



# **Derbyshire County Council Terms and Conditions**

**DERBYSHIRE COUNTY COUNCIL**  
**TERMS AND CONDITIONS**

**Contents**

1	DEFINITIONS AND INTERPRETATION .....	4
2	PERIOD OF CONTRACT .....	8
3	DUE DILIGENCE .....	8
4	PROVISION OF THE GOODS AND/OR SERVICES .....	8
5	STANDARD OF GOODS .....	9
6	PERFORMANCE AND STANDARD OF THE SERVICES .....	9
7	ORDERING AND DELIVERY .....	10
8	INSPECTION AND ACCEPTANCE .....	11
9	INSTALLATION .....	12
10	CONDUCT OF CONTRACTOR AND SUB-CONTRACTOR .....	12
11	CONTRACT DELAY .....	13
12	INVOICING AND PAYMENT .....	13
13	PRICE ADJUSTMENT EXTENSION .....	14
14	BEST VALUE .....	14
15	CONTRACTOR WARRANTIES AND UNDERTAKINGS .....	15
16	SUB-CONTRACTING .....	17
17	TERMINATION .....	18
18	VOLUNTARY TERMINATION BY THE COUNCIL .....	19
19	CONSEQUENCES OF TERMINATION .....	20
20	INDEMNITIES .....	20
21	DUTY TO MITIGATE .....	21
22	RIGHT OF SET-OFF .....	21
23	INSURANCE .....	21
24	ANTI-BRIBERY .....	22
25	INTELLECTUAL PROPERTY RIGHTS .....	23
26	DATA PROTECTION .....	24
27	FREEDOM OF INFORMATION .....	25
28	CONFIDENTIALITY .....	26
29	SOCIAL VALUE .....	26
30	TUPE (If applicable) .....	27
31	FORCE MAJEURE .....	29
32	NOTICES .....	29
33	DISPUTE RESOLUTION .....	30
34	AUDIT .....	31

## CONTROLLED

35	MEETINGS .....	31
36	SAFEGUARDING CHILDREN AND VULNERABLE ADULTS (if applicable) .....	32
37	CONFLICT OF INTEREST .....	32
38	ASSIGNMENT/NOVATION .....	33
39	ENTIRE AGREEMENT .....	33
40	THIRD PARTY RIGHTS .....	33
41	CHANGE CONTROL .....	33
42	GOVERNING LAW AND JURISDICTION .....	34

# 1 DEFINITIONS AND INTERPRETATION

1.1 The following terms and expressions shall have the following meanings unless expressly stated otherwise:

<b>“Affected Party”</b>	means the party seeking to claim relief in respect of a Force Majeure Event.
<b>“Applicable Law”</b>	means all applicable and relevant legislation, regulations, rules or mandatory codes of conduct, authorisations, licenses, consents and approvals in relation to the Services which are necessary for the Contractor to perform its obligations under these Terms & Conditions.
<b>“Award Letter”</b>	means the letter issued by the Council to the successful tenderer to award the Contract and which includes the Council’s requirements and, in particular, the Tender Documents and all other documents which are incorporated as part of the Contract.
<b>“Best Value Duty”</b>	means a general duty by a best value authority to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness, as set out in Section 3 of the Local Government Act 1999 (as amended by s137 of the Local Government & Public Involvement in Health Act 2007).
<b>“Commencement Date”</b>	means the date of the Award Letter and indicates the start of the Contract.
<b>“Confidential Information”</b>	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 which relates to the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and Contractors of either Party, all Personal Data and sensitive Personal Data within the meaning of the Data Protection Act 1998 and the Commercially Sensitive Information identified pursuant to clause 24.
<b>“Contract”</b>	means the Award Letter together with these Terms and Conditions and any other documentation set out in the Award Letter that the Council deems incorporated as part of the Contract as if such documents were set out here in full.
<b>“Contractor”</b>	means the person or firm who supplies the goods or services referred to in the Order Form and /or Award Letter and accepted by the Council as such and shall include its successors or its permitted assigns.
<b>“Contractor Personnel”</b>	means all employees, workers, staff, agents and consultants of the Contractor engaged in the provision of the Services or Goods at any time.
<b>“Council”</b>	means Derbyshire County Council.
<b>“CPI”</b>	means Consumer Price Index.
<b>“Data Controller”</b>	means as defined in the Data Protection Act 1998.
<b>“Data Processor”</b>	means as defined in the Data Protection Act 1998.

## CONTROLLED

<b>“Data Protection Legislation”</b>	means the Data Protection Act 1998; the EU Data Protection Directive 95/46/EC; the Regulation of Investigatory Powers Act 2000; the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000; the Electronic Communications Data Protection Directive 2002/58/EC; the Privacy and Electronic Communications (EC Directive) Regulations 2003; and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.
<b>“Data”</b>	means “Personal Data” and/or “Sensitive Personal Data”, as applicable and defined in the Data Protection Act 1998.
<b>“EIR”</b>	means the Environmental Information Regulations 2004.
<b>“Employees”</b>	means any of the Contractor’s employees engaged in the performance of the Services.
<b>“Expiry Date”</b>	means the expiry date of the Initial Term as set out explicitly or implicitly in the Award Letter.
<b>“Extended Expiry Date”</b>	means the expiry date of the Extension Period.
<b>“FOIA”</b>	means the Freedom of Information Act 2000.
<b>“Force Majeure Event”</b>	means any cause affecting the performance by a party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, being acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or Regulatory Bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Contractor or any other failure in the Contractor’s or Sub-Contractor’s supply chain.
<b>“Good Industry Practice”</b>	means standards, practices, methods and procedures conforming to Applicable 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.
<b>“Goods”</b>	means those Goods to be supplied to the Council by the Contractor.
<b>“Intellectual Property Rights”</b>	means all patents, rights to inventions, utility models, copyright and related rights, trade-marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in design, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
<b>“Law”</b>	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 statute, bye-law, regulation, order, rule of Court or directives or requirements of any competent Council, delegated or subordinate legislation.

## CONTROLLED

<b>“Losses”</b>	means all liabilities, costs, expenses, damages and losses (including but not limited to any indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses).
<b>“Material Breach”</b>	means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from a substantial portion of this Contract over the contract period. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.
<b>“Order”</b>	means the Council’s official purchase order system and / or 3 quotations procedure (where applicable).
<b>“Order Form”</b>	means the Council’s written order in relation to the Goods and/or Services.
<b>“Price”</b>	means the price as set out in the Price Schedule.
<b>“Price Schedule”</b>	means the price schedule submitted as part of the Tender Documents or included in the Order.
<b>“Regulated Activity Provider”</b>	means as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.
<b>“Regulated Activity”</b>	means: i. in relation to children, as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006; and ii. in relation to vulnerable adults as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.
<b>“Relevant Requirements”</b>	means as set out in clause 24.
<b>“Relevant Transfer Date”</b>	means any date upon which the Contract is terminated and/or transferred to any Replacement Contractor.
<b>“Replacement Contractor”</b>	means any and all third party replacement providers of the Services and/or any part thereof, to the Council at any time after the Commencement Date.
<b>“Request for Information”</b>	means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or EIR.
<b>“Service(s)”</b>	means one or any number of different services to be provided by the Contractor under this Contract as set out in the Award Letter.
<b>“Site”</b>	means any premises identified by the Council as being relevant to the Contract.
<b>“Sub-Contract”</b>	means any contract entered into by the Contractor with a third party for the provision of any of the Services or Goods in accordance with clause 16.
<b>“Sub-Contractor”</b>	means any contractor that enters into a Sub-Contract with the Contractor.

