

Annex 2

Goods Contract Conditions

Introduction

- (A) The Supplier carries on the business of supplying the Goods.
- (B) The Supplier wishes to supply and the Council wishes to buy the Goods on the Conditions set out in this Contract.
- (C) For the avoidance of doubt, this Contract is made up of the front sheet (the Provider Front Sheet) which contains key contractual information and, where required pursuant to the terms of this Contract, additional annexures.

Agreed Terms

These terms and conditions govern the Supplier's provision of Goods to the Council and are incorporated into the Contract.

1 Interpretation

1.1 In these Conditions, the following definitions apply:

Acceptance Criteria means any criteria with which Goods must comply as set out in the Specification or evidenced by written agreement between the parties;

Annex means any of the following annexes :

- (a) Annex 1 – Provider Front Sheet;
- (b) this Annex 2 – Goods Contract Conditions;
- (c) Annex 3 – Special Conditions;
- (d) Annex 4 – Schedule of Rates and Prices;
- (e) Annex 5 - Specification;
- (f) Annex 6 - Supplier Details; and
- (g) Annex 7 (Schedule of Processing, Personal Data and Data Subjects).

Applicable Law means the laws of England and Wales and the European Union and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Goods from time to time;

Best Value Duty means the duty on local authorities to provide best value and to provide services efficiently, effectively and economically and to strive for constant improvement of all services as set out in the Local Government Act of 1999 the Local Government Act of 2000 and any similar duty;

Business Day means a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business;

Charges means the charges for the Goods referred to in Condition 12 and set out in Annex 4 (*Schedule of Rates and Prices*);

Codes of Practice means the Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records issued pursuant to sections 45 and 46 of the FOIA and any similar or subsequent codes or guidance issued in relation to the Council's FOIA obligations, as amended, updated and replaced from time to time;

Commencement Date means the date indicated in PFS 3.1;

Commercially Sensitive Information means the information comprising the information of a commercially sensitive nature relating to the Supplier, its Intellectual Property Rights or its business or which the Supplier has indicated to the Council that, if disclosed by the Council, would cause the Supplier significant commercial disadvantage or material financial loss;

Condition(s) means these terms and conditions, including any Annexes;

Confidential Information means all information of a confidential nature (however recorded or preserved) disclosed or made available, directly or indirectly, by the Council or its Representatives to the Supplier or its Representatives, including any information which is marked confidential or private and any information relating to the Council's members, customers, clients, suppliers, business, strategy, plans, intentions, market opportunities, operations, processes or Intellectual Property;

Contract means the contract between the Council and the Supplier for the provision of the Goods comprising the Purchase Order and these Conditions;

Contract Period means the period from and including the Commencement Date to the Expiry Date, or if earlier, the Termination Date;

Contract Year means a period of twelve (12) months from the Commencement Date;

Council means Lichfield District Council whose office is at District Council House, Frog Lane, Lichfield, Staffordshire WS13 6YY;

Council Materials shall have the meaning given in Condition 4.1.4;

Council's Policies means the policies listed in PFS Section 5;

Council Representative means any individual named as such in the Purchase Order or such person or persons as notified to the Supplier by the Council in writing from time to time;

Data Loss Event means the any event that results, or may result, in unauthorised access to Personal Data held by the Provider under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.

DPA 2018 means the Data Protection Act 2018;

Data Protection Impact Assessment means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

Data Protection Law means (i) the GDPR, the LED, and any national implementing Applicable Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of Personal Data and privacy; (iii) all Applicable Law about the processing of Personal Data and privacy;

Data Protection Officer shall have the meaning given to it under the GDPR;

Data Subject shall have the meaning given to it under the GDPR;

Data Subject Access Request means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Law to access their Personal Data;

Delivery Location means the address specified by the Council in PFS Section 3.4 where the Goods are to be delivered. Where no address is specified, the Goods shall be delivered to Lichfield District Council, District Council House, Frog Lane, Lichfield, Staffordshire WS13 6YY;

EIR means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issues by the Information Commissioner or relevant government department in relation to such regulations;

Expiry Date means the date indicated in PFS Section 3.2;

FOIA means the Freedom of Information Act 2000 and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

Information has the meaning given under section 84 of FOIA;

GDPR means the General Data Protection Regulation (Regulation (EU) 2016/679)

Goods means the goods (or any part of them) provided or to be provided by the Supplier under the Contract as set out in the Purchase Order and detailed within the Specification including where relevant any Special Conditions and in all cases whether or not manufactured or produced by the Supplier;

Information has the meaning given under section 84 of FOIA;

Intellectual Property Rights means all intellectual property rights, whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world including all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets);

Modern Slavery Legislation means the legislation referred to in section 54 of the Modern Slavery Act 2015;

Parties means both the Council and the Provider;

Personal Data has the meaning given to it under the GDPR ;

Personal Data Breach shall have the meaning given to it under the GDPR;

Public Body means any part of the government of the United Kingdom including but not limited to the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales, local authorities, government ministers and government departments and government agencies;

Premises means any premises owned, leased to, controlled or occupied by the Council or its Representatives which are made available for use by the Supplier or its Representatives for the delivery of the Goods;

Processor shall have the meaning given in the GDPR

Prohibited Act means any of the following acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;
- (c) committing any offence:
 - (i) under the Bribery Act;
 - (ii) under legislation or common law concerning fraudulent acts;
 - (iii) defrauding, attempting to defraud or conspiring to defraud the Council; and
- (d) any activity, practice or conduct which would constitute one of the offences listed under part (c) above, if such activity, practice or conduct had been carried out in the UK.

