

These Terms and Conditions are only to be used for contracts with a total value of less than £50,000 and are not to be used for contracts involving the following subject matters: works, concessions, consultancy, Information Technology, health and social care, externally funded projects, staff transfers pursuant to TUPE, requirement for a change procedure or any high risk / politically sensitive contracts.

CORNWALL COUNCIL STANDARD TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1. In the Agreement, unless the context otherwise requires, the following expressions have the following meanings:

'Agreement' means the Agreement entered into between the Council and the Supplier for the supply of the Goods and/or Services for the Price in accordance with these Terms and Conditions;

'Award Letter' means the confirmation of contract award sent to the Supplier by the Council in respect of the Goods and/or Services purchased under this Agreement;

'Commencement Date' means the date of commencement of the Agreement as set out in the Award Letter;

'Confidential Information' means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all Personal Data and Special Categories of Data within the meaning of the Data Protection Legislation. Confidential Information shall not include information which:

- (i) was public knowledge at the time of disclosure (otherwise than by breach of Condition 13 (Confidentiality; Data Protection and Freedom of Information));
- (ii) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (iii) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (iv) is independently developed without access to the Confidential Information;

‘Conditions’ means the terms and conditions as set out in the Agreement;

‘Consent Notice’ means the consent of an individual to the sharing of their Personal Data for the provision of the Services;

‘Contract Period’ means the period ascertained in accordance with Condition 2;

‘Contract Standard’ means such standard as complies in each and every respect with all relevant provisions of the Agreement and where to the extent that no criteria are stated in the Agreement such standard as is to the entire satisfaction of the Council’s Representative;

‘Council’ means The Cornwall Council whose principal office is at New County Hall, Treyew Road, Truro, Cornwall, TR1 3AY;

‘Council’s Representative’ means the person appointed by the Council to oversee the performance of the Agreement;

‘Data Controller’ has the meaning given to it in the Data Protection Legislation;

‘Data Guidance’ means any applicable guidance, guidelines, direction or determination, framework, code of practice, standard or requirement regarding information governance, confidentiality, privacy or compliance with Data Protection Legislation (whether specifically mentioned in this Agreement or not) to the extent published and publicly available or their existence or contents have been notified to the Service Provider by the Council and/or any relevant Regulatory Body;

‘Data Processor’ has the meaning given to it in the Data Protection Legislation;

‘Data Protection Legislation’ means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC both superseded by the General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679), the Data Protection Act 2018 (which incorporates Directive (EU) 2016/680 – Law Enforcement Directive, the Digital Economy Act 2017, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2010 (SI2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC and subsequent amendments, 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;

‘Data Protection Officer’ has the meaning set out in the Data Protection Legislation;

‘Data Subject’ has the meaning given to it in Data Protection Legislation;

‘EIR’ means the Environmental Information Regulations 2004;

‘Expiry Date’ means the date of expiry of the Agreement as set out in the Award Letter;

‘FOIA’ means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Council or relevant government department in relation to such legislation and the Environmental Information Regulations 2004;

‘Goods’ means the goods described in the RFQ (if any);

‘Indirect Losses’ means loss of profits (other than profits directly and solely attributable to the provision of the Services), loss of use, loss of production, increased operating costs, loss of business, loss of business opportunity, loss of reputation or goodwill or any other consequential or indirect loss of any nature, whether arising in tort or on any other basis;

‘Information Governance Lead’ means the individual responsible for information governance and for providing the Service Provider with regular reports on information governance matters, including details of all incidents of data loss and breach of confidence;

‘Intellectual Property Rights’ means all vested and contingent and future intellectual property rights including but not limited to copyright, trade marks, service marks, design rights (whether registered or unregistered), patents, know-how, trade secrets, inventions, get-up, database rights and any applications for the protection or registration of these rights and all renewals and extensions thereof existing in any part of the world whether now known or in the future created to which the Council may be entitled;

‘Joint Data Controller’ shall have the meaning given it in the Data Protection Legislation;

‘Losses’ means all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) proceedings, demands and charges whether arising under statute, contract or at common law but, excluding Indirect Losses;

‘Personal Data’ has the meaning given to it in the Data Protection Legislation;

‘Personal Data Breach’ has the meaning given to it in the Data Protection Legislation;

‘Price’ means the price payable under the Agreement for the Goods and/or Services set out in the RFQ;

‘Privacy Notice’ means the information that must be provided to a Data Subject under the Data Protection Legislation;

‘Purchase Order’ means the order for the purchase of the Goods and/or Services by the Council which includes the description of the Goods and/or Services and the Price;

‘Purchase Order Number’ means the unique number that appears on the Purchase Order;

‘Regulated Activity’ means a regulated activity as defined in the Safeguarding Vulnerable Groups Act 2006;

‘RFQ’ means the Council’s request for quotation, which includes the Supplier’s response, for the purchase of the Goods and/or Services by the Council which includes the description of the Goods and/or Services and (if applicable) any special conditions which supplement these general terms and condition and the Price;

‘Sensitive Personal Data’ means Personal Data consisting of information as to the racial or ethnic origin, the political beliefs, religious or similar beliefs, trade union membership, details of physical or mental health, sexual life and alleged commissions of crimes or criminal record of the data subject;

‘Services’ means the services to be performed by the Supplier under the Agreement as described in the RFQ (if any)

‘Special Categories of Data’ has the meaning given to it in the Data Protection Legislation;

'Supplier' means the person, organisation or company whose name appears as the addressee in the RFQ;

'Terms and Conditions' means these terms and conditions;

'TUPE' means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246);

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

1.2 The headings in the Agreement are inserted for convenience only and shall not affect its interpretation.

1.3 Where appropriate words denoting the singular only shall include the plural and vice versa.

1.4 The masculine shall include the feminine and the neuter and vice versa.

1.5 A reference to a person shall include a reference to any individual, Council or other legal entity.

1.6 Reference to any Act of Parliament or any Order, Regulation, Statutory Instrument, Directive or the like shall be deemed to include a reference to any amendment or re-enactment thereof.

2. GENERAL

2.1 This Agreement shall commence on the Commencement Date and expire on the Expiry Date unless otherwise terminated in accordance with this Agreement.

2.2 In the event of any conflict between a Condition in these Terms and Conditions and a term of the RFQ, the term of the RFQ shall prevail.

