

## Purchase of Goods and/or Services

### Standard Terms and Conditions

#### 1. Basis of Contract

- 1.1 These standard terms and conditions, including any appendices to them ("**Conditions**"):
- (a) govern the purchase of the Goods, Services and/or Works, together with any Deliverables, ("**Supply**") described in the Council's purchase order form, including any description, specification or stipulation attached to or otherwise referenced in the purchase order form ("**Order**");
  - (b) apply to the exclusion of any and all terms and conditions that the Supplier may seek to impose or incorporate, whether in any Quotation or otherwise, or which are expressed or implied by trade, custom, practice, course of dealing; and
  - (c) in the case of any conflict, ambiguity or dispute as to meaning and application, prevail over any conflicting provisions of the Order.
- 1.2 Accordingly, the Order constitutes an offer by the Council for the Supply in accordance with these Conditions and the offer shall be deemed to be accepted by the Supplier exclusively on the terms of these Conditions on the earlier of:
- (a) the Supplier issuing written acceptance of the Order, or
  - (b) signature by both parties as required in the Order, or
  - (c) any act of the Supplier consistent with fulfilling or the intention to fulfil the Order, at which point and on which date a contract, comprised of the Order and these Conditions, ("**Contract**") for the Supply shall come into existence.
- 1.3 All of these Conditions shall apply to the Contract unless otherwise specified and as well as to any original Supply shall extend to any substituted or remedial Services and/or repaired or replacement Goods supplied by the Supplier.
- 1.4 The Contract is the sole and entire contract between the parties for the Supply and, save as expressly provided, supersedes all prior negotiations, submissions, representations or undertakings in respect of the Supply.

#### 2. Definitions and Interpretation

- 2.1 In addition to the terms defined in Condition 1:

**"Business Day"** means a day (other than a Saturday, Sunday or a public holiday) when the Council's principal offices are open for business;

**"Commencement Date"** means the earlier of the date on which the Supply commences or the date on which the first of any obligations

required by the Contract to be performed prior to the Supply commences unless and as the parties otherwise agree in writing;

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

**“Correction Period”** means the period, if any, stipulated in the Contract immediately following practical completion of the Works within which the Supplier is required to remedy any Defect;

**“Council”** means Cambridge City Council , Guildhall Market Square Cambridge CB2 3QJ ;

**“Council Materials”** means all materials, equipment and tools, drawings, specifications and data supplied by the Council to the Supplier for the purpose of providing the Supply;

**“Data Protection Legislation” (“DPL”)** means the UK General Data Protection Regulation , the Data Protection Act 2018 (and regulations made thereunder) or any successor UK legislation, and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data; (including without limitation the privacy of electronic communications);

**“Controller”, “Processor”, “Data Subject”, “Personal Data”, “Data Breach”, “processing” and “appropriate technical and organisational measures”** shall take the meaning given in the DPL;

<b>“Date of Delivery”</b>	means that date by which the Goods must be Delivered to the Council, as specified in the Contract;
<b>“Defect”</b>	means any defect, shrinkage or other fault whereby Works are not in accordance with the specification or, where no such specification is made, in accordance with good industry practice and to the Council’s reasonable satisfaction;
<b>“Deliverables”</b>	means all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Supply in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);
<b>“Deliver”</b>	means hand over the Goods to the Council at the address and on the date specified in the Contract, which shall include unloading and any other specific arrangements agreed in accordance with these Conditions. <b>“Delivered”</b> and <b>“Delivery”</b> shall be construed accordingly;
<b>“Force Majeure Event”</b>	means the occurrence after the Contract is entered into but before it expires or is terminated of: <ul style="list-style-type: none"> <li>(i) war, civil war, armed conflict or terrorism; or</li> <li>(ii) nuclear, radioactive, chemical or biological explosion or contamination unless the source or cause of the explosion or contamination is the result of the action of the Supplier; or</li> <li>(iii) fire, explosion, storm, riot and civil commotion, tempest, flood, volcanic eruption or earthquake, pandemic or epidemic;</li> <li>(iv) pressure waves caused by devices travelling at sonic or supersonic speeds; or</li> <li>(v) any other act, omission, event or accident outside the reasonable control of the party;</li> </ul> <p>which directly causes either party to be prevented from or delayed in complying with all or a material part of its obligations under the Contract;</p>

