

DARTFORD BOROUGH COUNCIL

Purchase Order Terms and Conditions

1 GENERAL CONDITIONS

1.1 The Purchase Order is issued subject to these Conditions, which govern both the Purchase Order and all business dealings between the Council and the Supplier relating to the Purchase Order. The Council's Purchase Order number must be quoted on all communications in connection with the Purchase Order. Failure to do so may result in delayed processing, acceptance and payment.

1.2 No terms or conditions submitted at any time by the Supplier shall form any part of the Agreement. In the event of a conflict between any of these Conditions and any specific term or condition (whether in the Agreement or otherwise) referred to in the Purchase Order, the latter shall prevail.

1.3 Any headings in the Conditions are for convenience and reference only and shall not affect their interpretation.

1.4 The Purchase Order constitutes an offer by the Council to purchase the Goods and/or acquire the Services and/or Deliverables subject to the Conditions.

1.5 The Supplier shall be deemed to have accepted the Conditions by accepting the Purchase Order (notwithstanding any conditions attached to such acceptance or any purported incorporation of terms other than these terms and conditions) or by delivering any Goods or performing any Services and/or Deliverables, at which point this Agreement shall come into existence.

2 INTERPRETATION

1.1 In the Conditions:

“Agreement” means the agreement concluded by the Commencement Date for the purchase of Goods and/or the supply and acquisition of Services and/or Deliverables, if earlier, any acceptance of the Purchase Order communicated by the Supplier to the Council in writing, whose terms shall comprise these Conditions;

'Conditions' means these terms and conditions for the purchase of the Goods, Services and/or Deliverables;

“Charges” means the charges, fees and any other sums payable by the Council to the Supplier as set out in the Purchase Order;

“Commencement Date” means the date of the Purchase Order;

“Confidential Information” means any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, finances, properties, assets, trading practices, Goods/Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, and customers of the Council or the Supplier (as the case may be) and all personal data within the meaning of the Data Protection Legislation;

“Control” means the ability to direct the affairs of another party whether by virtue of the ownership of shares, contract or otherwise (and **“Change of Control”** shall be construed accordingly);

“Council” means Dartford Borough Council, Civic Centre, Home Gardens, Dartford Kent DA1 1DR;

“Council Materials” means all materials, equipment and tools, drawings, specifications and data supplied by the Council to the Supplier;

“Council’s Requirements” means the instructions, requirements, policies, codes of conduct, guidelines, forms and other documents notified to the Supplier in writing or set out in the Annex to this Agreement and as may be notified to the Supplier from time to time, such may be amended, updated or supplemented from time to time;

“CTSA 2015” the Counter-Terrorism and Security Act 2015 (and all regulations made thereunder);

“Data Protection Legislation” means any applicable Laws relating to the processing, privacy and use of Personal Data, as applicable to either party or the Services under this Agreement, including the UK GDPR, the Data Protection Act 2018 and/or any corresponding or equivalent national laws or regulations; and any laws which implement any such laws; and any laws that replace, extend, re-enact, consolidate or amend any of the foregoing; all guidance, guidelines, codes of practice and codes of conduct issued by any relevant regulator, authority or body responsible for administering Data Protection Legislation (in each case whether or not legally binding);

“Data Controller,” “Data Processor,” “Data Protection Impact Assessments,” “Data Subject,” “Personal Data

Breach,” “Process/Processing/Processed” and **“Supervisory Authority”** have the same meaning as in the UK GDPR;

“DBS” means the UK Disclosure & Barring Service;

“Defective Goods” has the definition in clause 5.3;

“Deliverables” means all Documents, products and materials developed or provided by the Supplier as part of providing the Services;

“Delivery” means the completion of delivery of the Goods in accordance with clause 5;

“Delivery Location” means the place so described in the Purchase Order or otherwise agreed in writing between the parties;

“Documents” means (whether in hard copy or electronic format) any document, drawing, map, plan, diagram, design, picture or other image, tape, disk, or other device or record embodying information in any form including any web page, information portal, blog, online content or electronic file;

“EIR” means the Environmental Information Regulations 2004;

“Equality Legislation” means the Equality Act 2010 and any and all legislation, applicable guidance and statutory codes of practice relating to diversity, equality, non-discrimination and human rights as may be in force from time to time in England and Wales or in any other territory in which, or in respect of which, the Supplier provides the Services;

