

GOODS, SERVICES and RELATED WORKS

STANDARD CONDITIONS OF CONTRACT

Where standard and special terms and conditions vary, the special conditions will prevail.

These terms and conditions shall be incorporated in any Contract made by the Council for the Purchase and Supply of Goods and/or Services and Related Works.

1. GENERAL PROVISIONS

The following terms shall have the following meanings:

1.1. Definitions

"Approval" and "Approved" means the written consent of the Council.

"Commercially Sensitive Information" means the subset of Confidential Information listed in the Commercially Sensitive Information Schedule comprised of information:

- (a) which is provided by the Contractor to the Council in confidence for the period set out in that Schedule; and/or
- (b) that constitutes a trade secret.

"Confidential Information" means all information designated as such by either Party in writing and all other information which relates to the business, affairs, properties, assets, trading practices, goods, services, developments, trade secrets, know-how, personnel, customers and suppliers of either Party which may reasonably be regarded as the confidential information of the disclosing Party.

"Contract" means the agreement between the Council and the Contractor consisting of these terms and conditions including the Contract Documents, all of which have been signed by or on behalf of the Contractor.

"Contract Documents" shall mean all those documents referred to in the Contract Documents letter including the Specification, Request for Quotation and the Contractor's Quotation, Order, and any other documents (or parts thereof) if any specified by the Council and which shall be annexed to and incorporated with and form part of and will be read as one with these terms and conditions so that the Contractor shall comply with the requirements of all those documents.

"Contract Price" means the price exclusive of any applicable Tax, payable to the Contractor by the Council under the Contract, as set out in the Pricing Schedule/or Quotation.

"Contract Term" means the contract period which

shall be from the agreed commencement date until the agreed end date referred to in the Contract subject to any termination for breach or otherwise.

"Contractor" means the person or personnel, firm or company, with whom the Council enters into this Contract.

"Contractor's Representative" means the individual authorised, including their sub-contractor or any agent, to act on behalf of the Contractor for the purposes of the Contract.

"Controller" has the meaning given in the Data Protection Legislation.

"Council" means the Metropolitan Borough of Solihull.

"Council Property" means any property, other than real property, issued or made available to the Contractor in connection with the Contract.

"Data Protection Legislation" means the Data Protection Act 2018 and (i) unless and until the GDPR is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 2018.

"Data Subject" has the meaning given in the Data Protection Legislation.

"Default" means any breach of the obligations of the Contractor (including employees, agents and sub-contractors) under the Contract.

"Equipment" means the Contractor's equipment, plant, materials, etc. used in the performance of its obligations under the Contract.

"Extension Period" means the agreed period, if any, referred to in the Contract.

"Goods and/or Services" means any such goods services and related works, as are to be provided by the Contractor (or by the Contractor's sub-contractor) under the Contract as specified in the Contract Document Schedule.

"GDPR" means the General Data Protection Regulation (EU 2016-679).

"Intellectual Property Rights" means patents,

registered designs, trademarks and service marks (whether registered or not), domain names, copyright, design right, trade secrets and all similar property rights including those subsisting in any part of the world in inventions, computer programs, semiconductor topographies, confidential information, and in applications for protection of any of the above rights.

"Order" means the official instruction issued by the Council in writing or recordable electronic form.

"Party" means a party to this Contract and "Parties" shall be construed accordingly.

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

"Premises" means the location where the Goods are to be delivered and/or the Services are to be performed, as specified in the Contract.

"Prevent Duty" refers to the obligations and duties imposed by the Counter Terrorism and Security Act 2015.

"Pricing Schedule" means the schedule containing details of the contract price which shall be annexed to and incorporated with and form part of the Contract Documents.

"Processor" has the meaning given in the Data Protection Legislation.

"Quotation" means the Contractor's quotation response to the Request for Quotation.

"Related Works" means any installation, commissioning, maintenance or service related to the purchase of Goods or supply of Services under the Contract.

"Request for Quotation" means a request for Contractor to quote for the Goods and/or Services and related works required by the Council.

"Specification" means the description of the Goods and/or Services and Related Works to be provided under the Contract and annexed to and incorporated with and forming part of the Contract Documents.

"Staff" means all persons employed by the Contractor to perform the Contract together with the Contractor's servants, agents and sub-contractors used in the performance of the Contract.

"Tax" means value added tax, customs duties and any other taxes or duties.

"Working Day" means any day other than Saturday, Sunday or Bank Holiday.

1.2. Interpretation

The Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract.

This Contract shall supersede any prior agreement with the Contractor, whether written or oral, and shall have precedence over any printed terms and conditions appearing on any acceptance form, delivery form or other documents or letters emanating from the Contractor. The Contractor's terms and conditions shall have no effect whatsoever, except insofar as they confirm the terms and conditions of this Contract.

Headings contained in this Contract are for reference purposes only and should not be incorporated into the Contract and shall not be deemed to be any indication of the meaning of the clauses to which they relate.

Reference to any statute or statutory provision includes a reference to:

- (a) that statute or statutory provision as from time to time amended, extended, re-enacted or consolidated; and
- (b) all statutory instruments or orders made pursuant to it.

Words denoting the singular number only shall include the plural and vice versa. Words denoting any gender include all genders and words denoting persons shall include firms and corporations and vice versa.

1.3. Scope

Nothing in the Contract shall be construed as creating a partnership, a Contract of employment or a relationship of principal and agent between the Council and the Contractor.