<b>“Goods”</b>	means the goods to be supplied by the Supplier to the Council under the Contract;
<b>“IPRs”</b>	means all patents, rights to inventions, utility models, copyright and related rights, trademarks, 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 designs, rights in computer software, database right, topography 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>“Living Wage”</b>	Living Wage as defined by the Living Wage Foundation. Charity No. 1107264;
<b>“Normal Working Hours”</b>	means 08.00 to 17.30 on all Business Days;
<b>“Quotation”</b>	means the Supplier’s quotation, if any, to provide the Supply;
<b>“Prohibited Act”</b>	means: <ul style="list-style-type: none"> <li>(a) directly or indirectly offering, promising or giving any elected member of the Council or any person working for or engaged by the Council a financial or other advantage to induce that person to perform improperly a relevant function or activity or rewarding that person for improper performance of a relevant function or activity;</li> <li>(b) directly or indirectly requesting, agreeing to receive or accepting any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;</li> <li>(c) committing any offence under the Bribery Act 2010;</li> </ul>

- (d) committing any offence under section 117(2) of the Local Government Act 1972;
- (e) committing any offence of fraud;
- (f) defrauding, attempting to defraud or conspiring to defraud the Council;

**“Services”** means the services to be supplied by the Supplier to the Council under the Contract;

**“Specification”** means the description of the Council’s requirement for the Supply as set out or referred to in the Order;

**“Supplier”** means the party to whom the Order is addressed or, if different, by whom the Order is accepted, including any employee, worker, agent or subcontractor through whom it acts in the course of fulfilling its obligations under the Contract;

**“Works”** means the works to be performed by the Supplier for the Council under the Contract.

## 2.2 In these Conditions:

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa and words importing the masculine include the feminine and the neuter;
- (b) reference to a Condition is a reference to the whole of that Condition and reference to an Appendix is a reference to an Appendix to these Conditions unless stated otherwise;
- (c) reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (d) reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (e) the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
- (f) headings are included for ease of reference only and shall not affect the interpretation or construction of these Conditions.

## 3. Goods

- 3.1 Where the Supply consists of or includes the provision of Goods, the Supplier shall ensure that the Goods:
- (a) 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 Supplier) supplied by, or on behalf of, the Supplier;
  - (b) are free from defects (manifest or latent) in design, materials and workmanship and remain so for 12 months after Delivery;
  - (c) are of satisfactory quality (within the meaning of the Consumer Rights Act 2015) and comply with any applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;
  - (d) are fit for any purpose held out by the Supplier or made known to the Supplier by the Council expressly or by implication, and in this respect the Council relies on the Supplier's skill and judgement.
- 3.2 The Supplier shall Deliver the Goods to the Council on or by the relevant Date of Delivery. Unless otherwise agreed in writing by the Council, Delivery shall be on the date and to the address specified in the Contract. Delivery of the Goods shall be completed once the completion of unloading the Goods from the transporting vehicle at the Delivery address has taken place and the Council has signed for the Delivery.
- 3.3 The Supplier shall not Deliver Goods in instalments without the Council's prior written consent. Where it is agreed that Goods are Delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to Deliver any one instalment on time or at all or any defect in an instalment shall entitle the Council to the remedies set out in Condition 3.7.
- 3.4 Any access to the Council's premises and any labour and equipment that may be provided by the Council in connection with Delivery of Goods shall be provided without acceptance by the Council of any liability in respect of any actions, claims, costs and expenses incurred by third parties for any loss or damages to the extent that such loss or damage is not attributable to the negligence or other wrongful act of the Council or its servant or agent. The Supplier shall indemnify the Council in respect of any actions, suits, claims, demands, losses, charges, costs and expenses, which the Council may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of Delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Supplier or any of his sub-Suppliers.

