



THE EAST RIDING OF YORKSHIRE COUNCIL

STANDARD TERMS AND CONDITIONS

FOR THE SUPPLY OF GOODS AND/OR SERVICES

*[Please note these terms and conditions shall apply following a request for quotation and to orders for good and services placed by the Council via a purchase order up to a value of £75,000.]*

1. INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply:

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

“Commencement Date” has the meaning set out in clause 2.2.

“Conditions” these terms and conditions as amended from time to time in accordance with clause 16.7.

“Contract” the contract between the Council and the Supplier for the supply of Goods and/or Services in accordance with these Conditions.

“Council” the East Riding of Yorkshire Council.

“Council Materials” has the meaning set out in clause 5.3.9.

“Deliverables” all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

“Goods” the goods (or any part of them) as set out in the Order.

“Goods Specification” any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Council and the Supplier.

“Intellectual Property Rights” patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsists or will subsist now or in the future in any part of the world.

“Order” the Council’s order for the supply of Goods and/or Services, as set out in the Council’s purchase order form.

“Services” the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.

“Service Specification” the description or specification for Services agreed in writing by the Council and the Supplier.

“Supplier” the person, or firm from whom the Council purchases the Goods and/or Services.

1.2 In these Conditions, the following rules apply:



- 1.2.1 a "person" includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality);
- 1.2.2 a reference to a party includes its personal representatives, successors or permitted assigns;
- 1.2.3 a reference to a statutory or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.2.4 any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- 1.2.5 a reference to writing or written includes faxes and emails.

## **2. BASIS OF CONTRACT**

- 2.1 The Order constitutes an offer by the Council to purchase Goods and/or Services from the Supplier in accordance with these Conditions.
- 2.2 The Order shall be deemed to be accepted on the earlier of:
  - 2.2.1 the Supplier issuing written acceptance of the Order; or
  - 2.2.2 any act by the Supplier consistent with fulfilling the Order, at which point and on which date the contract shall come into existence ("Commencement Date").
- 2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.4 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

## **3. SUPPLY OF GOODS**

- 3.1 The Supplier shall ensure that the Goods shall:
  - 3.1.1 correspond with their description and any applicable Goods Specification;
  - 3.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1970) and fit for any purpose held out by the Supplier or made known to the Supplier by the Council, expressly or by implication, and in this respect the Council relies on the Supplier's skill and judgement;
  - 3.1.3 where applicable, be free from defects in design, materials and workmanship and remain so for a minimum of (18) eighteen months after delivery; and
  - 3.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 3.2 The Supplier shall ensure that all time it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the contract in respect of the Goods.
- 3.3 The Council shall have the right to inspect and test the Goods at any time before delivery.
- 3.4 If following such inspection or testing the Council considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1, the Council shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 3.5 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract and the Council shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

## **4. DELIVERY OF GOODS**



- 4.1 The Supplier shall ensure that:
- 4.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- 4.1.2 each delivery of the Goods is accompanied by a delivery note which shows the date of the order, the order number, the type and quantity of the Goods (including the code number of the Goods (where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 4.2 The Supplier shall deliver the Goods:
- 4.2.1 on the date specified in the Order or, if no such date is specified, within seven days of the date of the Order;
- 4.2.2 to the Council's premises at County Hall, Beverley, East Yorkshire, HU17 9BA or such other location as is set out in the Order or as instructed by the Council before delivery ("Delivery Location");
- 4.2.3 during the Council's normal hours of business on a Business Day, or as instructed by the Council.
- 4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 4.4 The Council shall not be deemed to have accepted any Goods and/or Services until the Council has had a reasonable time to inspect or test them following delivery.
- 4.5 If the Supplier:
- 4.5.1 delivers less than 95 per cent of the quantity of Goods ordered, the Council may reject the Goods; or
- 4.5.2 delivers more than 105 per cent of the quantity of Goods ordered, the Council may at its sole discretion reject the Goods or the excess Goods, and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and the Council accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.
- 4.6 The Supplier shall not deliver the Goods in instalments without the Council's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, a 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 clause 6.1.
- 4.7 Title and risk in the Goods shall pass to the Council on completion of delivery and formal acceptance by the Council.