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

“Force Majeure Event” has the meaning in clause 27;

“Goods” means the goods or products (if any) to be supplied by the Supplier under this Agreement as set out in the Purchase Order;

“Information Disclosure Requirements” means the requirements to disclose information under the FOIA and/or the EIR;

“Intellectual Property Rights” means any copyright and related rights, patents, rights to inventions, registered designs, database rights, design rights, topography rights, trademarks, service marks, trade names and domain names, trade secrets, rights in unpatented know-how, rights of confidence and any other intellectual or industrial property rights of any nature including all applications (or rights to apply) for, and renewals or extensions of such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

“Laws” any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;

“Premises” means, where applicable, the premises or location where the Services are to be provided, as notified by the Council to the Supplier;

“Purchase Order” means the relevant Council purchase order form issued to the Supplier applicable to the Council’s order for the Goods, Services and/or Deliverables;

“Relevant Person” means any individual employed or engaged by the Supplier and involved in the provision of the Services, or any agent or contractor or sub-contractor of the Supplier who is involved in the provision of the Services;

“Request for Information” means a request for information (as defined in the FOIA or EIR) relating to or connected with the Agreement or the Council more generally or any apparent request for such information under the Information Disclosure Requirements;

“Services” means the services set out in the Purchase Order and the Supplier’s obligations under this Agreement;

“Specification” means the specification (if any) set out in the Purchase Order and any other specification specified in writing by the Council;

“Sub-Contract” means a contract between two or more suppliers, at any stage of remoteness from the Council in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement;

“Supplier” means the person, firm or company so described in the Purchase Order;

“Supplier’s Team” means the Supplier and, where applicable, any Relevant Person, and all other employees, consultants, agents and sub-contractors which the Supplier engages in any way in relation to the supply of the Services, the Goods and/or Deliverables;

“UK GDPR” derived from the General Data Protection Regulation (EU) 2016/679, and

“Working Days” means Monday to Friday excluding and public holidays in England and Wales.

3 GOODS, SERVICES AND DELIVERABLES

3.1 The Supplier shall:

3.1.1 from the Commencement Date and for the duration of this Agreement ensure that the Goods, Services and/or Deliverables set out in the Purchase Order conform with all descriptions and Specification and are fit for any purpose made known by the Council;

3.1.2 meet any performance dates for the Goods, Services and/or Deliverables specified in this Agreement;

3.1.3 observe all the Council's health and safety rules and regulations and any other security requirements at any of the Premises as notified to it from time to time by the Council and promptly notify the Council of any health and safety hazards which may arise in connection with the performance of this Agreement;

3.1.4 not at any time during the term of this Agreement do or say anything which damages or which could reasonably be expected to damage the interests or reputation of the Council or its respective officers, employees, agents or contractors;

3.1.5 obtain and at all times maintain all necessary licences and consents to provide the Goods, Services and/or Deliverables, and comply with all applicable Laws;

3.1.6 obtain the Council's prior written consent to all promotional activity or publicity and act at all times in accordance with the Council's reasonable instructions relating to such activity or publicity.

4 SUPPLY OF THE SERVICES

4.1 The Supplier shall, from the Commencement Date and for the duration of this Agreement, provide the Services in accordance with this Agreement.

4.2 The Supplier shall meet any performance dates for the Services specified in the Agreement.

4.3 In providing the Services, the Supplier shall:

(a) co-operate with the Council and comply with all instructions of the Council;

(b) perform the Services with reasonable care and skill in accordance with generally recognised commercial practices and standards in the industry for similar services;

(c) use personnel who are suitably skilled and experienced to perform tasks assigned to them;

(d) provide all such other items as are required to provide the Services;

(e) (if applicable) hold all Council Materials in safe custody at its own risk, maintain Council Materials in good condition until returned to the Council and not dispose or use Council Materials other than in accordance with the Council's instructions or authorisation.

4.4 The Supplier shall retain such documentation as may be reasonably required to demonstrate compliance with the Procurement Act 2023 and shall provide such documentation upon written request from the Client within 10 Working Days

5 SUPPLY OF GOODS

5.1 The Supplier shall manufacture, pack, label and supply the Goods in accordance with all generally accepted industry standards and practices that are applicable.