1.4. Terms of Appointment

The Council appoints the Contractor to provide the Goods and/or Services and Related Works for the Contract Term in return for the Payment. The Contract does not confer any exclusivity upon the Contractor and will not warrant or guarantee any level of business and the Council reserves the right to use other contractors/service providers at its discretion

1.5. Contract Term

The Contract shall commence and shall expire automatically at the end of the Contract Term unless it is terminated in accordance with these terms and conditions, or otherwise lawfully terminated or extended under the Contract.

1.6. Contract Extension

Subject to satisfactory performance by the Contractor during the Contract Term, the Council may wish to extend the Contract for a further period between the parties as detailed in the Extension Period.

1.7. Variation

1.7.1. Terms and Conditions

No deletion from, addition to, or variation of these terms and conditions shall be valid or of any effect unless agreed in writing by the parties.

1.7.2. Terms and Conditions

The Contractor shall not alter or substitute any of the Goods unless approved in writing by the Council. The Council shall have the right from time to time by written notice to change the specification, add to or omit, or otherwise vary the Goods. Any price variation shall be subject to the provisions contained in clause 1.7.4.

1.7.3. Service(s)

The Council can vary the Services provided by the Contractor at any time and the Council will notify the Contractor of any such variation in writing. Any price variation shall be subject to the provisions in clause 1.7.4.

1.7.4. In the event of any variation of the Specification in accordance with clauses 1.7.2 and 1.7.3 which would occasion an amendment to the Contract Price, such amendment to the Contract Price shall be calculated by the Contractor and submitted in writing to the Council for consideration and shall be such amount as properly and fairly reflects the nature and extent of the variation in all the circumstances.

2. SUPPLY OF GOODS AND OR SERVICES AND RELATED WORK

2.1. The Contractor shall provide the Goods and/or Services and Related Works on the terms and conditions set out in the Contract

2.2. In providing the Goods and/or Services and Related Works the Contractor shall comply with and take into account all applicable laws enactments orders regulations and other similar instruments the requirements of any court with relevant jurisdiction and any British International or European standards from time to time in force.

2.3. Contractors Staff and site access

If the Council gives the Contractor notice that any person is not to become involved in or is to be removed from involvement in the performance of the Contract, the Contractor shall comply with such notice and if required by the Council the Contractor shall replace any person removed under this clause with another suitably qualified person.

If and when instructed by the Council, the Contractor shall give to the Council a list of names and addresses of all persons who are or who may be at any time concerned with the Goods and/or Services or any part of them, specifying the capacities in which they are so concerned, and giving such other particulars and evidence of identity and other supporting evidence as the Council may reasonably require. The decision of the Council as to whether any person is not to become involved in or is to be removed from involvement in the performance of the Contract and as to whether the Contractor has furnished the information or taken the steps required by this clause shall be final and conclusive.

The Contractor shall bear the cost of any notice,

instruction or decision of the Council under this clause.

3. CONTRACTOR'S OBLIGATIONS

3.1. Goods

3.1.1. Samples

The Contractor if required will provide, free of charge, samples of Goods for evaluation and approval. All subsequent deliveries shall be equal in quality to the approved samples and conform in all respects to the Specification and the terms and conditions detailed in the Contract.

3.1.2. Condition

The Contractor shall supply the Goods in accordance with the Specification. The Contractor warrants, represents, undertakes and guarantees that the Goods supplied under the Contract shall:

- (a) be free from defects (manifest or latent), in materials and workmanship and remain so for 12 months after Delivery;
- (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and comply with any applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;
- (c) conform with the specifications (including the Specification), drawings, descriptions given in quotations, estimates, brochures, sales, marketing and technical literature or material (in whatever format made available by the Contractor) supplied by, or on behalf of, the Contractor;
- (d) be free from design defects;
- (e) be fit for any purpose held out by the Contractor or made known to the Contractor by the Council expressly or by implication, and in this respect the Council relies on the Contractor's skill and judgement. The Contractor acknowledges and agrees that the approval by the Council of any designs provided by the Contractor shall not relieve the Contractor of any of its obligations under this sub-clause; and
- (f) the Contractor itself shall comply with all applicable laws.

3.1.3. Delivery

Goods shall be delivered at the times dates and places specified in the Contract and time of delivery shall be of the essence. If no times and dates are specified, the Goods shall be delivered promptly following the Contractor's receipt of the Order during normal working hours. A delivery note shall be included with each consignment, and an invoice shall be submitted to the address shown on the Order. Receipt or delivery of the Goods does not constitute any acknowledgement of the condition or nature of Goods delivered.

The Council shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity in the Order and the Contractor shall be responsible for any and all reasonable costs incurred in the removal of Goods delivered in excess of the quantity of the Order.

The Goods shall be packed and marked in a proper manner and in accordance with the Council's instructions and all statutory requirements and any requirements of the carriers. All packaging materials will be considered non-returnable unless specifically agreed otherwise.

Unless specified otherwise delivery of Goods and Related Work shall include unloading and stacking by the Contractor at such a place as the Council shall reasonably direct.

Should the Contractor fail to deliver the Goods at the times, dates, and places specified or agreed, the Council shall without prejudice to any other rights or remedies of the Council, cancel the Contract either wholly or in part and the Council shall not be liable to the Contractor for such cancellation.

3.1.4. Risk/Title of Goods

Without prejudice to any other rights or remedies of the Council title and risk in the Goods shall remain with the Contractor until they are delivered (including offloading and stacking) accepted and signed for by the Council.

The risk of any over delivered Goods that do not comply with the Order shall remain with the Contractor.

