shall not reduce or otherwise affect the Supplier's obligations under the Contract.
- 3.8** If the results of such inspection or testing cause the Council to be of the opinion that the Goods do not conform or are unlikely to conform with the Order or to the Specification supplied or advised by the Council to the Supplier, the Council shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure conformity and in addition the Council shall have the right to require and witness further testing and inspection. The Council may conduct further inspections and tests after the Supplier has carried out its remedial actions.
- 3.9** Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under the Contract.
- 3.10** If any of the Goods fail to comply with the provisions set out in Condition 3 the Council shall be entitled to avail itself of any one or more remedies listed in Condition 9.

3.11 Repairs or replacements necessary due to any breaches of this clause 3 will themselves be covered by this Agreement for a period of 24 months from acceptance of such repairs or replacements by the Council, including in accordance with Condition 9.

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, 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 cost and risk; and
- (d) where the Contract also includes the service of unpacking 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 on Condition 9.2(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 Schedules or Order.

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 days 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 Time for delivery shall be of the essence.

4.6 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 Authorised Representative shall constitute evidence of delivery of the Goods only and shall not constitute evidence as to the quantity, satisfactory quality or otherwise of the Goods.

- 4.7** 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.
- 4.8** 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 9.1.
- 4.9** Title and risk in the Goods shall pass to the Council on completion of delivery.

5. Acceptance

- 5.1** The Council shall have the right to reject the Goods in whole or in part whether or not paid for in full or in part within a reasonable time of delivery or performance (notwithstanding the commencement by the Council using the Goods or enjoying the benefit of the Services) if they do not conform to the requirements of the Contract.
- 5.2** Subject to clause 5.1, acceptance shall be deemed to have occurred after the reasonable time of delivery or performance referred to above unless the Council's Authorised Representative notifies the Supplier in writing of the rejection of the Goods or Services.

6. Operating Manuals and Product Recall

- 6.1** The Supplier shall supply to the Council all operating manuals and other documentation necessary for the satisfactory operation of the Goods. If after the delivery the operating manuals and documentation need updating or replacing the Supplier shall be responsible for notifying the Council of the availability of such updates or replacements and shall supply them at reasonable prices upon receipt of written instructions. The Supplier shall provide at no extra cost to the Council the operating manuals and other documentation in the media format in which they are available at the appropriate time.
- 6.2** 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.

7. Supply of Services

- 7.1** The Supplier shall from the Commencement Date or such 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.
- 7.2** 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.
- 7.3** 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.
- 7.4** 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 Good Industry 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) The Supplier shall provide the Services in a timely and professional manner and in accordance with the Service Specification and time schedules, programme for delivery or milestones stipulated by the Council and will conform to the standards generally observed in the industry for similar services.
 - (e) Time for performance shall be of the essence.
 - (f) ensure that the Services and Deliverables will conform with all descriptions, standards and specifications as 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;

- (g) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (h) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Council, will be free from defects in workmanship, installation and design;
- (i) obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
- (j) comply with all applicable laws, regulations, regulatory policies, guideline or industry codes which may apply to the provision of the Services;
- (k) observe all health and safety rules and regulations and any other security requirements that apply at any of the Council's premises;
- (l) 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;
- (m) 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;
- (n) the Supplier shall comply with the Council's Financial Regulations.
- (o) the Supplier shall remove from involvement in the Contract forthwith any person engaged in the performance of the Contract if in the reasonable opinion of the Council the continued involvement of such person would be undesirable; and
- (p) comply with any additional obligations as set out in the Service Specification.

8. Standard specifications

- 8.1** Where an appropriate British Standard Specification or British Standard Code of Practice issued by the British Standards Institution is current the Goods supplied and the Services provided under the Contract shall as a minimum requirement be in accordance with that Standard or an equivalent European or International Standard without prejudice to any higher standard specified elsewhere in the Contract.