Protective Measures means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of 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 such measures adopted by it;

Provider Front Sheet / PFS means the document titled "Provider Front Sheet" appended to this Contract at Annex 1 (*Supplier Front Sheet*);

Purchase Order means the written order from the Council for Goods incorporating or attached to these Conditions or an order made through an electronic invoice system;

Relevant Industry means the industry indicated in PFS Section 3.4;

Representatives means:

for the Supplier: employees, officers, agents, advisors, sub-contractors, suppliers and/or other representatives identified in Annex 6 (*Supplier Details*); and

for the Council: the Council Representative;

Request for Information means a request for Information or an apparent request under the Code of Practice on Access to Government Information, FOIA or EIR;

Specification means any specification for the Goods (including any relevant plans or drawings) as set out in Annex 5;

Special Conditions means any terms and conditions annexed to this Contract at Annex 3 where such are indicated as required in PFS Section 2.1;

Sub-Contract means any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the Goods from that third party;

Sub-Contractor means the contractors or suppliers that enter into a Sub-Contract with the Supplier;

Sub-processor means any third party appointed to process Personal Data on behalf of the Provider;

Supplier means the person, firm or company to whom the Purchase Order is addressed;

Supplier's Liability Percentage Cap means the percentage indicated in PFS Section 4.1;

Supplier's Liability means the figure indicated in PFS Section 4.2; and

Termination Date means the date of early termination of this Contract in accordance with its terms.

1.2 In these Conditions, the following rules of interpretation apply:

1.2.1 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.2.2 the masculine includes the feminine and vice versa;

1.2.3 the singular includes the plural and vice versa;

- 1.2.4 a reference to any paragraph, Condition, term or Annex is, except where expressly stated to the contrary, a reference to such paragraph, Condition, term or Annex of and to the Contract;
- 1.2.5 save where stated to the contrary, any reference to these Conditions, the Contract or to any other document shall include any permitted variation, amendment or supplement to such document;
- 1.2.6 a reference to a party includes its successors or permitted assigns;
- 1.2.7 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted;
- 1.2.8 any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- 1.2.9 any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended, replaced, consolidated or re enacted;
- 1.2.10 a reference to a person includes firms, partnerships, and corporations and their successors and permitted assignees or transferees;
- 1.2.11 headings are for convenience of reference only;
- 1.2.12 words preceding "include", "includes", "including" and "included" shall be construed without limitation by the words which follow those words; and
- 1.2.13 a reference to **writing** or **written** includes faxes and e-mails.
- 1.3 In the event of any inconsistency or conflict between any Purchase Order and these Conditions, these Conditions shall prevail.
- 1.4 In the event of any inconsistency or conflict between any Annex and these Conditions, the Annex shall prevail.
- 2 Formation of Contract**
- 2.1 The Contract shall come into existence and take effect on the Commencement Date and shall remain in full force and effect until either:
- 2.1.1 the Expiry Date;
- 2.1.2 the parties have discharged all their obligations under it (at which point it shall expire); or
- 2.1.3 it is terminated in accordance with these Conditions.
- 2.2 These Conditions apply to the supply of the Goods to the exclusion of any other terms that the Supplier may seek to impose or incorporate (including any standard trading terms of the Supplier), or which are implied by trade, custom, practice or course of dealing.

3 **Supplier's warranties**

3.1 The Supplier warrants that:

- 3.1.1 it shall provide the Goods specified in the Specification in accordance with these Conditions with effect from the Commencement Date;
- 3.1.2 it will meet any dates set out in the Purchase Order or Specification for the delivery of the Goods or (where no dates are so specified) then the Supplier shall deliver the Goods within a reasonable time;
- 3.1.3 the design, construction and quality of the Goods will comply in all respects with all relevant requirements of any law, statute, statutory rule or order, or other instrument of law which may be in force at the time when the same are provided;
- 3.1.4 it has and will maintain all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract;
- 3.1.5 it will not do or omit to do anything which may cause the Council to lose any licence, consent or permission upon which it relies for the purposes of conducting its business or affairs;
- 3.1.6 its Representatives will behave in a polite and courteous manner at all times when on the Premises;
- 3.1.7 the Goods will conform as to their quantity, quality and description with the Purchase Order or Specification, including with all Acceptance Criteria;
- 3.1.8 the Goods will be fit for any purpose and meet any standard or performance levels set out in the Purchase Order or Specification or which can reasonably be expected for Goods of the type in question;
- 3.1.9 the Goods will conform to any literature or description supplied by the Supplier to the Council prior to the issue of the Purchase Order;
- 3.1.10 (without prejudice to the generality of the foregoing warranties) the Goods will:
 - (a) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose;
 - (b) be of sound materials and workmanship;
 - (c) be free from defects in design, materials and workmanship;
 - (d) be equal in all respects to the examples, samples, patterns or specifications provided or given by the Council; and
 - (e) comply with all applicable statutory and regulatory requirements relating to their manufacture, labelling, packaging, storage, handling and delivery;
- 3.1.11 its Representatives will comply with all of the Council's policies and procedures, signs, notices and other instructions either displayed at the Premises or notified

to the Supplier (or its Representatives) from time to time and relating to the use of the Premises or any part of them or any equipment or facilities at the Premises; it will provide the Goods with reasonable skill and care and in accordance with the best practice prevailing in the Relevant Industry from time to time; and

3.1.12 it, and its Representatives will comply with all of the Council's Policies, procedures, signs, notices and other instructions either displayed at the Premises or notified to the Supplier (or its Representatives) from time to time and relating to the use of the Premises or any part of them or any equipment or facilities at the Premises.

3.2 The Supplier acknowledges and confirms that:

3.2.1 it has had an opportunity to carry out a thorough due diligence exercise in relation to the Goods and has asked the Council all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Goods in accordance with the terms of this Contract;

3.2.2 it has received all information requested by it from the Council pursuant to Condition 3.2.1 (*Supplier's warranties*) to enable it to determine whether it is able to provide the Goods in accordance with the terms of this Contract;

3.2.3 it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council pursuant to Condition 3.2.2 (*Supplier's warranties*);

3.2.4 it has raised all relevant due diligence questions with the Council before the Commencement Date; and

3.2.5 it has entered into this Contract in reliance on its own due diligence.