3.1.5. Rejection of Goods

The Council may reject any goods wholly or in part if the Goods do not comply with the requirements specified herein and shall be entitled (without prejudice to the other rights and remedies of the Council) to have the Goods repaired or replaced as quickly as possible and in any event within 7 days (at the option of the Council) or to treat the Contract as discharged and seek damages from the Provider including any costs incurred by the Council in obtaining substitute Goods from a third party.

3.1.6. Cancellation

The Council shall have the right to cancel the order for the Goods, or any part of the Goods, which have not yet been delivered to the Council. The cancellation shall be made in writing. Without prejudice to the generality of the foregoing, the Council shall pay such charges or that part of the charges for Goods which have been delivered to the Council or, on the deemed date of service of the notice of cancellation, are already in transit and the costs of materials which the Contractor has purchased to fulfil the order for the Goods and which cannot be used for other orders or be returned to the Contractor of those materials for a refund. For the avoidance of doubt the Council shall not be liable for any loss of anticipated profits or any consequential loss.

3.2. Services

3.2.1. Provision of Service(s)

The Contractor shall provide the Services during

the Contract Term within the time agreed and on a specified date(s), in accordance with the requirements of the Contract and the Specification.

3.2.2. Standards and Performance

To the extent that the standard of Service(s) has not been specified in the Contract; the Contractor shall exercise and continue to exercise in the performance of the Service(s) all reasonable skill care and diligence expected of a properly qualified and competent person(s) experienced in carrying out Service(s) of a similar size; timescale and degree of complexity.

The Contractor warrants that all Staff assigned to the performance of the Services shall possess and exercise such qualifications skill and experience as are necessary for the proper performance of the Services

The Contractor shall consult fully with the Council and keep the Council properly informed of all matters arising in the performance of the Service(s). The introduction of new methods or systems, which impinge on, the provision of the Service, shall be subject to prior approval.

3.2.3. Remedies in the event of inadequate performance

If the Council informs the Contractor that the Council considers any part of the Service(s) to be inadequate or in any way differing from the Contract, and this is other than as a result of default or negligence on the part of the Council, the Contractor shall at its own expense re-schedule and perform the Service(s) correctly within such reasonable time as may be specified by the Council.

Without prejudice to any other rights and remedies the Council may have pursuant to the Contract, the Contractor shall reimburse the Council for all reasonable costs incurred by the Council which have arisen as a direct consequence of the Contractor's failure to comply with such a request.

In the event that the Contractor persistently fails to comply with such requests, and such failures, taken as a whole, materially affect the commercial interests of the Council the Council reserves the right to terminate the Contract by notice in writing with immediate effect

In the event that the Council is of the opinion that there has been a fundamental breach of this Contract by the Contractor, or the Contractor's performance of its duties under the Contract has failed to meet the requirements, then the Council may, without prejudice to its rights under the Termination Clause in this Contract, do the following:

- without terminating the Contract, itself provide or procure the provision of part of the Service(s) until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Council that the Contractor will once more be able to perform such part of the Service(s) in accordance with the Contract.

The Council may charge to the Contractor any cost

reasonably incurred by the Council and any reasonable administration costs in respect of the provision of any part of the Service(s) by the Council or by a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Service(s).

3.2.4. Best Value and Benchmarking

In the performance of the Contract the Contractor shall assist the Council in achieving the performance of its duty to secure the continuous improvement of its Service(s) under legislation.

Without prejudice to the generality of the above the Contractor shall identify ways in which Service(s) may be carried out more efficiently or effectively and shall advise the Council accordingly; for example: -

- by being undertaken in a different manner to achieve the Council's objectives;
- by assisting the Council to develop quality standards for the provision of Service(s); and
- by assisting the Council to develop and implement production methodology including the application of information technology to systemise, monitor and supervise its performance and to ensure consistency of quality method and performance.

If so requested by the Council the Contractor shall provide a detailed breakdown of the activities required for the completion of the Service(s).

Where so requested by the Council, in order to assess the competitiveness of Service(s) which are provided or procured by the Council; the Contractor shall provide the Council with comparative costing information in terms of the price which the Contractor would charge, to the Council, for undertaking specified Service(s).

3.2.5. Monitoring and Performance

The Council shall inspect or examine the performance of the Service(s) at any reasonable time, and with reasonable notice, at any other premises where part of the Service(s) is being performed. The Council reserves the right to record that which it considers to be relevant to the performance and monitoring of this Contract.

Where so requested by the Council the Contractor shall provide the Council with performance records in terms of the Contract in respect of any Service(s) undertaken on behalf of the Council. These records shall take the form of monitoring reports, the content and regularity of which will be specified by the Council. The Contractor shall attend contract management meetings as agreed between the parties.

3.2.6. Access to Premises

Access to the Council's Premises shall not be exclusive to the Contractor and shall be limited to such Staff and the Contractor's suppliers as are necessary to the performance of the Service(s).

The Contractor shall make no delivery of Equipment nor commence any Service(s) on the Council's premises without obtaining the Council's prior approval.

The Contractor, upon being given reasonable notice by the Council, shall allow free access to any premises where Services and Related Work are carried out, by the Contractor or the Contractor's representative. The Contractor shall give assistance to the Council as necessary to enable inspection of this work. Any inspection or approval by the Council shall not relieve the Contractor of any of the obligations under this Contract.

3.2.7. Equipment

The Contractor shall provide all the Equipment necessary for the provision of the Service(s).

The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its own cost. The Contractor shall ensure that the Council's Premises are appropriate to contain and operate the Equipment. The Contractor shall maintain all items of Equipment within the Council's Premises in a safe, serviceable and clean condition.

All Equipment brought onto the Council's Premises shall be at the Contractor's own risk and the Council shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the negligence or default of the Council.