## 5. SUPPLY OF SERVICES

- 5.1 The Supplier shall from the date set out in the Order and for the duration of this Contract provide the Services to the Council in accordance with the terms of the Contract.
- 5.2 The Supplier shall meet any performance dates for the Services specified in the Order or notified to the Supplier by the Council.
- 5.3 In providing the Services, Supplier shall:
- 5.3.1 co-operate with the Council in all matters relating to the Services, and comply with all instructions of the Council;
- 5.3.2 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- 5.3.3 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, and shall where the Supplier is a Regulated Activity Provider under the Safeguarding Vulnerable Groups Act 2006 (including any subsequent re-enactment), ensure that valid disclosure checks are undertaken through the Disclosure and Barring Service for those



personnel engaged by the Supplier for the provision of Services who shall in performing the Services come into contact with children or vulnerable adults;

- 5.3.4 ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Council;
- 5.3.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- 5.3.6 use the best quality goods, materials, standards and techniques, and ensure the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Council, will be free from defects in workmanship, installation and design;
- 5.3.7 obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
- 5.3.8 observe all health and safety rules and regulations and any other security requirements that apply at any of the Council's premises;
- 5.3.9 hold all materials, equipment and tools, drawings, specifications and data supplied by the Council to the Supplier ("Council Materials") in safe custody at its own risk, maintain the Council Materials in good condition until returned to the Council, and not dispose or use the Council Materials other than in accordance with the Council's written instructions or authorisation; and
- 5.3.10 not do or omit to do anything which may cause the Council to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Council may rely or act on the Services.

## 6. COUNCIL REMEDIES

- 6.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, the Council shall, without limiting its other rights or remedies, have one or more of the following rights:
  - 6.1.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
  - 6.1.2 to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
  - 6.1.3 to recover from the Supplier any costs incurred by the Council in obtaining substitute goods and/or services from a third party;
  - 6.1.4 where the Council has paid in advance for Services that have not been provided by the Supplier and/or Goods which have not been delivered by the Supplier, to have such sums refunded by the Supplier within (7) seven days of written request by the Council; and
  - 6.1.5 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.
- 6.2 If the Supplier has delivered Goods that do not comply with the undertakings set out in the clause 3.1, then, without limiting its other rights or remedies, the Council shall have one or more of the following rights, whether or not it has accepted the Goods:
  - 6.2.1 to reject the Goods (in whole or in part) whether or not the title has passed and to return them to the Supplier at the Supplier's own risk and expense;
  - 6.2.2 to terminate the Contract with immediate effect by giving written notice to the Supplier;



- 6.2.3 to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- 6.2.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- 6.2.5 to recover from the Supplier any expenditure incurred by the Council in obtaining substitute goods from a third party; and
- 6.2.6 to claim damages for any additional costs, loss or expenses incurred by the Council arising from the Supplier's failure to supply Goods in accordance with clause 3.1.

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

6.4 The Council's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

## 7. COUNCIL'S OBLIGATIONS

7.1 The Council shall:

- 7.1.1 provide the Supplier with reasonable access at reasonable times to the Council's premises for the purpose of providing the Services;
- 7.1.2 provide such information as the Supplier may reasonably request for the provision of the Services and the Council considers reasonably necessary for the purpose of providing the Services.

## 8. CHARGES AND PAYMENT

8.1 The price for the Goods:

- 8.1.1 shall be the price set out in the Order; and
- 8.1.2 shall be inclusive of the costs of packaging, insurance and carriage 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 The charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Council, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

8.3 In respect of Goods, the Supplier shall invoice the Council on or at any time after completion of delivery and acceptance. In respect of Services, the Supplier shall invoice the Council on completion of the Services. Each invoice shall include such supporting information required by the Council to verify the accuracy of the invoice including but not limited to the relevant purchase order number.

8.4 In consideration of the supply of Goods and/or Services by the Supplier, the Council shall pay the invoiced amounts within (30) thirty days of the date of a correctly rendered valid and undisputed invoice to a bank account nominated in writing by the Supplier.

8.5 All amounts payable by the Council under the Contract are exclusive of amounts in respect of valued added tax ("VAT") chargeable from time to time. Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Council, the Council shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.

