

Terms and Conditions of Contract for Services

1 Interpretation

1.1 In these terms and conditions:

- “Agreement” means the contract between (i) the Council and (ii) the Supplier constituted by the Purchase Order and subject to these Terms and Conditions;
- “Charges” means the charges for the Services as specified in the Purchase Order ;
- “Confidential Information” means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
- “Data Protection Legislation” means the Data Protection Act 2018 (**DPA**) and any national implementing laws, regulations and secondary legislation and any successor legislation to the Data Protection Act 2018 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;
- “Expiry Date” means the date for expiry of the Agreement as set out in the Purchase Order;
- “FOIA” means the Freedom of Information Act 2000;
- “Information” has the meaning given under section 84 of the FOIA;
- “Key Personnel” means any persons specified as such in the Purchase Order or otherwise notified as such by the Council to the Supplier in writing;
- “Party” means the Supplier or the Council (as appropriate) and “Parties” shall mean both of them;
- “Personal Data” means personal data (as defined in the DPA) which is processed by the Supplier or any Staff on behalf of the Council pursuant to or in connection with the Services;
- “Purchase Order Number” means the Council’s unique number relating to the supply of the Services;
- “Request for Information” has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply);
- “Services” means the services to be supplied by the Supplier to the Council under the Agreement;
- “Specification” means the specification for the Services (including as to quantity, description and quality) as specified in the Purchase Order;
- “Staff” means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement;
- “Staff Vetting Procedures” means vetting procedures that accord with good industry practice or, where requested by the Council, the Council’s procedures for the vetting of personnel

- as provided to the Supplier from time to time;
- “Supplier” means the person named as Supplier in the Purchase Order;
- “Term” means the period from the start date of the Agreement set out in the Purchase Order to the Expiry Date. Such period may be extended in accordance with clause 4.2 or terminated in accordance with these terms and conditions;
- “VAT” means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
- “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 In these terms and conditions, unless the context otherwise requires:
- 1.2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 1.2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 1.2.3 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
- 1.2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or bylaw made under that enactment; and
- 1.2.5 the word ‘including’ shall be understood as meaning ‘including without limitation’.

2 Basis of Agreement

- 2.1 The Purchase Order constitutes an offer by the Council to purchase the Services subject to and in accordance with these terms and conditions.
- 2.2 The offer comprised in the Purchase Order shall be deemed to be accepted by the Supplier once the Council has sent a copy to the Supplier.

3 Supply of Services

- 3.1 In consideration of the Council’s agreement to pay the Charges, the Supplier shall supply the Services to the Council for the Term subject to and in accordance with these terms and conditions.
- 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 perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Supplier’s industry, profession or trade;
- 3.2.3 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;
- 3.2.4 ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
- 3.2.5 comply with all applicable laws; and
- 3.2.6 provide all equipment, tools and vehicles and other items as are required to provide 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 Charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Council and the Supplier.

4 Term

- 4.1 The Agreement shall take effect on the date specified in the Purchase Order and shall expire on the Expiry Date unless it is otherwise extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement.
- 4.2 The Council may extend the Agreement for a period of up to 6 months by giving not less than 10 Working Days' notice in writing to the Supplier prior to the Expiry Date. These terms and conditions shall apply throughout any such extended period.

5 Charges, Payment and Recovery of Sums Due

- 5.1 The Charges for the Services shall be as set out in the Purchase Order and shall be the full and exclusive remuneration of the Supplier in respect of the supply 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.
- 5.2 The Supplier shall invoice the Council as specified in these Terms and Conditions. Each invoice shall include such supporting information required by the Council to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.
- 5.3 In consideration of the supply of the Services by the Supplier, the Council shall pay the Supplier the invoiced amounts no later than 30 days after receipt of an invoice which includes the correct Purchase Order Number and which the Council has determined is valid and undisputed. The Council may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.
- 5.4 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Council shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Services.
- 5.5 If there is a dispute between the Parties as to the amount invoiced, the Council shall pay the agreed undisputed amount. The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate the Agreement for a failure to pay agreed undisputed sums in accordance with clause 16.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 19.
- 5.6 If a payment of an undisputed amount is not made by the Council by the due date, then the Council shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.7 If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Council in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Council from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with the Council. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Council in order to justify withholding payment of any such amount in whole or in part.
- 5.8 The Council shall accept and process for payment an electronic invoice submitted for payment by the Supplier where the invoice is undisputed and where it complies with the standard on electronic invoicing.
- 5.9 For the purposes of paragraph 5.8, an electronic invoice complies with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870."