4 **Supplier's general undertakings**

4.1 The Supplier undertakes to:

4.1.1 provide at its expense and risk all equipment, tools, materials, machines and vehicles and such other items as are required to provide the Goods;

4.1.2 co-operate with the Council and any third party nominated by the Council in all matters relating to the Contract;

4.1.3 comply with all reasonable instructions of the Council;

4.1.4 hold all materials, equipment and tools, drawings, specifications and data supplied by the Council to the Supplier (**Council Materials**) in safe custody at its own risk, maintain the Council Materials in good condition until returned to the Council, and not dispose of or use the Council Materials other than in accordance with the Council's written instructions or authorisation;

4.1.5 use all reasonable endeavours to transfer to the Council the benefit of any warranty or guarantee given by the manufacturer of any Goods of which the Supplier is not the manufacturer;

- 4.1.6 promptly remove from the Premises any rubbish generated and any of its equipment, tools, materials, machines and vehicles and any other items used in connection with the delivery of the Goods and leave the Premises in a clean and tidy condition, failing which the Council may dispose of them and make good the Premises at the expense of the Supplier;
- 4.1.7 notify the Council as soon as practicable of any health and safety or other hazards at the Premises of which it becomes aware; and
- 4.1.8 it will comply with the International Financial Reporting Standard for Small and Medium-sized Entities (**SMEs**) and any other International Financial Reporting Standard that it is required to comply with by Applicable Law.

5 **Supplier's personnel**

The Council reserves the right to refuse to admit to the Premises and to require the Supplier to replace with another suitably qualified person any Representative of the Supplier whose admission would in the reasonable opinion of the Council be undesirable.

6 **Delivery of Goods**

6.1 Without prejudice to Condition 4 (*Supplier's general undertakings*), the Supplier undertakes:

- 6.1.1 to deliver the Goods to the Delivery Location during the Council's normal opening hours on a Business Day and by the date specified in in the Specification; and
- 6.1.2 to ensure that the Goods are packed and secured in such a manner as to reach the Delivery Location in good condition under normal conditions of transport.

6.2 Each delivery of Goods must be accompanied by a delivery note which shows the date of the Purchase Order, the Purchase Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

6.3 The Supplier must not deliver the Goods in instalments unless it has the Council's prior written consent to do so in which case the Goods must be invoiced, and may be paid for, separately.

6.4 Delivery of the Goods shall be completed when the Goods have been unloaded at the Delivery Location and a Council Representative has inspected the Goods and confirmed that he is satisfied with the unloading. However, such confirmation shall not be deemed to be confirmation that the Goods conform with the Contract and is without prejudice to any right of rejection which may accrue to the Council under Condition 7 (*Testing and acceptance of Goods*).

6.5 If for any reason the Council is unable to accept delivery of the Goods at the time when they are due and ready for delivery the Supplier shall use all reasonable endeavours to store the Goods, safeguard them and take all reasonable steps to prevent their

deterioration until their actual delivery, and the Council shall be liable to the Supplier for the reasonable costs (including insurance) of his so doing.

7 Testing and acceptance of Goods

7.1 All Goods must meet any relevant Acceptance Criteria.

7.2 The Council may test Goods for conformity with Acceptance Criteria at any time during the period of fifteen (15) Business Days following their delivery under Condition 6.4 (*Delivery of Goods*).

7.3 If any Goods fail to meet their Acceptance Criteria the Council will notify the Supplier accordingly specifying the non-conformity.

7.4 In the case of Goods which fail to meet the Acceptance Criteria the Council may either:

7.4.1 opt to reject them, in which case Condition 9 (*The Council's remedies*) will apply; or

7.4.2 request the Supplier to remedy the non-compliance at its own expense either at the Premises or elsewhere and redeliver the Goods to the Council within fifteen (15) Business Days of the Council's notification under Condition 7.3 (*Testing and acceptance of Goods*), following which the Council shall have a further fifteen (15) Business Days in which to re-test the Goods for conformity with the Acceptance Criteria.

7.5 If any Goods fail to meet the Acceptance Criteria on re-testing under Condition 7.4.2 (*Testing and acceptance of Goods*), the Council may reject them and exercise its rights under Condition 9 or at its sole discretion repeat the steps in Condition 7.4 (*Testing and Acceptance of Goods*).

8 Risk and title

8.1 Risk in the Goods shall pass to the Council on completion of delivery in accordance with Condition 6.4 (*Delivery of Goods*).

8.2 Title to the Goods shall pass to the Council on payment of the Charges for them.

9 The Council's remedies

9.1 If:

9.1.1 the Supplier fails to deliver the Goods by the date required under these Conditions;

9.1.2 the Supplier fails to comply with its warranties set out in Condition 3 (*Supplier's Warranties*); or

9.1.3 Condition 7.4.1 (*Testing and Acceptance of Goods*) applies; or

9.1.4 Condition 7.5 (*Testing and Acceptance of Goods*) applies,

the Council may exercise any of the rights set out in Condition 9.2 (*The Council's Remedies*).

9.2 The rights referred to in Condition 9.1 (*The Council's Remedies*) are:

9.2.1 to refuse to accept any instalment delivery of Goods which the Supplier attempts to make;

9.2.2 to reject any Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;

9.2.3 to recover from the Supplier any costs incurred by the Council in having a third party provide substitute Goods;

9.2.4 to claim damages for any additional costs, loss or expenses incurred by the Council which are attributable to the Supplier's failures set out in Condition 9.1;

9.2.5 to terminate the Contract with immediate effect by giving written notice to the Supplier.

9.3 The rights set out in Condition 9.2 (*The Council's Remedies*) are cumulative and the exercise by the Council of any one of them shall not preclude it from exercising any other.

9.4 The Council's rights under this Condition 9 are in addition to its rights and remedies implied by statute and at common law.

