

**Contents**

*Together we are stronger*

1. Definitions
2. Interpretation
3. Commencement and Duration
4. The Price and Payment
5. The Goods
6. Supply of Services
7. Supplier's Staff
8. Contract Performance
9. Disruption and Business Continuity
10. Cancellation and Termination
11. Indemnity and Insurance
12. Property-Related Services
13. Data Protection
14. Confidentiality
15. Freedom of Information
16. Prevention of Bribery
17. Anti-discrimination
18. Environmental Requirements
19. Health and Safety
20. Safeguarding
21. Audit
22. Costs of Audit
23. Complaints / Dispute Resolution
24. Variations
25. Assignment and Sub-Contracting
26. Notices
27. Waiver
28. Severance
29. Remedies Cumulative
30. Third Party Rights
31. Applicable Law

## 1. Definitions

1.1 Unless the context otherwise requires the following provisions shall have the meanings given to them below:

**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.

**Commencement Date** means the date identified on the Purchase Order.

**Confidential Information** means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, intellectual property rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA.

**Contract** means these terms and conditions and the Purchase Order.

**Contract Period** means the period from the date stipulated by the Council upon which the Services are to be supplied to the date of expiry stipulated by the Council or such earlier date of termination or partial termination of the contract in accordance with the Law or the provisions of the Contract.

**Contracting Authority** means any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015.

**Conviction** means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1 (1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being made the subject of a prohibition or restriction under section 218(6) of the Education Reform Act 1988).

**Crown** means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government and particular bodies and government agencies.

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

**Default** means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other.

**Delivery Date** means the date specified by the Council for delivery of the Goods or completion of the Services.

**Disaster Recovery and Business Continuity Plan** means the disaster recovery and business continuity plan prepared by the Supplier to deal with a Disaster.

**DPA** means the Data Protection Act 2018.

**Employment Checks** means the pre-appointment checks that are required by Law and applicable guidance, including without limitation, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, criminal record checks and occupational health checks and the Supplier shall ensure that these meet the Council's Disclosure and Barring Service Policy which is available at [http://www.lincolnshire.gov.uk/jobs/manuals/employment-manual/recruitment-selection-and-induction/recruitment-and-selection-policy-\(incorporating-safer-recruitment\)/87476.article](http://www.lincolnshire.gov.uk/jobs/manuals/employment-manual/recruitment-selection-and-induction/recruitment-and-selection-policy-(incorporating-safer-recruitment)/87476.article)

**Enhanced DBS & Barred List Check** means an Enhanced DBS & Barred List Check (child) or Enhanced DBS & Barred List Check (adult) or Enhanced DBS & Barred List Check (child & adult) (as appropriate) and the Supplier shall ensure that these meet the Council's Disclosure and Barring Service Policy.

**Enhanced DBS Position** means any position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended), which also meets the criteria set out in the Police Act 1997 (Criminal Records) Regulations 2002 (as amended), and in relation to which an Enhanced DBS Disclosure or an Enhanced DBS & Barred List Check (as appropriate) is permitted as set out in the Council's Disclosure and Barring Service Policy.

**Environmental Information Regulations** means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**Equality Legislation** means the Equality Act 2010 and such other acts and legislation to ensure, among others equality of access to goods and services, promotion of good relations between groups in society, the provision of reasonable adjustments for people with disabilities and equality in employment.

**Equipment** means the Supplier's equipment, plant, materials and such other items supplied and used by the Supplier in the performance of its obligations under the Contract.

**FOIA** means the Freedom of Information Act 2000 and any subordinate legislation made under this 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.

**Fraud** means any offence under Law creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the Council.

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

**Good Industry Practice** means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

**Goods** means goods to be supplied by the Supplier (or by the Supplier's sub-contractor) in accordance with the Contract.

**LED** means the Law Enforcement Directive (*Directive (EU) 2016/680*).

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

**Information Commissioner's Office** means the office of the Information Commissioner whose role is to uphold information rights in the public interest, and responsible for data protection in England, Scotland and Wales in accordance with provisions set out in Section 6 of the DPA.

**Initial Contract Period** means the period from the Commencement Date to the Delivery Date or such earlier date of termination of the Contract in accordance with the Law or the provisions of the Contract.

**Law** means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the Supplier is bound to comply.

**Month** means calendar month.

**Party** means a party to the Contract.

**Personal Data** takes the meaning given in the GDPR.

**Processing** takes the meaning given in the GDPR.

**Premises** means the location where the Services are to be supplied.

**Price** means the Price payable to the Supplier by the Council for the full and proper performance by the Supplier of its obligations under the Contract and in accordance with the provisions set out in the Contract.

**Prohibited Act** means any of the following acts:-

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:-
  - (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;
- (c) committing any offence:-

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

**Purchase Order** means a formal written order issued by the Council setting out the details in respect of the Goods and/or Services to be provided which shall be deemed to include these terms and conditions.

**Quality Standards** means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Purchase Order.

**Regulatory Bodies** means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Council and “Regulatory Body” shall be construed accordingly.

**Request for Information** shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply).

**Services** means the services to be supplied by the Supplier as specified by the Council in the Purchase Order.

**Staff** means all persons employed by the Supplier to perform its obligations under the Contract together with the Supplier’s servants, agents, suppliers and Sub-Contractors used in the performance of its obligations under the Contract.

**Staff Vetting Procedure** means the Council’s procedures for the vetting of Staff and as advised to the Supplier by the Council available at [http://www.lincolnshire.gov.uk/jobs/manuals/employment-manual/recruitment-selection-and-induction/recruitment-and-selection-policy-\(incorporating-safer-recruitment\)/87476.article](http://www.lincolnshire.gov.uk/jobs/manuals/employment-manual/recruitment-selection-and-induction/recruitment-and-selection-policy-(incorporating-safer-recruitment)/87476.article)

**Sub-Contract** means any contract or agreement, or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier:-

- (a) the Services or any part of the Services; or
- (b) the facilities or services necessary for the provision of the Services or any part of the Services, or necessary for the management, direction or control of the Services or any part of the Services.