2.3 The Agreement constitutes the entire agreement between the parties relating to the supply of the Goods and Services and replaces all previous negotiations, agreements, understandings and representations whether oral or in writing. However nothing in the Agreement shall limit or exclude any liability for fraud.

3. SUPPLY OF SERVICES

- 3.1 In consideration of the Council's agreement to pay the Price, the Supplier shall supply the Services to the Council subject to and in accordance with the terms of the Agreement.
- 3.2 In supplying the Services, the Supplier shall:
- 3.2.1 co-operate with the Council in all matters relating to the Services and comply with all the Council's instructions;
 - 3.2.2 shall provide all other services reasonably required by the Council which are reasonably incidental to the Services in accordance with the terms of the Agreement;
 - 3.2.3 perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Supplier's industry, profession or trade;
 - 3.2.4 use staff 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 Agreement;
 - 3.2.5 ensure that the Services shall conform with all descriptions and specifications set out in the RFQ;
 - 3.2.6 comply with all applicable laws;
 - 3.2.7 provide all equipment, tools and vehicles and other items as are required to provide the Services;
 - 3.2.8 keep the Council fully informed and provide it with regular reports on all matters of interest to a prudent client, together with such information as the Council may reasonably require from time to time. This includes, but is not limited to:
 - (a) any and all data required as part of contract management or management information;
 - (b) any and all data and information needed to track performance against the Agreement's key performance indicators (if applicable)
 - 3.2.9 maintain current and accurate records of all work undertaken in the provision of the Services.

- 3.3 The Council may by written notice to the Supplier at any time request a variation to the scope of the Services. In the event that the Supplier agrees to any variation to the scope of the Services, the Price shall be subject to fair and reasonable adjustment to be agreed in writing between the Council and the Supplier.
- 3.4 The Supplier shall inform the Council's Representative promptly and confirm in writing if the Supplier is unable to or fails to provide any part of the Service in accordance with the Agreement. The provision of information under this Condition 4.4 shall not in any way release or excuse the Supplier from any of its obligations under the Agreement.
- 3.5 The Supplier shall at all times allow the Council's Representative, professional advisors and such other persons as from time to time nominated by the Council's Representative if relevant, access to:
- 3.5.1 any work places of the Supplier for the purpose of inspecting work being performed pursuant to the Agreement;
 - 3.5.2 any work places of the Supplier for the purpose of inspecting and taking copies of records and documents in the possession, custody or control of the Supplier in connection with the Agreement;
 - 3.5.3 any personnel or agent of the Supplier for the purpose of interviewing such persons in connection with the Agreement;
 - 3.5.4 any report required by any statutory enactment or regulation or a copy thereof shall be supplied by Supplier if requested to do so in writing by the Council.
- 3.6 The Supplier shall at all times during the Agreement and for a period of six (6) years thereafter:
- 3.6.1 keep secure and give or make available for inspection by the Council;
 - 3.6.2 its internal auditors, the Local Government Ombudsman and the District Auditor all original and copy records, documents, information, statements and papers which may be acquired or produced by the Supplier or by any permitted sub-contractor in the performance of the Agreement. In default of compliance, the Council may recover possession of such materials and the Supplier grants a licence to the Council or its appointed agents to enter for that purpose any

premises of the Supplier or its permitted sub-contractors where any such materials may be held, and

- 3.6.3 co-operate fully with any investigations at its own expense and make such explanations to the Council, its internal auditors, the Ombudsman and the District Auditor as may be necessary for them to be satisfied that the terms and conditions of the Agreement, the Council's Contract Procedure Rules, Financial Regulations and all statutory and regulatory provisions relating to the Agreement are being and have been complied with.
- 3.7 The Supplier shall at all times (where relevant) comply with the Council's policies and procedures as may be amended from time to time.
- 3.8 Except and to the extent and upon the terms of the Agreement or as otherwise required or permitted by the Council, the Supplier shall not use any facilities or equipment of the Council.
- 3.9 The Supplier shall not advertise the fact that it is undertaking the Agreement other than with the written consent of the Council.
- 3.10 The Supplier shall as may be necessary or appropriate co-operate, liaise with, and co-ordinate its activities with those of any other supplier or contractor or sub-contractor employed directly or indirectly by the Council and shall provide the Services in harmony with and at no detriment to any other Services provided by or on behalf of or to the Council. If the Supplier or its personnel default in complying or fail to comply with this Condition, then any costs, expenses, liabilities or damages whatsoever incurred by the Council as a consequence thereof, including the reasonable cost to the Council of the time spent by its officers as a result of the default or failure, may be deducted from any sums due or to become due to the Supplier under the Agreement or shall be recoverable from the Supplier by the Council as a debt.

4. SUPPLIER'S PERSONNEL

- 4.1 The Supplier shall employ sufficient persons to ensure that the Services are provided at all times and in all respects in accordance with the Agreement.
- 4.2 The Supplier's personnel employed in and about the provision of the Services shall be properly and sufficiently qualified, competent, skilled, honest, and experienced and shall at all times exercise due care in the execution of their duties. The Supplier shall

ensure that such persons are properly and sufficiently instructed and supervised with regard to the provision of the Services and in particular:

- 4.2.1 the task or tasks such person has to perform,
 - 4.2.2 all relevant provisions hereof,
 - 4.2.3 all relevant policies, rules, procedures and standards of the Council, and
 - 4.2.4 all relevant rules, procedures and statutory requirements concerning health and safety, including the Council's health and safety policy which shall be provided to the Supplier and if not so provided shall be requested by it.
- 4.3 The Council's Representative shall, upon giving notice in writing, have the power to require the Supplier to remove from the provision of the Services any personnel of the Supplier specified in such notice including the Supplier's Representative. The Supplier shall forthwith remove such personnel from the provision of the Services and shall unless the Council determines otherwise immediately provide a replacement who shall be satisfactory to the Council.
- 4.4 The Council shall in no circumstances be liable either to the Supplier or to such personnel in respect of any cost, expense, liability loss, or damage occasioned by such removal and the Supplier shall fully indemnify the Council in respect of any claim made by such personnel.
- 4.5 The Supplier shall provide and shall ensure that its personnel at all times when engaged in the provision of the Services at any premises owned, occupied or controlled by the Council wear such identification (including photographic identification) as may be specified by the Council, and shall ensure that when requested to do so any personnel of the Supplier shall disclose his identity and status as personnel of the Supplier and shall not attempt to avoid so doing.
- 4.6 Where Council rules and regulations or the nature or the location of any duties upon which the Supplier's personnel shall be engaged in the provision of the Services make the wearing of any special or protective clothing headwear or footwear necessary or appropriate, the Supplier shall provide and shall require its personnel to wear such clothing headwear or footwear. Such special or protective clothing headwear or footwear shall be maintained and replaced as necessary by the Supplier.