10 **The Council's obligations**

The Council will provide such information as the Supplier may reasonably request in connection with the provision of the Goods provided that the Council (acting reasonably) considers such information necessary for the purpose of providing the Goods.

11 **Liability**

11.1 Subject to Condition 11.3 (*Liability*), neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the Contract which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.

11.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this Contract.

11.3 Subject to Condition 11.4 (*Liability*), the Supplier's total aggregate liability:

11.3.1 is unlimited in respect of:

(a) any breach of Condition 22 (*Corruption*);

(b) the Supplier's wilful default;

(c) the indemnities in Condition 23 (*Modern Slavery Legislation*); and

- (d) any breach of Condition 27 (Data Protection Law).
- 11.3.2 in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Contract, shall in no event exceed the Supplier's Liability or, if lower and a figure has been inserted into PFS Section 4.1, the Supplier's Liability Percentage Cap of the aggregate Charges paid under or pursuant to this Contract.
- 11.4 Notwithstanding any other provision of this Contract neither party limits or excludes its liability for:
- 11.4.1 fraud or fraudulent misrepresentation;
- 11.4.2 death or personal injury caused by its negligence;
- 11.4.3 breach of any obligation as to title implied by statute; or
- 11.4.4 any other act or omission, liability for which may not be limited under any applicable law.
- 11.5 In this Condition 11(*Liability*), a reference to the Council's liability for something is a reference to any liability whatsoever which the Council might have for it, its consequences, and any direct, indirect or consequential loss, damage, costs or expenses resulting from it or its consequences, whether the liability arises under the Contract, in tort or otherwise, and even if it results from the Council's negligence or from negligence for which the Council would otherwise be liable.
- 11.6 The Council shall not be in breach of the Contract, and shall not have any liability for anything, to the extent that its apparent breach or liability is attributable to the Supplier's breach of the Contract.
- 11.7 Subject to Condition 11.4 (*Liability*) the Council shall not have any liability for:
- 11.7.1 any indirect or consequential loss or damage;
- 11.7.2 any loss of business, rent, profit or anticipated savings whether direct or indirect unless it has expressly assumed such liability;
- 11.7.3 any damage to goodwill or reputation;
- 11.7.4 loss, theft, damage or destruction to any equipment, tools, machinery, vehicles or other equipment brought onto the Premises by the Supplier or its Representatives; or
- 11.7.5 any loss, damage, costs or expenses suffered or incurred by any third party.
- 11.8 Subject to Condition 11.4 (*Liability*) the Council's total liability under this Contract shall be limited to the Charges it has paid or is due to pay to the Supplier under the Contract.

12 Charges and payment

12.1 The Charges for the Goods and the date or dates on which they are payable are set out in the Specification; and:

12.1.1 shall be inclusive of any costs of packaging, insurance and carriage; and

12.1.2 unless otherwise specified shall be inclusive of any amounts in respect of valued added tax chargeable from time to time (VAT).

12.2 Pursuant to Condition 7 (*Testing and acceptance of Goods*), unless otherwise provided in the Purchase Order, the Supplier may invoice the Charges at any time after the Council's acceptance of the Goods.

12.3 Invoices must include the Purchase Order number and sufficient supporting information to enable the Council to identify the Goods for which payment is claimed.

12.4 Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Council, the Supplier shall provide a valid VAT invoice.

12.5 Subject to compliance by the Supplier with the foregoing provisions of this Condition 12, the Council shall pay the Charges as invoiced within 30 days of receipt of the invoice.

12.6 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 amount in whole or in part. The Council may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier against any amount payable by the Council to the Supplier.

13 Intellectual property rights

13.1 The Supplier warrants that:

13.1.1 the Supplier has all Intellectual Property Rights, permissions, licences and consents necessary to carry out its obligations under the Contract and shall not carry out its obligations in breach of any Intellectual Property Right permission, licence or consent; and

13.1.2 the Supplier has full clear and unencumbered title to all Goods, and that at the date of delivery of such items to the Council, it has full and unrestricted rights to transfer full title to all Goods to the Council.

13.2 The Supplier shall, promptly at the Council's request, do (or procure to be done) all such further acts and things and execute (or procure the execution of) all such other documents as the Council may from time to time require for the purpose of securing for the Council the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned or licensed to the Council in accordance with the Contract.

13.3 The Council reserves to itself or its licensors all the Council Materials and any Intellectual Property Rights in them and the Contract shall not operate to vest in the Supplier any rights in the Council Materials other than a licence, for the duration of the Contract, to use them to the extent necessary to enable the Supplier to carry out its obligations under the Contract.

14 Indemnity

- 14.1 The Supplier shall indemnify, and shall keep indemnified, the Council in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses, awarded against or incurred or paid by the Council as a result of or in connection with:
- 14.1.1 any claim made against the Council for death, personal injury or damage to property arising out of, or in connection with, any non-compliance of the Goods with the Contract;
 - 14.1.2 any claim made against the Council arising out of, or in connection with, the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier;
 - 14.1.3 any claim made against the Council arising out of, or in connection with the negligence of the Supplier or its Representatives whilst on, entering, or leaving the Premises;
 - 14.1.4 any claim made against the Council for infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the Council's use of the Goods;
 - 14.1.5 all damage to the Council's property or the Premises caused by the Supplier or its Representatives (including any damage or destruction to, corruption of, or loss of data held by the Council);
 - 14.1.6 any claim made against the Council by a third party resulting from, or arising out of any breach by the Supplier of its obligations under Conditions 13 (*Intellectual Property Rights*) or 16 (*Confidentiality*).
- 14.2 The Supplier shall not be liable to the Council for any losses, damage or injury to the extent that they are caused by or arise directly out of the act or omissions of the Council in breach of its obligations under the Contract.