- 3.5 Delivery of the Goods shall be accompanied by a delivery note which shows the Purchase Order number and the type and quantity of the Goods and, in the case of part Delivery, the outstanding balance remaining to be Delivered. Any packaging material the Supplier requires to be returned to it by the Council shall be clearly identified on the delivery note and shall be returnable only at the cost of the Supplier.
- 3.6 Unless otherwise expressly stipulated by the Council in the Contract, Deliveries shall only be accepted by the Council on Business Days and during Normal Working Hours.
- 3.7 Where (i) the Supplier fails to Deliver the Goods or part of the Goods or (ii) the Goods or part of the Goods do not comply with the provisions of Condition 3.1, then without limiting any of its other rights or remedies implied by statute or common law, the Council shall be entitled:
- (a) to terminate the Contract or the Contract as it relates to the Goods in question;
  - (b) request the Supplier, free of charge and within 14 days, to deliver substitute Goods within the timescales specified by the Council;
  - (c) to require the Supplier, free of charge and within 14 days, to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
  - (d) to reject the Goods (in whole or part) and return them to the Supplier at the Supplier's own risk and expense and the Council shall be entitled to a full refund within 14 days on those Goods or part of Goods duly returned;
  - (e) to buy the same or similar Goods from another supplier;
  - (f) to recover any expenses incurred in respect of buying the Goods from another supplier which shall include but not be limited to administration costs, chargeable staff time and extra delivery costs; and/or
  - (g) to claim damages for any additional costs, loss or expenses incurred by the Council arising from the Supplier's failure to supply Goods in accordance with Condition 3.1.
- 3.8 Without prejudice to any other rights or remedies of the Council, title and risk in the Goods (or such part of them) shall pass to the Council when Delivery of the Goods (or such part of them) is complete (including off-loading and stacking).
- 3.9 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.
- 3.10 Without prejudice to the generality of the foregoing Condition 3.9, the Council shall pay such price or that part of the price for those Goods that 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 Supplier has purchased to fulfil the order for the Goods and which cannot be used for other orders or be returned to the supplier 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.

#### **4. Services**

4.1 The Supplier shall from the Commencement Date and for the duration of the Contract provide the Services to the Council in accordance with the terms of the Contract.

4.2 The Supplier shall meet any performance dates for the Services specified in the Order or notified to the Supplier by the Council.

4.3 In providing the Services, the Supplier shall:

- (a) perform them with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- (b) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
- (c) ensure that the Services and any Deliverables will conform with all descriptions and specifications set out in the Order, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Council;
- (d) provide all equipment, tools and vehicles and such other items as are required to provide services;
- (e) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used or transferred to the Council, will be free from defects in workmanship, installation and design;
- (f) obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
- (g) observe all health and safety rules and regulations and any other security requirements that apply at any of the Council's premises; and
- (h) hold all the Council Materials in safe custody at its own risk, maintain the Council Materials in good condition until returned to the Council, and not dispose or use the Council Materials other than in accordance with the Council's written instructions or authorisation.

#### **5. Works**

5.1 The Supplier shall:

- (a) carry out Works in a proper and workmanlike manner all applicable law, good industry practice and in a manner that is not likely to cause damage to property or be injurious to people;



- (b) use such materials and/or such quality of materials as shall be specified in the Contract or, where no such specification is made, as shall be in accordance with good industry practice and to the Council's reasonable satisfaction;
- (c) comply with all health & safety requirements in relation to the Works as laid down in applicable law and ensure at all times that the personnel performing the Works have a safe system of work;
- (d) co-operate with the Council and the Council's contractors and agents in the obtaining and sharing of information or the co-ordination and timing of activities in connection with the Works;
- (e) comply with the Council's instructions;
- (f) unless and save as expressly provided for in the Contract or as agreed in writing by the Council, carry out the Works during Normal Working Hours on Business Days.

5.2 Throughout the progress of such Works, the site of the Works shall be in the Supplier's control and the Supplier shall keep the site in an orderly state and shall provide and maintain at its own cost all necessary lights, guards, fencing and warning signs for the protection of the works and the safety and convenience of the public.

5.3 The Supplier be responsible for the storage, treatment (if any) and disposal of all waste created by or arising out of Works and shall provide the Council, on request, with all information relating to the same. Without prejudice to any other provision in the Contract, the Supplier shall comply with and obtain all permits, consents and licences required under law relating to waste management.

5.4 The Supplier will promptly notify practical completion of the Works to the Council and following inspection of the Works by or on behalf of the Council within the Correction Period or (where no Correction Period is stipulated) as soon as practicable, or otherwise within such timescale as is agreed with the Council, at its own expense make good any Defects notified to it by the Council and notify the Council forthwith upon having done so.

## **6. General**

6.1 The Supplier shall co-operate with the Council in all matters relating to the Contract or the Supply, including any Delivery, and comply with all the Council's instructions.

6.2 At its own expense, the Supplier shall provide the Council with such reports, summaries and other information in relation to the Supply or the Contract and with such frequency or at such intervals as is set out in the Order.