5.2 The Supplier shall ensure that the Goods are properly labelled, packed and secured in a manner to ensure them to reach the Delivery Location in good condition.

5.3 *Inspection, acceptance and defective goods*

(a) The Supplier shall allow the Council to make any inspections or tests it may reasonably require and the Supplier shall provide all reasonable facilities and assistance at no cost to the Council at the Supplier's Premises. No failure to notify the Supplier of any complaint at the time of such inspections or tests and no approval given during or after such inspections or tests shall constitute confirmation by the Council that the Goods are in conformity with the warranty under clause 5.3(c) below.

(b) The Council may reject any Goods delivered to it that do not comply with the warranty under clause 5.3(c) below.

(c) The Supplier warrants that the Goods shall:

(i) conform with any Specification or other instructions of the Council provided to the Supplier in writing;

(ii) be of satisfactory quality (within the meaning of the UK Sale of Goods Act 1979 (as amended), and fit for any purpose held out by the Supplier;

(iii) be free from defects in design, material and workmanship and remain so for one year after Delivery; and

(iv) comply with all applicable statutory and regulatory requirements.

(d) If the Council notifies the Supplier that it reasonably considers that the Goods are not or are not likely to be as warranted under clause 5.3(c) (**"Defective Goods"**), the Supplier shall, without prejudice to clause 5.3(e), take any action as is necessary to ensure that the Goods are or will be as warranted under clause 5.3(c).

(e) The Council shall be entitled to require the Supplier to repair or replace any Defective Goods and any repair shall be carried out by the Supplier without undue delay and, in any event, within one month of notification to it by the Council of the defect.

(f) The Supplier shall be responsible for all costs, charges and expenses incurred by it in connection with the repair, replacement or other action to ensure that the Goods are or will be as warranted under clause 5.3(c) including any costs of collection or Delivery.

5.4 *Risk and title to the Goods*

5.4.1 Risk in and title to the Goods shall pass to the Council on Delivery.

5.4.2 The Supplier shall, for the period it has possession or control of the Goods:

- (i) have the sole risk of loss or damage to the Goods;
- (ii) ensure that the Goods are kept secure and identified as the property of the Council; and
- (iii) without prejudice to the general insurance obligations in clause 8, maintain, with a reputable insurance company, insurance cover for any loss or damage to the Goods for their full replacement costs.

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

5.5 *Product liability*

5.5.1 If any claim is made against the Council arising out of or in connection with the manufacture of, or any defect in the Goods, the Supplier shall indemnify the Council against all damages or other compensation awarded against the Council in connection with the claim or paid or agreed to be paid by the Council in settlement of the claim and all legal or other expenses incurred by the Council in or about the defence or settlement of the claim.

5.5.2 The terms of this Agreement shall apply to any repaired or replaced Goods supplied by the Supplier.

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

6 DATA PROTECTION

6.1 With respect to any Personal Data that the Council transfers or makes available to Supplier to provide the Goods, Services and/or Deliverables, the Council warrants that its Processing, including the transfer to Supplier, of the Personal Data is carried out in accordance with Data Protection Legislation.

6.2 Without limiting Supplier's obligation to comply with the Data Protection Legislation, the Supplier, in its capacity as a Data Processor of Personal Data, shall:

- (a) Process Personal Data only on documented instructions from the Council, including in regard to the transfer of Personal Data to a third country or an international organisation, unless required to do so by European Union or Member State law to which Supplier is subject. In such case, the Supplier will inform the Council of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest;
- (b) take all reasonable steps to ensure the reliability of staff having access to Personal Data and ensure that persons authorised to Process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
- (c) implement technical and organisational security measures as provided by Data Protection Legislation (including pursuant to Article 32 of the UK GDPR) or the Council under the Agreement necessary to protect Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access and against all other unlawful forms of processing;
- (d) Not engage another party to Process Personal Data (**“Sub-processors”** without notifying the Council and obtaining the Council’s prior written authorisation (not to be unreasonably withheld or delayed). If such authorisation is granted, the Supplier shall ensure:
- (i.) such Sub-processor's Processing of such Personal Data is carried out exclusively from a territory that is deemed to provide an adequate level of protection under Data Protection Legislation or where such Processing is otherwise deemed to be subject to adequate levels of protection under Data Protection Legislation;
- (ii.) the written contract under which such Sub-processor processes such Personal Data is not less onerous than this clause 6.2. The Supplier will provide the Council with an up to date list of relevant Sub-processors on request and shall remain fully liable to the Council for acts and omissions of the Supplier’s Sub-processors.
- (e) taking into account the nature of the Processing, assist the Council by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Council’s obligation to respond to requests for exercising the Data Subject's rights laid down in Data Protection Legislation (including Chapter III of the UK GDPR);
- (f) provide reasonable assistance so as to enable the Council to ensure compliance with any obligations it may have in respect of Data Security, Personal Data Breach notification, Data Protection Impact Assessments, and engaging in other consultations, pursuant to Data Protection Legislation (including Articles 32 to 36 of the