15 Insurance

- 15.1 For the duration of the Contract and for a period of 6 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, insurance to provide a level of cover sufficient for all risks which may be incurred by the Supplier under the Contract, including death or personal injury, or loss of or damage to property.
- 15.2 The insurance required under Condition 15.1 (*Insurance*) shall include as a minimum the insurance stated in PFS Section 6.
- 15.3 The Supplier shall, at the request of the Council, produce to the Council a valid certificate of insurance and such other written documentation as is necessary to demonstrate that the Supplier has complied with its obligations under this Condition 15 (*Insurance*).
- 15.4 The Supplier shall not do or permit anything, or make any omission, which might cause any insurance to be voided.

15.5 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities incurred in connection with the Contract.

15.6 The Supplier shall inform the Council in writing whenever there is any change to the insurance referred to in this Condition 15 (*Insurance*) (including any change in the scope or level of cover or the identity of the insurer).

16 **Confidentiality**

16.1 Subject to Condition 16.2 (*Confidentiality*), the Supplier shall not acquire any rights of ownership or use in any Confidential Information originating from or provided by the Council.

16.2 The Supplier undertakes:

16.2.1 to restrict disclosure of Confidential Information to such of its Representatives as need to know it for the purpose of discharging the Supplier's obligations under the Contract, and shall ensure that all such Representatives are subject to obligations of confidentiality corresponding to those set out in this Condition 16 (*Confidentiality*);

16.2.2 that the Supplier and its Representatives shall use Confidential Information only for the purposes of performing their respective obligations under the Contract;

16.2.3 that any person employed or engaged by the Supplier in connection with the Contract shall not, in the course of such employment or engagement, disclose any Confidential Information to any third party without the prior written consent of the Council;

16.2.4 to take all necessary precautions to ensure that all Confidential Information is treated as confidential and not disclosed (save as aforesaid) or used other than as permitted by this Condition 16 (*Confidentiality*); and

16.2.5 that, without prejudice to the generality of the foregoing, neither the Supplier nor any of its Representatives shall use the Confidential Information for the solicitation of business from the other or from any third party.

16.3 The provisions of Condition 16 (*Confidentiality*) shall not apply to any information which:

16.3.1 is or becomes public other than by breach of this Condition 16 or

16.3.2 is in the possession of the Supplier without restriction on disclosure before the date of receipt from the disclosing person; or

16.3.3 is independently developed by the Supplier without access to the Confidential Information; or

16.3.4 must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the FOIA subject to Condition 30 (*Freedom of Information*) or EIR.

17 **Termination**

17.1 The Council may terminate the Contract with immediate effect by giving written notice to the Supplier if:

- 17.1.1 the circumstances set out in Conditions 9.2.5 (*The Council's Remedies*) or 22.1 (*Corruption*), 23.1.4 (*Modern Slavery Legislation*) or 30 (*Freedom of Information*) apply;
- 17.1.2 the Supplier commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within ten (10) Business Days of receipt of written notice of the breach;
- 17.1.3 the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- 17.1.4 the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- 17.1.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- 17.1.6 the Supplier (being an individual) is the subject of a bankruptcy petition order;
- 17.1.7 a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 17.1.8 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier (being a company);
- 17.1.9 a floating charge holder over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 17.1.10 a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- 17.1.11 the Supplier becomes the subject of administration or an administration order (in each case whether or not the out of court procedure is used);

- 17.1.12 any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Condition 17.1.3 to Condition 17.1.11 (inclusive);
 - 17.1.13 the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business; or
 - 17.1.14 the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 17.2 Without limiting its other rights or remedies, the Council may at any time terminate the Contract in whole or in part by giving the Supplier one month's written notice, in which case the Council shall pay the Supplier for any Goods accepted up until the date of termination, but shall not be liable for any anticipated profits or any other loss in respect of the termination.

18 Consequences of termination

- 18.1 On expiry or termination of the Contract or any part of it for any reason the following shall apply:
- 18.1.1 the Supplier shall immediately return all the Council Materials to the Council. If the Supplier fails to do so, then the Council may, without limiting its other rights or remedies, enter the Supplier's premises and take possession of the Council Materials. Until they have been delivered or returned, the Supplier shall be solely responsible for their safe-keeping and will not use them for any purpose;
 - 18.1.2 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and
- 18.2 The following Conditions shall survive expiry or termination and shall continue in full force and effect: 1, 2.2, 3, 4, 6, 7, 9, 11, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 34, 35, 36, 37 and any other Condition which expressly or by implication has effect after expiry or termination shall continue in full force and effect.

19 Publicity

- 19.1 The Supplier shall not:
- 19.1.1 make any press announcements or publicise the existence or terms of the Contract without the Council's prior written consent and shall ensure the observance of the provisions of this Condition **Error! Reference source not found.** (*Publicity*) by its Representatives; or
 - 19.1.2 use the Council's name or logo in any promotion or marketing or announcement of orders,

without the prior written consent of the Council.

19.2 The Council shall be entitled to publicise the Contract or any Purchase Order (or any information concerning either) for any reason without any obligation to give notice to the Supplier.

20 **Dispute resolution**

20.1 For the purposes of this Condition 20 (*Dispute resolution*) the notice provisions of Condition 29.1 (*Notice*) shall apply but for "writing" shall not include e-mail.

20.2 If a dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it then except as expressly provided in this Contract, the parties shall follow the procedure set out in this Condition:

20.2.1 either party shall give to the other written notice of the Dispute to the contact address listed in Annex 6 (*Supplier Details*) or other address nominated pursuant to Condition 30.4 (*Notice*) setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the senior Representatives within each of the parties shall attempt in good faith to resolve the Dispute;

20.2.2 if the Dispute cannot be resolved by the parties' senior Representatives within twenty (20) Business Days after it has been referred to them, either party may give notice to the other party in writing referring the matter to mediation to be conducted in accordance with Condition 20.3(*Dispute resolution*).