6.3 The Supplier shall pay and ensure that its sub-contractors pay at least the Living Wage (as defined by the Living Wage Foundation) to all Personnel who work on Cambridge City Council

premises (or land maintained by the Council) for two hours or more on any day of the week for eight or more consecutive weeks and provide evidence of its compliance with such on written request by the Council.

6.4 Insofar as this Contract involves the Supplier in Processing Data within the meaning of the DPL the Supplier shall:

(a) process Personal Data only on the written instructions of the Council unless the Supplier is required by applicable UK law to otherwise process that personal data (and if so required promptly notify the Council of the requirement);

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

(c) ensure all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

(d) not transfer any Personal Data outside of the UK unless the prior written consent of the Council has been obtained and the following conditions are fulfilled: (i) the Council or the Supplier has provided appropriate safeguards in relation to the transfer; (ii) the data subject has enforceable rights and remedies; (iii) the Supplier complies with its obligations under the DPL by providing an adequate level of protection to any Personal Data that is transferred; and (iv) the Supplier complies with reasonable instructions notified to it in advance by the Council with respect to the processing of Personal Data.

6.5 The Supplier shall:

(a) assist the Council in responding to any request from a Data Subject and ensuring compliance with all DPL obligations;

(b) notify the Council on becoming aware of a Personal Data breach;

(c) at the written direction of the Council, delete or return Personal Data and copies thereof to the Council on termination of the Contract unless required by applicable UK law to store the Personal Data; and

- (d) maintain complete and accurate records to demonstrate its compliance with this clause 6.5 and make such records available to the Council (including but not limited to its auditors) promptly upon the Council's written request.
- 6.6 The Supplier will not appoint any third party processor of Personal Data under this Contract without the prior written consent of the Council.
- 6.7 Where the Council has provided its written consent to the Supplier appointing a third party processor of Personal Data under this Contract, the Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor, into a written agreement incorporating terms which are substantially similar to those set out in these clauses 6.4 to clause 6.6, and which the Supplier undertakes reflect and will continue to reflect the requirements of the Data Protection Legislation.
- 6.8 As between the Council and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it in relation to this Contract.
- 6.9 The Supplier shall comply with the data protection obligations set out in the Data Protection processing table attached hereto at Appendix 1 or otherwise issued by the Council to the Supplier.
- 6.10 The Supplier shall inform the Council of any application for information it receives pursuant to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 within 2 Business Days of receipt and shall promptly assist and cooperate with the Council to enable the Council to comply with its disclosure obligations in respect of such information.
- 6.11 The Supplier shall adopt a policy to comply with the requirements of the Equality Act 2010 ("the Act") and all statutory provisions subsidiary to that Act and shall take all reasonable steps to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Act and, further, shall seek to promote equality among its personnel and generally. The Supplier shall set out its equal opportunities policy in instructions to those concerned with recruitment, training or promotion, in documents available to its personnel and recognised trade unions or other representative groups of its personnel and in its advertisements and literature. The Supplier shall take all reasonable steps to ensure that its personnel engaged in the provision of the Supply comply with the requirements of the Act when dealing with Council customers, Council personnel or members of the public.
- 7. Council's Obligations**
- 7.1 The Council shall provide the Supplier with reasonable access at reasonable times to the Council's premises for the purpose of providing the Supply.

7.2 As soon as practicable, or within such other timescale as may be agreed with the Supplier, following receipt of notification from the Supplier of the practical completion of Works and having due regard to the Correction Period, if any, the Council will inspect the Works and notify the Supplier of any Defects.

## **8. Charges and Payment**

8.1 The price for the Supply:

- (a) shall be the price set out in the Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the Commencement Date; and
- (b) shall be inclusive of the costs of packaging, insurance, carriage and delivery of the Goods, unless otherwise agreed in writing by the Council. No extra charges shall be effective unless agreed in writing and signed by the Council.

8.2 In respect of Goods, the Supplier shall invoice the Council on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Council on completion of them. In respect of Works, the Supplier shall invoice the Council once the Works have been notified to the Council as practically completed and any Defects notified by the Council following inspection following practical completion have been made good. Each invoice shall include such supporting information required by the Council to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.

8.3 In consideration of the Supply, the Council shall pay each valid invoice, subject to any permissible deductions and together with Value Added Tax at the appropriate rate, within 30 days of receipt.