- 4.7 The Supplier shall notify the Council's Representative immediately upon becoming aware of any possible conflict of interest which may arise between the interests of the Council and any other client of the Supplier and the Supplier shall take all reasonable steps to remove or avoid the cause of any such conflict of interest to the satisfaction of the Council's Representative.

5. SUPPLIER'S REPRESENTATIVE

- 5.1 The Supplier shall appoint a suitably qualified and experienced Supplier Representative (and notify the Council in writing of their identity) who shall be empowered to act on behalf of the Supplier for all purposes connected with the Agreement. Such appointment or any further appointment shall be subject to the approval of the Council. The Supplier's Representative shall not be replaced without prior written approval of the Council, such approval not to be unreasonably withheld. Any notice, information, instruction or other communication given to the Supplier's Representative or his duly appointed deputy shall be deemed to have been given to the Supplier.
- 5.2 The Supplier shall forthwith give notice in writing to the Council's Representative of the identity, address and telephone numbers of any person appointed as the Supplier's Representative and of any subsequent appointment.
- 5.3 The Supplier shall forthwith give notice in writing to the Council's Representative of the identity, address and telephone numbers of any person authorised to act for any short temporary period as deputy for the Supplier's Representative and when such deputy ceases to be so authorised.
- 5.4 The Supplier shall ensure that the Supplier's Representative or his deputy is available to meet the Council's Representative at all reasonable times. The Supplier shall submit to the Council a list of any personnel appointed to supervise each area of work and shall inform the Council within five working days if there are any changes to that list.

6. COUNCIL'S REPRESENTATIVE

- 6.1 The Council's Representative shall be the person nominated in writing by the Council from time to time to act in the name of the Council for the purposes of the Agreement.
- 6.2 The Council's Representative shall have power to issue instructions to the Supplier on any matter relating to the provision of the Services and the Supplier shall comply therewith.

- 6.3 From time to time the Council's Representative may appoint one or more representatives to act for the Council's Representative generally or for specified purposes or periods. Any act or instruction of any such representative shall be treated as an act or instruction of the Council's Representative.

7. SUPPLY OF GOODS

- 7.1 The Supplier shall ensure that the Goods shall:

7.1.1 correspond with the description in the RFQ;

7.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) 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. The Supplier acknowledges and agrees that the approval by the Council of any designs provided by the Supplier shall not relieve the Supplier of any of its obligations under this sub-Condition;

7.1.3 will conform in all respects with any samples approved by the Council;

7.1.4 where applicable, be free from defects in design materials and workmanship and remain so for 12 months after delivery (or such other period as may be specified in the Purchaser Order);

7.1.5 comply with all applicable statutory and regulatory requirements including those relating to the design, quality, manufacture, testing, labelling, packaging, storage, handling and delivery of the Goods.

- 7.2 The Supplier shall ensure that at all times it has and maintains all of the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Agreement in respect of the Goods.

- 7.3 The Council shall, on giving reasonable notice, have the right to (as appropriate):

7.3.1 inspect and test the Goods;

7.3.2 inspect the manufacturing facilities and the equipment used by the Supplier in the manufacture of the Goods;

7.3.3 inspect and take samples of the raw materials, packaging, and the Goods;

7.3.4 inspect stock levels of the raw materials, packaging, and the Goods,

at the Supplier's premises at any reasonable time during the Supplier's business hours before delivery and in this regard the Supplier shall co-operate and provide reasonable assistance to the Council at its own expense (unless otherwise agreed in respect of 7.3.3 above).

7.4 If following such inspection or testing the Council considers that the Goods do not conform or are unlikely to comply with the Supplier's undertaking at Condition 8.1, the Council shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

7.5 Notwithstanding such inspection or testing, the Supplier shall remain fully responsible for the Goods and such inspection or testing shall not reduce or otherwise affect the Suppliers obligations under the Agreement, and the Council shall have the right to conduct further inspections or tests after the Supplier has carried out its remedial actions.

8. DELIVERY OF GOODS

8.1 The Supplier shall ensure that:

8.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;

8.1.2 the Goods are supplied, as appropriate, with all manuals and user documentation and any safety data sheets or other product information required to be provided under all applicable law at the time of delivery;

8.1.3 each delivery of the Goods is accompanied by a delivery note which clearly identifies the Agreement (e.g. by reference to the title and date of the RFQ and the Purchase Order Number, the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage or other instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

8.1.4 if the Supplier requires the Council to return any packaging material for the Goods to the Supplier (i.e. where it is not reasonable for the Supplier to remove such materials from the delivery location (specified in the RFQ) at the time of delivery), that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

8.2 The Supplier shall deliver the Goods:

- 8.2.1 on the date (or dates) specified in the RFQ. If no dates are specified in the RFQ then the Goods shall be delivered as soon as reasonably possible and no later than 28 days after the date of the Award Letter;
 - 8.2.2 to the location or locations set out in the Award Letter or as instructed by the Council before delivery (each such location being a "Delivery Location") and in doing so shall observe and comply with all health and safety rules and regulations and any access and security requirements relating to the Delivery Location including any reasonable directions given by Council staff;
 - 8.2.3 during the Council's normal hours of business on a Working Day, or as instructed by the Council.
- 8.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 8.4 Subject to any alternative requirements or any maximum and/or minimum tolerance in terms of the quantity (or other measure) of Goods specified as being acceptable in the RFQ, the Supplier shall deliver the precise quantity of Goods ordered by the Council and the Council may reject the Goods (or any excess Goods) and any rejected Goods shall be returnable at the Supplier's risk and expense.
- 8.5 Where the RFQ states a tolerance in terms of the maximum and/or minimum quantity (or other measure) of Goods that must be delivered and the Supplier:
- 8.5.1 delivers less than required minimum number or percentage of Goods ordered, the Council may reject the Goods; or
 - 8.5.2 delivers more than the required maximum number or percentage 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.
- 8.6 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, failure by the Supplier to deliver any instalment on time or at all or any defect in any instalment shall entitle the Council to the remedies set out in Condition 15.