**Sub-Contractor** means the third parties that enter into a Sub-Contract with the Supplier.

**Supplier** means the person, firm or company with whom the Council places a Purchase Order.

**Working Day** means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

## **2. Interpretation**

2.1 The interpretation and construction of the terms and conditions shall be subject to the following provisions:-

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to Clauses are to the clauses of these terms and conditions which form part of the Contract;
- (d) the Schedules form part of the Contract and shall have effect as if set out in full in the body of the Contract and any reference to the Contract includes the Schedules;
- (e) reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (f) reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (g) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation"; and
- (h) headings are included for ease of reference only and shall not affect the interpretation or construction of the Contract.

## **3. Commencement and Duration**

3.1 The Contract shall take effect on the Commencement Date and shall expire automatically on the Delivery Date or such date as identified in the Purchase Order, unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or extended.

3.2 The Parties may before the expiry date in clause 3.1 agree to extend the Contract for a further period as will be determined and agreed between them provided that the total period of such extension:

- (a) shall not exceed twelve (12) Months; and
- (b) that the Party seeking an extension shall not later than two (2) Months before the expiration of the initial Contract Period serve upon the other Party a notice in writing requesting an extension and the receiving Party shall respond to such notice within fourteen (14) days of receipt thereof by failure of which the notice will be deemed not to have been served and this Agreement will expire on the Expiry Date.

#### **4. The Price and Payment**

- 4.1 The Price shall be as specified in the Purchase Order.
- 4.2 The Price is exclusive of VAT which shall be payable by the Council at the rate prevailing at the date of the Contract.
- 4.3 Payment of the Price and VAT shall be made by the Council within thirty (30) days from the date on which the Council has determined that the invoice is valid and undisputed.
- 4.4 In respect of any invoice, the Supplier shall ensure that each invoice:-
- (a) clearly displays a valid Purchase Order number which number must be obtained from the Council upon request for the provision of Services and/or Goods;
  - (b) only contains one Purchase Order number which relates to the Goods and/or Services requested under the relevant Purchase Order. For the avoidance of doubt, if an invoice contains more than one Purchase Order number, it shall be rejected;
  - (c) includes the Supplier's name, address, contact details;
  - (d) details the Services and/or Goods which the invoice relates to including delivery address;
  - (e) a unique invoice reference number;
  - (f) is either electronically typed or handwritten but no invoice shall be accepted which has been electronically typed and manually altered, e.g. manually corrected or updated;
  - (g) is submitted via e-mail to [invoices@lincolnshire.gov.uk](mailto:invoices@lincolnshire.gov.uk) in PDF or TIF format without security being applied and is sent as a separate file or is sent by post addressed to Lincolnshire County Council, Serco Lincs Invoices, PO Box 7811, Corby, NN17 9HF;
  - (h) which is submitted by e-mail shall only consist of an invoice and no other documentation; and
  - (i) which is to be accompanied by documentation, is submitted by post to the address identified in sub-clause (g) above.
- 4.5 If the Supplier fails to submit an invoice in accordance with Clause 4.4, no payment shall become due until such time as an invoice has been submitted by the Supplier which conforms in all respects with the requirements set out in Clause 4.4. For the avoidance of doubt, the Supplier shall not be able to exercise any right under Clause 4.7 until such time as it has submitted an invoice in full compliance with the requirements set out in Clause 4.4.
- 4.6 Where the Supplier enters into a sub-contract with a supplier or contractor for the purposes of performing its obligations under the Contract, the Supplier shall ensure that a provision is included in such sub-contract which requires payment to be made of all sums due by the Supplier to the sub-contractor within a

specified period not exceeding thirty (30) days from the receipt of a valid invoice and the Supplier shall ensure that the counterparty to that sub-contract includes in any sub-contract which it awards provisions having the same effect as the provisions set out in this Clause 4.6.

- 4.7 Wherever under the Contract any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Council in respect of any breach of the Contract), the Council may unilaterally deduct that sum from any sum then due or which at any later time may become due to the Supplier under the Contract or under any other agreement or contract with the Council.
- 4.8 If the Council fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Council in writing of such failure to pay. If the Council fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Supplier may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Council exercising its rights under Clause 4.7.
- 4.9 Interest shall be payable on the late payment of any undisputed sums of money due to either Party under the Contract such interest to be calculated at the rate of 4% over the Bank of England base rate for the time being, from the final date for payment to and including the date on which such amount is paid or discharged.

## **5. The Goods**

### **5.1 The Purchase Order**

The Purchase Order sets out in detail the quantity and description of the Goods.

### **5.2 The Standard of Goods**

- (a) The Supplier warrants that all Goods are of a satisfactory quality and fit for purpose, comply with all applicable published standards and meet all applicable health and safety requirements.
- (b) The Supplier acknowledges that the Council relies on the skill and judgment of the Supplier in the supply of the Goods and the performance of its obligations under the Contract.

### **5.3 Delivery**

- (a) The Supplier shall deliver the Goods at the time(s) and date(s) specified in the Purchase Order or otherwise stipulated by the Council.
- (b) Unless otherwise stated in the Purchase Order, where the Goods are delivered by the Supplier, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises/address of delivery. Where the Goods are collected by the Council, the point of delivery shall be when the Goods are loaded onto the Council's vehicle.
- (c) Except where otherwise provided in the Contract, delivery shall include the unloading, stacking or installation of the Goods by the Staff or the Supplier's suppliers or carriers at such place as the Council or the Council's duly authorised personnel shall reasonably direct.