UK GDPR taking into account the nature of Processing and the information available to Supplier);

(g) at the choice of the Council, promptly delete or return all the Personal Data to the Council after the end of the provision of Services relating to Processing or termination of this Agreement, and delete existing copies unless applicable Laws require storage of Personal Data, in which case Supplier shall cease all processing of the Personal Data other than as required by Protection Legislation and ensure the confidentiality and security of the Personal Data retained in accordance with this clause 6 and Data Protection Legislation and delete the Personal Data upon expiry of the time period specified by the Council;

(h) without limiting any of the Council's existing audit rights under this Agreement, make available to the Council all information necessary to demonstrate compliance with Data Protection Legislation (including the obligations laid down in Articles 28 and 30 of the UK GDPR) and allow for and contribute to audits, including inspections, conducted by the Council or another auditor mandated by the Council; and

(i) promptly inform the Council if, in its opinion, any instruction infringes Data Protection Legislation.

(j) The Supplier will notify the Council without undue delay, and in any event within one Business Day, upon becoming aware of an actual or reasonably suspected Personal Data Breach. The notification shall at least specify:

(i.) the time, date and location of the Personal Data Breach and a description of the nature of the Personal Data Breach, including, where possible, the categories and approximate number of Data Subjects concerned and approximate type and number of Personal Data records concerned;

(i.i) where possible, a description of the likely consequences of the Personal Data Breach; and

(iii.) measures taken and/or to be taken to mitigate the consequences of the Personal Data Breach.

(k) The Supplier will notify the Council promptly of any:

(i.) legally binding request for disclosure of the Personal Data by a law enforcement authority unless such notification is prohibited by law;

(ii.) request received directly from a Data Subject relating to the Council's or Supplier's Processing of Personal Data; or

(iii.) request or inquiry from a Supervisory Authority relating to Supplier's Processing of Personal Data.

(l) Where the Council faces an actual or potential claim arising out of or related to the breach of any Data Protection Legislation concerning the Services, Supplier will promptly provide all materials and information requested by the Council that is relevant to the defence of such claim and the underlying circumstances concerning the claim.

(m) The Supplier and the Council will each comply with their respective obligations as Data Processor and Data Controller under Data Protection Legislation, including identifying the subject matter and duration of the Processing, the nature and purpose of the Processing, and the type of Personal Data and categories of Data Subjects.

(n) In the event of a dispute or claim brought by a Data Subject or a Supervisory Authority concerning the processing of the Personal Data against either or both of the parties, the parties will inform each other promptly about any such disputes or claims, and will cooperate with a view to settling them amicably in a timely fashion.

(o) The Supplier shall indemnify and keep the Council indemnified from and against any and all losses, costs, expenses, claims and other liabilities incurred by the Council as a result of any breach of this clause 6.

7 CONFIDENTIALITY AND DATA SECURITY

7.1 Each party undertakes that it shall not at any time disclose to any person any Confidential Information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, unless permitted by clause 5.2. No party shall use any other party's Confidential Information for any purpose other than to perform this Agreement and/or in the case of the Council only, in order for the Council to obtain the full benefit of this Agreement. The provisions of this clause shall survive the termination of this Agreement, however arising.

7.2 Each party may disclose the other party's Confidential Information:

(a) to its employees, officers, representatives or advisers who need to know such information to carry out the party's obligations under this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's Confidential Information comply with this clause 7; and

(b) as may be required by law, court order or any governmental or regulatory authority.

7.3 The Council may disclose the Supplier's Confidential Information to other parties, which facilitate the administration of the Council's business or support the Council's infrastructure. The Council shall be responsible for preserving the confidentiality of such Confidential Information.