The Council may at its option purchase any item of Equipment from the Contractor at any time, if the Council considers that the item is likely to be required in the provision of the Service(s) following the expiry or termination of the Contract. The purchase price to be paid by the Council shall be the fair market value.

3.2.8. Removal of Equipment, Rubbish and Unused materials

On completion of the Services and Related Works the Contractor shall remove the Equipment and unused materials and shall clear away from the Council's Premises all rubbish arising out of the Services and Related Works, make good any damage caused to the Council's Premises by the removal of the Equipment and leave the Council's Premises in a neat and tidy condition.

The Council shall have the power at any time during the delivery of the Service(s) to order in writing:

- (a) the removal from the Council's Premises of any Equipment which in the opinion of the Council are either hazardous, noxious or not in accordance with the Contract; and/or

- (b) the substitution of proper and suitable materials, plant, equipment; and/or
- (c) the removal and proper re-execution notwithstanding any previous test thereof or interim payment therefore of any service and/or work which, in respect of material or workmanship, is not in the opinion of the Council in accordance with the Contract.

3.2.9. Purchasing on behalf of the Council

In the event that the Contractor procures Services including equipment from third parties on behalf of the Council then they shall at all times do so in accordance with the provisions of the Public Contracts Regulations 2015 and amendments.

4. CONTRACT PRICE AND PAYMENTS

4.1. Contract Price

In consideration of the Contractor fulfilling its obligations under the Contract the Council will pay the Contractor the Contract Price. Unless otherwise agreed in writing by the Council, the Contract Price shall include every cost and expense of the Contractor directly or indirectly incurred in connection with the performance of the Service and/or the supply of the Goods, including but not limited to the costs of packaging, insurance, delivery, unloading, stacking and carriage.

4.2. Payment

The Council will pay within 30 days from receipt and agreement of invoices submitted in arrears for Goods provided or Services supplied to the Council. If there is a dispute between the Parties as to the amount invoiced, the Council shall pay the undisputed amount. The Contractor shall not suspend the supply of the Goods and/or Services unless the Contractor is entitled to terminate the Contract for a failure to pay undisputed sums in accordance with clause 8.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 10.

4.3. Payment of subcontractors

Where the Contractor enters into a sub-contract with a Contractor or contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision having the same effect as clause 4.2 and 4.6 is included in such a sub-contract.

4.4. Invoices

The Contractor shall invoice the Council as specified in the Contract. Each invoice shall include such supporting information required by the Council to verify the accuracy of the invoice, including the relevant order number that corresponds with an order and a breakdown of the Goods supplied in the invoice period.

4.5. Tax

All sums payable under this Contract unless otherwise stated are exclusive of VAT and other duties or taxes. The Contractor will produce for the

Council a valid VAT invoice.

4.6. Interest on Late Payment

In the event of failure by the Council and in the absence of any contract dispute any payment of any charges for the Goods and/or Services and Related Work is not made in accordance with the Contract then the Contractor shall be entitled to interest on any overdue payment from the due date to the date of actual payment at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.

4.7. Recovery of sums due

Wherever under this Contract any sum of money is recoverable from or payable by the Contractor that sum may be deducted from any sum then due or which at any later time may become due to the Contractor under this Contract or under any other agreement or contract with the Council. The Contractor shall not be entitled to assert any credit, set-off or counterclaim against the Council in order to justify withholding payment of any such amount in whole or in part.

4.8. Price Variation

The Contract Price shall apply for the Contract Term. In the event that the Council extends the Contract Term pursuant to clause 1.6 (Contract Extension) the Council shall, in the 6-month period prior to the expiry of the Contract Term, enter into good faith negotiations with the Contractor (for a period of not more than 30 Working Days) to agree a variation in the Contract Price.

If the Parties are unable to agree a variation in the Contract Price, the Contract shall terminate at the end of the initial Contract Term.

If a variation in the Contract Price is agreed between the Council and the Contractor, the revised Contract Price will take effect from the first day of any Extension period and shall apply during such Extension Period.

Any increase in the Contract Price shall not exceed the percentage change in the Office of National Statistics' Consumer Prices Index (CPI) (or another such index specified in the Pricing Schedule) between the commencement date and the date 6 months before the end of the initial Contract Term.

Acceptance of any price variation is at the discretion of the Council.

5. PROTECTION OF INFORMATION

5.1. Data Protection

The Contractor complies with any registration requirements under the Data Protection Legislation and shall observe its obligations under the Data Protection Legislation and any other applicable laws.

Where the Contractor is processing Personal Data (as defined by the Data Protection Legislation) on behalf of the Council, the Contractor shall:

5.1.1. Permitted use of Personal Information

- (a) Only process the Personal Data in accordance

with the written instructions from the Council and for purposes defined by the Council (as set out by Schedule of Processing, Personal Data and Data Subjects) unless the Contractor is required by the laws of any member of the European Union or by the laws of the European Union (Applicable Laws) applicable to the Contractor to otherwise process the personal data. Where the Contractor is so required it shall promptly notify the Council unless prohibited by the Applicable Laws.