20.3 The following provisions shall apply to any such reference to mediation:

20.3.1 the reference shall be a reference under the Model Mediation Procedure (**MMP**) of the Centre of Dispute Resolution (**CEDR**) for the time being in force;

20.3.2 to initiate the mediation, a party must serve notice in writing (**ADR Notice**) to the other party to the Dispute, requesting a mediation. A copy of the ADR Notice should be sent to CEDR Solve. The mediation will start not later than ten (10) Business Days after the date of the ADR Notice;

20.3.3 both parties shall, immediately on such referral, co-operate fully, promptly and in good faith with CEDR and the mediator and shall do all such acts and sign all such documents as CEDR or the mediator may reasonably require to give effect to such mediation, including an agreement in, or substantially in, the form of CEDR's Model Mediation Agreement for the time being in force; and

20.3.4 to the extent not provided for by such agreement of the MMP, the mediation shall commence by either party serving on the other written notice setting out, in summary form, the issues in dispute and calling on that other party to agree the appointment of a mediator. The mediation shall be conducted by a sole mediator (which shall not exclude the presence of a pupil mediator) agreed between the parties or, in default of agreement, appointed by CEDR.

20.4 If the parties are able to resolve the Dispute through mediation under this Condition 20 (*Dispute resolution*), the parties' authorised Representatives will document the resolution and sign a memorandum evidencing its terms.

20.5 No party may commence any court or arbitration proceedings under Condition 34.1 (*Governing law and jurisdiction*) in relation to the whole or part of the Dispute until thirty (30) Business Days after service of the ADR Notice, provided that the right to issue proceedings is not prejudiced by a delay.

20.6 The Supplier shall continue to provide the Goods and to perform its obligations under the Contract notwithstanding any dispute or the implementation of the procedures set out in this Condition 20 (*Dispute resolution*).

21 **Conflict of interest**

21.1 The Supplier shall take all appropriate steps to ensure that neither it nor any of its Representatives is placed in a position where (in the reasonable opinion of the Council) there is or may be an actual, perceived or potential conflict between, on the one hand, the pecuniary or personal interests of the Supplier or its Representatives and, on the other hand, such persons' duties owed to the Council under the provisions of the Contract.

21.2 The Supplier must disclose to the Council full details of any actual or potential conflict of interest in writing and comply with any reasonable instructions of the Council in connection with their resolution.

22 **Corruption**

22.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any of the Supplier's Representatives, have at any time prior to the Commencement Date:

22.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

22.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

22.2 The Supplier shall not during the Term of this Contract:

22.2.1 commit a Prohibited Act; and/or

22.2.2 do or suffer anything to be done which would cause the Council or any of the Council's employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.

22.3 The Supplier undertakes to:

22.3.1 comply with all applicable laws and regulations and codes relating to anti-bribery and anti-corruption including, but not limited to, the Bribery Act 2010;

22.3.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom;

- 22.3.3 comply with the Council's anti-corruption policies disclosed to the Supplier from time to time;
 - 22.3.4 ensure that any of its Representatives associated with the supply of the Goods comply with this Condition 22 (*Corruption*); and
 - 22.3.5 immediately notify the Council if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier.
- 22.4 For the purposes of Condition 22.1 (*Corruption*), the meaning of "foreign public official" and whether a person is "associated" with another person shall be determined in accordance with sections 6(2), 6(5), 6(6) and 8 of the Bribery Act 2010.
- 22.5 The Council shall be entitled to terminate the Contract forthwith and to recover from the Supplier the amount of any loss resulting from such termination if the Supplier or a Supplier's Representative:
- 22.5.1 offers or agrees to give any person working for or engaged by the Council or any other Public Body any favour, gift or other consideration, which could act as an inducement or a reward for any act or failure to act connected to the Contract, or any other agreement between the Supplier and the Council or any Public Body, including its award to the Supplier and any of the rights and obligations contained within it;
 - 22.5.2 has entered into the Contract if it has knowledge that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the Council or any other Public Body by or for the Supplier, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Council before the Contract is entered into;
 - 22.5.3 breaches the undertaking set out in Condition 22.1 (*Corruption*); or
 - 22.5.4 gives any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.
- 22.6 For the purposes of Condition 22.1(*Corruption*), "loss" shall include, but shall not be limited to:
- 22.6.1 the Council's costs in finding a replacement Supplier;
 - 22.6.2 direct, indirect and consequential losses; and
 - 22.6.3 any loss suffered by the Council as a result of a delay in its receipt of the Goods.

23 **Modern Slavery Legislation**

23.1 The Supplier undertakes to the Council that:

- 23.1.1 it has not and its directors, officers and employees have not and shall not engage in activity which would amount to a breach of the Modern Slavery Legislation or activity which would constitute an offence under the Modern Slavery Legislation if the conduct took place in the United Kingdom or activity

which could or would place the Council in breach of the Modern Slavery Legislation or activity which would constitute an offence under the Modern Slavery Legislation if the conduct took place in the United Kingdom;

- 23.1.2 it has and shall maintain and implement procedures designed to ensure compliance with the Modern Slavery Legislation and prevent conduct that would give rise to an offence under the Modern Slavery Legislation;
- 23.1.3 if required by law to do so, it shall comply with its obligations under section 54 of the Modern Slavery Act 2015; and
- 23.1.4 in the event of a breach of Conditions 23.1.1 or 23.1.2 by the Supplier the Council may at its sole discretion terminate this Contract. In the event of breach of Condition 23.1.3, the Council may terminate this Contract if such a breach is not remedied within 7 days of a receipt of a notice from the Council in respect of the same

and, without prejudice to the obligations set out above, the Supplier will take all appropriate steps to satisfy itself, acting reasonably, that any third party whom the Supplier enters into a Sub-Contract with has not and shall not engage in any activity that would constitute a breach of the Modern Slavery Legislation in relation to the Goods and, for which purpose, shall include an undertaking similar to that contained above.

- 23.2 The Supplier shall indemnify the Council against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the Council as a result of any breach of this Condition 23.2 (*Modern Slavery Legislation*) by the Supplier or any breach of provisions equivalent to Condition 23.1 (*Modern Slavery Legislation*) in any contract with a Sub-Contractor.