- (d) Time of delivery shall be of the essence and if the Supplier fails to deliver the Goods within the time specified, the Council may release itself from any obligation to accept and pay for the Goods and/or terminate the Contract in either case without prejudice to any other rights and remedies of the Council.
- (e) The Council shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Council elects not to accept such over-delivered Goods it shall give notice in writing to the Supplier to remove them within five (5) Working Days and to refund to the Council any expenses incurred by it as a result of such over-delivery (including but not limited to the costs of moving and storing the Goods), failing which the Council may dispose of such Goods and charge the Supplier for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Supplier unless they are accepted by the Council.
- (f) The Council shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Purchase Order or otherwise stipulated by the Council.
- (g) Unless expressly agreed to the contrary, the Council shall not be obliged to accept delivery by instalments. If, however, the Council does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to any other rights or remedies of the Council, entitle the Council to terminate the whole of any unfulfilled part of the Contract without further liability to the Council.
- (h) Unless otherwise agreed in writing by the Council the Price includes all delivery charges and costs.

#### **5.4 Risk and Ownership**

- (a) Subject to clause 5.3(e), risk in the Goods shall, without prejudice to any other rights or remedies of the Council (including the Council's rights and remedies under clause 5.6 (Inspection, Rejection and Guarantee)), pass to the Council at the time of delivery.
- (b) Ownership in the Goods shall, without prejudice to any other rights or remedies of the Council (including the Council's rights and remedies under clause 5.6 (Inspection, Rejection and Guarantee)), pass to the Council at the time of delivery (or payment, if earlier).

#### **5.5 Non-Delivery**

- 5.1 On dispatch of any consignment of the Goods the Supplier shall send the Council an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. Where the Goods, having been placed in transit, fail to be delivered to the Council on the due date for delivery, the Council may within ten (10) Working Days of the notified date of delivery give notice to the Supplier that the Goods have not been delivered and may request the Supplier to deliver substitute Goods within the timescales specified by the Council or terminate the Contract in accordance with clause 5.3 (d) (Delivery). The delivery of substitute Goods shall be delivered free of charge by the Supplier to the Council.

## **5.6 Inspection, Rejection and Guarantee**

- (a) The Council or its authorised representatives may inspect or test the Goods either complete or in the process of manufacture during normal business hours on reasonable notice at the Supplier's Premises and the Supplier shall provide all reasonable assistance in relation to any such inspection or test free of charge. No failure to make a complaint at the time of any such inspection or test and no approval given during or after such inspection or test shall constitute a waiver by the Council of any rights or remedies in respect of the Goods and the Council reserves the right to reject the Goods in accordance with clause 5.6(b).
- (b) The Council may by written notice to the Supplier reject any of the Goods which fail to conform to a sample which has been formally approved by the Council in writing or which fails to meet the requirements set out in the Contract. Such notice shall be given within a reasonable time after delivery to the Council of such Goods. If the Council rejects any of the Goods pursuant to this clause the Council may (without prejudice to other rights and remedies) either:-
  - (i) have such Goods promptly, and in any event within five (5) Working Days, either repaired by the Supplier or replaced by the Supplier with Goods which conform in all respects with the approved sample or with the requirements set out in the Contract and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or
  - (ii) treat the Contract as discharged by the Supplier's breach and obtain a refund (if payment for the Goods has already been made) from the Supplier in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Council in obtaining other goods in replacement provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement goods.
- (c) The issue by the Council of a receipt note for the Goods shall not constitute any acknowledgement of the condition, quantity or nature of those Goods, or the Council's acceptance of them.
- (d) The Supplier hereby guarantees the Goods for the period from the date of delivery to the date eighteen (18) Months thereafter against faulty materials or workmanship. If the Council shall within such guarantee period or within twenty five (25) Working Days thereafter give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use the Supplier shall (without prejudice to any other rights and remedies which the Council may have) promptly remedy such defects (whether by repair or replacement as the Council shall elect) free of charge.
- (e) Any Goods rejected or returned by the Council as described in clause 5.6(b) shall be returned to the Supplier at the Supplier's risk and expense.

## **5.7 Labelling and Packaging**

The Goods shall be packed and marked in a proper manner and in accordance with the Council's instructions and any statutory requirements and any requirements of the carriers. In particular the Goods shall be marked with the

contract number (or other reference number if appropriate) and the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.

## **6. Supply of Services**

### **6.1 The Services**

The nature and extent of the Services shall be as set out in the Purchase Order.

### **6.2. Delivery of Services**

- (a) The Supplier shall supply the Services during the Contract Period in accordance with the Council's requirements as set out in the Purchase Order, Law, Quality Standards, Good Industry Practice and the provisions of the Contract. The Council may inspect and examine the manner in which the Supplier supplies the Services during normal business hours on reasonable notice.
- (b) Where the Services cover work at any Council Premises the Supplier shall give reasonable notice to the Head or Manager of the establishment prior to commencing work and comply with any requirements of the Head or Manager in respect of minimising disruption to the establishment.
- (c) The Supplier shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.
- (d) If the Council informs the Supplier in writing that the Council reasonably believes that any part of the Services does not meet the requirements of the Contract or differs in any way from those requirements, and this is other than as a result of a Default by the Council, the Supplier shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Council.
- (e) Timely supply of the Services shall be of the essence of the Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.
- (f) The Supplier shall provide all the Equipment necessary for the supply of the Services.
- (g) The Supplier shall not deliver any Equipment nor begin any work at the Premises without obtaining prior approval of the Council.
- (h) All Equipment brought onto the Premises shall be at the Supplier's own risk and the Council shall have no liability for any loss of or damage to any Equipment unless the Supplier is able to demonstrate that such loss or damage was caused or contributed to by the Council's default. The Supplier shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises shall remain the property of the Supplier.

- (i) The Supplier shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- (j) The Supplier shall at the Council's written request at its own expense and as soon as reasonably practicable:-
  - (i) remove from the Premises any Equipment which in the reasonable opinion of the Council is either hazardous, noxious or not in accordance with the Contract; and
  - (ii) replace such item with a suitable substitute item of Equipment.
- (k) On completion of the Services the Supplier shall remove the Equipment together with any other materials used by the Supplier to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier or any Staff.