## CONTROLLED

<b>“Sub-Contractor Personnel”</b>	means all employees, workers, staff, agents and consultants of the Sub-Contractor engaged in the provision of the Services or Goods at any time.
<b>“Tender Documents”</b>	means the documents that comprise the tender.
<b>“Term”</b>	means the period of this Contract up to the Expiry Date or where extended, up to the Extended Expiry Date.
<b>“Terms and Conditions”</b>	means the terms and conditions set out below.
<b>“TUPE”</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as substituted or varied from time to time or any equivalent or like legislation in place in any and all relevant jurisdictions.
<b>“Working Day”</b>	means 9am to 5pm Monday to Friday excluding English Bank Holidays and extra-statutory and concessionary days applicable to the Council, or some other time frame as set out in the Award Letter.

- 1.2 Clause headings shall not affect the interpretation of these Terms and Conditions.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4 Words in the singular shall include the plural and vice versa.
- 1.5 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.6 Where the words include(s), including or in particular are used in these Terms and Conditions, they are deemed to have the words without limitation following them. Where the context permits, the words other and otherwise are illustrative and shall not limit the sense of the words preceding them.
- 1.7 Any obligation in these Terms and Conditions on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 1.8 References to clauses are to the clauses in these Terms and Conditions.
- 1.9 References to Sub-Contractors shall be to Sub-Contractors of any tier.
- 1.10 All references to legislation in these Terms and Conditions shall include references to the legislation as amended and updated from time to time.
- 1.11 These Terms and Conditions shall apply to all Council Orders unless an alternative form of contract has been expressly agreed in writing, in advance, with the Council and, where this clause 1.11 applies if an Award Letter has not been issued references to Award Letter shall be substituted with Order for the purposes of these Terms and Conditions.
- 1.12 The Contractor's terms and conditions shall not be accepted as any part of this Contract.

## **2 PERIOD OF CONTRACT**

- 2.1 The Contract is for the supply of Goods and/or provision of Services as set out in the Award Letter.
- 2.2 The Contract start date to which these Terms and Conditions relate is that set out in the Award Letter and the Contract shall continue in full force and effect until the Expiry Date (the "Initial Term").
- 2.3 Prior to the expiry of the Initial Term, the Council may, at its absolute discretion, serve notice on the Contractor in writing extending the Term of this Contract for a further period (the "Extension Period"). In the event that the Council serves notice under this clause 2.3 the Term of this Contract will be extended in accordance with the notice until the Extended Expiry Date.
- 2.4 The Award Letter and referenced documents therein, together with these Terms and Conditions constitutes the entire Contract which shall apply to the Initial Term and the Extension Period unless expressly stated otherwise.

## **3 DUE DILIGENCE**

- 3.1 The Contractor acknowledges that it:
  - 3.1.1 has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council;
  - 3.1.2 has raised all relevant due diligence questions with the Council before the start of the Contract; and
  - 3.1.3 has entered into the Contract in reliance on its own due diligence alone.

## **4 PROVISION OF THE GOODS AND/OR SERVICES**

- 4.1 The Contractor shall supply the Goods and/or Services throughout the Term in accordance with the provisions of this Contract.
- 4.2 If the Council informs the Contractor in writing that the Council reasonably believes that any part of the Goods and/or Services do not meet the requirements in the Award Letter or differ in any way from the Council's requirements, the Contractor shall, at its own expense, re-schedule and carry out the Goods and/or Services in accordance with the Award Letter and requirements of the Council within such reasonable time as may be specified by the Council.
- 4.3 The Contractor accepts responsibility for all damage to, shortage, or loss of the Goods if:
  - 4.3.1 the same is notified in writing to the Contractor within fifteen (15) Working Days of receipt of the Goods by the Council; and
  - 4.3.2 the Goods have been handled by the Council in accordance with the Contractor's instructions.
- 4.4 Where the Contractor accepts responsibility under clause 4.3, it shall, at its sole option, replace or repair the Goods (or part thereof), which have been



## CONTROLLED

proven, to the Contractor's reasonable satisfaction, to have been lost or damaged in transit.

- 4.5 The Contractor agrees that the Council relies on the skill and judgment of the Contractor in the supply of the Goods and/or the provision of the Services and in the performance of its obligations under the Contract.

## 5 STANDARD OF GOODS

- 5.1 The Contractor shall, and shall procure that any Sub-Contractor shall, at all times ensure that:

5.1.1 Goods are compatible with any Council equipment, meet the Council's requirements and Award Letter and that they will:

- i. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose made known to the Contractor by the Council or set out in the Award Letter, and in this respect the Council relies on the Contractor's skill and judgement;
- ii. be capable of the performance required by the Council;
- iii. be new and free from defects in design, materials and workmanship;
- iv. meet or exceed the standards detailed within the Award Letter including any warranty periods;
- v. comply with all applicable statutory and regulatory requirements, including any relating to their manufacture, labelling, packaging, storage, handling and delivery;
- vi. correspond with:
  - (a) their description;
  - (b) any examples or samples provided to the Council by the Contractor in relation to the provision of the Goods; and
  - (c) be supplied with product warranties (where applicable) in a form that can be utilised by the Council.

- 5.2 The Contractor shall ensure that at all times the Goods are delivered and installed by appropriately qualified and trained personnel.

- 5.3 The Contractor hereby guarantees the Goods for the duration of the Initial Term against faulty materials and workmanship. If the Council shall during the Initial Term give notice in writing to the Contractor of any defect in any of the Goods as may have arisen during the Initial Term under proper and normal use, the Contractor 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.

## 6 STANDARD AND PERFORMANCE OF THE SERVICES

- 6.1 The Contractor shall, and shall procure that any Contractor Personnel or Sub-Contractor or Sub-Contractor Personnel shall, ensure that the Services comply with and meet all the requirements of:

6.1.1 the Award Letter;

## CONTROLLED

- 6.1.2 Good Industry Practice; and
- 6.1.3 all applicable Council policies and Applicable Law,  
with effect from the Commencement Date.
- 6.2 The Contractor shall, and shall procure that any Sub-Contractor shall, ensure that the Services are:
  - 6.2.1 carried out in compliance with equality requirements; and
  - 6.2.2 performed by appropriately qualified and trained personnel for the work being carried out.
- 6.3 The Contractor shall, and shall procure that any Sub-Contractor shall, at all times in connection with the provision of Services act in:
  - 6.3.1 good faith and in the best interests of the Council;
  - 6.3.2 accordance with Good Industry Practice; and
  - 6.3.3 accordance with all Applicable Law.
- 6.4 The provision of the Services is in accordance with the acknowledgement by the Contractor that time is of the essence, unless agreed otherwise.

## **7 ORDERING AND DELIVERY**

- 7.1 Goods and/or Services shall be ordered and delivered as set out in the Award Letter.
- 7.2 Subject to clause 7.3, the Contractor shall deliver the Goods and/or Services in accordance with the Award Letter and at the dates and times specified by the Council.
- 7.3 Deliveries shall be made at a specified time and date stipulated by the Council, and shall in any event be between the hours of 09.00 and 17.00 Monday to Friday inclusive (unless otherwise agreed). Where a Bank Holiday falls on a scheduled delivery day, delivery shall be offered on either the preceding or next Working Day.
- 7.4 The Contractor shall arrange for delivery of the Goods having regard to access, visibility, quantity of the Goods being delivered and the safety of individuals at the Council's premises or other delivery site and the delivery times.
- 7.5 The Council may refuse admission to the Contractor or require the Contractor to leave its premises at any time and shall not be obliged to give the Contractor any reasons for its decision. Any such decision taken by the Council may result in such persons no longer delivering the Goods and/or Services on behalf of the Contractor under the Contract.
- 7.6 Whilst on the Council's premises, the Contractor shall abide by the Council's rules, regulations and policies relating to the premises.
- 7.7 Subject to clause 7.4, delivery of the Goods shall occur at the point the Goods are unloaded and deposited at the location stated by the Council, or in accordance with the Award Letter. Any signed receipt obtained by the Contractor from the Council shall only be proof that delivery has been effected and shall not confirm the Council's liability to accept the Goods.