9. Council remedies

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

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

9.2 If the Supplier has delivered Goods that do not comply with the undertakings set out in Clause 3, then, without limiting or affecting other rights or remedies available to it, the Council shall have one or more of the following rights, whether or not it has accepted the Goods:

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to reject the Goods (in whole or in part) whether or not title has passed and:
 - i. the Supplier shall promptly collect and remove the Goods at the Supplier's own risk and expense within seven (7) 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 9.2(b)(i) above, the Council may return the Goods to the Supplier at the Supplier's risk and expense;
 - iii. if the Council requires the Supplier to remove the Goods pursuant to Condition 9.2(b)(i), then the Council shall not be responsible for any damage occasioned whilst the Goods are at the Delivery Location 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 clause 3.

9.3 If the Supplier has supplied Services that do not comply with the requirements of clause 7.4 then, without limiting or affecting other rights or remedies available to it, the Council shall have one or more of the following rights and remedies:

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to return the Deliverables to the Supplier at the Supplier's own risk and expense;
- (c) to require the Supplier to provide repeat performance of the Services, or to provide a full refund of the price paid for the Services (if paid);
- (d) to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
- (e) to recover from the Supplier any expenditure incurred by the Council in obtaining substitute services or deliverables 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 comply with clause 7.4.

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

9.5 The Council's rights and remedies under the Contract are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.

10. Council's obligations

10.1 The Council shall:

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

11. Charges and payment

11.1 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.

11.2 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.

11.3 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.

11.4 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.

11.5 All invoices must be sent to the address specified by the Council in the Order.

11.6 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.

11.7 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.

- 11.8** 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 11.8 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.
- 11.9** 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.
- 11.10** 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

12. Intellectual property rights

- 12.1** 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.
- 12.2** 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.
- 12.3** The Council grants the Supplier an 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.
- 12.4** All Council Materials are the exclusive property of the Council.

13. Indemnity

- 13.1** 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, or the Deliverables, to the extent that the defect is attributable to the acts or omissions of the Supplier, its employees, subcontractors and all other person so instructed by the Supplier; 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.

13.2 Nothing in this Condition shall restrict or limit the Council's general obligation at law to mitigate a loss which it may suffer or incur as a result of a matter that may give rise to a claim under this indemnity.

13.3 This Condition 13 shall survive termination of the Agreement.

14. Liability

14.1 The Supplier shall perform the service with reasonable skill and care and acknowledges that it will be liable to the Council for losses, damages, costs or expenses ("losses") caused by its negligence (including failure to perform its contractual duties with reasonable care and skill) or wilful default, subject to the following provisions:

- a) The Supplier will not be so liable if such losses are due to the provision of false, misleading information from the Council;
- b) The aggregate liability, whether to the Council or any third party, of whatever nature, whether in contract, tort or otherwise of the Supplier for any losses whatsoever howsoever caused arising from or in any way connected with the Agreement shall not exceed the amount for which the Supplier is insured.

14.2 Nothing in this Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; and
- (d) breach of section 2 of the Consumer Protection Act 1987.

15. Insurance

15.1 The Supplier shall maintain in force, 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 its obligations under 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.

16. Confidentiality

16.1 The Supplier acknowledges that in the course of the engagement he may have access to Confidential Information. The Supplier has therefore agreed to accept the restrictions in this Condition.

16.2 The Supplier shall not (except in the proper course of his duties), either during the Term period or at any time after the Termination Date, use or disclose to any third party (and shall use his best endeavours to prevent the publication or disclosure of) any Confidential Information. This restriction does not apply to:

- (a) any use or disclosure authorised by the Council or required by law; or
- (b) any information which is already in, or comes into, the public domain otherwise than through the Supplier's unauthorised disclosure.

16.3 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.

16.4 In the event the Supplier fails to comply with this Condition, the Council reserves the right to terminate the Contract with immediate effect by notice in writing.

17. Freedom of Information

17.1 The Supplier acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Council (at the Supplier's expense) to enable the Council to comply with these information disclosure requirements.

17.2 The Supplier shall:

- a) transfer the Request for Information to the Council as soon as practicable after receipt and in any event within two 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 five Working Days (or such other period as the Council may specify) of the Council requesting that Information;
- 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; and
- d) not respond directly to a Request for Information unless authorised in writing to do so by the Council.