## **7. Supplier's Staff**

- 7.1 At all times, the Supplier shall ensure that:-
- (a) each of the Staff is suitably qualified, adequately trained (including any specialist based training that is required for the proper delivery of the Services) and capable of providing the Services in respect of which they are engaged;
  - (b) there is an adequate number of Staff to provide the Services properly;
  - (c) all of the Staff comply with all of the Council's policies as notified to it from time to time; and
  - (d) all of the Staff comply with the Law, fully understand the nature of their duties and carry out their responsibilities in accordance with a general duty of care and safe methods of working.
- 7.2 The Supplier shall notify its entire Staff about the Supplier's obligations under the terms of the Contract and about any applicable Law.
- 7.3 Upon receipt of a complaint against a member of Staff, the Council may, to the extent reasonably necessary to protect the standards and reputation of the Council, in consultation with the Supplier, request that the Supplier investigates the complaint and provides the Council with all requested information in relation to this investigation, in accordance with the Supplier's own internal policy and procedures and Good Industry Practice.
- 7.4 In the event of industrial disputes or action by any of the Staff, it remains the Supplier's responsibility to meet the requirements of the Contract. The Supplier shall inform the Council immediately of impending or actual industrial disputes or action, which may affect the Supplier's ability to deliver the Services and of the Supplier's contingency plans for dealing with such disputes or action.
- 7.5 The Council may, by written notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Premises:-
- (a) any member of Staff; or

- (b) any person employed or engaged by the Supplier,  
whose admission or continued presence would, in the reasonable opinion of the Council, be undesirable.
- 7.6 At the Council's written request, the Supplier shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Property, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Council may reasonably request.
- 7.7 The Staff, engaged within the boundaries of the Property, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Property.
- 7.8 The Supplier shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Services. The Supplier confirms that all persons employed or engaged by the Supplier were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.
- 7.9 Subject to Clause 7.10, before the Supplier engages or employs any person in the provision of the Services, or in any activity related to, or connected with, the provision of the Services, the Supplier shall without limitation, complete:-
- (a) the Employment Checks; and
  - (b) if appropriate such other checks as required by the Council's Recruitment and Selection Policy and all other policies and documentation referred to therein including the Council's Disclosure and Barring Service Policy referred to in the Contract.
- 7.10 Subject to Clause 7.11, the Supplier may engage a person in an Enhanced DBS Position (as applicable) pending the receipt of the Enhanced DBS & Barred List Check (as appropriate) with the agreement of the Council.
- 7.11 Where Clause 7.10 applies, the Supplier shall ensure that until the Enhanced DBS & Barred List Check (as appropriate) is obtained, the following safeguards shall be put in place:-
- (a) an appropriately qualified and experienced member of Staff is appointed to supervise the new member of Staff; and
  - (b) wherever it is possible, this supervisor is on duty at the same time as the new member of Staff, or is available to be consulted; and
  - (c) the new member of Staff is accompanied at all times by either the appointed supervisor or a member of Staff who has already been subjected to the Staff Vetting Procedure whilst providing the Services under the Contract; and
  - (d) any other reasonable requirement of the Council.
- 7.12 The Supplier shall (unless and to the extent agreed otherwise by the Council in writing) conduct such questioning and investigation as is reasonable regarding any Convictions, where the above required checks reveal a Conviction.

- 7.13 Without prejudice to the provisions of this Clause 7, the Supplier shall not engage or continue to utilise in the provision of the Services involving or which are likely to involve access to children, vulnerable persons or other members of the public to whom the Council owes a special duty of care, any member of Staff whose Conviction means it would reasonably be regarded as inappropriate for them to be conducting such activity.
- 7.14 If the Supplier fails to comply with Clause 7 and in the reasonable opinion of the Council, such failure may be prejudicial to the interests of the Council, then the Council may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.
- 7.15 The decision of the Council as to whether any person is to be refused access to the Property and as to whether the Supplier has failed to comply with Clause 7 shall be final and conclusive.
- 7.16 The Supplier shall replace any of the Staff who the Council reasonably determines have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Staff 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 at no additional cost to the Council.
- 7.17 The Supplier shall maintain up-to-date personnel records on the Staff engaged in the provision of the Services and shall provide information to the Council as the Council reasonably requests on the Staff. The Supplier shall ensure at all times that it has the right to provide these records in compliance with the DPA.
- 7.18 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 as the prevailing industry norm for similar services, locations and environments.

## **8. Contract Performance**

- 8.1 The Supplier shall perform its obligations under the Contract:-
- (a) with appropriately experienced, qualified and trained personnel with all due skill, care and diligence;
  - (b) in accordance with Good Industry Practice and Quality Standards; and
  - (c) in compliance with all applicable Laws.
- 8.2 The Supplier shall ensure that:-
- (a) the Goods conform in all respects with the Purchase and, where applicable, with any sample approved by the Council;
  - (b) the Goods operate in accordance with the relevant technical specifications and correspond with the requirements set out in the Contract;
  - (c) the Goods conform in all respects with all applicable Laws; and

(d) the Goods are free from defects in design, materials and workmanship and are fit and sufficient for all the purposes for which such Goods are ordinarily used and for any particular purpose made known to the Supplier by the Council.

8.3 The Council shall conduct a review of the performance of the Contract at least annually during the Contract Period or such lesser period as shall be appropriate to the duration of the Contract. During any such review, a performance report shall be agreed and actioned as required.

## **9. Disruption and Business Continuity**

### **Disruption**

9.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Council, its employees or any other contractor employed by the Council.

9.2 The Supplier shall immediately inform the Council of any actual or potential industrial action, whether such action is by the Supplier or others for whom the Supplier is responsible, which affects or might affect its ability at any time to perform its obligations under the Contract.

9.3 In the event of industrial action by the Staff, the Supplier shall seek the written approval of the Council to its proposals to continue to perform its obligations under the Contract.

9.4 If the Supplier's proposals referred to in clause 7.3 are considered insufficient or unacceptable by the Council acting reasonably, then the Contract may be terminated with immediate effect by the Council by notice in writing.