## CONTROLLED

- 7.8 With every delivery the Contractor shall provide to the Council a delivery note which shall specify:
- 7.8.1 the description and the quality of the Goods supplied; and
  - 7.8.2 the order number.
- 7.9 Should the Contractor fail to deliver the Goods in accordance with the times and dates set out in the Award Letter the Council shall be entitled to:
- 7.9.1 reject the Goods which were not delivered in accordance with the Award Letter and recover any payments made, or be released from any obligation to make payment in respect of those Goods;
  - 7.9.2 reject:
    - i. any instalment of Goods already received under the Contract; and
    - ii. any future delivery of Goods due under the Contract;
  - 7.9.3 recover any payments made, or be released from any obligation to make payment, in respect of those Goods;
  - 7.9.4 purchase replacement goods equivalent to the Goods in lieu thereof; and/or
  - 7.9.5 terminate the Contract.
- 7.10 In the event that quantities of Goods are delivered which are in excess of the quantities required to be delivered at the relevant time in accordance with the Award Letter:
- 7.10.1 the Council shall be under no obligation to accept the excess quantities supplied; and
  - 7.10.2 the Council shall be entitled to dispose of the excess quantities of Goods supplied and recover the costs of disposal from the Contractor.
- 7.11 The Customer shall not be required to accept any Goods delivered prior to the times and dates set out in the Award Letter unless the Award Letter expressly states otherwise.

## 8 INSPECTION AND ACCEPTANCE

- 8.1 The Council shall be entitled to reject the Goods and/or Services or any element of the Goods and/or Services which it determines does not conform to the requirements of this Contract.
- 8.2 In order to exercise its right to reject under clause 8.1, the Council shall give written notice to the Contractor that it intends to reject the Goods and/or Services or any element of the Goods and/or Services, together with an explanation of the reasons why, within a reasonable period of time after delivery of the Goods.
- 8.3 In the event that the Council exercises its right to reject the Goods and/or Services in accordance with clauses 8.1 and 8.2, the Council may elect for the Contractor:
- 8.3.1 to replace the rejected Goods with goods that conform to the requirements of the Award Letter as soon as reasonably practicable and in any event within five (5) Working Days of the Council rejecting the Goods in accordance with clause 8.2;

## CONTROLLED

8.3.2 to revise the provision of the Services so that the Services conform to the requirements of the Award Letter as soon as reasonably practicable and in any event within five (5) Working Days of the Council rejecting the Services in accordance with clause 8.1; or

8.3.3 to:

- i. repay any element of the Price attributable to the rejected Goods and/or Services already paid by the Council;
- ii. release the Council from any further obligation to make payments in respect of the Price attributable to the rejected Goods and / or Services;
- iii. pay to the Council any Losses incurred by the Council in obtaining any substitute or replacement for the rejected Goods and/or Services; and
- iv. in either case, the Contractor shall, at its own risk and cost, collect the rejected Goods in accordance with the instructions of the Council.

8.4 The Council's rights under clauses 8.1 to 8.3 shall apply equally to any replacement Goods and/or Services provided by the Contractor.

## 9 INSTALLATION

- 9.1 Where Goods are to be installed, the Contractor shall carry out such installation in good workmanship manner and in accordance with Good Industry Practice.
- 9.2 Where any access to the Council's premises is necessary in connection with delivery or installation, the Contractor shall at all times comply with the reasonable requirements of the Council's security procedures as notified to the Contractor from time to time.
- 9.3 The Council shall have the right at any time during the Term of this Contract to require the Contractor to remove from the Council's premises any materials which in the opinion of the Council are either hazardous, noxious or not in accordance with the Contract.
- 9.4 The Contractor shall ensure that the Goods are safe and without risk to health when installed and properly used.
- 9.5 On completion of the installation works the Contractor shall remove the Contractor's equipment and unused materials and shall clear away from the Council's premises all rubbish arising out of the Contract and leave the Council's premises in a neat and tidy condition.

## 10 CONDUCT OF CONTRACTOR AND SUB-CONTRACTOR

- 10.1 Whilst engaged at the Council's premises the Contractor shall, and shall procure that any Sub-Contractor shall, comply with the Council's policies relating to the conduct of Contractor Personnel and security arrangements and the Council acting reasonably may:
- 10.1.1 instruct the Contractor that disciplinary action is taken against any employee of the Contractor or any Sub-Contractor involved in the provision of the Goods and Services (in accordance with the terms

## CONTROLLED

and conditions of employment of the employee concerned) where such employee misconducts themselves or is incompetent or negligent in their duties (in which case the Council shall co-operate with any disciplinary proceedings and shall be advised in writing of the outcome); or

- 10.1.2 where the Council has reasonable grounds for considering that the presence or conduct of an employee at any location relevant to the performance of the Services is undesirable, require the exclusion of the relevant employee from the relevant location(s).
- 10.2 Where the Contractor is unable (acting reasonably) to comply with clause 10.1.2 by the time period specified by the Council, then the Contractor shall comply with its obligations under that clause as soon as reasonably practicable and, in any event, no later than the end of the day on which the relevant individual first goes on Site. Until such time as the Contractor has complied with its obligations in respect of that individual, that individual shall at all times be accompanied on Site by a member of the Contractor's personnel or Sub-Contractor's Personnel who has been properly notified to the Council.
- 10.3 The Council reserves the right to terminate the Contract if the Contractor changes the personnel delivering the Goods and/or Service without written agreement from the Council where such personnel have been identified in the Award Letter.

## 11 CONTRACT DELAY

- 11.1 If, at any time, the Contractor becomes aware of any circumstance or occurrence which may lead to a delay in the provision of the Services or otherwise adversely affect the Contractor's performance of its obligations under this Contract, it shall immediately notify the Council in writing, providing details of the potential or actual delay.
- 11.2 The Contractor shall use its best endeavours to avoid and mitigate the impact of any circumstance or occurrence referred to in clause 11.1 upon the Council.

## 12 INVOICING AND PAYMENT

- 12.1 In consideration for the Contractor's compliance with its obligations under this Contract the Council shall pay to the Contractor the Price.
- 12.2 The Council shall pay all sums properly due and payable to the Contractor in cleared funds within thirty (30) days of receipt of a valid and undisputed invoice (or as otherwise stated).
- 12.3 Where the Contractor enters into a Sub-Contract for the purpose of performing its obligations under this Contract, the Contractor shall ensure that a provision is included in such Sub-Contract which requires payment to be made of all sums due by the Contractor to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid and undisputed invoice.
- 12.4 The Price excludes any amount in respect of VAT and the Council shall, upon receipt of a valid and undisputed VAT invoice, pay such additional amounts in respect of VAT as are chargeable.
- 12.5 Any invoice submitted by the Contractor shall be considered and verified by the Council in a timely manner.

## CONTROLLED

- 12.6 The Council may withhold payment against any invoice not submitted in accordance with this Contract and shall immediately notify the Contractor in writing of its reason for so doing. If the invoice is disputed in part only, the Contractor shall issue a credit note in respect of the original invoice and issue an invoice for the part not in dispute. On receipt of such an invoice the Council shall pay that part of the original invoice which it accepts, while any query concerning a disputed sum is resolved.
- 12.7 Notwithstanding any other provision of this Contract, if the Contractor notifies the Council that the Contractor has failed to pay a valid and undisputed Sub-Contractor's invoice within thirty (30) days of receipt, or the Council otherwise discovers the same, the Council shall be entitled to publish the details of the late payment or non-payment (including on government websites and in the press).
- 12.8 If the Contractor does not submit an invoice within six (6) months of either the provision of the Services or the delivery of the Goods to which the invoice relates the Council reserves the right to refuse payment.
- 12.9 Any invoice submitted by the Contractor shall include the following as a minimum:
- 12.9.1 invoice date;
  - 12.9.2 Contractor's invoice number/reference;
  - 12.9.3 delivery address;
  - 12.9.4 Contractor's name and address; and
  - 12.9.5 VAT number and split of VAT for each VAT rate (where applicable).
- 12.10 Invoices should be sent to the agreed contact point and in the electronic or paper format as agreed by the Council.