## **9. Title and IPR**

9.1 In respect of items transferred to the Council as part of the Supply, including without limitation Goods or Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Council, it will have full and unrestricted rights to sell and transfer all such items to the Council.

9.2 The Supplier assigns to the Council, with full title guarantee and free from all third-party rights, all IPR in the products of Services, including for the avoidance of doubt the Deliverables.

9.3 The Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.

9.4 The Supplier shall, promptly at the Council's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Council may from

time to time require for the purpose of securing for the Council the full benefit of the Contract, including all right, title and interest in and to the IPR assigned to the Council.

9.5 All Council Materials are the exclusive property of the Council.

## **10. Confidentiality**

10.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each party will:

(a) treat the other party's Confidential Information as confidential and safeguard it accordingly;

(b) not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

10.2 Clause 10.1 will not apply to the extent that:

(a) such disclosure is a requirement of law placed upon the party making the disclosure including but not limited to any requirement for disclosure under the Freedom of Information Act 2000 and / or the Environmental Information Regulations 2004;

(b) such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

(c) such information was obtained from a third party without obligation of confidentiality;

(d) such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract.

10.3 The Supplier may only disclose the Council's Confidential Information to:

(a) the personnel directly involved in the provision of the Services or Works and who need to know the information;

(b) will ensure that such personnel are aware of and will comply with these obligations as to confidentiality;

10.4 The Supplier will not, and will procure that its personnel do not, use any of the Council's Confidential Information otherwise than for the purposes of the Contract.

10.5 In discharging its obligations under this clause 10, the Supplier will observe all further or particularised requirements in respect of confidentiality as are set out in the Specification and/or Purchase Order.

## **11. Indemnity and Insurance**

11.1 The Supplier shall be liable for and shall indemnify and keep indemnified the Council against all liabilities, actions, damages, costs, losses, claims, expenses, demands and proceedings whatsoever either arising directly from the breach by the Supplier of any of its obligations

under the Contract or which the Supplier ought reasonably to have foreseen as being the probable result of its breach of any of its obligations under the Contract.

11.2 For the duration of the Contract the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract and shall, on the Council's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

11.3 This clause 11 shall survive termination or expiry of the Contract.

## **12. Termination**

12.1 The Council may terminate this Contract at any time by giving the Supplier not less than one month's notice in writing.

12.2 If the Supplier commits a material breach of any of its obligations under the Contract, the Council may give the Supplier not less than 10 Business Days' notice to remedy the breach. If the breach is not remedied within that time, or if the breach is not capable of remedy, the Council may terminate the Contract by giving the Supplier not less than 10 Business Days' notice in writing.

12.3 The Council may terminate the Contract immediately by giving the Supplier notice in writing if:

- (a) the Supplier becomes bankrupt or insolvent, is in circumstances which entitle the Court or a creditor to appoint or have appointed a receiver, manager or administrative receiver, has a provisional liquidator appointed or has a winding-up order made; and/or
- (b) the Supplier (or anyone acting on behalf of the Supplier, with or without the Supplier's knowledge) commits any Prohibited Act in connection with the Contract or the Council.

12.4 If the Supplier fails to perform or (in the reasonable opinion of the Council) inadequately performs the Supply by the applicable date, the Council shall, without limiting its other rights or remedies, have one or more of the following rights:

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to refuse to accept any subsequent performance of the Supply which the Supplier attempts to make;
- (c) to recover from the Supplier any costs incurred by the Council in obtaining substitute goods, services and/or works from a third party;

- (d) where the Council has paid for Goods, Services or Works that have not been Delivered, provided, performed or made good by the Supplier, to have such sums refunded within 14 days by the Supplier; and
- (e) to claim damages for any additional costs, loss or expenses incurred by the Council which are in any way attributable to the Supplier's failure to meet such dates.

**13. Consequences of Termination**

13.1 On termination of the Contract or any part of it for any reason:

- (a) the Supplier shall immediately deliver to the Council all Deliverables, whether or not then complete, and return all Council Materials. If the Supplier fails to do so, then the Council may without limiting its other rights or remedies enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract;
- (b) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and
- (c) Conditions which expressly or by implication have effect after termination shall continue in full force and effect.