9.5 If the Supplier is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business of the Council, the Supplier may request a reasonable allowance of time.

### **Business Continuity**

9.6 The Supplier shall ensure that it has and is able to implement the provisions of a Disaster Recovery and Business Continuity Plan at any time in accordance with its terms to ensure that the performance of the Contract shall be maintained in the event of disruption (including disruption to information technology systems) to the Supplier's operations and those of its Sub-Contractors however caused. Such contingency plans shall be available for the Council to inspect and to practically test at any reasonable time and shall be subject to regular updating and review throughout the duration of the Contract.

9.7 The Supplier shall test the Disaster Recovery and Business Continuity Plan on a regular basis (and, in any event, not less than once in every twelve (12) Month period). The Council shall be entitled to participate in such tests as it may reasonably require.

9.8 Following each test, the Supplier shall send to the Council a written report summarising the results of the test and shall promptly implement any actions or remedial measures which the Council considers to be necessary as a result of those tests.

9.9 The Supplier shall implement the Disaster Recovery and Business Continuity Plan in the event that the Goods and/or Services are not available for more than forty eight (48) hours.

## **10. Cancellation and Termination**

10.1 The Council may cancel the Contract at any time before Goods are delivered on the giving of written notice. The Supplier shall promptly repay to the Council any sums paid in respect of the Price and the Council shall not be liable for any loss or damage whatsoever arising from such cancellation.

10.2 The Council may terminate any contract without cause for Services on the giving of reasonable written notice. The Council shall pay for work carried out prior to the date of termination but shall otherwise not be liable for any loss or damage whatsoever arising from such termination.

10.3 Where the Council terminates the Contract under clause 10.4(a) and then makes other arrangements for the supply of Goods and/or Services, the Council may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Council throughout the remainder of the Contract Period. The Council shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clause 10.4(a), no further payments shall be payable by the Council to the Supplier (for Goods and/or Services supplied by the Supplier prior to termination and in accordance with the Contract but where the payment has yet to be made by the Council), until the Council has established the final cost of making the other arrangements envisaged under this clause.

10.4 The Council may terminate the contract forthwith on written notice if:-

(a) the Supplier is in breach of its obligations under the Contract and if:-

- (i) the Supplier has failed to remedy the breach within fourteen (14) days of notice from the Council specifying the breach and requiring its remedy; or
- (ii) the breach is not in the opinion of the Council capable of remedy; or
- (iii) the breach is a material breach of the Contract.

(b) where the Supplier is a company and in respect of the Supplier:-

- (i) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (ii) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- (iii) a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or



- (iv) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
  - (v) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
  - (vi) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
  - (vii) being a “small company” within the meaning of section 382 of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
  - (viii) any event similar to those listed in Clause 10.4(b) (i)-(vii) occurs under Law of any other jurisdiction.
- (c) where the Supplier is an individual and:-
- (i) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Supplier’s creditors; or
  - (ii) a petition is presented and not dismissed within fourteen (14) days or order made for the Supplier’s bankruptcy; or
  - (iii) a receiver, or similar officer is appointed over the whole or any part of the Supplier’s assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
  - (iv) the Supplier is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
  - (v) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier’s assets and such attachment or process is not discharged within fourteen (14) days; or
  - (vi) the Supplier dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; or
  - (vii) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

10.5 The Supplier shall notify the Council immediately if the Supplier undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 (“**change of control**”). The Council may terminate the Contract by notice in writing with immediate effect upon:-

- (a) being notified that a change of control has occurred; or

- (b) where no notification has been made, the date that the Council becomes aware of the change of control

but shall not be permitted to terminate where written consent was granted by the Council prior to the change of control.

## **11. Indemnity and Insurance**

11.1 Neither Party excludes or limits liability to the other Party for:-

- (a) death or personal injury caused by its negligence; or
- (b) Fraud; or
- (c) fraudulent misrepresentation; or
- (d) any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

11.2 The Supplier shall indemnify the Council and keep the Council indemnified fully against all claims, proceedings, actions, damages, costs, expenses (including the costs of legal and professional services (including legal costs on a full indemnity basis) and any other liabilities which may arise out of, or in consequence of, the supply, installation and/or commissioning of the Goods, or the late or purported supply, installation and/or commissioning of the Goods, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Supplier of its obligations under the Contract, the presence of the Supplier or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Supplier, or any other loss which is caused directly or indirectly by any act or omission of the Supplier.

11.3 The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Council or by breach by the Council of its obligations under the Contract.

11.4 Without prejudice to the Council's rights under the Contract, the Supplier shall in respect of the performance of its obligations under the Contract effect and maintain the following insurances as applicable at indemnity levels commensurate of the nature of the Goods and/or Services provided under the Contract with a reputable insurance company:-

- (a) public liability insurance;
- (b) employer's liability insurance;
- (c) professional indemnity insurance;
- (d) product liability insurance; and
- (e) any other insurances as may be required by Law.

11.5 In each case, the level of insurance carried shall apply in respect of any single act or occurrence or a series of acts or occurrences arising from a single event but with no aggregate limit during any one period of cover. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier. Such insurance shall be maintained for the duration of

the Contract Period and for a minimum of six (6) years following the expiration or earlier termination of the Contract

- 11.6 Subject always to clause 11.1, in no event shall either Party be liable to the other for any:-
- (a) loss of profits, business, revenue or goodwill; and/or
  - (b) loss of savings (whether anticipated or otherwise); and/or
  - (c) indirect or consequential loss or damage.
- 11.7 The Supplier shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure incurred by the Council resulting from the direct Default of the Supplier.
- 11.8 The Supplier shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 11.9 If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by the provisions of the Contract the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 11.10 The Supplier shall notify the Council immediately of any alteration, cancellation or change of cover in respect of the insurances required by this Clause 11.
- 11.11 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract.