## 13 PRICE ADJUSTMENT EXTENSION

- 13.1 The Prices are fixed for the Initial Term of the Contract.
- 13.2 Where the Contract is extended pursuant to clause 2.3, prior to the expiry of the Initial Term, the Contractor may submit an application to the Council for an alternation to the Price to be applicable for the Extension Period (a "Price Variance").
- 13.3 Any Price Variance submitted as part of an application pursuant to clause 13.2 shall be limited to the prevailing CPI at the time the request is submitted.
- 13.4 A Price Variance shall be at the Council's sole discretion and shall be agreed in writing by the Council in advance.

## 14 BEST VALUE

- 14.1 The Contractor acknowledges that:
- 14.1.1 the Council is subject to the Best Value Duty;
  - 14.1.2 the provisions of this clause 14 are intended to assist the Council in discharging its Best Value Duty in relation to the Goods and Services; and

## CONTROLLED

- 14.1.3 the provisions of this clause 14 shall apply in respect of the obligations of the Contractor and the Council concerning the Best Value Duty.
- 14.2 The Contractor shall, throughout the duration of the Contract, but only to the extent of its obligations in this Contract, make arrangements to secure continuous improvement in the way in which the Services are provided, having regard to a combination of economy, efficiency and effectiveness.
- 14.3 The Contractor shall undertake, or refrain from undertaking, such actions as the Council shall reasonably request to enable the Council to comply with its Best Value Duty, including:
- 14.3.1 complying with all requests by the Council to procure the attendance of specific officers or employees of the Contractor or any Sub-Contractor (or to procure attendance of any of its or their sub-contractors) at any meetings of the Council at which the Services are to be discussed; and
- 14.3.2 permitting any officer or employee of the Council at all reasonable times and upon reasonable notice, access to:
- i. any document or data relating to the Services; and
  - ii. any Contractor Personnel or Sub-Contractor Personnel.

## 15 CONTRACTOR WARRANTIES AND UNDERTAKINGS

- 15.1 The Contractor warrants, represents and undertakes to the Council that on the Commencement Date and until the Expiry Date or the Extended Expiry date, whichever is the later:
- 15.1.1 if it is a company, it is properly constituted and incorporated under the laws of England and has the corporate power to own its assets and to carry on its business as it is now being conducted;
- 15.1.2 the information contained in the Award Letter remains true and accurate unless and to the extent that any changes have been notified to the Council and the Council has agreed to the provision of the Goods and/or Services on the basis of those changes and no others;
- 15.1.3 it has the corporate power to enter into and to exercise its rights and perform its obligations under this Contract;
- 15.1.4 all action necessary on the part of the Contractor to authorise the execution of and the performance of its obligations under this Contract has been taken;
- 15.1.5 the obligations expressed to be assumed by the Contractor under this Contract are legal, valid, binding and enforceable to the extent permitted by law and are in the proper form for enforcement in England;
- 15.1.6 the execution, delivery and performance by the Contractor of this Contract does not contravene any provision of:
- i. any existing Law either in force, or enacted but not yet in force binding on the Contractor;
  - ii. the Memorandum and Articles of Association of the Contractor;

## CONTROLLED

- iii. any order or decree of any court or arbitrator which is binding on the Contractor; or
  - iv. any obligation which is binding upon the Contractor or upon any of its assets or revenues;
- 15.1.7 no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Contractor, pending or threatened against it or any of its assets which will or might have a material adverse effect on the ability of the Contractor to perform its obligations under this Contract;
- 15.1.8 it is not the subject of any other obligation, compliance with which will, or is likely to have, a material adverse effect on the ability of the Contractor to perform its obligations under this Contract;
- 15.1.9 no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;
- 15.1.10 it has not paid commission or agreed to pay any commission to any employee, agent, sub-contractor, officer or member of the Council either directly or through another on its behalf; and
- 15.1.11 the Council relies upon such warranties and representations.
- 15.2 The Contractor warrants and undertakes to the Council that for so long as this Contract remains in full force:
- 15.2.1 the Goods and/or Services shall be provided and carried out by appropriately experienced, qualified and trained personnel with all due skill, care and diligence;
  - 15.2.2 it shall discharge its obligations hereunder (including the provision of the Goods and/or Services) with all due skill, care and diligence including in accordance with Good Industry Practice and its own established internal procedures;
  - 15.2.3 the Goods and/or Services are, and will continue to be, during the Term:
    - i. of satisfactory quality; and
    - ii. in conformance with the relevant specifications set out in the Award Letter and (if applicable) the manufacturer's specifications and documentation;
  - 15.2.4 should a problem in the provision of Goods and/or Services arise the Contractor shall use best endeavours to remedy the problem at no cost to the Council;
  - 15.2.5 it will upon becoming aware that any litigation, arbitration, administrative or adjudication or mediation proceedings before or of any court or arbitrator may be threatened or pending and immediately after the commencement thereof (or within ten (10) Working Days of becoming aware the same may be threatened or pending or with ten (10) Working Days after the commencement



## CONTROLLED

thereof where the litigation or arbitration or administrative or adjudication or mediation proceedings is against a Sub-Contractor) give the Council notice of all such litigation, arbitration, administrative or adjudication or mediation proceedings which would adversely affect, to an extent which is material in the context of the delivery of the Services, the Contractor's ability to perform its obligations under this Contract;

- 15.2.6 it will not without the prior written consent of the Council (and whether by a single transaction or by a series of transactions whether related or not) sell, transfer, lend or otherwise dispose of (other than by way of security) the whole or any part of its business or assets which would materially affect the ability of the Contractor to perform its obligations under this Contract;
- 15.2.7 it will not cease to be resident in the United Kingdom or transfer in whole or in part its undertaking, business or trade outside the United Kingdom;
- 15.2.8 it will not undertake the performance of its obligations under this Contract for the provision of the Services or the Goods otherwise than through itself or a Sub-Contractor; and
- 15.2.9 it shall not without the written consent of the Council (such consent not to be unreasonably withheld or delayed) make any loans or grant any credit or give any guarantee or indemnity to or for the benefit of any person or otherwise voluntarily or for consideration assume any liability (whether actual or contingent) in respect of any obligation of any other person except in the ordinary course of business.

- 15.3 All warranties, representations, undertakings, indemnities and other obligations made, given or undertaken by the Contractor in these Terms and Conditions are cumulative and none shall be given a limited construction by reference to any other.

## 16 SUB-CONTRACTING

- 16.1 The Contractor shall not, without the prior written consent of the Council, sub-contract, whether in whole or in part, any one or more of its obligations under this Contract.
- 16.2 In relation to any sub-contracting pursuant to clause 16.1:
  - 16.2.1 the Contractor shall be responsible to the Council in Law or otherwise for all such sub-contracted Services and / or Goods and such sub-contracting shall not modify, diminish, reduce or in any other way affect the liability and/or obligations of the Contractor under this Contract and / or at Law or otherwise;
  - 16.2.2 the Contractor's remuneration shall not be increased by the amounts payable by the Contractor to its Sub-Contractors; and
  - 16.2.3 the Contractor shall be liable to the Council for the tortious acts and omissions of the person performing any sub-contracted work and/or Services.