6 Premises and equipment

- 6.1 If necessary, the Council shall provide the Supplier with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Council's premises by the Supplier or the Staff shall be at the Supplier's risk.
- 6.2 If the Supplier supplies all or any of the Services at or from the Council's premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Supplier shall vacate the Council's premises, remove the Supplier's plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Council's premises in a clean, safe and tidy condition. The Supplier shall be solely responsible for making good any damage to the Council's premises or any objects contained at the Council's premises which is caused by the Supplier or any Staff, other than fair wear and tear.
- 6.3 If the Supplier supplies all or any of the Services at or from its premises or the premises of a third party, the Council may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
- 6.4 The Council shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Council's premises the Supplier shall, and shall procure that all Staff shall, comply with all the Council's security requirements.
- 6.5 Where all or any of the Services are supplied from the Supplier's premises, the Supplier shall, at its own cost, comply with all security requirements specified by the Council in writing.
- 6.6 Without prejudice to clause 3.2.6, any equipment provided by the Council for the purposes of the Agreement shall remain the property of the Council and shall be used by the Supplier and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Council on expiry or termination of the Agreement.
- 6.7 The Supplier shall reimburse the Council for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Supplier or any Staff. Equipment supplied by the Council shall be deemed to be in a good condition when received by the Supplier or relevant Staff unless the Council is notified otherwise in writing within 5 Working Days.

7 Staff and Key Personnel

- 7.1 If the Council reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:
 - 7.1.1 refuse admission to the relevant person(s) to the Council's premises;
 - 7.1.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s); and/or
 - 7.1.3 require that the Supplier replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Council to the person removed is surrendered,and the Supplier shall comply with any such notice.
- 7.2 The Supplier shall:
 - 7.2.1 ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;
 - 7.2.2 if requested, provide the Council with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Council's premises in connection with the Agreement; and
 - 7.2.3 procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Council.

- 7.3 Any Key Personnel shall not be released from supplying the Services without the agreement of the Council, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment.
- 7.4 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Council (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

8 Assignment and sub-contracting

- 8.1 The Supplier shall not without the written consent of the Council assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Council may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
- 8.2 Where the Supplier enters into a sub-contract 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 due by the Supplier to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid and undisputed invoice.
- 8.3 Where the Council has consented to the placing of sub-contracts, the Supplier shall, at the request of the Council, send copies of each sub-contract to the Council as soon as is reasonably practicable.
- 8.4 The Council may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under the Agreement.

9 Intellectual Property Rights

- 9.1 All intellectual property rights in any materials provided by the Council to the Supplier for the purposes of this Agreement shall remain the property of the Council but the Council hereby grants the Supplier a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement for the sole purpose of enabling the Supplier to perform its obligations under the Agreement.
- 9.2 All intellectual property rights in any materials created or developed by the Supplier pursuant to the Agreement or arising as a result of the provision of the Services shall vest in the Supplier. If, and to the extent, that any intellectual property rights in such materials vest in the Council by operation of law, the Council hereby assigns to the Supplier by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such intellectual property rights all its intellectual property rights in such materials (with full title guarantee and free from all third party rights).
- 9.3 The Supplier hereby grants the Council:
- 9.3.1 a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-licence) to use all intellectual property rights in the materials created or developed pursuant to the Agreement and any intellectual property rights arising as a result of the provision of the Services; and
- 9.3.2 a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use:
- (a) any intellectual property rights vested in or licensed to the Supplier on the date of the Agreement; and

- (b) any intellectual property rights created during the Term but which are neither created or developed pursuant to the Agreement nor arise as a result of the provision of the Services,

including any modifications to or derivative versions of any such intellectual property rights, which the Council reasonably requires in order to exercise its rights and take the benefit of the Agreement including the Services provided.

- 9.4 The Supplier shall indemnify, and keep indemnified, the Council in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Council as a result of or in connection with any claim made against the Council for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Supplier or any Staff.

10 Governance and Records

- 10.1 The Supplier shall:

- 10.1.1 attend progress meetings with the Council at the frequency and times specified by the Council and shall ensure that its representatives are suitably qualified to attend such meetings; and

- 10.1.2 submit progress reports to the Council at the times and in the format specified by the Council.