- (b) Not disclose any personal data to sub-contractors or other parties without obtaining the prior written consent of the Council unless required to by Applicable Law. Where the Contractor is so required it shall promptly notify the Council unless prohibited by the Applicable Laws.
- (c) Not cause or permit the Personal Data to be transferred outside of the European Economic Area without the prior consent of the Council and the following conditions are fulfilled:
 - i. The Council or the Contractor has provided appropriate safeguards in relation to the transfer
 - ii. The data subject has enforceable rights and effective remedies
 - iii. The Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection of any Personal Data that is transferred
 - iv. The Contractor complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data

5.1.2. Technical and organisational safeguards

- (a) Ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction or damage to Personal Data appropriate to the harm that might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal Data and the nature of the data to be protected having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data ensuring confidentiality, integrity, availability and resilience of its systems and services ensuring that availability and access to personal data can be restored in a timely manner after an incident and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted it);
- (b) Ensure that laptops and other portable and mobile devices including magnetic media,

used to store and transmit Personal Data, the loss of which could cause damage or distress to individuals, shall be protected using approved encryption software which is designed to guard against the compromise of information;

- (c) Take reasonable steps to ensure the reliability of its Staff who may have access to the Personal Data; including ensuring that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality; and
- (d) Ensure that only those of the Contractor's Staff who need to have access to the Personal Data are granted access to such data and only for the purposes of the performance of the Contract and all of the Contractor's Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations of this clause 5.1.

5.1.3. Request from Individuals for access to their own Personal Data

- (a) Notify the Council immediately if it receives:
 - i. A request from a Data Subject to have access to that persons Personal Data
 - ii. A request to rectify, block or erase any Personal Data
 - iii. Any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner)
 - iv. A request for any third party for disclosure of Personal Data where compliance is required or purported to be required by Applicable Laws
- (b) Assist the Council in responding to any request from a Data Subject and in ensuring compliance with the Council's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (c) Notify the Council immediately if it becomes aware of any unlawful or unlawful processing loss of damage to or destruction of Personal Data or on becoming aware of any other Personal Data. Such notification shall be to the Council's data protection office as required to be appointed under the Data Protection Legislation;
- (d) Promptly comply with any request from the Council requiring the Contractor to amend transfer or delete any Personal Data and at the written direction of the Council delete or return Personal Data and copies thereof to the Council in termination of the Contract unless required by the Applicable Laws to store the Personal Data;
- (e) Maintain complete and accurate records and information to demonstrate its compliance with this clause 5.1.

5.1.4. Assistance

The Contractor shall provide the Council with full co-operation and assistance in order to enable the Council to comply with its obligations under the Data Protection

Legislation in relation to the Data Subjects rights under Chapter III of GDPR.

5.1.5. Audit and Inspection of Data Processing

Permit the Council or its external advisors to, subject to reasonable and appropriate confidential undertakings, inspect and audit the Contractor's data processing activities and those of its agents and sub-contractors and comply with all reasonable requests or directions of the Council to verify and procure that the Contractor is in full compliance with its obligations under the Contract.

5.1.6. Data Protection Legislation

Shall and shall procure that its sub-contractors comply at all times with Data Protection Legislation and shall not perform their obligations under the Contract in such a way as to cause the Council to breach any of its obligations under Data Protection Legislation.

5.1.7. Data Protection Indemnity

Keep the Council indemnified against all losses damages cost or expenses and other liabilities (including, without limitation, legal fees) incurred by or awarded against or agreed to be paid by the Council arising from the Contractor failing to comply with the Data Protection Legislation or any breach of the Contractor's obligations under this clause 5.1.

5.1.8. Sub-Contracting

Where the Contractor sub-contracts processing Personal Data in accordance with 6.1 ensure that the provisions having the same effect as this Clause 5.1 are included in any contract between the Contractor and the sub-contractor.

5.1.9. Standard Controller to Processor Clauses under Applicable Certification Scheme

- (a) The Council may at any time, on not less than 30 Working Days written notice to the Contractor, revise this clause 5.1 by replacing it with any applicable Controller to Processor standard clauses or similar terms forming part of an application certification scheme (which shall apply when incorporated by attachment to this contract);
- (b) The Council may, on not less than 30 Working Days written notice to Contractor amend the Contract to ensure that it complies with any guidance issued by the Information Commissioners Office.

5.1.10. Survival of Terms

The provisions of this clause 5.1 shall apply during the continuance of this contract and indefinitely after its expiry or termination.

5.2. Confidentiality

The Contractor shall not disclose information relating to the Goods and/or Services to be supplied and shall not disclose the same or any of

the same to any other person except such of its Staff as may be necessary for the performance of its obligations under this Contract.

5.3. Security of Confidential Information

In order to ensure that no unauthorised person gains access to any Confidential Information or any data, including Personal Data, obtained in the performance of the Contract, the Contractor undertakes to maintain security systems approved by the Council.

The Contractor will immediately notify the Council of any breach of security in relation to Confidential Information and all data obtained in the performance of the Contract and will keep a record of such breaches. The Contractor will use its best endeavours to recover such Confidential Information or data however it may be recorded. The Contractor will co-operate with the Council in any investigation that the Council considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data. The Council may require the Contractor to alter any security systems at any time during the Contract Term.

5.4. Copyright and ownership of documents

Copyright in all the material including but not limited to drawings, reports, specifications, bills of quantity, calculations and other similar documents prepared for the Contract by the Contractor shall remain vested in the Contractor but the Contractor shall grant to the Council and its nominees an irrevocable royalty-free non-exclusive licence to copy and use the material and to reproduce the information contained in it for any purpose whatsoever relating to the Contract. Such licence shall enable the Council to copy and use the material for any extension of the Contract. Such licence shall be capable of sub-licence and transfer by the Council. The Contractor shall not be liable to the Council for any sub- licensee or transferee for any use of the material for any purpose other than that for which the same was prepared or provided by the Contractor.

The Council shall on written request be entitled to be supplied by the Contractor with copies of the items referred to above.