## 17 TERMINATION

17.1 Without affecting any other right or remedy available to it, the Council may terminate all or part of this Contract with immediate effect by giving written notice to the Contractor if:

- 17.1.1 the Contractor fails to pay any amount due under this Contract on the due date for payment and remains in default not less than thirty (30) Working Days after being notified in writing to make such payment;
- 17.1.2 the Contractor commits a Material Breach of any term of this Contract which breach is irremediable, or if such breach is remediable, fails to remedy that breach within a period of fifteen (15) Working Days after being notified in writing to do so;
- 17.1.3 the Contractor repeatedly breaches any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract;
- 17.1.4 the Contractor, or any of the Contractor's employees and agents (in all cases whether or not acting with the Contractor's knowledge):
  - i. directly or indirectly offers, promises or gives any person working for or engaged by the Council a financial or other advantage to:
    - (a) induce that person to perform improperly a relevant function or activity; or
    - (b) reward that person for improper performance of a relevant function or activity;
  - ii. directly or indirectly requests, agrees to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;
  - iii. commits any offence:
    - (a) under Section 117(2) of the Local Government Act 1972;
    - (b) under the Bribery Act 2010;
    - (c) under legislation creating offences concerning fraudulent acts;
    - (d) at common law concerning fraudulent acts relating to this Contract or any other contract with the Customer; or
    - (e) to defraud, attempt to defraud or conspire to defraud the Customer.
- 17.1.5 the Contractor suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the

## CONTROLLED

Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

- 17.1.6 the Contractor commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- 17.1.7 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Contractor (being a company);
- 17.1.8 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Contractor (being a company);
- 17.1.9 the holder of a qualifying floating charge over the assets of the Contractor (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 17.1.10 a person becomes entitled to appoint a receiver over the assets of the Contractor or a receiver is appointed over the assets of the Contractor;
- 17.1.11 the Contractor (being an individual) is the subject of a bankruptcy petition or order;
- 17.1.12 a creditor or encumbrancer of the Contractor 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 Contractor's assets and such attachment or process is not discharged within fourteen (14) Working Days;
- 17.1.13 any event occurs, or proceeding is taken, with respect to the Contractor in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clauses 17.1.4 to 17.1.12;
- 17.1.14 the Contractor suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- 17.1.15 there is a change of control of the Contractor (within the meaning of section 1124 of the Corporation Tax Act 2010);
- 17.1.16 the Contractor (being an individual) 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
- 17.1.17 any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.

## 18 VOLUNTARY TERMINATION BY THE COUNCIL

- 18.1 The Council may terminate all or part of this Contract immediately at any time on or before its Expiry Date or Extended Expiry Date (as applicable) by complying with its obligations under clause 18.2.

## CONTROLLED

- 18.2 If the Council wishes to terminate all or part of this Contract under this clause 18.2, it must give notice to the Contractor stating:
- 18.2.1 that the Council is terminating the Contract (either in full or detailing the part of the Contract to be terminated) under this clause 18; and
  - 18.2.2 the date that the Contract (or part of it) will terminate, if the Contract is to not terminate immediately.
- 18.3 The Contract (or part of it) will terminate on the date specified in the notice given to the Contractor pursuant to clause 18.2.

## 19 CONSEQUENCES OF TERMINATION

- 19.1 In the event that this Contract is terminated in accordance with clause 17.1 the Council shall be entitled to recover any Losses from the Contractor it suffers as a result of the circumstances giving rise to the Council's ability to terminate this Contract.
- 19.2 The Losses referred to in clause 19.1 shall include:
- 19.2.1 any additional costs incurred by the Council in procuring replacement services and goods (including any difference in purchase price); and
  - 19.2.2 any costs incurred by the Council in procuring an alternative supplier to provide services and goods similar to the Services and Goods.
- 19.3 Immediately upon termination or expiry of this Contract the Contractor shall:
- 19.3.1 provide to the Council all documents, materials, correspondence, papers, specifications, information contained within databases, manuals, guidance and other information in its control or possession which the Council may require or requests in writing in order to assist in the timely and efficient transfer of services to any third party providing the same or similar services or goods to the Services or Goods or the adoption of such Services or Goods by the Council itself;
  - 19.3.2 deliver up to the Council or destroy (as directed by the Council) any Council property provided pursuant to this Contract; and
  - 19.3.3 co-operate with the Council to ensure all exit arrangements are complied with.
- 19.4 Termination or expiry of this Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

## 20 INDEMNITIES

- 20.1 Neither party excludes or limits liability to the other party for:
- 20.1.1 death or personal injury;
  - 20.1.2 fraud; or
  - 20.1.3 fraudulent misrepresentation.

## CONTROLLED

- 20.2 The Contractor shall indemnify the Council against all Losses suffered or incurred by the Council arising out of or in connection with:
- 20.2.1 the Contractor's breach, negligent performance or non-performance of any of its obligations under the Contract;
  - 20.2.2 any breach of statutory duty arising in relation to the Contract;
  - 20.2.3 the enforcement of the Contract;
  - 20.2.4 any claim made against the Council for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with any act or omission by the Contractor or Contractor Personnel, Sub-Contractors or Sub-Contractor Personnel, professional advisors and consultants in the delivery of its obligations under the Contract; or
  - 20.2.5 any claim made against the Council by a third party arising out of or in connection with this Contract to the extent that such claim arises out of the performance, breach, negligent performance or failure or delay in performance of this Contract by, or presence at the Council's premises of, the Contractor, Contractor Personnel, Sub-Contractors or Sub-Contractor Personnel, professional advisors and consultants.

## 21 DUTY TO MITIGATE

- 21.1 Both the Council and the Contractor shall at all times throughout the duration of this Contract use reasonable endeavours to mitigate any loss, damage, costs or expenses suffered as a result of any acts or omissions of the other party in relation to the performance of obligations under this Contract.

## 22 RIGHT OF SET-OFF

- 22.1 The Council may retain or set off any amount owed to it by the Contractor against any amount due to the Contractor under this Contract or under any other agreement between the Contractor and the Council.

## 23 INSURANCE

- 23.1 The Contractor shall take out and maintain with a reputable insurance underwriter or companies a policy or policies of insurance which are adequate to cover its liability under this Contract and any other insurances required in order to comply with the Law and the Award Letter for the duration of the Contract. These insurances must be effective in each case not later than the date on which the relevant risk commences.
- 23.2 The Contractor shall provide to 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.
- 23.3 The Contractor shall not take any action or fail to take any reasonable action, or permit anything to occur, which would entitle any insurer to refuse to pay any claim under any insurance policy referred to in clause 23.1.
- 23.4 Should the Contractor fail to take out any insurances in accordance with clause 23.1, the Council may purchase such insurances and recover the costs of such insurances from the Contractor.

## 24 ANTI-BRIBERY

### 24.1 The Contractor shall:

- 24.1.1 comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (the “**Relevant Requirements**”);
- 24.1.2 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;
- 24.1.3 have and shall maintain in place throughout the term of this Contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and clause 24.1.2, and will enforce them where appropriate;
- 24.1.4 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;
- 24.1.5 immediately notify the Council (in writing) if a foreign public official acquires a direct or indirect interest in the Contractor (and the Contractor warrants that it has no foreign public officials as officers or employees at the date of this Contract); and
- 24.1.6 within one month of the Commencement Date and annually thereafter, certify to the Council in writing signed by an officer of the Contractor, compliance with this clause 24 by the Contractor and all persons associated with it. The Contractor shall provide such supporting evidence of compliance as the Council may reasonably request.