- 10.2 The Supplier shall keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services supplied under it and all payments made by the Council. The Supplier shall on request afford the Council or the Council's representatives such access to those records as may be reasonably requested by the Council in connection with the Agreement.

11 Confidentiality, Transparency and Publicity

- 11.1 Subject to clause 11.2, each Party shall:

- 11.1.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and

- 11.1.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.

- 11.2 Notwithstanding clause 11.1, a Party may disclose Confidential Information which it receives from the other Party:

- 11.2.1 where disclosure is required by applicable law or by a court of competent jurisdiction;

- 11.2.2 to its auditors or for the purposes of regulatory requirements;

- 11.2.3 on a confidential basis, to its professional advisers;

- 11.2.4 to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;

- 11.2.5 where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier's obligations under the Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 11.2.5 shall observe the Supplier's confidentiality obligations under the Agreement; and

- 11.2.6 where the receiving Party is the Council:

- (a) on a confidential basis to the employees, agents, consultants and contractors of the Council;
- (b) on a confidential basis to any other Central or Local Government Body if required by applicable law, any successor body to a Central or Local Government Body or any company to which the Council transfers or proposes to transfer all or any part of its business;
- (c) to the extent that the Council (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
- (d) in accordance with clause 12.

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Council under this clause 11.

11.3 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 and the Supplier hereby gives its consent for the Council to publish this Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. The Council may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.

11.4 The Supplier shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Council.

12 Freedom of Information

12.1 The Supplier acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:

- 12.1.1 provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;
- 12.1.2 transfer to the Council all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- 12.1.3 provide the Council with a copy of all Information belonging to the Council requested in the Request for Information which is in its possession or control in the form that the Council requires within 5 Working Days (or such other period as the Council may reasonably specify) of the Council's request for such Information; and
- 12.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Council.

12.2 The Supplier acknowledges that the Council may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Supplier or the Services (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances the Council shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

12.3 Notwithstanding any other provision in the Agreement, the Council shall be responsible for determining in its absolute discretion whether any Information relating to the Supplier or the Services is exempt from disclosure in accordance with the FOIA and/or the Environmental

Information Regulations 2004.

13 Protection of Personal Data and Security of Data

13.1 With respect to the Parties' rights and obligations under this Agreement, the Parties acknowledge that the Council is a Data Controller and that the Supplier is a Data Processor OR, where relevant, that the Council and the Supplier are joint Data Controllers.

13.2 The Supplier shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.

13.3 The Supplier shall:

- 13.3.1 Process the Personal Data only in accordance with the written instructions of the Council and only to the extent that is necessary for the provision of the Services under this Agreement or as is required by law or any regulatory body;
- 13.3.2 not engage a sub-processor to undertake any Processing of any Personal Data without the prior written authorisation of the Council. Where such authorisation is granted by the Council (at its sole discretion), the Supplier shall ensure that it enters into a contract with that sub-processor on the same or equivalent terms as are set out in this **clause**;
- 13.3.3 ensure that persons authorised to Process the Personal Data are aware of and comply with the Supplier's duties under this clause;
- 13.3.4 ensure that persons authorised to Process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
- 13.3.5 ensure that none of the Supplier's employees publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council;
- 13.3.6 ensure that persons authorised to Process the Personal Data have been trained in the use, care, protection and handling of Personal Data;
- 13.3.7 not transfer any Personal Data to any country or territory outside the European Economic Area without the prior written consent of the Council;
- 13.3.8 at the written direction of the Council, delete or return all the Personal Data to the Council after the end of the provision of Services, and delete existing copies, unless the Supplier has a statutory duty to retain that Personal Data. If the Supplier believes that it does have such a statutory duty, this should be notified to the Council in writing at least three (3) months prior to the expiry or termination (whichever is earlier) of this Agreement;
- 13.3.9 assist the Council by implementing appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Council's obligation to respond to Subject Access Requests, as well as providing all assistance and cooperation as the Council may require to investigate or deal with any such Subject Access Requests;
- 13.3.10 ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data;

13.3.11 insofar as this is possible given the nature of Processing and the information available to the Supplier, assist the Council in ensuring compliance with its obligations pursuant to the Data Protection Legislation;

13.3.12 notify the Council of any actual or potential Personal Data Breach within 24 hours of its occurrence (or, in the case of a potential breach, the Supplier becoming aware of such breach), along with all supporting facts and information sufficient to allow the Council to make any required report(s) to any relevant Data Subjects, the Information Commissioner or other regulatory or governmental body or bodies to which it is subject;