17.3 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.

17.4 The Supplier will ensure that all information relevant to this Contract is retained for disclosure and if requested, the Supplier must permit the Council to inspect such records as requested for a period of six years after the Agreement has completed.

18. Audit

18.1 The Supplier shall keep and maintain until six years after the Contract has been completed, or for a longer period as may be agreed between the parties in writing full and accurate records of all data arising under this Contract including: (a) the Services provided under it; (b) all expenditure reimbursed by the Council; and (c) all payments made by the Council.

18.2 The Supplier shall on request afford the Council or the Council's Authorised Representatives such access to the Supplier's records as may be required in connection with the Contract for the purposes of:-

- (a) verifying the accuracy of, and/or the costs of all Suppliers including Sub-Suppliers of the Services, charges and invoicing;
- (b) reviewing the Supplier's compliance with the Data Protection Act 2018 (DPA), the Freedom of Information Act 2000 as required by this Agreement and any other legislation applicable to the Contract;

- (c) to review relevant records and any books of account kept by the Supplier in connection with the provision of the Contract;
- (d) to carry out the audit and certification of the Council's accounts as required by legislation or otherwise;
- (e) to verify the accuracy and completeness of any management information delivered or required by this Contract.

18.3 The Council shall use its reasonable endeavours to ensure that the conduct of any audit does not unreasonably disrupt the Supplier or delay the provision of the Contract.

18.4 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Condition, unless the audit identifies a material failure to perform its obligations under this Contract in any material manner by the Supplier in which case the Supplier shall reimburse the Council for all the Council's reasonable costs incurred in the course of the audit.

18.5 If an audit identifies that:

- (a) the Supplier has failed to perform its obligations under this Contract in any material manner, the parties shall agree and implement a remedial plan. If the Supplier's failure relates to a failure to provide any information to the Council about the charges, or the Supplier's costs, then the remedial plan shall include a requirement for the provision of all such information;
- (b) the Council has overpaid any charges, the Supplier shall pay to the Council the amount overpaid within 20 days. The Council may deduct the relevant amount from the charges if the Supplier fails to make this payment; and
- (c) the Council has underpaid any charges, the Council shall pay to the Supplier the amount of the under-payment less the cost of audit incurred by the Council if this was due to a default by the Supplier in relation to invoicing within 20 days.

19. Safeguarding of Children and Vulnerable Adults

19.1 The Supplier shall (and shall procure that any of its staff involved in connection with the activities under the Agreement shall) comply with the Council's policy for Safeguarding Children and Vulnerable Adults.

19.2 In addition to compliance with the general policy, the Supplier warrants that at all times throughout the duration 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 performance of the Contract will be a risk or potential risk to children or vulnerable adults or is a person who is barred from any activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012) and any regulations made thereunder or as amended from time to time.

- 19.3** Throughout the duration of this Contract, the Supplier shall not employ or use the services of any person who is barred from or whose previous conduct or records indicate that he or she would not be suitable to deliver the project or any Regulated Activity (as defined in Part 1 of Schedule 5 to the Safeguarding Vulnerable Groups Act 2006 as amended), or who may otherwise present a risk to children or vulnerable adults that he/she may come into contact with during the term of this Contract.
- 19.4** 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 clause have been met.

20. Data protection

- 20.1** The Supplier and Council shall (and shall ensure that any of its Staff involved in the provision of the Services) comply with any notification requirements under the Data Protection Legislation and both Parties shall duly observe all their obligations under the Data Protection Legislation, which arise in connection with the Contract.
- 20.2** Without prejudice to the generality of Clause 20.1, 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.
- 20.3** The Supplier shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing.
- 20.4** The Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this Contract:
- (a) process that Personal Data only on the written instructions of the Council unless the Supplier is required by Applicable Laws to otherwise process that Personal Data;
 - (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;

- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- (d) 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;
- (e) assist the Council, in responding to any request from a Data Subject and in ensuring compliance with its 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 without undue delay on becoming aware of a Personal Data breach;
- (g) ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the relevant legislation.
- (h) at the written direction of the Council, delete or return Personal Data and copies thereof to the Council on termination of the agreement unless required by Applicable Law to store the Personal Data; and
- (i) maintain complete and accurate records and information to demonstrate its compliance with its obligation under the Data Protection Legislation, this clause and allow for audits by the Council or the Council's designated auditor.