- 8.7 Title and risk in the Goods shall pass to the Council on completion of delivery at the Delivery Location.
- 8.8 Notwithstanding Condition 8.7 and subject to any alternative provisions in the RFQ, the Council shall not be deemed to have accepted any Goods until it has had a reasonable time to inspect them following delivery.
- 8.9 The Supplier shall be responsible for and keep under its control all equipment and materials brought to the Delivery Location.
- 8.10 The Supplier shall immediately inform and notify the Council on becoming aware of any damage caused by the Supplier to the Delivery Location or any other property belonging to the Council or any third party in the course of delivering the Goods.
- 8.11 Notwithstanding Condition 15, where the need to repair the Delivery Location or repair or replace any other property arises directly from the act, omission, default or negligence of the Supplier the reasonable costs incurred in carrying out such maintenance or repairs shall be recoverable by the Council from the Supplier as a debt, payable within 28 days of the Council's relevant invoice.

9. PAYMENTS

- 9.1 Provided the Supplier has complied fully with the Agreement the Council shall in consideration of the provision of the Services pay the Price to the Supplier in accordance with the RFQ.
- 9.2 The Price shall unless agreed in writing between the Parties be exclusive of Value Added Tax.
- 9.3 Any VAT payable by the Council shall be payable at the rate and in the same manner for the time being prescribed by law. All VAT charges must be shown separately in any invoice clearly identifying what it relates to.
- 9.4 Provided that the Supplier shall have complied fully with the Agreement and where there is no dispute, payment of the Agreement Price and any VAT shall be made by the Council within 28 days of receipt of a valid invoice. Each invoice shall contain appropriate references and a detailed breakdown of the Services provided and shall be

supported by any other documentation reasonably required by the Council's Representative to substantiate the invoice.

9.5 Where the Supplier enters into a sub-contact with a contractor for the purpose of performing its obligations under the Agreement, it shall ensure that a provision is included in such sub-contract which requires payment to be made of all sums by the Supplier to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.

9.6 No variation to the Price nor any extra charges shall be accepted by the Council unless this has been expressly agreed in writing by the Parties.

10. USE OF COUNCIL PREMISES

The Supplier shall ensure that neither the Supplier nor its employees or agents shall do any act or thing at any premises owned or occupied or controlled by the Council that is not solely for the benefit of the Council and done in the course of the proper performance of the Services and as may be permitted by the Agreement.

11. EQUIPMENT AND MATERIALS

Except as otherwise specified in the Agreement, the Supplier shall provide all equipment and materials reasonably necessary for the provision of the Services. Any equipment used in the provision of the Services and belonging to the Council, which is damaged, lost or unduly worn due to negligence, misuse, or wilful action by the Supplier or its employees or other persons for whose action it is responsible, must be replaced at the Supplier's own expense.

12. INTELLECTUAL PROPERTY RIGHTS

12.1 Pursuant to and for the consideration set out in the Agreement the Supplier hereby assigns with full title guarantee (or shall use all reasonable endeavours to procure that any person, firm or company who is in a position to assign the same with full title guarantee shall assign to the Council) with effect from the Commencement Date or in the case of Intellectual Property Rights not yet in existence with effect from the creation thereof, to the Council, the Intellectual Property Rights created by the Supplier in the performance of the Services. The Supplier shall not be liable for the use of any such Intellectual Property Rights other than for which the same was originally prepared or provided by or on behalf of the Supplier.

12.2 The Supplier warrants to the Council that the Intellectual Property Rights referred to in Condition 12.1 are, save to the extent that duly authorised sub-contractors have been used, the Supplier's own original work and that in performance of the Services it has

not infringed and will not infringe any intellectual property right of any third party. The Supplier further warrants that where duly authorised sub-contractors are used their work will be original.

- 12.3 The Supplier shall indemnify and keep indemnified the Council against all reasonably foreseeable and legally enforceable actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Supplier of this Condition 12.

13. CONFIDENTIALITY; DATA PROTECTION AND FREEDOM OF INFORMATION

13.1 CONFIDENTIALITY

13.1.1 Except where otherwise provided for in the Agreement, Confidential Information is owned by the Party that discloses it (the "Disclosing Party") and the Party that receives it (the "Receiving Party") has no right to use it.

13.1.2 Subject to Conditions 13.1.3 and 13.1.4, the Receiving Party agrees:

- (a) to use the Disclosing Party's Confidential Information only in connection with the Receiving Party's performance under the Agreement;
- (b) not to disclose the Disclosing Party's Confidential Information to any third party or to use it to the detriment of the Disclosing Party; and
- (c) to maintain the confidentiality of the Disclosing Party's Confidential Information and to return it immediately on receipt of written demand from the Disclosing Party.

13.1.3 The Receiving Party may disclose the Disclosing Party's Confidential Information:

- (a) in connection with any dispute resolution under Condition 23 (Dispute Resolution);
- (b) in connection with any litigation between the Parties;
- (c) to comply with the law;
- (d) to its staff, consultants and sub-contractors, who shall in respect of such Confidential Information be under a duty no less onerous than the Receiving Party's duty set out in Condition 13.1.2;
- (e) to comply with a regulatory bodies request.

13.1.4 The obligations in Condition 13.1.1 and Condition 13.1.2 will not apply to any

Confidential Information which:

- (a) is in or comes into the public domain other than by breach of the Agreement;
- (b) the Receiving Party can show by its records was in its possession before it received it from the Disclosing Party; or
- (c) the Receiving Party can prove that it obtained or was able to obtain from a source other than the Disclosing Party without breaching any obligation of confidence.

13.1.5 The obligations in Condition 13.1 and Condition 13.2 shall not apply where the Confidential Information is related to an item of business at a board meeting of the Council or of any committee, sub-committee or joint committee of the Council or is related to an executive decision of the Council and it is not reasonably practicable for that item of business to be transacted or that executive decision to be made without reference to the Confidential Information, provided that the Confidential Information is exempt information within the meaning of Section 101 of the Local Government Act 1972 (as amended), the Council shall consider properly whether or not to exercise its powers under Part V of that Act or (in the case of executive decisions) under the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 as amended to prevent the disclosure of that Confidential Information and in doing so shall give due weight to the interests of the Supplier and where reasonably practicable shall consider any representations made by the Supplier.