## **12. Property-Related Services**

- 12.1 Failure by the Supplier to comply with the conditions of the Construction Industry Scheme when applicable may result in payment being withheld.
- 12.2 All fossils antiques and other objects of interest or value which may be found on the site or in excavating the same during the progress of any works shall be the property of the Council.

## **13. Data Protection**

- 13.1 The Parties do not envisage the Processing of any Personal Data under this Contract. In the event that there is any Processing of Personal Data the Parties shall comply with their respective obligations under Data Protection Legislation.

## **14. Confidentiality**

- 14.1 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in the Contract, each Party shall:-
- (a) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
  - (b) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

- 14.2 Clause 14.1 shall not apply to the extent that:-
- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to Clause 15;
  - (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
  - (c) such information was obtained from a third party without obligation of confidentiality;
  - (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
  - (e) it is independently developed without access to the other Party's Confidential Information.
- 14.3 The Supplier may only disclose the Council's Confidential Information to Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations of confidentiality.
- 14.4 The Supplier shall not use any of the Council's Confidential Information received otherwise than for the purposes of the Contract.
- 14.5 At the written request of the Council, the Supplier shall procure that the Staff identified in the Council's notice signs a confidentiality undertaking prior to commencing any work in accordance with the Contract.
- 14.6 Nothing in the Contract shall prevent the Council from disclosing the Supplier's Confidential Information:-
- (a) to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
  - (b) to any consultant, professional adviser, contractor, supplier or other person engaged by the Council or any person conducting an Office of Government Commerce gateway review;
  - (c) to the extent that the Council (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
  - (d) for the purpose of the examination and certification of the Council's accounts;
  - (e) on a confidential basis for the purpose of the exercise of its rights under the Contract including for auditing purposes, to a body to novate, assign or dispose of its rights under the Contract, to a replacement supplier (Clause 13.3) and for the purpose of the examination and certification of the Council's accounts; or

- (f) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources.
- 14.7 The Council shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Supplier's Confidential Information is disclosed pursuant to Clause 14.6 is made aware of the Council's obligations of confidentiality.
- 14.8 Nothing in this Clause 14 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.
- 14.9 Any breach by the Supplier of Clauses 14.1. – 14.4 shall be a material breach for the purposes of Clause 10 and shall entitle the Council (at its absolute discretion) to exercise its rights under the corresponding provisions of Clause 10.
- 14.10 The Parties acknowledge that except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Contract is not Confidential Information. The Council shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- 14.11 Notwithstanding any other term of the Contract, the Supplier hereby gives consent for the Council to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) including from time to time agreed changes to the Contract, to the general public.

## **15. Freedom of Information**

- 15.1 The Supplier acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.
- 15.2 The Supplier shall and shall procure that any Sub-Contractors shall:-
  - (a) transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
  - (b) provide the Council with a copy of all Information in its possession, or power in the form that the Council requires within five (5) Working Days (or such other period as the Council may specify) of the Council's request; and
  - (c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- 15.3 The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement

whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

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

15.5 The Supplier acknowledges that (notwithstanding the provisions of Clause 15.2) the Council may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under section 45 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier or the Services in certain circumstances:-

(a) without consulting the Supplier; or

(b) following consultation with the Supplier and having taken their views into account;

provided always that where 15.5(a) applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

15.6 The Supplier shall ensure that all Information is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

## **16. Prevention of Bribery**

The Supplier:

16.1 shall not, and shall procure that all Staff shall not, in connection with the Contract commit a Prohibited Act;

16.2 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 the Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of the Contract.

The Supplier shall:-

16.3 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;

16.4 within five (5) Working Days of the Commencement Date, and annually (or at such intervals as determined by the Council which shall be commensurate the duration of the Contract) thereafter, certify to the Council in writing (such certification to be signed by an officer of the Supplier) compliance with this Clause 16 by the Supplier and all persons associated with it or other persons who are supplying goods or services in connection with the Contract. The Supplier shall provide such supporting evidence of compliance as the Council may reasonably request.

- 16.5 The Supplier shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent it from committing a Prohibited Act and shall enforce it where appropriate.
- 16.6 The Supplier shall immediately notify the Council in writing if it becomes aware of or suspects any Default of Clauses 16.1 and 16.2 or has reason to believe that it has or any Staff has:-
- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act or Default of Clause 16.2;
  - (b) 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; or
  - (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Contract or otherwise suspects that any person or party directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act or breach of Clause 16.2.
- 16.7 If the Supplier notifies the Council that it suspects or knows that there may be a breach of Clause 16, the Supplier must respond promptly and in any event within ten (10) Working Days 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 six (6) calendar years following the expiry or termination of the Contract.
- 16.8 The Council may:-
- (a) terminate the Contract by written notice with immediate effect and recover from the Supplier the amount of any Loss suffered by the Council resulting from the termination including the cost reasonably incurred by the Council of making other arrangements for the supply of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period if the Supplier breaches Clause 16; and
  - (b) recover in full from the Supplier any other Loss sustained by the Council in consequence of any Default of Clause 16.
- 16.9 Any notice of termination under Clause 16.8 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 the Contract shall terminate.
- 16.10 Despite Clause 23 (Disputes), any dispute relating to:-
- (a) the interpretation of Clause 16; or
  - (b) the amount or value of any gift, consideration or commission, shall be determined by the Council acting reasonably having given due

consideration to all relevant factors and its decision shall be final and conclusive.

- 16.11 Any termination under Clause 16.8 shall be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.
- 16.12 In exercising its rights or remedies under Clause 16.8, the Council shall act in a reasonable and proportionate manner having regard to such matters as the gravity of the conduct prohibited by Clauses 16.1 and 16.2 and the identity of the person performing that Prohibited Act/prohibited conduct.