5.5. Intellectual Property Rights

The Contractor warrants that the performance of the Contract does not in any way infringe the Intellectual Property Rights of any third party and the Contractor fully indemnifies the Council against any actions claims, demands, damages, losses, charges and costs and expenses of whatever nature in respect of any alleged infringement.

5.6. Publicity

The Contractor shall not advertise the fact that it is supplying Goods and/or Services to the Council under this Contract other than with the written permission of the Council. The Contractor shall not use the logo of the Council or any representation thereof, nor cause it to be used without the written consent of the Council.

5.7. Freedom of Information

The Contractor acknowledges that the Council is

subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:

- (a) Provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;
- (b) Transfer to the Council all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- (c) Provide the Council with a copy of all Information belonging to the Council requested in the Request for Information which is in its possession or control in the form that the Council requires within 5 Working Days (or such other period as the Council may reasonably specify) of the Council's request for such Information; and
- (d) Not respond directly to a Request for Information unless authorised in writing to do so by the Council.
- (e) The Contractor acknowledges that the Council may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Contractor or the Services (including Commercially Sensitive Information) without consulting or obtaining consent from the Contractor. In these circumstances the Council shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Contractor advance notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.
- (f) Notwithstanding any other provision in the Contract, the Council shall be responsible for determining in its absolute discretion whether any Information relating to the Contractor or the Services is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

5.8. Audit

The Contractor shall keep and maintain until six years after the end of the Contract Term or as long a period as may be agreed by the Parties full and accurate records of the Contract relating to the Goods and/or Services supplied under it the supply chain of such goods and/or services all expenditure reimbursed by the Council and all payments made by the Council. The Contractor shall on request afford the Council such access to those records as may be requested by the Council in connection with the Contract.

6. CONTROL OF THE CONTRACT

6.1. Assignment and Sub-Contracting

The Contractor shall not assign or sub-contract or otherwise dispose of any of its rights or obligations under the Contract without the consent in writing of the Council.

Should consent to sub-contract be given to the Contractor by the Council, the Contractor shall continue to remain liable for all acts, defaults or negligence howsoever caused by any subcontractor. The Council may require a direct warrantee and undertaking from the subcontractor concerning the requirements and compliance with the Contract.

Where the Council has consented to the placing of sub-contracts, the Contractor shall, at the request of the Council, send copies of each sub-contract, to the Council as soon as is reasonably practicable.

6.2. Waiver

The failure of either Party to insist upon strict performance of any provision of the Contract or the failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy. No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing and a waiver of any right or remedy arising from a breach of Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of Contract.

6.3. Severability

If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

6.4. Remedies Cumulative

Unless otherwise provided in this Contract no single or partial exercise of any right or remedy by a Party shall prevent or restrict the further exercise of that or any other right or remedy.

Unless otherwise provided in this Contract, rights and remedies under this Contract are cumulative and do not exclude any rights or remedies provided by law in equity or otherwise.

7. LIABILITIES

7.1. Insurance and indemnity

Neither Party excludes or limits liability to the other Party for death or personal injury caused by its negligence or for any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982 or Section 12 of the Sale of Goods Act 1979.

7.2. The Contractor shall indemnify and keep indemnified the Council fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with the Contract 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 Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.

7.3. The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover (not less than £5m, any one occurrence or as otherwise referred to in the Contract Documents letter) in respect of all third party liabilities which may be incurred by the Contractor, arising out of the Contractor's performance of the Contract, including death or personal injury, loss of or damage to property or any other loss. Such insurance policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor.

7.4. Where applicable the Contractor shall hold and maintain professional indemnity insurance cover and shall ensure that all professional consultants involved in the provision of the Services hold and maintain appropriate cover. Such insurance to be held by the Contractor or by any agent, sub-contractor or consultant involved in the provision of Services with a limit of indemnity as referred to in the Contract Documents letter or, in the absence of the Contract Documents letter, of not less than £1m in the aggregate. Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of this Contract.

7.5. The Contractor shall produce for inspection when requested by the Council documentary evidence that the insurance cover is in full force and effect and that all premiums payable under such insurance policies has been paid and confirm that such policies include an Indemnity to Principal's clause. Such insurance shall at all times be affected with insurers of repute that is authorised by the financial conduct authority to transact business in the United Kingdom, and the policies will not contain any unusual or unduly onerous conditions.

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

7.7. Warranties and Representations

The Contractor warrants and represents that it has the full capacity and authority and all necessary consents (including, but not limited to, where its procedures so require, the consent of its parent company) to enter into and perform this Contract and that this Contract is executed by a duly authorised representative of the Contractor.

8. STATUTORY OBLIGATIONS AND REGULATIONS

8.1. Statutory Requirements

Without prejudice to clause 2.2, the Contractor shall comply with the provisions of this clause.

8.2. Health and safety

The Contractor shall comply with the requirements of the Health and Safety at Work etc Act 1974 and other subordinate legislation which applies to its Staff working on the premises in performance of a Contract and those affected by their business, activity, and undertaking.

The Contractor shall ensure that its health and safety policy statement together with risk assessments, documented safe systems of work, training records etc are made available to the Council on request.

8.3. Equalities and Human Rights

The Contractor shall comply with:

8.3.1. The Human Rights Act 1998 as if the Contractor were a public body as defined in the Human Rights Act 1998; and

8.3.2. The Equalities Act 2010 (the Act) and all regulations and codes of practice made under the Act.

8.4. The Contractor shall inform the Council as soon as the Contractor becomes aware of any legal proceedings or complaint brought or likely to be brought against the Contractor under the legislation in sub clauses 8.3.1 and 8.3.2.