20.5 The Council does not consent to the Supplier appointing any third party processor of Personal Data under this Contract unless the same is specifically agreed in writing.

21. Anti-Discrimination, Equality and Diversity

21.1 The Supplier shall not, unlawfully discriminate either directly or indirectly on such grounds as race, colour ethnic or national origin, disability, gender or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Supplier shall not, and shall procure that the substitute, employed in the performance of this Agreement, shall not, unlawfully discriminate within the meaning and scope of the Equality Act 2010, the Human Rights Act 1998 or other relevant legislation, or any statutory modification or re-enactment thereof (the 'Discrimination Act').

21.2 The Supplier shall notify the Council immediately of any investigation of or proceedings against the Supplier in relation to the Discrimination Acts and shall cooperate fully and promptly with requests of the person or body conducting such investigation or proceedings, including allowing access to any documents or data required, attending any meetings and providing any information requested.

21.3 The Supplier shall indemnify the Council against all costs, claims, charges, demands, losses and expenses incurred or suffered by the Council arising out of or in connection with any investigation conducted or any proceedings brought in relation to the Discrimination Acts due directly or indirectly to any act or omission by the Supplier.

22. Prevention of bribery

22.1 The Supplier:

- (a) shall not, and shall procure that any supplier and all Supplier Personnel shall not, in connection with this Contract commit a Prohibited Act;
- (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Contract.

22.2 The Supplier shall:

- (a) if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
- (b) certify to the Council in writing (such certification to be signed by an officer of the Supplier) compliance with this Condition by the Supplier and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Supplier shall provide such supporting evidence of compliance as the Council may reasonably request.

22.3 The Supplier shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any Supplier party or Supplier Personnel from committing a Prohibited Act and shall enforce it where appropriate.

22.4 If any breach of this clause is suspected or known, the Supplier must notify the Council immediately.

22.5 If the Supplier notifies the Council that it suspects or knows that there may be a breach of this Condition, the Supplier must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation. This obligation shall continue for 6 years following the expiry or termination of this Condition.

22.6 The Council may terminate this Contract by written notice with immediate effect if the Supplier, Supplier Party or Supplier Personnel (in all cases whether or not acting with the Supplier's knowledge) breaches this Condition. In determining whether to exercise the right of termination under this Condition, the Council shall give all due consideration, where appropriate, to action other than termination of this Contract unless the Prohibited Act is committed by the Supplier or a senior officer of the Supplier or by an employee, Sub-Contractor or supplier not acting independently of the Supplier. The expression "not acting independently of" (when used in relation to the Supplier or a Sub-Contractor) means and shall be construed as acting:

- (a) with the authority; or,
- (b) with the actual knowledge;

of any one or more of the directors of the Supplier or the Sub-Contractor (as the case may be); or

- (c) in circumstances where any one or more of the directors of the Supplier ought reasonably to have had knowledge.

22.7 Any notice of termination under clause 22.6 must specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the party whom the Council believes has committed the Prohibited Act; and
- (c) the date on which this Agreement will terminate.

22.8 In any dispute, difference or question arising in respect of:

- (a) the interpretation of clause 22; or
- (b) the amount or value of any gift, consideration or commission,

shall be determined by the Council and its decision shall be final and conclusive.