13.2 INFORMATION GOVERNANCE AND DATA PROTECTION

13.2.1 The Parties must comply with Data Protection Legislation, Data Guidance, the FOIA and the EIR, and must assist each other as necessary to enable each other to comply with these obligations.

13.2.2 The Supplier must comply with and must demonstrate satisfactory compliance with Condition 13.2.1 above.

13.2.3 The Supplier must:

- (a) nominate an Information Governance Lead;
- (b) where required by Data Protection Legislation, nominate a Data Protection Officer if applicable; and
- (c) ensure that the Council is kept informed at all times of the identities and

contact details of the Information Governance Lead and the Data Protection Officer if applicable.

- 13.2.4 If the Supplier is required under Data Protection Legislation to notify the Information Commissioner or a Data Subject of a Personal Data Breach then within 48 hours of the breach occurring the Supplier must inform the Council of the Personal Data Breach, and if the Supplier will report the breach to the Information Commissioner within 72 hours as is required within the Data Protection Legislation.
- 13.2.5 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This Condition 13.2 is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation.
- 13.2.6 Whether or not a Party or Sub-Contractor is a Data Controller or Data Processor will be determined in accordance with Data Protection Legislation and any further Data Guidance. The Parties acknowledge that a Party or Sub-Contractor may act as both a Data Controller and a Data Processor, or a Joint Data Controller.
- 13.2.7 Without prejudice to the generality of Condition 13.2, the Parties will ensure that they have all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the other Party for the duration and purposes of this Agreement.
- 13.2.8 Where required under Data Protection legislation, the Supplier shall ensure that it has a Privacy Notice or Consent Notice in place.
- 13.2.9 Any failure by the Supplier to inform individuals as required by Data Protection Legislation or Data Guidance about the uses of Personal Data that may take place under this Agreement cannot be relied on by the Services Provider as evidence that such use is unlawful and therefore not contractually required.
- 13.2.10 Without prejudice to the generality of Condition 13.2, the Supplier must ensure that all Personal Data processed by or on behalf of the Supplier in the course of delivering the Services is processed in accordance with the relevant Parties' obligations under Data Protection Legislation and Data Guidance. The Supplier shall:
- (a) process Personal Data only on the written instructions of the Council, unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union ("Applicable Laws") applicable to the Supplier to otherwise process the Personal Data. Where the Supplier is so

required, it shall promptly notify the Council before processing the Personal Data, unless prohibited by the Applicable Laws;

- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Council, 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) not transfer any Personal Data outside of the European Economic Area 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 effective remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Supplier complies with the reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
- (d) notify the Council as soon as reasonably practicable if it receives:
 - (i) a request from a Data Subject to have access to that individual's Personal Data;
 - (ii) a request to rectify, stop the processing of or erase any Personal Data;
 - (iii) receives any other request, complaint or communication relating to

either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);

- (e) at the Supplier's expense, assist the Council in responding to any request from a Data Subject and in ensuring compliance with the Council's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) at the written direction of the Council, delete or return Personal Data and copies thereof to the individual on termination or expiry of this Agreement unless required by the Applicable Laws to store the Personal Data;
- (g) maintain complete and accurate records and information to demonstrate its compliance with this Condition 13.2 and allow for audits by the Council or the Council's designated auditor.

13.2.11 Where the Council requires information for the purposes of quality management, the Supplier must consider whether the Council's request can be met by providing anonymised or aggregated data which does not contain Personal Data. Where Personal Data must be shared in order to meet the requirements of the Council, the Supplier must:

- (a) provide such information in pseudonymised form where possible; and in any event
- (b) ensure that there is a legal basis for the sharing of Personal Data.

13.2.12 Subject always to Condition 19 (Assignment and Sub-Contracting), if the Supplier is to engage any Sub-Contractor to deliver any part of the Services (other than as a Data Processor) and the Sub-Contractor is to access personal or confidential information or interact with individuals, the Supplier must impose on its Sub-Contractor obligations that are no less onerous than the obligations imposed on the Supplier by this Condition 13.2.

13.2.13 The Supplier shall indemnify the Council against any losses, damages, cost or expenses incurred by the Council arising from, or in connection with, any breach of the Supplier's obligations under this Condition 13.2.

13.2.14 Notwithstanding any other provision of this Agreement, where the Supplier commits a Personal Data Breach which under Data Protection Legislation must be notified to the Information Commissioner and/or to an individual the Council may

terminate this Agreement with immediate effect.

13.3 FREEDOM OF INFORMATION AND TRANSPARENCY

13.3.1 The Parties acknowledge their respective duties under the FOIA and shall give all reasonable assistance to each other where appropriate or necessary to comply with such duties.

13.3.2 If the Supplier is not a public authority, the Supplier acknowledges that the Council is subject to the requirements of the FOIA and will assist and co-operate with the Council to enable the Council to comply with its disclosure obligations under the FOIA. Accordingly the Supplier agrees:

- (a) that the Agreement and any other recorded information held by the Supplier on the Council's behalf for the purposes of the Agreement are subject to the obligations and commitments of the Council under the FOIA;
- (b) that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA is a decision solely for the Council;
- (c) that if the Supplier receives a request for information under the FOIA, it will not respond to such request (unless directed to do so by the Council) and will promptly (and in any event within 2 working days) transfer the request to the Council;
- (d) that the Council, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of the FOIA, and regulation 16 of the Environmental Information Regulations 2004, may disclose information concerning the Supplier and the Agreement either without consulting with the Supplier, or following consultation with the Supplier and having taken its views into account; and
- (e) to assist the Council in responding to a request for information, by processing information or environmental information (as the same are defined in the FOIA) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of the FOIA, and providing copies of all information requested by an authority within 5 working days of such request and without charge.

13.3.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the

Agreement is not Confidential Information.