8.6 If a party fails to make any undisputed payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 2% per annum above the base lending



rate of the Bank of England from time to time. The Council and the Supplier agree that this clause provides each of them with a substantial remedy in respect of any late payments of sums due for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments that the defaulting party disputes in good faith.

- 8.7 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the Council to inspect such records at all reasonable times on request.
- 8.8 The Council may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to the Council against any liability of the Council to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.

## **9. INTELLECTUAL PROPERTY RIGHTS**

- 9.1 In respect of the Goods and any goods that are transferred to the Council as part of the Services under this Contract including without limitation the 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 Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables.
- 9.3 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 Intellectual Property Rights assigned to the Council in accordance with clause 9.2.
- 9.4 All Council Materials are the exclusive property to the Council.

## **10. INDEMNITY**

- 10.1 The Supplier shall keep the Council indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered incurred by the Council as a result of or in connection with:
  - 10.1.1 any claim made against the Council for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
  - 10.1.2 any claim made against the Council by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
  - 10.1.3 any claim made against the Council by a third party arising out of in connection with the supply of the Goods or the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees agents or subcontractors, subject always to an aggregate financial limit of no more than 125% of the contract price.



## 11. INSURANCE

- 11.1 During the term of the Contract and where requested, for a period of six years thereafter, the Supplier shall maintain in force, with a reputable insurance company: product liability insurance (£5 million); public liability insurance (£10 million); and professional indemnity insurance (£1 million), as necessary to cover the risks and or 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.

## 12. CONFIDENTIALITY

- 12.1 A party (receiving party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.
- 12.2 The Council is subject to the Freedom of Information Act 2000 (the FOIA) and the Environmental Information Regulations 2004 (including any subsequent re-enactments) as well as the Local Government Transparency Code and as such may be required to disclose information forming part of the agreement to anyone who makes a legitimate request. The Council has an absolute discretion to determine how to respond to a request, including the application of any potential exemptions.
- 12.3 The Supplier shall assist and cooperate with the Council (at the Supplier's expense) to enable the Council to comply with any information disclosure requirements, and in so doing will observe any timescales notified to it by the Council.
- 12.4 Where the Supplier has access to information about people, it shall ensure that in making the Supply or delivering the Services, the provisions of the Data Protection Act 1998 (including any subsequent re-enactments and as from 25 May 2018 the General Data Protection Regulations (Regulations (EU)2016/679)) are observed (and also any of the Council's data protection requirements notified to the Supplier).
- 12.5 This clause 12 shall survive termination of the Contract.

## 13. TERMINATION

- 13.1 Without limiting its other rights or remedies, the Council may terminate the Contract:
- 13.1.1 in respect of the supply of Services, by giving the Supplier (14) fourteen days' written notice; and
- 13.1.2 in respect of the supply of Goods, in whole or in part at any time before delivery with immediate effect by giving written notice to the Supplier, whereupon the Supplier shall discontinue all work on the Contract. The Council shall pay the Supplier fair and reasonable compensation for any work in progress on the Goods at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.





- 13.2 In any of the circumstances in these Conditions in which a party may terminate the Contract, where both Goods and Services are supplied, that party may terminate the Contract in respect of the Services, and the Contract shall continue in respect of the remaining supply.
- 13.3 Without limiting its other rights or remedies, the Council may terminate the Contract with immediate effect by giving written notice to the Supplier if:
- 13.3.1 the Supplier commits a material breach of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within (7) seven days of receipt of notice in writing to do so;
  - 13.3.2 the Supplier repeatedly breaches any of the terms of the 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 the Contract;
  - 13.3.3 the Supplier 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 or as having no reasonable prospect of so doing, neither case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
  - 13.3.4 the Supplier 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 other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier.
  - 13.3.5 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 Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
  - 13.3.6 the Supplier (being an individual) is the subject of a bankruptcy petition or order;
  - 13.3.7 a creditor or encumbrancer of the Supplier 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 its assets and such attachment or process is not discharged within (14) fourteen days;
  - 13.3.8 an application is made to court, or an order is made, for the appointment of an administrator is given or if an administrator is appointed over the Supplier (being a company);
  - 13.3.9 the holder of a floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
  - 13.3.10 a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
  - 13.3.11 any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.3.3 to clause 13.3.10 (inclusive);
  - 13.3.12 the Supplier suspends or ceases, or threatens to suspend, or cease, to carry on all or a substantial part of its business;
  - 13.3.13 the other party's financial position deteriorates to such an extent that in the Supplier's opinion the Council's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
  - 13.3.14 the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 13.4 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.