Where any investigation is conducted or proceedings are brought arising directly or indirectly out of this Contract or any other action by the Contractor or its Staff, the Council shall be entitled to recover from the Contractor the full cost it may have incurred in 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.

The Contractor shall provide such information as the Council may reasonably request for the purpose of assessing the Contractor's compliance with this clause

8.5. Contract 3rd Parties Act

The Contracts (Rights of Third Parties) Act 1999 is expressly excluded from this Contract unless otherwise agreed.

8.6. Disclosure and Barring Services

The Contractor shall ensure that in respect of any of its servants, Staff, agents or sub-contractors whom in performing the Services under the Contract may come into contact with children or vulnerable adults are subject to a valid (enhanced) disclosure check undertaken through the Disclosure and Barring Service as appropriate.

8.7. Compliance with Relevant Requirements under the Bribery Act 2010

8.7.1. The Contractor shall:

- (a) comply with all Relevant Requirements;
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

- (c) have and shall maintain in place throughout the term of this Contract its own policies and procedures, including Adequate Procedures to ensure compliance with the Relevant Requirements, and will enforce them where appropriate;
- (d) procure and ensure that all of its associated persons and/or other persons who are performing services and/or providing goods in connection with this Contract comply with this Clause; and
- (e) promptly report to the Council any request or demand for any undue financial or other advantage of any kind received by the Contractor in connection with the performance of this Contract.

8.7.2. For the purpose of this Clause, the following terms have the meanings ascribed to them below:

“Adequate Procedures” shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issues under section 9 of that Act).

“Associated Person” shall have the meaning ascribed to it in section 8 of the Bribery Act and shall include but is not limited to any Staff of a Party to this Contract as applicable in relation to the Services.

“Bribery Act” shall mean the Bribery Act 2010 (and any amendment thereto).

“Relevant Requirements” shall mean all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act.

8.8. Anti-Slavery and Human Trafficking

8.8.1. Compliance with Anti-Slavery and Human Trafficking Law

The Contractor shall:

- (a) comply with all applicable anti-slavery and human trafficking laws regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015
- (b) have and maintain throughout the term of this Contract its own policies and procedures to ensure its compliance with sub-clause (a) above
- (c) not engage in activity or practice or conduct that would constitute an offence under the Modern Slavery Act 2015(MSA Offence)

8.8.2. Due Diligence

The Contractor warrants and represents:

- (a) neither the Contractor nor its officers or Staff has committed an MSA Offence or have been convicted of an MSA Offence
- (b) has been notified that it is subject to an investigation relating to an alleged MSA

Offence or prosecution under the Modern Slavery Act 2015

- (c) is aware of any circumstances within its supply chain that could give rise to an investigation relating to an MSA Offence or prosecution under the Modern Slavery Act 2015
- (d) it shall notify the Council immediately in writing if it becomes aware or has reason to believe that it or its officers or Staff have breached or potentially breached any of the Contractor's obligations under this Clause 8.8. Such notice shall set out full details of the circumstances of the breach or potential breach of the Contractor's obligations.

8.8.3. Subcontracting

Where the Contractor delegates or sub-contracts its obligations under this Contract in accordance with clause 6.1:

- (a) it shall ensure that the provisions having the same effect as this clause 8.8 are included in any contract between the Contractor and the sub-contractor;
- (b) prohibit the subcontractor from sub-contracting the supply of Goods, Services and/or Related Works that it has agreed with the Contractor to provide; and
- (c) ensure that it has the ability to audit its subcontractors to ensure compliance with its policies and procedures relating to Modern Slavery.

8.8.4. Training

The Contractor shall:

- (a) conduct a programme of training for its officers Staff and other members of its supply chain to ensure compliance with its policies, procedures and anti-slavery, human trafficking and counter-terrorism laws; and
- (b) keep a record of all training offered and completed by its officers or Staff, and other members of its supply chain to ensure compliance with its policies and procedures and anti-slavery and human trafficking laws and shall make a copy of such records available to the Council on request.

8.8.5. Breach

Any breach of this clause 8.8 by the Contractor shall be deemed a fundamental breach of the Contract and shall entitle the Council to terminate the Contract in accordance with Clause 9.3.

8.9. Prevent Duty

8.9.1. The Provider acknowledges that the Council is subject to the Prevent Duty which requires it to act to deal with the present and growing threat of terrorism within the UK, treat security with the utmost importance and recognise the need to tackle terrorism and, where possible, to prevent individuals from being drawn into terrorism.

8.9.2. Where the Council has any concerns about a person, or becomes aware of any other matters which may require it to take action in accordance with the Prevent Duty, the Provider shall at the request of the Council provide the Council with a copy of all relevant

information which is available to it in the form the Council requires and shall provide all necessary assistance requested by the Council to report and/or take such action.

8.9.3. The Council shall be responsible for determining in its absolute discretion what action it needs to take, and the Provider acknowledges that the Council may for the purpose of complying with the Prevent Duty disclose such information.

8.9.4. The Provider undertakes to comply and to ensure that all its employees, agents and contractors comply with the Council's policies concerning the Prevent Duty as they may be updated from time to time.

9. DEFAULT, DISRUPTION AND TERMINATION

9.1. Bribery and Corruption

Without prejudice to any other rights or remedies the Council may terminate this Contract on written notice to the Contractor specifying the date on which this Contract will terminate in the event of a breach of Clause 8.7.

9.2. Break

The Council may terminate this Contract, or to terminate the provision of any part of the Contract, at any time by giving three months written notice to the Contractor.