- 13.3.4 Notwithstanding any other provision of the Agreement, the Supplier hereby consents to the publication of the Agreement in its entirety including from time to time agreed changes to the Agreement subject to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA.
- 13.3.5 In preparing a copy of the Agreement for publication pursuant to Condition 13.1.4 the Council may consult with the Supplier to inform its decision making regarding any redactions but the final decision in relation to the redaction of information shall be at the Council's absolute discretion.
- 13.3.6 The Supplier shall assist and co-operate with the Council to enable the Council to publish the Agreement.
- 13.3.7 In order to comply with the Government's policy on transparency in the areas of Agreements and procurement the Council will be disclosing information on its website in relation to expenditure over £500 (five hundred pounds) in relation to the Agreement. The information will include the Supplier's name and the Charges paid. The Parties acknowledge that this information is not Confidential Information or commercially sensitive information.
- 13.3.8 The Supplier shall comply with any requirements (including compliance with any appropriate information assurance scheme and the Computer Misuse Act 1990) in relation to its security policies, procedures and control of Confidential Information, Personal Data and Sensitive Personal Data.
- 13.3.9 The Supplier shall be responsible for any costs associated with compliance with the provisions of this Condition 13.
- 13.4 The Supplier shall indemnify the Council and shall keep the Council indemnified against Losses and Indirect Losses suffered or incurred by the Council as a result of any breach of this Condition 13.
- 13.5 The Parties acknowledge that damages may not be an adequate remedy for any breach of this Condition 13, and in addition to any right to damages the Council shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this Condition 13.
- 13. This Condition 13 shall not limit the Public Interest Disclosure Act 1998 in any way whatsoever.

14. STATUTORY OBLIGATIONS

- 14.1 The Supplier shall at all times comply with the requirements of the Health and Safety at Work Act 1974, the Management of Health and Safety at Work Regulations 1999 and all other statutory and regulatory requirements and the Council's policies and procedures relating to health and safety.
- 14.2 The Supplier shall at all times ensure that its staff, whilst on the premises owned, managed, controlled or occupied by the Council ("Council Premises"), comply with the Council's policies and procedures relating to health and safety.
- 14.3 The Council's Representative or its nominated health and safety representative reserves the right at any time to monitor and audit health and safety systems and procedures relevant to the Services under the Agreement, including the request for a copy of the organisation's health and safety policy and such other information (including all related policies and risk assessments) relating to the provision of the Services.
- 14.4 The Supplier shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at Council Premises of which it becomes aware and which relate to or arise in connection with the performance of the Agreement.
- 14.5 The Supplier shall properly maintain records of all accidents and incidents and notify the Council of all incidents that occur on Council Premises and/or meet the criteria of Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 which arise in connection with the performance of the Agreement.
- 14.6 The Supplier shall at all times comply with the requirement of the Equality Act 2010 and all other relevant related statutory and regulatory requirements and the Council's policies and procedures, copies of which are available on request, relating to equal opportunities and shall not treat any person or group of people less favourably than another on the grounds of race, colour, religion, belief, ethnicity, gender, age, disability, nationality, marital status and civil partnership, pregnancy and maternity or sexual orientation.
- 14.7 The Supplier shall at all times comply with all statutory and European and domestic statutory and regulatory requirements where relevant to the provision by the Supplier of the Goods and to be observed and performed in connection with the Agreement including any obligations binding upon the Council.
- 14.8 The Supplier shall indemnify the Council against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever and howsoever arising in respect of any breach by the Supplier of this Condition 14.

15. COUNCIL REMEDIES

- 15.1 If the Supplier fails to deliver the Goods and/or perform the Services by the required date(s) or in conformity with any of the undertakings set out in Conditions 3.3 and 7.1 the Council may, as applicable and at its sole discretion, without limiting its other rights or remedies under this Agreement or law:
- 15.1.1 subject to any deemed acceptance of the Goods in accordance with Condition 8, reject the Goods (in whole or in part) whether or not title has passed and return them to the Supplier at the Supplier's own risk and expense;
 - 15.1.2 terminate the Agreement (in whole or part) with immediate effect by giving written notice to the Supplier;
 - 15.1.3 refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make other than where a replacement or repair is requested by the Council under Condition 15.1.4;
 - 15.1.4 require the Supplier to repair or replace any rejected Goods (whether or not the Council has previously required the Supplier to repair or replace the rejected Goods) or to re-perform the defective Services to the Council's satisfaction at no additional cost to the Council;
 - 15.1.5 where the Council has paid for Services that have not been provided by the Supplier and/or Goods which have not been delivered by the Supplier, require the refund of such sums within 28 days of a written request by the Council and such sums shall be recoverable as a debt; and
 - 15.1.6 the right to claim damages for any other costs, expenses or losses resulting from the Supplier's failure to deliver the Goods and/or Services in accordance with the Contract including, without limitation, any increased costs reasonably incurred by the Council in obtaining substitute goods and/or services.
- 15.2 These Conditions shall extend to any substitute or remedial services and/or repaired or replacement goods supplied by the Supplier.
- 15.3 The Council's rights under this Agreement are in addition to its rights and remedies implied by statute and common law.

16. GRATUITIES

The Supplier shall not, whether itself, or by any person employed by it to provide the Services, solicit or accept any gratuity or any other reward, tip or any other form of money taking, collection or charge for any part of the Services other than charges properly approved by the Council in accordance with the provisions of the Agreement.

17. PREVENTION OF BRIBERY

17.1 The Supplier warrants and undertakes to the Council that:

17.1.1 it will comply with applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;

17.1.2 it will comply with the Council's anti-bribery policy as may be amended from time to time, a copy of which will be provided to the Supplier on written request;

17.1.3 it will procure that any person who performs or has performed services for or on its behalf ("Associated Person") in connection with the Agreement complies with this Condition 16;

17.1.4 it will not enter into any agreement with any Associated Person in connection with the Agreement, unless such agreement contains undertakings on the same terms as contained in this Condition 16;

17.1.5 it has and will maintain in place effective accounting procedures and internal controls necessary to record all expenditure in connection with the Agreement;

17.1.6 from time to time, at the reasonable request of the Council, it will confirm in writing that it has complied with its undertakings under Conditions 17.1.1 – 17.1.5 and will provide any information reasonably requested by the Council in support of such compliance;

17.1.7 it shall notify the Council as soon as practicable of any breach of any of the undertakings contained within this Condition of which it becomes aware.

18. AGENCY

18.1 Neither the Supplier nor the Supplier's personnel shall in any circumstances hold themselves out:

18.1.1 as being the servant or agent of the Council otherwise than in circumstances expressly permitted by the Agreement;

18.1.2 as being authorised to enter into any Agreement on behalf of the Council or in any other way to bind the Council to the performance, variation, release or discharge of any obligation otherwise than in circumstances expressly or implicitly permitted by the Agreement.

18.1.3 as having the power to make, vary, discharge or waive any bylaw or regulation of any kind.