13.5 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

#### **14. CONSEQUENCES OF TERMINATION**

14.1 On termination of the Contract for any reason, the Supplier shall immediately deliver to the Council all Deliverables whether or not then complete, and return all Council Materials. If the Supplier fails to do so, then the Council may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

#### **15. FORCE MAJEURE**

15.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such a delay or failure results from events, circumstances or causes beyond its reasonable control (Force Majeure Event).

15.2 The Supplier shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations.

15.3 If a Force Majeure Event prevents, hinders or delays the Supplier's performance of its obligations for a continuous period of more than (7) seven Business Days, the Council may terminate the Contract immediately by giving written notice to the Supplier.

#### **16. GENERAL**

##### **Assignment and other dealings**

16.1 The Council may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

16.2 The Supplier may not assign, transfer, mortgage, charge, subcontract, declare a trust over 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.

##### **Notices**

16.3 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or email.

16.4 A note or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 16.2.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or if sent by fax or email, one Business Day after transmission.

16.5 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

##### **Severance**

16.6 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable, if such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.



**Waiver**

- 16.7 A waiver or any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**No Partnership or Agency**

- 16.8 Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

**Third Parties**

- 16.9 A person who is not a party to the Contract shall not have any rights to enforce its' terms.

**Variation**

- 16.10 Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed by both parties in writing and signed on their behalf by their respective duly authorised representative.

**Governing Law**

- 16.11 The Contract, and any dispute or claim arising out 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 and Wales.

**Jurisdiction**

- 16.12 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 agreement or its subject matter or formation (including non-contractual disputes or claims).

**Disputes**

- 16.13 If any difference shall arise between the Council and the Supplier as to the interpretation or operation of these Conditions as to the rights, duties, obligations or liabilities of either party hereto which cannot be resolved amicably between the parties within a reasonable time then the Council shall refer the dispute to senior members of staff. During this time neither party will resort to litigation. If the dispute is not resolved in that way within two months then either party may exercise any remedy it may have.

**Publicity**

- 16.14 The Supplier shall not without the written permission of the Council advertise or disclose to any third party that it is providing Goods and or Services to the Council.

**Prevention of Bribery**

- 16.15 The Council may terminate the Contract and recover all of its loss if the Supplier, its employees or anyone acting on the Supplier's behalf do any of the following:

- 16.15.1 directly or indirectly offer, give, agree to give anyone, or accept from anyone any inducement or reward in respect of this or any other Council contract; or

- 16.15.2 commit any offence under the Bribery Act 2010; or





16.15.3 commit or attempt to commit any fraud in connection with this or any other Council contract whether alone or in conjunction with member or employees of the Council.

**Transparency**

16.16 The parties acknowledge that save for any information which is exempt from disclosure in accordance with the provisions of the FOIA then the Contract is not confidential information. The Council shall be responsible for determining in its absolute discretion whether any part of the Contract is exempt from disclosure in accordance with the Act. Notwithstanding any other term of the Contract the Supplier hereby gives its consent for the Council to publish the Contract in its entirety to the general public in whatever form the Council decides.

**Conflicts of Interest**

16.17 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff is placed in a position where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Council under the provisions of the Contract. The supplier will disclose to the Council full particulars of any such conflict of interest which may arise.

16.18 Prior to the commencement of the Services. If the Supplier is being engaged as a consultant or interim manager, the Supplier shall use its best endeavours to disclose any actual or potential financial, non-financial, personal or professional interest in any organisation, company or other body that is or has potentially, currently and/or previously had dealings with the Council, where such interest may and/or could result in a conflict with the interests of the Council.

16.19 The Council reserves the right to terminate the Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be an actual conflict or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Council under the provisions of the Contract.

**Modern Slavery**

16.20 The Supplier undertakes, warrants and represents that neither the Supplier nor any of its officers, employees, agents or subcontractors has committed an offence under the Modern Slavery Act 2015 and any breach of this clause shall be deemed a material breach of the Contract and shall entitle the Council to terminate the Contract in accordance with Clause 13.