24.2 Without prejudice to clause 24.1, the Contractor shall ensure that any person associated with the Contractor who is performing services in connection with this Contract, does so only on the basis of a written contract which imposes on, and secures from such person, terms equivalent to those imposed on the Contractor in this clause 24 (the “**Relevant Terms**”). The Contractor shall, in any circumstances, be responsible for the observance and performance by such persons of the Relevant Terms, and shall, in any circumstances, be directly liable to the Council for any breach by such persons of any of the Relevant Terms howsoever arising.

24.3 Breach of this clause 24 shall be deemed to be an irremediable breach, pursuant to clause 17.1.2.

24.4 For the purpose of this clause 24, the meaning of ‘adequate procedures’, ‘foreign public official’, and whether a person is ‘associated’ with another person, shall be determined in accordance with:

- 24.4.1 section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act);
- 24.4.2 sections 6(5) and 6(6) of that Act; and
- 24.4.3 section 8 of that Act respectively.

24.5 For the purposes of this clause 24, a person associated with the Contractor includes, but is not limited to, any Sub-Contractor of the Contractor.

## CONTROLLED

- 24.6 The Council shall be entitled to terminate this Contract with immediate effect and to recover from the Contractor the amount of any Loss resulting from such termination, if:
- 24.6.1 the Contractor shall have offered or given to any person any gift or consideration of any kind as inducement for reward for doing or forbearing to do or having done or forborne to do any action in relation to this Contract or any other agreement with the Council;
  - 24.6.2 any like act shall have been done by any person employed by him or acting on his behalf (whether with or without the knowledge of the Contractor); or
  - 24.6.3 in relation to any agreement with the Council, the Contractor or any person employed by him or acting on his behalf shall have committed any offence under the Prevention of Corruption Acts 1889-1916 or have given any fee or reward, the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

## 25 INTELLECTUAL PROPERTY RIGHTS

### 25.1 All Intellectual Property Rights:

- 25.1.1 furnished to or made available to the Contractor by the Council shall remain the property of the Council unless agreed otherwise in the Award Letter; and
- 25.1.2 prepared by or for the Contractor for use, or intended use, in relation to the performance of its obligations under the Contract shall belong to the Council,

and the Contractor shall not, and shall procure that the Contractor's personnel and Sub-Contractors shall not, (except when necessary for the implementation of the Contract) without obtaining the Council's prior written approval, use or disclose any such Intellectual Property Rights, or any other information (whether or not relevant to the Contract) which the Contractor may obtain in performing the Contract except information which is in the public domain.

- 25.2 The Contractor shall obtain written approval before using any material, in relation to the performance of the Contract, which is, or may be, subject to any third party Intellectual Property Rights. The Contractor shall procure that the owner of such rights grants to the Council a non-exclusive licence, or, if itself a licensee of those rights, shall grant to the Council an authorised sub-licence to use, reproduce and maintain the material. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-license, transfer, novate or assign to any other third party providing services to the Council, and shall be granted at no cost to the Council.
- 25.3 Where a claim or proceeding is made or brought against the Council which arises out of the infringement of any Intellectual Property Rights, or because the use of any materials, plant, machinery or equipment in connection with this Contract infringes any Intellectual Property Rights of a third party, then, unless such infringement has arisen out of the use of any Intellectual Property Rights by or on behalf of the Council otherwise than in accordance with the terms of this Contract, the Contractor shall indemnify the Council at all times from and against all Losses in accordance with clause 20.2.4.

## 26 DATA PROTECTION

- 26.1 The Contractor shall, and shall procure that the Sub-Contractor shall, ensure that the Goods and/or Services comply with the Data Protection Legislation, and, in particular, the collection, store and/or use of Data.
- 26.2 For the avoidance of doubt, title to the rights in Data passed to the Contractor by the Council in whatever format collected and recorded by the Contractor on behalf of the Council pursuant to this Contract, is vested, and shall remain vested at all times, in the Council.
- 26.3 It is acknowledged that the Contractor will act in the capacity of Data Processor and the Council as Data Controller in the performance of the Services. As Data Processor, the Contractor shall at all times perform the Services in such a manner as not to cause the Council in any way to be in breach of the Data Protection Act 1998 (the “**Act**”).
- 26.4 The Contractor shall, and shall procure that any Sub-Contractor shall, at all times in respect of the Data of which the Council is Data Controller, comply with obligations equivalent to those set out in the principles of the Act and Data Protection Legislation.
- 26.5 The Contractor shall perform the Services in full compliance of all applicable guidelines and codes of practice issued by the Office of the Information Commissioner (or its successor or equivalent body) in the UK from time to time to the extent that the Data Controller issues instructions which conflict with the applicable guidelines.
- 26.6 In the event that the Contractor is permitted access to Data for any reason, or is provided or supplied with Data by the Council for any purpose, the Contractor shall use and/or hold such Data only for the purposes and in the manner directed by the Council, and shall not otherwise modify, amend or alter the contents of such Data or disclosure or permit the disclosure of such Data to any third party unless specifically authorised by the Council or by the data subject (such disclosure being subject to the provisions of clauses 26.11 to 26.13 inclusive).
- 26.7 Upon reasonable notice to the Contractor, the Council shall be entitled to audit the procedures of the Contractor (which shall include the right to enter the Contractor’s premises and/or access its systems) for the purpose of ensuring compliance with this clause 26 and to take any reasonable steps to satisfy itself that the Contractor is so complying.
- 26.8 Where the Council requests Data in the Contractor’s possession for the purpose of complying with a data subject access request made under the Act, the Contractor will retrieve the relevant Data and provide a full copy of such to the Council as soon as is possible but in any event within 5 days of receipt of the request or any other period as agreed in writing.
- 26.9 Where the Contractor directly receives a request for disclosure of Data of which the Council is Data Controller from a data subject or any other third party, it shall promptly notify, and provide a copy of the request to the Council.
- 26.10 The Contractor shall not, and shall procure that its Sub-Contractor(s) shall not, process Data in, or transfer Data to, any country outside of the European Economic Area (as it is constituted from time to time) without the prior written consent of the Council.



## CONTROLLED

- 26.11 In the event that the Contractor wishes to appoint a third party (including, without limitation, a Sub-Contractor) to process Data pursuant to this Contract, it shall:
- 26.11.1 choose a third party with sufficient guarantees in respect of the technical and organisation security measures, having regard to the Act, governing the processing to be carried out;
  - 26.11.2 ensure compliance with the measures referred to in clause 26.11.1;
  - 26.11.3 ensure that the processing of Data carried out by such third party, is only done so under a contract:
    - 26.11.3.1 which is evidenced in writing; and
    - 26.11.3.2 which obliges such third party to act only in accordance with this clause 26.
- 26.12 The Contractor shall procure that any third party with whom it contracts agrees to terms including clauses the same as, or similar to, those contained in this clause 26.
- 26.13 The Contractor shall advise the Council in advance of the identity of any such third parties and acquire written agreement from the Council before appointing the same to process any Data.

## 27 FREEDOM OF INFORMATION

- 27.1 The Contractor acknowledges that the Council is subject to the requirements of the Code of Practice on Government Information, FOIA and the EIR and shall assist and co-operate with the Council to enable the Council to comply with its information disclosure obligations.
- 27.2 The Contractor shall:
- 27.2.1 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;
  - 27.2.2 provide the Council with a copy of all information in its possession or power (being information held by the Contractor on behalf of the Council) in the form that the Council requires within five (5) Working Days of the Council 's request (or such other period as the Council may specify); and
  - 27.2.3 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 EIR.
- 27.3 The Council shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other information:
- 27.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the EIR; and/or
  - 27.3.2 is to be disclosed in response to a Request for Information.
- 27.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Council.