19. ASSIGNMENT AND SUBCONTRACTING

19.1 The Council shall be entitled to assign the benefit of the Agreement or any part thereof and shall give written notice of any assignment to the Supplier.

19.2 The Supplier shall not:

19.2.1 assign the Agreement or any part thereof or the benefit or advantage of the Agreement of any part thereof;

19.2.2 sub-contract the provision of the Services or any part thereof to any person without the previous written consent of the Council, which consent shall be at the absolute discretion of the Council and if given shall not relieve the Supplier from any liability or obligation under the Agreement and the Supplier shall be responsible for the acts, defaults or negligence of any sub-contractor or sub-contractor's agents or employees in all respects as if they were the acts, defaults or negligence of the Supplier or the Supplier's agents, or employees.

20. TERMINATION

20.1 The Council may terminate the Agreement at any time by giving at least one (1) months' (or such other period as is specified in the RFQ) notice in writing to the Supplier.

20.2 Without prejudice to any other right or remedy it might have, either party the Council may terminate the Agreement by written notice to the Supplier with immediate effect if the Supplier:

20.2.1 (without prejudice to Condition 20.2.5), is in material breach of any obligation under the Agreement which is not capable of remedy;

20.2.2 repeatedly breaches any of the terms and conditions of the Agreement 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 and conditions of the Agreement;

20.2.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;

20.2.4 undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;

20.2.5 breaches any of the provisions of Conditions 7.2, 12, 13 and 17; or

20.2.6 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this Condition 20.2.6) in consequence of debt in any jurisdiction.

20.3 The Supplier shall notify the Council as soon as practicable of any change of control as referred to in Condition 20.2.4 or any potential such change of control.

20.4 The Supplier may terminate the Agreement by written notice to the Council if the Council has not paid any undisputed amounts within ninety (90) days of them falling due.

20.5 Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this Condition or any other provision of the Agreement that either expressly or by implication has effect after termination.

20.6 Upon termination or expiry of the Agreement, the Supplier shall:

20.6.1 give all reasonable assistance to the Council and any incoming supplier of the Services; and

20.6.2 return all requested documents, information and data to the Council as soon as reasonably practicable.

20.7 If the Council elects to terminate the Agreement pursuant to Conditions 20.1 or 20.2

the Council shall:

20.7.1 cease to be under any obligation to make further payment;

20.7.2 be entitled to require the Supplier forthwith to return files, documents or other items belonging to the Council and any other resources licensed, loaned, or hired, to the Supplier and should the Supplier fail to return these, to enter onto any site of the Supplier and repossess all such files, documents, or other items. The Council shall have full and unfettered licence over all drawings, details, descriptive schedules and other documents for use in connection with the provision of the Services;

20.7.3 be entitled to deduct from any sum or sums which would but for Condition 20.7.1 have been due from the Council to the Supplier under the Agreement or any other contract or be entitled to recover the same from the Supplier as a debt, any loss or damage to the Council resulting from or arising out of the termination of the Agreement. Such loss or damage shall include the reasonable cost to the Council of the time spent by its officers in terminating the Agreement and in making alternative arrangements for the provision of the Services or any part thereof;

20.7.4 be entitled to employ and pay other persons to provide and complete the provision of the Services or part thereof and to use the Supplier's files, documents, materials, equipment, vehicles or other goods for the purposes thereof;

20.7.5 when the total costs, loss and/or damage suffered by the Council resulting from or arising out of the termination of the Agreement have been calculated and after taking into account any deduction made or to be made by the Council from any sum or sums which would have been due to the Supplier, be entitled to any balance shown as due to the Council which shall be recoverable as a debt.

20.8 The rights of the Council under this Condition are in addition to and without prejudice to any other rights the Council may have whether against the Supplier directly or pursuant to any guarantee, indemnity or bond.

21. INDEMNITY AND INSURANCE

21.1 The Supplier shall indemnify and keep indemnified the Council against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever and howsoever arising in respect of, or in any way arising out of, the provision of the Services, in relation to the injury to, or death of, any person, and the loss of, or

damage to, any property including property belonging to the Council except and to the extent that it may arise out of the act, default or negligence of the Council, its employees or agents not being the Supplier or its personnel.

- 21.2 Without prejudice to its obligations under this Condition 21, the Supplier shall effect and maintain with reputable insurers such policy or policies of insurance as may be necessary to cover the Suppliers obligations and liabilities under this Condition, including but not limited to the insurance levels and types as specified in the RFQ for any one occurrence or series of occurrences arising out of any one event.
- 21.3 The Supplier shall (if requested in writing to do so by the Council) supply to the Council forthwith any relevant policy or a certificate from its insurers or brokers confirming that the Supplier's insurance policies comply with Condition 21.2 and the Supplier shall supply to the Council on request copies of all insurance policies, cover notes, premium receipts and other documents necessary to establish compliance with Condition 21.2.
- 21.4 If the Supplier fails to take out and maintain the insurance required under Condition 21.2 then the Council itself may insure against any risk in respect of which the failure shall have occurred and a sum or sums equivalent to the amount paid or payable by the Council in respect of premiums therefore may be deducted by the Council from any monies due or to become due to the Supplier under the Agreement or such amount may be recoverable by the Council from the Supplier as a debt.
- 21.5 The Supplier shall procure that any sub-contractors of the Supplier maintain like insurance cover to that required to be maintained by the Supplier under the Agreement and any such other insurance cover as may from time to time be reasonably required by the Council.

22. RECOVERY OF SUMS DUE TO THE COUNCIL

Whenever under the Agreement any sum of money shall be recoverable from or payable by the Supplier to the Council the same may be deducted from any sum then due or which at any time thereafter may become due to the Supplier under the Agreement or any other contract between the Parties.

23. DISPUTE RESOLUTION

- 23.1 Any disputes or differences arising between the Parties in respect of the construction or effect of the Agreement, or the rights, duties and liabilities of the Parties hereinunder, or any matter or event connected with or arising out of the Agreement shall be resolved by the Parties negotiating in good faith.

- 23.2 In the absence of resolution in accordance with Condition 23.1 above the dispute may be referred by the Agreement of both Parties to a single mediator to be appointed in accordance with the mediation procedures of the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure 2018 or such later edition as may be in force from time to time or such other organisation which provides mediation services. The mediator shall be agreed upon by the Parties.
- 23.3 All costs of mediation shall be borne equally by the Parties unless otherwise directed by the mediator.
- 23.4 The submission of either Party to Condition 23.2 above shall not limit their right to commence any proceedings in any court of competent jurisdiction in England and Wales.