13.3.13 notify the Council immediately if it receives:

- a) a request from a Data Subject to have access to that person's Personal Data;
- b) a request to rectify, erase or cease processing Personal Data;
- c) any communication from the Information Commissioner or any other regulatory authority;
- d) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by law; or
- e) a complaint or request relating to the Council's obligations under the Data Protection Legislation;

13.3.14 provide the Council with full cooperation and assistance in relation to any complaint or request made, including by:

- a) providing the Council with full details of the complaint or request;
- b) complying with a Subject Access Request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Council's instructions;
- c) providing the Council with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Council); and
- d) providing the Council with information requested by the Council;

13.3.15 make available to the Council, at reasonable intervals and within twenty one (21) days following a request for such, all information necessary to demonstrate compliance with the obligations laid down in the Data Protection Legislation and allow for and contribute to audits, including inspections, conducted by the Council or another auditor mandated by the Council.

13.4 The Supplier shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Agreement in such a way as to cause the Council to breach any of its applicable obligations under the Data Protection Legislation.

13.5 The Supplier shall indemnify and keep indemnified the Council against all demands, actions, proceedings, claims, damages, liabilities, costs and expenses (including reasonable legal

costs) incurred by it in respect of any breach of this clause by the Supplier and/or any act or omission of any Sub-Contractor appointed by the Supplier.

13.6 The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its termination.

13.7 In the event of conflict between any provision in the Agreement and this clause the provisions of this clause shall take precedence.

14 Liability

14.1 The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Council if and to the extent that it is caused by the negligence or wilful misconduct of the Council or by breach by the Council of its obligations under the Agreement.

14.2 Subject always to clauses 14.3 and 14.4:

14.2.1 the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 125% of the Charges paid or payable to the Supplier; and

14.2.2 except in the case of claims arising under clauses 9.4 and 18.3, in no event shall the Supplier be liable to the Council for any:

- (a) loss of profits;
- (b) loss of business;
- (c) loss of revenue;
- (d) loss of or damage to goodwill;
- (e) loss of savings (whether anticipated or otherwise); and/or
- (f) any indirect, special or consequential loss or damage.

14.3 Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:

14.3.1 death or personal injury caused by its negligence or that of its Staff;

14.3.2 fraud or fraudulent misrepresentation by it or that of its Staff; or

14.3.3 any other matter which, by law, may not be excluded or limited.

14.4 The Supplier's liability under the indemnity in clause 9.4 and 18.3 shall be unlimited.

15 Force Majeure

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

16 Termination

16.1 The Council may terminate the Agreement at any time by notice in writing to the Supplier to take effect on any date falling at least 1 month (or, if the Agreement is less than 3 months in duration, at least 10 Working Days) later than the date of service of the relevant notice. Where the Council exercises its right to terminate the Contract under clause 16.1, the Supplier shall only be entitled to payment for Services duly rendered up to the date of termination and the

Council shall incur no liability to the Supplier in respect of any other losses whatsoever whether:

- 16.1.1 loss of future profits;
- 16.1.2 redundancy or sub-contractor breakage costs; or
- 16.1.3 any other costs whatsoever incurred by the Supplier as a consequence of such termination.

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

- 16.2.1 (without prejudice to clause 16.2.5), is in material breach of any obligation under the Agreement which is not capable of remedy;
- 16.2.2 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;
- 16.2.3 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;
- 16.2.4 undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;
- 16.2.5 breaches any of the provisions of clauses 7.2, 11, 12, 13 and 17; or
- 16.2.6 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 clause 16.2.6) in consequence of debt in any jurisdiction; or
- 16.2.7 if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply

16.3 The Supplier shall notify the Council as soon as practicable of any change of control as referred to in clause 16.2.4 or any potential such change of control.

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

16.5 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 clause and clauses 2, 3.2, 6.1, 6.2, 6.6, 6.7, 7, 9, 10.2, 11, 12, 13, 14, 16.6, 17.4, 18.3, 19 and 20.7 or any other provision of the Agreement that either expressly or by implication has effect after termination.

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

- 16.6.1 give all reasonable assistance to the Council and any incoming supplier of the Services; and
- 16.6.2 return Records (including all data and / or information covered by the Data Protection Act 2018) to the Authority immediately at the end of the Agreement, whether by expiry or termination, for retention by the Authority for a period of not less than six (6) years (or such longer period as may be required by law).