7.4 The Supplier shall only use data supplied to it by or on behalf of the Council for the purposes of performing the Services and shall not alter or delete it without the Council's consent.

7.5 The Supplier shall indemnify and keep the Council indemnified from and against any and all losses, costs, expenses, claims and other liabilities incurred by the Council as a result of any breach of clauses 7.1 and 7.4 by the Supplier.

7.6 The Supplier shall, at any time on the request of the Council, return all Confidential Information and/or data to the Council and/or permanently delete the same (where possible) from its systems, including any backup copies and provide written confirmation to the Council that it has done so.

7.7 The Supplier acknowledges that the Council is subject to the Information Disclosure Requirements and shall assist and co-operate with the Council to enable the Council to comply with those requirements.

7.8 Where the Council receives a Request for Information in relation to information that the Supplier or any of its sub-contractors is holding on behalf of the Council and which the Council does not hold itself, the Council shall as soon as reasonably practicable after receipt and in any event within five (5) calendar days of receipt, forward the Request for Information to the Supplier and the Supplier shall:

(a) provide the Council with a copy of all such information in the form that the Council requires as soon as practicable and in any event within ten (10) calendar days (or such other period as the Council acting reasonably may specify) of the Council's request; and

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

7.9 The Supplier acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose the Supplier's Confidential Information in accordance with the Information Disclosure Requirements:

(a) in certain circumstances without consulting the Supplier; or

(b) following consultation with the Supplier and having taken its views into account, provided always that where this clause applies, the Council shall take reasonable steps to draw this to the attention of the Supplier after any such disclosure.

7.10 The Supplier acknowledges the Client's duty under the Procurement Act 2023 to publish certain contract-related data and agrees that such disclosure shall not be a breach of confidentiality unless it relates to Commercially Sensitive Information.

8 INDEMNITY AND INSURANCE

8.1 The Supplier shall indemnify the Council against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonably incurred professional costs and expresses) suffered or incurred by the Council or by a third party arising out of, or in connection with, this Agreement.

8.2 The Supplier shall take out and maintain with a reputable insurance company a policy or policies of insurance that are normal for contracts of this nature and covering all the matters which are the subject of indemnities under these Conditions.

8.3 The Supplier shall at the request of the Council produce the relevant policy or policies together with receipts or other evidence of payment of the latest premium.

8.4 Nothing in this Agreement shall exclude or limit the liability of either party for death or personal injury caused by its negligence or for fraudulent misrepresentation.

9 COUNCIL'S OBLIGATIONS

9.1 The Council shall (where applicable) provide the Supplier with reasonable access to such parts of the Premises on a non-exclusive basis as the Council may from time to time designate as are necessary for the performance of the Services provided that use of the Premises is strictly in accordance with the Council's reasonable instructions and is to be solely for the purposes of providing the Services.

10 EQUALITY

10.1 The Supplier shall ensure that it does not, whether as an employer or provider of services and/or goods, discriminate within the meaning of the Equality Legislation.

10.2 The Supplier shall comply with any equality or diversity policies or guidelines included in the Council's Requirements.

11 CHARGES AND PAYMENT

11.1 Unless stated otherwise, the Charges are exclusive of value added tax (VAT) or any equivalent sales tax in any applicable jurisdiction.

11.2 Unless stated otherwise, the Supplier shall invoice for the Charges monthly in arrears and all such invoices shall be accompanied by a statement setting out the Services, Goods and/or Deliverables supplied in the relevant month in sufficient detail to justify the Charges.

11.3 The Council shall pay each invoice which is properly due, undisputed and submitted to it by the Supplier, within 30 days of receipt, to a bank account nominated in writing by the Supplier. Where an electronic invoice is submitted for payment by the Supplier, the invoice shall comply with the standard on electronic invoicing, namely the Public Procurement (Electronic Invoices etc.) Regulations 2019.

11.4 Interest shall be payable on the late payment of any undisputed Charges properly invoiced under this Agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

11.5 Where the Supplier enters into a Sub-Contract, the Supplier shall:

- (a) pay any valid invoice received from its sub-contractor within 30 days following receipt of the relevant invoice payable under the Sub-Contract; and
- (b) include in that Sub-Contract a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clauses 11.3 and 11.4 of this Agreement.