24. FORCE MAJEURE

- 24.1 Either Party reserves the right to defer the date of delivery or payment or cancel the Agreement or reduce the provision of the Services if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Council including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, fire, explosion, flood, epidemic, lockouts, strikes or other labour disputes (whether or not relating to either party's workforce) or restraints or delays affecting carriers or inability or delay in obtaining supplies or adequate or suitable materials.
- 24.2 If the performance of a Party's obligations under the Agreement is in the opinion of that Party likely to be hindered, delayed or affected by a reason falling within Condition 24.1 the Party so affected shall promptly notify the other Party in writing of that fact. If such circumstances continue for a continuous period of more than 6 months, either Party may terminate the Agreement by written notice to the other Party.

25. TUPE

- 25.1 The Parties acknowledge and agree that any Services provided under the Agreement are in relation to a single specific event or task of short term duration and are unlikely to give rise to a 'relevant transfer' under TUPE either at the commencement of the Agreement or on its expiry or termination.
- 25.2 In the event that TUPE is deemed to apply to the Services, the parties shall co-operate, share information in a timely manner and use all reasonable endeavours to

ensure a smooth transition to/from the Services and transfer of relevant staff to the Supplier/Council/ replacement supplier of similar services (as appropriate), in accordance with TUPE and all other applicable laws.

26. LEGAL PROCEEDINGS

- 26.1 The Supplier shall notify the Council's Representative immediately upon becoming aware of any accident, damage, or breach of any statutory provision relating in any way to the provision of or connected with the Services.
- 26.2 If requested to do so by the Council's Representative and at its own expense, the Supplier shall provide the Council's Representative with any relevant information in connection with any litigation, arbitration or other dispute in which the Council may become involved or any relevant disciplinary hearing internal to the Council and shall give evidence in such inquiries or proceedings or hearings, arising out of the provision of the Services.
- 26.3 The Supplier shall at its own expense fully assist the Local Government Ombudsman, the Audit Commission, the District Auditor, the Council's Internal Auditor, the Council's Monitoring Officer and any other body or person as may be specified by the Council's Representative with any investigations, enquiries or complaints relating to allegations of maladministration or other irregularities or improprieties in connection either directly or indirectly with the Agreement such assistance to include the prompt disclosure to such body or person as aforesaid of all relevant information and documentation.
- 26.4 Should any part of the Services involve the Supplier in performing duties or exercising powers under some other contract it shall upon becoming aware of anything which is likely to give rise to arbitration or litigation under that other contract forthwith notify the Council's Representative of any such matter together with such particulars as are available.

27. SAFEGUARDING

- 27.1 The Supplier shall develop and maintain awareness and understanding of safeguarding issues with vulnerable adults, children and young people.
- 27.2 The Supplier shall ensure that all allegations, suspicions and incidents of abuse, harm or risk of harm to children and/or vulnerable adults or where there is concern about the behaviour of an individual are reported immediately to the Council's Representative and the Multi Agency Referral Unit (MARU) 0300 123 1116. The

Supplier's safeguarding policies and procedures should include active encouragement to staff in whistle blowing if aware of suspected abuse.

- 27.3 The Supplier shall ensure that children and/or vulnerable adults are safeguarded from any form of exploitation including physical, financial, psychological and sexual abuse, neglect, discriminatory abuse or self-harm or inhumane or degrading treatment through deliberate intent, negligent acts or omissions.
- 27.4 The Supplier shall comply with all statutory obligations and Council and Government policies (including but not limited to the Council's Safeguarding Policy, Safeguarding Guidance for Providers and the South West Safeguarding Procedures) in respect of safeguarding as applicable and amended from time to time.
- 27.5 The Supplier shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this Condition 28 have been met.
- 27.6 The Supplier must comply with any instruction given by the Council in respect of this Condition 27.

Whistleblowing

- 27.7 The Supplier shall have in place a process whereby its employees may report in confidence any alleged malpractice on the part of the Supplier as regards any part of the provision of the Services.
- 27.8 The Supplier shall not take any action against any employee pursuant to its contractual rights in respect of that employee where such employee has in accordance with the process provided pursuant to Condition 27.7 and in good faith reported alleged malpractice on the part of the Supplier.

28. MISCELLANEOUS

- 28.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 28.2 A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the

prior written agreement of the Parties.

- 28.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 28.4 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this Condition shall exclude liability for fraud or fraudulent misrepresentation.
- 28.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- 28.6 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the Agreemental relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 28.6 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 28.7 If any provision of the Agreement is a by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

29. NOTICES

- 29.1 Any demand, notice, or other communication required to be given hereunder shall be sufficiently served if served personally on the addressee, or if sent by prepaid first

class recorded delivery post to the registered office or last known address of the Party to be served therewith or by email to the email address provided by the Party's Representative (with a copy to be sent by pre-paid first class post within twenty-four hours of the email being sent)_and if so sent shall, subject to proof to the contrary, be deemed to have been received by the addressee on the second business day after the date of posting or on successful transmission, as the case may be, or if sent by email on the day that the email is deemed to be delivered in accordance with Condition 29.2.

29.2 If a demand, notice or other communication is given by email then:

- (a) it is deemed to be served on the day of transmission provided that a read receipt is duly requested and a delivery confirmation and/or such other evidence of delivery is received before 5pm; or
- (b) on the next following Business Day if the relevant delivery confirmation receipt or such other evidence of delivery is received after 5pm but before midnight on a Business Day; or
- (c) on the next following Business Day if the relevant delivery confirmation receipt or other such evidence of delivery is received on a day which is not a Business Day.

29.3 If an automatic electronic notification is received by the sender within twenty four (24 hours) after sending the email informing the sender that the email has not been delivered to the recipient, or that the recipient is out of the office, the email shall be deemed not to have been served by email and shall instead be deemed to have been served on the day the posted notice would have been deemed to have been served in accordance with Condition 29.1.

30. GOVERNING LAW & JURISDICTION

The Agreement shall in all respects be construed and interpreted in accordance with the laws of England and Wales and the English courts shall have exclusive jurisdiction to settle any disputes which may arise between the Parties out of or in connection with the Agreement.