24 **Audit**

- 24.1 The Supplier shall keep and maintain until six years after the Contract has come to an end, or for such longer period as may be specified by the Council in writing from time to time:
 - 24.1.1 all Information relating to the Contract.
 - 24.1.2 full and accurate records of the following:
 - (a) all Charges paid by the Council; and
 - (b) such other information as the Council specifies in writing from time to time.
- 24.2 The Supplier shall on request afford the Council, the Council's Representatives or the Council's auditors such access to such information or records (including the information referred to in Conditions 23.1.1 and 23.1.2) as may (in the reasonable opinion of the Council) be required by the Council in order to comply with its legal obligations (including its obligations under FOIA and its obligations in connection with the Best Value Duty).

25 **Discrimination**

- 25.1 The Supplier shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in the provision of the Goods.
- 25.2 The Supplier shall take all reasonable steps to secure the observance of Condition 24.1 by all of its Representatives employed in the performance of the Contract.
- 25.3 The Supplier shall have appropriately trained staff available to deal with racial issues or complaints and monitor the same and the manner of dealing therewith. Such information shall be passed to the Council on a regular basis as agreed with the Council.

26 **Human rights**

- 26.1 The Supplier shall (and shall use its reasonable endeavours to procure that its Representatives shall):
- 26.1.1 perform its obligations under this Contract (including those in relation to the Goods) in accordance with:
- (a) all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - (b) the Council's equality and diversity policy as provided to the Supplier from time to time; and
 - (c) any other requirements and instructions which the Council reasonably imposes in connection with any equality obligations imposed on the Council at any time under applicable equality law; and
- 26.1.2 take all necessary steps, and inform the Council of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).
- 26.2 At all times comply with the provisions of the Human Rights Act 1998 in the performance of the Contract and the Supplier shall undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998.

27 **Data Protection Law**

- 27.1 The Parties acknowledge that for the purposes of the Data Protection Law, the Council is the Controller and the Provider is the Processor. The only processing that the Provider is authorised to do is listed in Annex 9 by the Council and may not be determined by the Provider.
- 27.2 The Provider shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Law.

27.3 The Provider shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:

- a) a systematic description of the envisaged processing operations and the purpose of the processing;
- b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

27.4 The Provider shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

- (a) process that Personal Data only in accordance with Annex 9, unless the Provider is required to do otherwise by Law. If it is so required the Provider shall promptly notify the Council before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Council as appropriate to protect against a Data Loss Event having taken account of the:

- i. nature of the data to be protected;
- ii. harm that might result from a Data Loss Event;
- iii. state of technological development; and
- iv. cost of implementing any measures;

(c) ensure that :

- I. the Provider Representatives do not process Personal Data except in accordance with this Contract (and in particular Annex 9);
- II. it takes all reasonable steps to ensure the reliability and integrity of any Provider Representatives who have access to the Personal Data and ensure that they:

- (A) are aware of and comply with the Provider's duties under this clause;
- (B) are subject to appropriate confidentiality undertakings with the Provider or any Sub-processor;
- (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Council or as otherwise permitted by this Contract; and
- (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

(d) not transfer Personal Data outside of the EU unless the prior written consent of The Council has been obtained and the following conditions are fulfilled:

- (i) the Council or the Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Council;
- (ii) the Data Subject has enforceable rights and effective legal remedies;
- (iii) the Provider complies with its obligations under the Data Protection Law by providing an adequate level of protection to any Personal Data that is

transferred (or, if it is not so bound, uses its best endeavours to assist the Council in meeting its obligations); and

(iv) the Provider complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;

(e) at the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the Contract unless the Provider is required by Applicable Law to retain the Personal Data.

27.5 Subject to condition 27.6 below, the Provider shall notify the Council immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Law;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Applicable Law; or
- (f) becomes aware of a Data Loss Event.

27.6 The Provider's obligation to notify under condition 27.5 above shall include the provision of further information to the Council in phases, as details become available.

Taking into account the nature of the processing, the Provider shall provide the Council with full assistance in relation to either Party's obligations under Data Protection Law and any complaint, communication or request made under condition 27.5 above (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:

- (a) the Council with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Law;
- (c) the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Council following any Data Loss Event;
- (e) assistance as requested by the Council with respect to any request from the Information Commissioner's Office, or any consultation by the Council with the Information Commissioner's Office.

27.7 The Provider shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Provider employs fewer than 250 staff, unless:

- (a) the Council determines that the processing is not occasional;

- (b) the Council determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- (c) the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

27.8 The Provider shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor.

27.9 The Provider shall designate a data protection officer if required by the Data Protection Law.

Before allowing any Sub-processor to process any Personal Data related to this Contract, the Provider must:

- (a) notify the Council in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Council;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this condition 30 such that they apply to the Sub-processor; and
- (d) provide the Council with such information regarding the Sub-processor as the Council may reasonably require.

27.10 The Council may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).

27.11 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than 30 Working Days' notice to the Provider amend this contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

The provisions of this Condition shall apply during the Contract and indefinitely after its expiry or termination

28 **Best value**

28.1 The Supplier shall:

- 28.1.1 not do anything which would cause the Council to be in breach of the Best Value Duty;
- 28.1.2 act at all times in a manner which is compatible with and corresponds with the Council's Best Value Duty; and
- 28.1.3 in relation to its obligations in the Contract, make arrangements to secure continuous improvement in the way in which the Goods are provided, having regard to a combination of economy, efficiency and effectiveness.

29 **Freedom of information**

29.1 The Supplier acknowledges that the Council is subject to the requirements of FOIA and EIR and shall assist and co-operate with the Council (at the Supplier's expense) to enable the Council to comply with its obligations under FOIA and EIR. The Supplier shall act in

accordance with the FOIA, the Codes of Practice, the EIR and any other similar codes of practice or guidance from time to time.