**14. Dispute Resolution**

14.1 Any dispute arising out of the Contract shall be referred for resolution first to a Director of the Council and an equivalent director of the Supplier. If the dispute cannot be resolved by those two persons within 10 Business Days of referral (or within such further period agreed by the parties), then the dispute shall be referred for resolution to a mediator or arbitrator that both parties agree is suitable, or where agreement cannot be reached, to the Centre for Effective Dispute Resolution (CEDR) where upon the parties agree to enter into mediation in good faith to settle the dispute and will do so in accordance with the CEDR Model Mediation Procedure.

14.2 No party may commence any court proceedings in relation to the whole or part of the dispute until 30 days after service of the Alternative Dispute Resolution (ADR) notice, provided that the right to issue proceedings is not prejudiced by such delay. If the dispute is not resolved within 30 days after service of the ADR notice, or either party fails to participate or ceases to participate in the mediation before the end of that 30 day period, or the mediation terminates before the end of that 30 day period, the dispute shall be resolved by the courts of England and Wales in accordance with clause 15.7 of the Contract. Nothing in this dispute resolution procedure will prevent the parties from seeking from any court of competent jurisdiction an

interim order restraining the other party from doing any act or compelling the other party to do any act.

## **15. Miscellaneous**

### **15.1 Force Majeure**

- (a) Neither party shall be considered in breach of its obligations under the Contract, or be responsible for any delay in the performance of such obligations, if such performance is prevented or delayed wholly or in material part as a direct or indirect consequence of a Force Majeure Event.
- (b) If the performance any party's obligations under this Contract is, in the reasonable opinion of that party, delayed or affected by a Force Majeure Event, then that party shall promptly notify the other party in writing, giving details of the Force Majeure Event and, in so far as it can be reasonably ascertained, the anticipated length of delay.
- (c) If the Force Majeure Event shall, or if it is reasonably anticipated at any time that the Force Majeure Event shall, subsist for a period of 30 days or more, then either party may terminate the Contract on written notice to the other.

### **15.2 Assignment and subcontracting**

- (a) The Supplier shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Council.
- (b) The Council may at any time assign, transfer, charge, subcontract, or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

### **15.3 Notices**

Any formal demand, notice or other communication required to be given pursuant to this Contract shall be sufficiently served if sent by recorded delivery post (or equivalent) (but not facsimile transmission) to the relevant address of the party to be served and, if so sent, shall (subject to proof to the contrary) be deemed to have been received by the addressee (in the case of transmission by post) on the second Business Day after the date of posting or on the first Business Day after confirmed transmission, as the case may be. Any formal demand, notice or other communication required to be given pursuant to this Contract may be sent by email provided it sent to the email address noted in the Order.



15.4 Severance

If any provision of this Contract shall become or shall be declared by any Court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity or unenforceability shall in no way impair or affect any other provision, all of which shall remain in full force and effect.

15.5 Third parties

A person who is not a party to the Contract shall not have any rights under or in connection with it.

15.6 Variation

Any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Council.

15.7 Governing law and jurisdiction

The Contract shall be governed by the laws of England and subject to the exclusive jurisdiction of the Courts of England.

15.8 Survival of the Contract

Insofar as any of the rights and obligations of the parties in the Contract shall or may be exercised after expiry or determination of the Contract, the provisions of the Contract conferring such rights and powers shall survive and remain in full force and effect notwithstanding such expiry or determination.

**APPENDIX 1 - DATA PROTECTION**

- 1.1 The provisions of this Appendix I shall apply during the term of the Contract and indefinitely after its expiry.

Processing Personal Data and Data Subjects

1. The Supplier shall comply with any further written instructions with respect to processing by the Council.
2. Any such instructions shall be incorporated into this Appendix.

Description	Details
Subject matter of the processing	<i>(this should be a high level short description of what the processing is about i.e. its subject matter)</i>

Duration of the processing	<i>(clearly set out the duration of the processing including details)</i>
Nature and purposes of the processing	<i>(please be as specific as possible but make sure you cover all intended purposes, the nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaption or alteration, retrieval, consultation, use disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc the purpose might include employment processing, statutory obligation, recruitment, assessment etc)</i>
Type of Personal Data	<i>(examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc)</i>
Categories of Data Subject	<i>(examples include: staff, (including volunteers, agents and temporary workers), customers, clients, suppliers, patients, students, pupils, members of the public, users of a particular website etc)</i>
Plan for Return	<i>(describe how long the data will be retained for, how it will be returned or destroyed)</i>