## **17. Anti-Discrimination**

- 17.1 The Supplier shall not unlawfully discriminate within the meaning and scope of Equality Legislation or other any Law, enactment, order, or regulation relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in employment.
- 17.2 The Supplier shall take all reasonable steps to secure the observance of Clause 17.1 by all Staff employed in performance of the Contract.
- 17.3 The Supplier shall notify the Council forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Supplier under Equality Legislation or other any Law, enactment, order or regulation relating to discrimination.
- 17.4 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Supplier's performance of the Contract being in contravention of Equality Legislation or other any Law, enactment, order or regulation relating to discrimination, the Supplier shall, free of charge:-
- (a) provide any information requested in the timescale allotted;
  - (b) attend any meetings as required and permit the Staff to attend;
  - (c) promptly allow access to and investigation of any documents or data deemed to be relevant;
  - (d) allow the Supplier and any of the Staff to appear as witness in any ensuing proceedings, and
  - (e) cooperate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.
- 17.5 Where any investigation is conducted or proceedings are brought under Equality Legislation or other any Law, enactment, order or regulation relating to discrimination which arise directly or indirectly out of any act or omission of the Supplier, and where there is a finding against the Supplier in such investigation or proceedings, the Supplier shall indemnify the Council with respect to all Losses arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Council may have been ordered or required to pay to a third party.
- 17.6 The Supplier must ensure that all written information produced or used in connection with the Contract is as accessible as possible to people with disabilities and to people whose level of literacy in English is limited.



17.7 The Supplier acknowledges that the Council may carry out an impact analysis as defined under the Equality Act 2010 in respect of any aspect of the provision of the Services and the Supplier shall provide all necessary assistance and information to the Council as may be required in relation to the performance of an impact analysis by the Council. The Supplier shall implement any changes or adjustments that are required as a result of, or in connection with the outcome of the impact analysis undertaken by the Council.

## **18. Environmental Requirements**

18.1 The Supplier shall perform its obligations under the Contract in accordance with the Council's environmental policy which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

## **19. Health and Safety**

19.1 The Supplier shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract.

19.2 While on Council Premises, the Supplier shall comply with any health and safety measures implemented by the Council in respect of Staff and other persons working there.

19.3 The Supplier shall notify the Council immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

19.4 The Supplier shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working or attending the Premises in the performance of the Supplier's obligations under the Contract.

19.5 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.

## **20. Safeguarding**

### **Safeguarding Children/Vulnerable Adults**

20.1 The Supplier shall make the necessary arrangements to ensure compliance with all Laws relevant to the duty to safeguard and promote the welfare of children and vulnerable adults in the delivery of all aspects of the Service including but not limited to the Section 11 of the Children Act 2004, Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012) and The Mental Health Act 1983.

20.2 The Supplier, if it has responsibility for the management and control of Regulated Activity (as defined under the legislation identified below), shall make the necessary arrangements to ensure compliance with Section 11 of the Children

Act 2004 (the duty to safeguard and promote the welfare of children in the delivery of all aspects of the Service) and Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012).

- 20.3 The Supplier shall make the necessary arrangements to ensure compliance with registration requirements with the Disclosure and Barring Service.
- 20.4 To fulfil the commitment to safeguard and promote the welfare of children and vulnerable adults, as appropriate, the Supplier shall have:-
- (a) Clear priorities for safeguarding and promoting the welfare of children/vulnerable adults explicitly stated in strategic policy documents;
  - (b) A clear commitment by senior management to the importance of safeguarding and promoting children/vulnerable adults' welfare;
  - (c) A clear line of accountability within the organisation for work on safeguarding and promoting the welfare of children/vulnerable adults;
  - (d) Recruitment and human resources procedures in compliance with Clause 7 in order to safeguard and promote the welfare of children/vulnerable adults;
  - (e) Procedures for dealing with allegations of abuse against members of Staff and volunteers;
  - (f) Arrangements to ensure all Staff undertake appropriate training and refresher training to enable them to carry out their responsibilities effectively;
  - (g) Policies for safeguarding and promoting the welfare of children/vulnerable adults and procedures that are in accordance with guidance and locally agreed inter-agency procedures;
  - (h) Arrangements to work effectively with other organisations to safeguard and promote the welfare of children/vulnerable adults including sharing of information;
  - (i) A culture of listening to and engaging in dialogue with children/vulnerable adults; and
  - (j) Appropriate whistle-blowing procedures.
- 20.5 The Supplier shall immediately notify the Council of any information it reasonably requests to enable it to be satisfied that the obligations of Clauses 7 and 20 have been met.

## **21. Audit**

- 21.1 The Supplier shall keep and maintain until six (6) years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services and/or Goods supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Supplier shall on request afford the Council such access to those records as may be requested by the Council in connection with the Contract.

- 21.2 Except where an audit is imposed on the Council by a Regulatory Body, the Council may at any time during the Contract Period and for a period of twelve (12) Months after the Contract Period, conduct an audit for the following purposes:-
- (a) to verify the accuracy of the Price that become due and payable by the Council to the Supplier in respect of the Goods and/or Services (and proposed or actual changes to them in accordance with the Contract) or the costs of all suppliers (including Sub-Contractors) of the Goods and/or Services;
  - (b) to review the integrity, confidentiality and security of the Council Personal Data;
  - (c) to review the Supplier's compliance with the DPA, FOIA and other Law applicable to the Services;
  - (d) to review the Supplier's compliance with its obligations under the Contract;
  - (e) to review any records created during the provision of the Goods and/or Services;
  - (f) to review any books of account kept by the Supplier in connection with the provisions of the Services;
  - (g) to carry out the audit and certification of the Council's accounts;
  - (h) to carry out an examination pursuant to section 6 (1) of the National Audit Act 1983 of the economy efficiency and effectiveness with which the Council has used its resources; and
  - (i) to verify the accuracy and completeness of any management information delivered or required by the Contract.
- 21.3 The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.
- 21.4 Subject to the Council's obligation of confidentiality, the Supplier shall on demand provide the Council and any other Regulatory Body (and/or their agents or representatives) with all reasonable co-operation, access and assistance in relation to each audit, including:-
- (a) all Information requested within the permitted scope of the audit;
  - (b) reasonable access to any premises or sites controlled by the Supplier and to any Equipment used (whether exclusively or non-exclusively) in the performance of the Services;
  - (c) access to the Staff;
  - (d) access to software owned or licenced to the Supplier including software which is or will be used by the Supplier for the purposes of providing the Services; and
  - (e) accommodation (including desks) at the Supplier's premises as reasonably required to conduct the audit.