22.9 Any termination under Condition 22.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

23. Termination

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

- (a) with immediate effect by giving written notice to the Supplier if:

- (i) there is a change of Control (within the meaning of Section 1124 of the Corporation Tax Act 2010) of the Supplier; or
- (ii) the Supplier's financial position deteriorates to such an extent that in the Council's opinion the Supplier's capability to adequately fulfil its obligations under the Agreement has been placed in Jeopardy; or
- (iii) if a resolution is passed or an order is made for the winding up of the Supplier (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Supplier becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the Supplier's property or equipment;
- (iv) the Supplier (or any of its 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 Agreement or any other agreement or contract with the Council;
 - b) commit any offence under the Bribery Act 2010;
 - c) give any inducement of which the receipt is an offence under Section 117(2) of the Local Government Act 1972;
 - d) the Supplier commits a breach of Clause 7.4 (j).
- (b) If public funding ceases to be available for the project.
- (c) for convenience, without penalty, by giving the Supplier 14 days' written notice after placing an Order.

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

- (a) the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified in writing to do so;
- (b) 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.

23.3 Either Party may terminate this Contract in accordance with the provisions of the Force majeure clause.

24. Consequences of termination

24.1 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.

24.2 If the Contract is terminated in accordance with Condition 23.2 (a), the Council shall:

- (a) cease to be under any obligation to make further payment until the costs loss and/or damage resulting from or arising out of the termination of the Contract shall have been calculated and provided such calculation shows a sum or sums due to the Supplier;
- (b) be entitled to contract with and pay other persons to provide and complete provision of the Contract and the Services or any part thereof; and
- (c) be entitled to deduct from any sum or sums which would have been due from the Council to the Supplier under the Contract or any other contract or be entitled to recover the same from the Supplier as a debt any loss or damage to the Council resulting from or arising out of the termination of the Supplier's engagement. Such loss or damage shall include the reasonable cost to the Council of the time spent by its officers in terminating the Contract and in making alternative arrangements for the provision of the Services or any part thereof.

24.3 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.

24.4 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.

25. Force Majeure

25.1 Subject to the remaining provisions of this clause, neither party to this Contract shall be liable to the other for any delay or non-performance of its obligations under this agreement to the extent that such non-performance is due to a Force Majeure Event.

- 25.2** In the event that either party is delayed or prevented from performing its obligations under this Agreement by a Force Majeure Event, such party shall:
- (a) give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
 - (b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this agreement; and
 - (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 25.3** A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 25.4** The Supplier cannot claim relief if the Force Majeure Event is one where a reasonable Supplier should have foreseen and provided for the cause in question.
- 25.5** As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this agreement. Where the Supplier is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Good Industry Practice.
- 25.6** The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this Contract. Following such notification, this Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
- 25.7** Either Party may, during the continuance of any Force Majeure Event, terminate this Contract by written notice to the other Party if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than 30 Working Days.

26. Health and Safety

- 26.1** The Supplier shall promptly notify the Council of any health and safety hazards, which may arise in connection with the performance of the Contract. The Council shall promptly notify the Supplier of any health and safety hazards that may exist or arise at

the Council's premises and that may affect the Supplier in the performance of the Contract.

26.2 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 Supplier's behalf in the performance of the Contract.

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

27. Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE")

27.1 In the event that TUPE applies to the Contract:

(a) within 20 (twenty) working days of being so requested by the Council, the Supplier shall fully and accurately disclose to the Council for the purposes of TUPE all employee liability information relating to its employees engaged in providing the Services under the Contract ("the Employee Information");

(b) the Supplier shall permit the Council to use the Employee Information for the purposes of TUPE; and

(c) the Supplier shall indemnify the Council fully and hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or:

i. arising from or relating to the provision of the Employee Information; and

ii. as a result of any claim or demand by any employee or person claiming to be an employee on any date upon which the Contract is terminated or transferred to any third party arising out of their employment or its termination.

28. General

28.1 At all times during the period of the Contract the Supplier shall be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the parties.

28.2 Assignment and other dealings.

- (a) The Council may at any time assign, 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, 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.

28.3 Notices.

- (a) All notice required or permitted to be given under this Contract between the parties must be in writing and delivered by hand or sent by special delivery post to the official address of each party. Service of notice 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.

28.4 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Contract. If any provision of the Contract is deemed deleted under this clause the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

28.5 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.

28.6 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.

28.7 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.

- 28.8 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.
- 28.9 Variation.** Except as set out in this Contract, 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.
- 28.10 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.
- 28.11 Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 28.12 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.