29.2 The Supplier shall and shall procure that its Representatives shall:

29.2.1 transfer any Request for Information to the Council as soon as practicable after receipt and in any event within two (2) Business Days of receiving a Request for Information;

29.2.2 provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council requesting that Information; and

29.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of FOIA or regulation 5 of EIR.

29.3 The Council shall be responsible for determining (in its absolute discretion) whether any Information:

29.3.1 is exempt from disclosure in accordance with the provisions of FOIA or EIR;

29.3.2 is to be disclosed in response to a Request for Information

and in no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so in writing by the Council.

29.4 The Supplier acknowledges that the Council may be obliged under the FOIA or EIR to disclose Information (including Commercially Sensitive Information):

29.4.1 without obtaining consent from or consulting with the Supplier; or

29.4.2 following consultation with the Supplier and having taken its views into account.

29.5 Where Condition 29.4.1 (*Freedom of information*) applies the Council shall, in accordance with any recommendations issued under any code of practice issued under section 45 of FOIA, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention as soon as practicable after any such disclosure.

30 **Notice**

30.1 Any notice given to a party under or in connection with this Contract shall be in writing marked for the attention of the party's Authorised Representative and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at the contact address listed in Annex 6 (*Supplier Details*) or other address nominated pursuant to Condition 30.4 (*Notice*). Subject to Condition 20.1 (*Dispute Resolution*), for the purposes of this Condition, "writing" shall include e-mail if correctly sent to the address listed in Annex 6 (*Supplier Details*).

30.2 Any notice shall be deemed to have been received:

- 30.2.1 if delivered by hand, on signature of a delivery receipt;
- 30.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the Working Day after posting or at the time recorded by the delivery service;
- 30.2.3 [if sent by email, at 9.00 am on the next Working Day after transmission.]

30.3 This Condition 30 (*Notice*) is subject to Condition 20.1 (*Dispute resolution*) with regard to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

30.4 Either party to this Contract (and either Representative) may change its nominated address, email or other contact detail provided in Annex 6 (*Supplier Details*) by prior notice to the other party.

31 **Severance**

If any provision of the Contract is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, or indications to that effect are received by either of the parties from any competent authority the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality or at the discretion of the Council it may be severed from the rest of the Contract which shall remain in full force and effect unless the Council in its reasonable discretion decides that the effect of such a declaration is to defeat the original intention of the parties, in which event the Council shall be entitled to terminate the Contract by ten (10) Business Days' written notice to the Supplier.

32 **Waiver and accumulation of remedies**

32.1 The rights and remedies provided by the Contract may be waived only in writing by the relevant Representative in a manner that expressly states that such waiver is intended for, and such waiver shall only be operative with regard to, the specific circumstances referred to.

32.2 Unless a right or remedy of the Council is expressed to be an exclusive right or remedy, the exercise of it by the Council is without prejudice to the Council's rights and remedies in equity (including, without limitation, specific performance or injunctive relief), law or under or in connection with the Contract. Any failure to exercise, or any delay in exercising, a right or remedy by either party shall not constitute a waiver of that right or remedy, or of any other rights or remedies.

32.3 The Council's rights and remedies under the Contract are cumulative and may be exercisable at any time and, unless otherwise specified in these Conditions, are not exclusive of any right or remedies provided at law, in equity or otherwise.

33 **Variations**

Neither the Council nor the Supplier shall be bound by any variation, waiver of, or addition to the Contract (including the Specification) unless evidenced in writing and signed by an authorised Representative on their behalf.

34 **Assignment or sub-contracting**

34.1 The Supplier shall not assign or transfer its rights or obligations under the Contract or any part thereof to any third party without the Council's prior written consent.

34.2 The Supplier shall not sub-contract the provision of the Goods or any part of them without the Council's prior written consent and any such consent shall not relieve the Supplier of any of its obligations under the Contract.

34.3 Where the Supplier enters into Sub-Contract with a third party in connection with the Contract, it shall cause a term to be included in such Sub-Contract that requires payment to be made of undisputed sums by the Supplier to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.

34.4 The Council may assign, novate, outsource or otherwise dispose of any or all of its rights and obligations under the Contract at any time to any person having the legal capacity, power and authority to become a party to and to perform its obligations, being:

34.4.1 a Minister of the Crown;

34.4.2 any other local authority which has sufficient financial standing or financial resources to perform the obligations; or

34.4.3 any other public authority.

34.5 Nothing in these Conditions shall restrict the rights of the Secretary of State to effect a statutory transfer.

35 **Partnership or Agency**

35.1 Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

35.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

36 **Governing law and jurisdiction**

36.1 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

36.2 Subject to Condition 30 (*Notice*) each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

37 **Rights of third parties**

No person other than the Council or the Supplier shall have any rights under the Contract and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply.

Whistleblowing policy

The Supplier shall comply with the Council's whistleblowing procedure, which ensures that employees of the Supplier are able to bring to the attention of the Council malpractice, fraud and breach of laws on the part of the Supplier without fear of disciplinary and other retribution or discriminatory action.

The Council's Whistleblowing Policy can be found on the following link:

<https://www.lichfielddc.gov.uk/Council/Financial-information/Downloads/Whistleblowing-policy-2016.pdf>

EXAMPLE

Annex 3
Special Conditions

EXAMPLE

Annex 4

Schedule of Rates and Prices

If blank, the schedule is taken to be that detailed within the Purchase Order.

EXAMPLE

Annex 5
Specification

If blank, the Specification is taken to be that detailed within the Purchase Order.

EXAMPLE

Annex 6
Supplier Details

Supplier Name

Contact Name

Supplier Registered Address

Company Registration Number

VAT Registration Number

Supplier Correspondence Address

Telephone

Fax

E-mail

Annex 7 – Schedule of Processing, Personal Data and Data Subjects

EXAMPLE