21.5 The Council shall endeavour to (but shall not be obliged to) provide at least fourteen (14) calendar days' notice of its intention to conduct an audit.

21.6 If an audit identifies that:-

- (a) the Supplier has committed a material Default which is capable of remedy, the Supplier shall correct such Default as soon as reasonably practicable;
- (b) the Council has overpaid any charges that became due and payable by the Council to the Supplier in respect of the Goods and/or Services properly rendered, the Supplier shall pay to the Council the amount overpaid within twenty (20) Working Days. The Council may deduct the relevant amount from any further payment when due if the Supplier fails to make the payment; and
- (c) the Council has underpaid any charges that become due and payable by the Council to the Supplier in respect of the Goods and/or Services properly rendered, the Council shall pay to the Supplier the amount of the underpayment less the cost incurred by the Council of the audit if this was due to a Default by the Supplier within twenty (20) Working Days.

## **22. Audit Costs**

22.1 The Parties agree that they shall each bear their own respective costs and expenses incurred in respect of compliance with their obligations under Clause 21.2 unless an audit identifies a material Default by the Supplier in which case the Supplier shall reimburse:-

- (a) the Council for all the Council's identifiable, reasonable costs and expenses properly incurred in the course of the audit; and
- (b) where the Council, a Regulatory Body and Auditor General appoint another Contracting Body to conduct an audit, the Council shall be able to recover on demand from the Supplier the identifiable, reasonable and properly incurred costs and expenses of the relevant Contracting Body.

## **23. Complaints / Dispute Resolution**

23.1 The Supplier shall maintain an up to date, comprehensive and detailed written record of all complaints it receives regarding the Goods and/or Services which shall be available to the Council upon request from time to time and as soon as practicable or in any event within five (5) Working Days of such request by the Council. Such records shall contain all relevant details of the complaint including the following details:-

- (a) the member of Staff or other person to whom the complaint was made and the name and job title of that person;
- (b) the name and address (if known) of the person making the complaint and in what capacity the complaint was made;
- (c) the nature and extent of the default of which complaint was made;
- (d) the date and time of complaint; and

- (e) any action taken to remedy the complaint, and if no action is to be taken, the reasons why no action is to be taken.
- 23.2 The Council shall have the right to investigate all complaints which fall within this Clause 23 and to take such steps, or require the taking of such steps by the Supplier, as it deems necessary (acting reasonably) in order to deal with the complaint. The Supplier shall promptly provide such documentation, information and assistance (including access to Staff) as the Council may reasonably require in order to enable the Council to investigate and deal with the complaint.
- 23.3 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the director (or equivalent) of each Party.
- 23.4 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 23.5 If the dispute cannot be resolved by the Parties pursuant to Clause 23.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 23.7.
- 23.6 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation and the Supplier and the Staff shall comply fully with the requirements of the Contract at all times.
- 23.7 The procedure for mediation and consequential provisions relating to mediation are as follows:
- (a) A neutral adviser or mediator (“the Mediator”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within five (5) Working Days from the date of the proposal to appoint a Mediator or within five (5) Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (“CEDR”) or other reputable mediation body to appoint a Mediator.
  - (b) The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR or other reputable mediation body to provide guidance on a suitable procedure.
  - (c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
  - (d) Both Parties agree to co-operate fully with any Mediator appointed and to bear their own costs and one half of the fees and expenses of the Mediator unless otherwise agreed at Mediation.

- (e) If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
  - (f) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.
  - (g) If the Parties fail to reach agreement in the structured negotiations within twenty (20) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.
- 23.6 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

#### **24. Variations**

- 24.1 No change to the Contract shall be valid unless made in writing and signed by a duly authorised representative of each Party.

#### **25. Assignment and Sub-Contracting**

- 25.1 The Supplier shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without the approval of the Council in writing.
- 25.2 The Supplier shall be responsible for the acts and omissions of its Sub-Contractors as though they are its own.

#### **26. Notices**

- 26.1 Any notice to be served on either Party by the other under the Contract shall be sent by prepaid recorded delivery or registered post to the address of the relevant Party shown at the head of the Contract or by facsimile transmission or electronic mail (provided that a confirmatory copy is at the same time despatched by recorded post) prior to 4.00 pm on any weekday except for Christmas Day, Good Friday and any statutory bank holiday. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or 4 hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.
- 26.2 Each of the Parties shall give notice to the other of the change or acquisition of any address or telephone fax or e-mail address at the earliest possible opportunity but in any event within 48 hours of such change or acquisition.

#### **27. Waiver**

- 27.1 The failure by either Party to enforce at any time or for any period one or more of the terms or conditions of the Contract shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of the Contract.

**28. Severance**

- 28.1 If any provision of the Contract is declared by a court or other competent authority to be unlawful, void or unenforceable, it shall be deemed to be deleted from the Contract and shall be of no force and effect and the Contract shall remain in full force and effect as if such provision had not originally been contained in it. In the event of any such deletion, the Parties shall negotiate in good faith in order to agree the terms of a mutually acceptable and satisfactory alternative provision in the place of the provision so deleted.

**29. Remedies Cumulative**

- 29.1 Except as otherwise expressly provided by the Contract all remedies available to either Party for breach of the Contract cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

**30. Third Party Rights**

- 30.1 The Contracts (Rights of Third Parties) Act 1999 does not apply in relation to the Contract or any agreement, arrangement, understanding, liability or obligation under or in connection with the Contract.

**31. Applicable Law**

- 31.1 The Contract shall be governed by and construed in accordance with English law and subject to the exclusive jurisdiction of the English Court.