27.5 The Contractor acknowledges that the Council may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of FOIA, be obliged in certain circumstances and/or following consultation with the Contractor to disclose information without consulting or obtaining consent from the Contractor, or despite having taken the Contractors' views into account, provided that the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate:

27.5.1 to give the Contractor advanced notice; or failing that

27.5.2 to draw the disclosure to the Contractor's attention after any such disclosure.

## 28 CONFIDENTIALITY

28.1 In respect of any Confidential Information it may receive from the other party (the "**Discloser**") and subject always to the remainder of this clause 28, each party (the "**Recipient**") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party, without the Discloser's prior written consent provided that:

28.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of this Contract;

28.1.2 the provisions of this clause 28 shall not apply to any Confidential Information which:

- i. is in or enters the public domain other than by breach of this Contract or other act or omissions of the Recipient;
- ii. is obtained by a third party who is lawfully authorised to disclose such information;
- iii. is authorised for release by the prior written consent of the Discloser; or
- iv. the disclosure of which is required to ensure the compliance of the Council with FOIA, EIR, or the Local Government Transparency Code 2015;

the Council may, in its sole discretion, elect to publish this Contract (including any variations to this Contract) in its entirety.

28.2 Nothing in this clause 28 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law or, provided that the information is subject to confidentiality undertakings equivalent to those set out in clause 28.1, to its professional advisors or insurers.

## 29 SOCIAL VALUE

29.1 The Contractor shall, as part of the supply of the Goods and/or provision of Services, fulfil any Social Value requirements as set out in the Award Letter.

**30 TUPE (IF APPLICABLE)**

- 30.1 If, at the date of expiry or termination of this Contract, the Services, and/or any part thereof, TUPE applies in respect of any Employees, such Employees shall transfer to the Replacement Contractor on the Relevant Transfer Date.
- 30.2 It is the Contractor's responsibility to liaise with the current contractor and to manage all TUPE implications which arise during the implementation phase of the Contract and thereafter.
- 30.3 The Council gives no warranty as to the accuracy of any information provided by the incumbent contractor about its employees engaged in the performance of the contract who may transfer to the Contractor at the Commencement Date. It is for each Contractor to take such steps as it deems necessary to satisfy itself as to the accuracy of information provided.
- 30.4 The Contractor shall form its own views on, and be solely responsible for, any implications arising from the Acquired Rights Directive and/or TUPE which may apply to its Employees.
- 30.5 The Contractor shall be responsible for all costs which might arise on or after the Commencement Date under the provisions of this clause 30.
- 30.6 The Contractor shall indemnify the Council against any Losses which the Council may incur as a result of any failure by the Contractor to comply fully with its respective obligations pursuant to Regulation 13 of TUPE (or any other relevant legislation or guidance).
- 30.7 The Contractor shall indemnify the Council from and against all Losses in connection with, or as a result of, any claim or demand by any Employee or other employee or person claiming to be an Employee on the Relevant Transfer Date arising out of their employment or its termination, whether such claim or claims arise before, or after, the Relevant Transfer Date.
- 30.8 The Council shall have no liability in respect of any claim made, or any award of compensation, including but not limited to redundancy or unfair or wrongful dismissal, to any Employee in respect of his or her service with the Contractor.
- 30.9 The Contractor shall comply with all requirements within the Best Value Authorities Staff Transfers (Pensions) Direction 2007.
- 30.10 The Contractor shall indemnify, hold harmless and keep indemnified the Council against any Losses arising from:
  - 30.10.1 any change or proposed change to the terms and conditions of employment of any Employee where such change is, or is proposed, to be effected following the Relevant Transfer Date of any such person; and
  - 30.10.2 in respect of any Losses incurred by the Employee arising from the employment or proposed employment of any such Employee, otherwise than on terms the same as those enjoyed by any such person immediately prior to the Relevant Transfer Date.
- 30.11 The Contractor shall ensure that all other employees, including those recruited by the previous service provider of the services on behalf of the Council, and those recruited at any time by the Contractor to provide Services under this Contract, are offered employment on fair and reasonable terms and conditions which are, overall, no less favourable than those of transferred Employees, and the Contractor will also offer reasonable pension arrangements, all in

## CONTROLLED

accordance with the Cabinet Office Statement on Staff Transfers in the Public Sector (Revised December 2013) and the Principles of Good Employment Practice (2010).

30.12 During the period of six months preceding:

30.12.1 the expiry of the Contract;

30.12.2 the date that the Council has given notice to terminate the Contract;  
or

30.12.3 the date that the Contractor stops trading,

and within 20 Working Days of being so requested by the Council, the Contractor shall fully and accurately disclose to the Council all information relating to its Employees engaged in providing Services.

30.13 The information requested by the Council in clause 30.12 shall include, but not be limited to, the following:

30.13.1 the total number of Employees whose employment with the Contractor is liable to be terminated at the expiry of this Contract but for any operation of law;

30.13.2 for each person, age and gender, details of their salary, and pay settlements covering that person which relate to future dates but which have already been agreed and their redundancy entitlements (the names of individual Employees do not have to be given);

30.13.3 full information about the other terms and conditions on which the affected Employees are employed (including but not limited to their working arrangements), or about where that information can be found;

30.13.4 details of pensions entitlements, if any;

30.13.5 job titles of the Employees affected and the qualifications required for each position;

30.13.6 details of any disciplinary and / or grievance proceedings involving the Employee within the previous two years;

30.13.7 details of any outstanding claims the Employee has brought against the Contractor within the last two years or are currently outstanding;

30.13.8 details of any claims that the Contractor has reasonable grounds to believe the Employee may bring against the Replacement Contractor, arising out of the Employee's employment with the Contractor; and

30.13.9 details of any collective agreements in respect of any transferring Employee,

and the Council shall share such information to prospective tenderers as it considers appropriate.

30.14 The Contractor agrees to indemnify the Council fully and to hold it harmless at all times from and against all Losses whatsoever in any way connected with or arising from or relating to the provision of information under clause 30.13.

## CONTROLLED

- 30.15 The Contractor will co-operate with any subsequent transfer of the Contract by allowing the Replacement Contractor to communicate with and meet the Contractor's affected Employees and/or their representatives.
- 30.16 In the event that the information provided by the Contractor becomes inaccurate, whether due to changes to the employment and personnel details of the affected Employees made subsequent to the original provision of such information, or, by reason of the Contractor becoming aware that the information originally given was inaccurate, the Contractor shall notify the Council of the inaccuracies and provide the amended information.
- 30.17 The provisions of this clause 30 shall apply during the continuance of this Contract and indefinitely after its termination.

### **31 FORCE MAJEURE**

- 31.1 Subject to the remaining provisions of this clause 31, neither party shall be in breach of this Contract, nor liable for delay in performing or failure to perform any of its obligations under this Contract, if such delay or failure result from a Force Majeure Event, and each party shall be eligible to claim relief.
- 31.2 The Contractor cannot claim relief if the Force Majeure Event is attributable to its:
- 31.2.1 wilful act;
  - 31.2.2 neglect; or
  - 31.2.3 failure to take reasonable precautions against the relevant Force Majeure Event.
- 31.3 Pursuant to clause 31.2, the Affected Party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for one month, the party not affected may terminate this Contract by giving 14 days' written notice to the other.
- 31.4 The Affected Party shall immediately give the other party written notice of a Force Majeure Event. The notification shall include details of the Force Majeure Event together with evidence of its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 31.5 Where a Force Majeure Event only affects the performance of one part of the Contract, the Contractor shall only be relieved in accordance with this clause 31 in relation to that part of the Contract and all remaining obligations under the Contract shall continue unaffected.

### **32 NOTICES**

- 32.1 Any notice from one party to the other under or in connection with this Contract shall be:
- 32.1.1 in writing; and
  - 32.1.2 signed on behalf of the party giving it, marked for the attention of the representative of the receiving party as set out in the Award Letter, or as otherwise notified by either party to the other party from time to time; and

## CONTROLLED

32.1.3 sent by a delivery method listed in clause 32.2.