12 CHANGE CONTROL

12.1 If either party wishes to change the scope or provision of the Services, it shall submit details of the requested change to the other in writing and such change shall only be implemented if agreed in writing by both parties acting reasonably.

13 INTELLECTUAL PROPERTY RIGHTS

13.1 The Supplier assigns (by way of both present and future rights) to the Council, with full title guarantee and free from all third party rights, the Intellectual Property Rights and all other rights in the output of the Services (including any Deliverables) in each case with effect from their creation.

13.2 If the Supplier needs to use any of the Intellectual Property Rights assigned to the Council in the performance of this Agreement and/or which belong to the Council, the Council grants to the Supplier a non-exclusive, non-transferable, royalty free and revocable licence to use such Intellectual Property Rights solely in order to perform this Agreement. Any licence granted under this clause shall automatically terminate when this Agreement terminates/expires.

13.3 The Supplier shall procure irrevocable waivers of any moral rights in the output of the Services (including the Deliverables) to which any individual is now, or may be at any future time, entitled.

13.4 If in performing the Services the Supplier uses any Intellectual Property Rights owned by itself or a third party (other than the Council) and/or the use of Goods and/or Deliverables will require the use of any Intellectual Property Rights owned by itself or a third party, the Supplier shall grant to the Council or shall procure for it a perpetual, non-exclusive, royalty free, transferable licence to use, develop, support or maintain such Intellectual Property Rights in order to enable the Council to secure the full benefit of the Goods, Services, Deliverables and the rights assigned to it under this clause. This shall include for the completion and use of the output of the Services.

13.5 The Supplier shall indemnify and keep the Council indemnified from and against any and all losses, costs, expenses, claims and other liabilities incurred by the Council as a result of any claim that the use by the Council of the Goods, Deliverables, the Services and/or Intellectual Property Rights for which the Supplier has secured or granted a licence in accordance with this clause, infringes the rights of a third party.

13.6 Any use of the name and/or logo of the Council is subject to the prior written consent of the Council and compliance with the relevant Council guidelines.

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

14 LIMITATION OF LIABILITY

14.1 Nothing in this Agreement shall exclude or restrict the liability of either party to the other for death or personal injury resulting from negligence or for fraudulent misrepresentation or in any other circumstances where liability may not be limited under any applicable Laws.

14.2 Subject to clause 14.1, neither party shall be liable to the other whether in contract, tort, negligence, breach of statutory duty or otherwise for any indirect loss or damage, costs or expenses whatsoever or howsoever arising out of or in connection with this Agreement.

14.3 Subject to clauses 14.1 and 14.2, the Council's liability to the Supplier in respect of any one claim or series of linked claims under this Agreement (whether in contract, tort, negligence, breach of statutory duty or otherwise) shall not exceed an amount equal to the sum of the Charges paid or properly invoiced and due to be paid under this Agreement, plus any late payment interest properly chargeable under the terms of this Agreement, in the twelve (12) month period immediately preceding the event which gives rise to the relevant claim or series of linked claims.

15 TERMINATION

15.1 Without prejudice to any other rights or remedies which the Council may have, the Council may terminate this Agreement without liability to the Supplier immediately on giving notice to the Supplier if:

15.1.1 the performance of the Services is delayed, hindered or prevented by a Force Majeure Event for a period in excess of 28 days;

15.1.2 where the Supplier is a company, there is a Change of Control of the Supplier;
or

15.1.3 the Supplier or any Relevant Person is:

(i) incapacitated (including by reason of illness or accident) from providing the Services for an aggregate period of five (5) Working Days in any two (2) week consecutive period;

(ii) convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed);

(iii) in the reasonable opinion of the Council, negligent and incompetent in the performance of the Services; or

(iv) guilty of any fraud, dishonesty or serious misconduct.

15.2 Either party may give notice in writing to the other terminating this Agreement with immediate effect if:

(a) the other party commits any material breach of any of the terms of this Agreement and that breach (if capable of remedy) is not remedied within thirty (30) days of notice being given requiring it to be remedied (and where such breach is not capable of remedy, the terminating party shall be entitled to terminate this Agreement with immediate effect); or

(b) the other party becomes (or, in the reasonable opinion of the terminating party, is at serious risk of becoming) insolvent or unable to pay its debts as they fall due.

15.3 The Council shall be entitled to terminate this Agreement at any time by serving not less than seven (7) days' written notice on the Supplier.