17 Compliance

- 17.1 The Supplier shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Council shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Council's premises and which may affect the Supplier in the performance of its obligations under the Agreement.
- 17.2 The Supplier shall:
- 17.2.1 comply with all the Council's health and safety measures while on the Council's premises; and
 - 17.2.2 notify the Council immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Council's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 17.3 The Supplier shall:
- 17.3.1 perform its obligations under the Agreement in accordance with all applicable equality Law and the Council's equality and diversity policy as provided to the Supplier from time to time; and
 - 17.3.2 take all reasonable steps to secure the observance of clause 17.3.1 by all Staff.
- 17.4 The Supplier shall supply the Services in accordance with the Council's environmental policy as provided to the Supplier from time to time.
- 17.5 The Supplier shall comply with, and shall ensure that its Staff shall comply with, the provisions of:
- 17.5.1 section 182 of the Finance Act 1989.

18 Prevention of Fraud and Corruption

- 18.1 The Supplier shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.
- 18.2 The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify the Council immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 18.3 If the Supplier or the Staff engages in conduct prohibited by clause 18.1 or commits fraud in relation to the Agreement or is in breach of the Bribery Act 2010 the Council may:
- 18.3.1 terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the supply of the Services and any additional expenditure incurred by the Council throughout the remainder of the Agreement; or
 - 18.3.2 recover in full from the Supplier any other loss sustained by the Council in consequence of any breach of this clause.

19 Dispute Resolution

- 19.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.
- 19.2 If the dispute cannot be resolved by the Parties within one month of being escalated as referred

to in clause 19.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the “**Mediator**”) chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.

19.3 If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.

20 General

20.1 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.

20.2 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.

20.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.

20.4 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 clause shall exclude liability for fraud or fraudulent misrepresentation.

20.5 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.

20.6 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual 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.

20.7 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.

20.8 If any provision of the Agreement is prohibited 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.

21 Notices

21.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 21.3, e-mail to the address of the relevant Party set out in the Purchase Order, or such other address as that Party may from time to time notify to the other Party in accordance with this clause:

21.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.

21.3 Notices under clauses 15 (Force Majeure) and 16 (Termination) may be served by email only if

the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 21.1.

22 Governing Law and Jurisdiction

The validity, construction and performance of the Agreement, and all contractual and non contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

23 Whistleblowing

The Supplier shall comply with the Public Interest Disclosure Act 1998 and with the Council's whistleblowing policy.

24 Modern Slavery

The Supplier shall comply with the provisions of the Modern Slavery Act 2015.

25 Prevent

25.1 The Supplier shall ensure their employees and agents have a good understanding of the need to prevent people being drawn into terrorism; and

25.2 in the event of there being a concern about a person, notify the Council.

26 Business Continuity Plan

26.1 The Supplier shall have in place by the Commencement Date of this Agreement a Business Continuity Plan ("**BCP**") a copy of which shall be provided to the Contract Manager. The BCP shall be current and up to date and prepared to ISO 22301 or at least to an equivalent standard.

26.2 The BCP shall be maintained and regularly tested by the Supplier throughout the Term of this Agreement. The results of such testing shall be forwarded to the Contract Manager within five Working Days of the test being completed. The Contract Manager shall then have the right within 20 Working Days, by written statement, to require reasonable alterations to the BCP to be made by the Supplier at its expense should such alterations be judged by the Contract Manager as needed for sustaining the proper performance of the Services.

27 Effect of Brexit

27.1 Brexit means a change in the United Kingdom's membership of the European Union (including but not limited to where the United Kingdom leaves the European Union pursuant to Article 50 of the Treaty of Lisbon or enters into a transitional arrangement).

27.2 The Supplier shall be entitled to an extension of time where delaying completing the Services is proven to be caused by the effects of Brexit as defined in the following circumstances:

27.2.1 delay to the Services caused by a delay to the delivery or importation or unavailability of goods and / or materials into the United Kingdom (regardless of which countries comprise the UK at such date) caused by Brexit; and

27.2.2 delay to the Services caused by shortage of or restrictions / restraints to the immigration of labour to the United Kingdom (regardless of which countries comprise the UK at such date) or from the European Union (regardless of which countries comprise the EU at such date) caused by Brexit.

27.3 The Parties agree that any increase in costs caused by the imposition of, or any change to, customs duties, tariffs, levies or changes of fees, caused by Brexit, shall be shared equally.