9.3. Termination on Default

The Council may terminate the Contract or terminate the provision of any part of the Contract by written notice to the Contractor with immediate effect if the Contractor commits a Default and if the Contractor has not remedied the Default within 30 days after the issue of a written notice specifying the Default and requesting it to be remedied or (b) the Default is not capable of remedy or (c) the Default is a fundamental breach of the Contract.

9.4. Termination for Non-Payment

In addition to the Contractor's statutory rights, the Contractor may terminate the Contract by written notice to the Council if the Council has not paid any undisputed amounts within 90 days of them falling due.

9.5. Consequences of Termination

Where the Council terminates all or part of the Contract under clause 8.3 and makes other arrangements for the provision of Goods and/or Services, the Council shall be entitled to recover from the Contractor the cost of making those other arrangements and any additional expenditure incurred by the Council throughout the remainder of the Contract Term, and no further payments shall be payable by the Council to the Contractor until the Council has established the final cost of making those other arrangements.

9.6. Bankruptcy or Insolvency

If the Contractor: -

- (a) becomes bankrupt, or makes a composition or arrangement with its creditors, or has a proposal in Respect of its company for the voluntary arrangements for a composition of debts, or scheme or arrangements, approved in accordance with the Insolvency Act;
- (b) has an application made under the Insolvency Act in respect of its company to the Court for the appointment of an administrative receiver;
- (c) has a winding-up order made, or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding up passed;
- (d) has a provisional liquidator, receiver or manager of its business or undertaking duly appointed;
- (e) has an administrative receiver, as defined in the Insolvency Act 1986 appointed;
- (f) has possession taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in, or subject to, the floating charge; and/or
- (g) is in circumstances which entitle the court or a creditor to appoint, or have appointed, a receiver, a manager, or an administrative receiver, or which entitle the Court to make a winding-up order;

then the Council may terminate this Contract by notice in writing with immediate effect.

9.7. Recovery upon Termination

9.7.1. Unless required to be retained by law at the end of the Contract (and howsoever arising) the Contractor shall forthwith deliver to the Council upon request all materials, documents, information data and access keys relating to the Contract in its possession or under its control or in the possession or under the control of any permitted sub-contractors or shall erase and instruct its sub-contractors to erase such information and in default of compliance with this clause the Council may recover possession thereof and the Contractor grants licence to the Council or its appointed agents to enter (for the purposes of such recovery) any Premises where any such items may be held.

9.7.2. The provisions of this clause shall survive the continuance of this Contract and indefinitely after its termination.

9.8. Force Majeure

Neither Party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from circumstances beyond the reasonable control of the Party affected. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than 60 days, either Party may terminate the Contract by written notice to the other Party.

9.9. Ineffective Contract

Where for any reason a court of competent jurisdiction declares this Contract ineffective (or where the court sets this Contract aside) then the Parties agree that this Contract shall terminate as at the date of such declaration and that this clause and any exit provisions shall be severed from the Contract and shall thereafter continue in full force and effect.

9.9.1. As from the date of such declaration the parties acting (reasonably and in good faith) shall agree or in the absence of such agreement the Council shall determine an appropriate exit plan with the objective of achieving:

- (a) an orderly and efficient cessation of the provision of the Goods and / or Services and Related Work or (at the Council's request) a transition of the same to the Council or such other entity as the Council may specify;
- (b) minimal disruption or inconvenience to the Council; and
- (c) giving effect to the terms of such declaration.

9.9.2. Where clause 9.9 applies, the Council shall pay to the Contractor the sum equal to:

- (a) the Contract Price incurred for Goods and/or Services already provided under this Contract from the date of commencement of this Contract up to the date of such declaration of ineffectiveness; or
- (b) the reasonable costs incurred by the Contractor in complying with any exit plan. Such costs shall be based on any comparable costs or charges agreed as part of the Contract Price or as otherwise as reasonably determined by the Council

9.9.3. The sums paid to the Contractor by the Council under this clause shall be in full and final settlement of all the Council's liability for any loss and/or expense incurred by the Contractor as a result of the court declaring this Contract ineffective.

9.9.4. For the avoidance of doubt, where this clause 9.9 applies, the Council shall not be liable to the Contractor for loss of profits, loss of business, loss of revenue, loss of goodwill, loss of anticipated savings, or other special, indirect or consequential loss.

10. DISPUTE RESOLUTION

10.1. 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 30 days of either Party notifying the

other of the dispute such efforts shall involve the escalation of the dispute to the appropriate director (or equivalent) of each Party.

10.2. If the dispute cannot be resolved by the Parties pursuant to clause 10.1 the dispute shall be referred to mediation unless (a) the Council considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.

10.3. The performance of the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation, and the Contractor (or employee, agent, supplier or sub-contractor) shall comply fully with the requirements of the Contract at all times.

10.4. The Parties shall not institute court proceedings until the procedure set out in clause 10.3 has been completed.

11. NOTICES

11.1. Any notice given under this Contract shall be in writing and signed by or on behalf of the Party giving it and shall be served by delivering it personally or sending it by pre-paid recorded delivery to the relevant Party at the address identified by the respective Parties.

11.2. Any such notice shall be deemed to have been received: -

- (a) if delivered personally, at the time of delivery; or
- (b) in the case of pre-paid recorded delivery 48 hours from the date of posting.

11.3. In providing such service it shall be sufficient to prove that the envelope containing such notice was addressed to the address of the relevant Party and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery.

12. LAW

12.1. Applicable Law

This Contract shall be governed by and construed in accordance with English Law and the parties agree to submit to the exclusive jurisdiction of the English Courts.