32.2 The table below sets out the delivery methods by which a notice (or any other communication) in connection with this Contract may be sent as well as the corresponding dates and times of deemed delivery that shall apply:

Delivery Method	Deemed Delivery
By hand	On signature of a delivery receipt
By pre-paid first class post, recorded delivery or other next Working Day delivery service	At 09:00 on the second Working Day after posting

32.3 This clause 32 does not apply to the service of proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

32.4 For the purpose of this clause 32, "writing" shall not include email.

### 33 DISPUTE RESOLUTION

33.1 Where a dispute arises in connection with this Contract, a senior representative of each of the parties shall meet as soon as practicable after such dispute arises or a dispute is anticipated, and each party shall use its reasonable endeavours to resolve that dispute or anticipated dispute as soon as possible and in any event within ten (10) Working Days (or such other period as may be agreed in writing by the parties) of such dispute arising or of such anticipated dispute becoming expected.

33.2 In the event that the senior representatives fail to settle the dispute, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution Model Mediation Procedure.

33.3 Neither party shall commence court proceedings or arbitration in relation to any dispute arising pursuant to this Contract until it has attempted to settle the dispute by mediation and either:

33.3.1 the mediation has concluded or been terminated; or

33.3.2 the other party has failed to participate in the mediation,

provided always that the right to issue proceedings shall not be prejudiced by such delay.

33.4 Each party shall bear its own costs in relation to the reference to the mediator and the mediator's fees and any costs properly incurred by him shall be borne by the parties equally.

33.5 If the dispute cannot be resolved by the parties pursuant to clauses 33.1 and, 33.2, then before the Contractor may commence any court proceedings, it shall serve written notice on the Council of its intention and the Council shall have fifteen (15) Working Days from receipt of the Contractor's notice in which to reply requiring the dispute to be referred to arbitration in accordance with the provisions of this clause.

## CONTROLLED

33.6 In its notice to the Council pursuant to clause 33.5, the Contractor may request that the dispute is referred to arbitration, to which the Council may, in its sole discretion consent.

33.7 If:

33.7.1 the Council requires the dispute to be referred to arbitration in accordance with clause 33.5; or

33.7.2 the Council consents to the Contractor's request to refer the dispute to arbitration in accordance with clause 33.6,

the dispute shall be referred to arbitration, and the parties shall comply with the following provisions:

- i. the arbitration shall be governed by the provisions of the Arbitration Act 1996 and the London Court of International Arbitration ("**LCIA**") procedural rules shall be applied and are deemed to be incorporated into this Contract (save that in the event of any conflict between those rules and this Contract, this Contract shall prevail);
- ii. the decision of the arbitrator shall be binding on the parties (in the absence of any material failure by the arbitrator to comply with the LCIA procedural rules);
- iii. the tribunal shall consist of a sole arbitrator to be agreed by the parties and in the event that the parties fail to agree the appointment of the arbitrator within ten (10) Working Days, or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA, ; and
- iv. the arbitration proceedings shall take place in London, England.

33.8 Nothing in this clause 33 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.

## 34 AUDIT

34.1 Without prejudice to clause 26.7 (Data Protection audit), the Council shall be entitled to carry out audits to determine whether the Contractor has performed its obligations under this Contract. For this purpose, the Contractor grants to the Council, its statutory auditors or any authorised agents of the Council, a right of reasonable access to any premises of the Contractor which are used in connection with the performance of the Contractor's responsibilities and obligations under this Contract. Such access shall include a right to access to all computer systems, personnel and financial records, minute books and any other relevant evidence (including obtaining relevant copies).

34.2 The Contractor shall afford the Council, its auditors or agents all co-operation and assistance reasonably required for the purposes of carrying out an audit of the Contractor's compliance with this Contract.

## 35 MEETINGS

35.1 Unless agreed otherwise by the Council, the parties shall conduct quarterly review meetings, either face to face or by telephone conference, which shall commence one month after the Commencement Date (or such other

## CONTROLLED

frequency as may be agreed between the parties) where the parties shall discuss the operation of this Contract, and, in particular, the on-going relationship between the parties.

- 35.2 For the avoidance of doubt in this clause 35, the Contractor, at its cost, shall be responsible for the arrangement and administration of the quarterly review meetings.

### **36 SAFEGUARDING CHILDREN AND VULNERABLE ADULTS (IF APPLICABLE)**

- 36.1 The parties acknowledge that the Contractor is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
- 36.2 The Contractor shall:
- 36.2.1 ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service ("DBS"); and
  - 36.2.2 monitor the level and validity of the checks under this clause 36 for each member of staff; and
  - 36.2.3 not employ, or use the services of, any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity, or who may otherwise present a risk to service users.
- 36.3 The Contractor warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is, or will be employed, or engaged by the Contractor in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 36.4 The Contractor shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 36 have been met.
- 36.5 The Contractor shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to the service users.

### **37 CONFLICT OF INTEREST**

- 37.1 The Contractor acknowledges and agrees that no conflict of interest exists between the Contractor and or any Sub-Contractor and the Council at the Commencement Date. In the event that the Contractor becomes aware of a conflict of interest between its own interests or those of a Sub-Contractor and the Council, it shall notify the Council of the full details of any such conflict of interest immediately.
- 37.2 The Council reserves the right to terminate this Contract immediately by notice in writing and/or take such steps as it shall deem necessary should it become



## CONTROLLED

aware of a conflict of interest between itself and the Contractor or Sub-Contractor.

### **38 ASSIGNMENT/NOVATION**

- 38.1 The Contractor shall not assign, novate, or otherwise transfer its rights and obligations under this Contract in whole or in part except with the prior written consent of the Council.
- 38.2 The Council may assign, novate or otherwise transfer its rights and obligations under this Contract in whole or in part at its sole discretion.

### **39 ENTIRE AGREEMENT**

- 39.1 This Agreement constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it and supersedes any previous agreement between the parties.

### **40 THIRD PARTY RIGHTS**

- 40.1 No term of this Contract is enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Contract.

### **41 SEVERABILITY**

- 41.1 If any term, condition or provision of this Contract shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this Contract.

### **42 CHANGE CONTROL**

- 42.1 If either party wishes to change the scope of the Services, that party shall submit details of the requested change to the other Party in writing.
- 42.2 If the Council requests a change to the scope of the Services, the Contractor shall, within a reasonable time (and in any event not more than five (5) Working Days after receipt of the Council's request), and without further charge to the Council, provide a written estimate to the Council of:
  - 42.2.1 the likely time required to implement the change;
  - 42.2.2 any necessary variations to the Price as a result of the change;
  - 42.2.3 the likely effect of the change on the Services; and
  - 42.2.4 any other impact of the change on the terms of this Contract.
- 42.3 If the Council does not wish to proceed with a change to the scope of the Services, there shall be no change to the Services or this Contract.
- 42.4 If the Council wishes the Contractor to proceed with the change, the Contractor shall do so after agreement on the necessary variations to its Price (if any), the Services and any other relevant terms of this Contract to take account of the change.
- 42.5 If the Contractor requests a change to the scope of the Services, the Council shall not unreasonably withhold or delay consent to it. If the Council wishes the Contractor to proceed with the change, the Contractor shall do so.

## CONTROLLED

- 42.6 Unless the Contractor's request was attributable to the Council's non-compliance with the Council's obligations under this Contract, neither the Price, the Services, nor any other terms of this Contract shall vary as a result of such change.

### **43 GOVERNING LAW AND JURISDICTION**

- 43.1 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.
- 43.2 Each party irrevocably agrees that the Courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).