15.4 Termination of this Agreement, however it arises, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive, or implicitly surviving, termination.

16 CONSEQUENCES OF TERMINATION

16.1 On termination of this Agreement for any reason, the Supplier shall comply with any specific termination activities identified in this Agreement and, in any event, immediately deliver to the Council or destroy (on the instruction of the Council):

- (a) any and all Council Materials;
- (b) all copies of Confidential Information and data provided by or behalf of the Council for this Agreement; and
- (c) all information, data and other documentation comprised in the Deliverables and existing at the date of such termination, whether or not then complete. All Intellectual Property Rights in such materials shall automatically pass to the Council (to the extent that they have not already done so under the other terms of this Agreement).

16.2 If any Charges have been paid in advance for Goods, Services and/or Deliverables not provided by the Supplier as at the termination date, the Supplier shall promptly repay to the Council all such monies.

16.3 The Supplier shall provide access to the Council and any replacement supplier for up to 12 months after the expiry or termination of this Agreement to such information relating to the Goods, Services and/or Deliverables as remains in the Supplier's possession or control and such members of the Supplier's Team as have been involved in the performance of the Services and who are still employed by the Supplier. This assistance shall be provided free of charge if this Agreement is terminated under clause 15.2 and, in all other cases, at fees to be agreed by the parties.

16.4 On any termination or expiry of this Agreement the accrued rights and liabilities of the parties as at termination, and all clauses which are expressly or by implication to survive termination or expiry, shall survive and continue.

17 ANTI-CORRUPTION/BRIBERY

17.1 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 this Agreement or for showing or refraining from showing favour or disfavour to any person in relation to this Agreement.

17.2 The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by it and/or the Relevant Person in connection with this 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.

17.3 If the Supplier or the Relevant Person engages in conduct prohibited by clause 17.1 or commits fraud in relation to this Agreement or any other contract with the Council, the Council may:

- (a) terminate this Agreement without liability to the Supplier immediately on giving notice and recover from the Supplier the amount of any loss suffered by it resulting from the termination, including the cost reasonably incurred by it of making other arrangements for the supply of the Services and any additional expenditure incurred by it throughout the remainder of this Agreement;
- (b) recover in full from the Supplier any other loss sustained by it in consequence of any breach of this clause 17.

18 SAFEGUARDING AND PREVENTION OF TERRORISM

18.1

- (a) The Supplier shall comply with all applicable Laws, codes of practice and guidance relevant to the safeguarding and protection of children and vulnerable adults and with the Council's Requirements (i.e. safeguarding policies), as notified to the Supplier and amended from time to time, which the Supplier acknowledges may include submitting to a check by the DBS. For the avoidance of doubt, Relevant Person(s) employed or engaged in the delivery of the Services shall be DBS checked.
- (b) Relevant Person(s) who disclose that they have a conviction relevant to the nature of the Services, relevant to the work of the Council or is of a type otherwise advised by the Council, or is found by the Supplier to have a conviction (whether as a result of a police check, a DBS check or otherwise), must not be employed or engaged by the Supplier in the provision of any part of the Services.

18.2 The Supplier acknowledges that the Council has a duty under the CTSA 2015 to have due regard to prevent people from being drawn into terrorism. The Supplier shall, and shall procure that Relevant Person shall, give all reasonable assistance and support to the Council in meeting its duty as a specified authority pursuant to the CTSA 2015 and the Supplier shall have regard to the statutory guidance issued under section 29 of the CTSA 2015.

18.3 The Supplier shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 18 have been met.

18.4 The Supplier shall ensure that, where it engages any other party to supply any of the Services under this Agreement that that party shall also comply with this clause 18 as if they were a party to this Agreement.

19 ANTI-SLAVERY AND HUMAN TRAFFICKING

19.1 The Supplier shall:

19.1.1 ensure that slavery and human trafficking is not taking place in any part of its business or in any part of its supply chain;

19.1.2 implement due diligence procedures for its own suppliers, sub-contractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains;

19.1.3 respond promptly to all slavery and human trafficking due diligence questionnaires issued to it by the Council from time to time and ensure that its responses to all such questionnaires are complete and accurate; and

19.1.4 notify the Council as soon as it becomes aware of any actual or suspected slavery or human trafficking in any part of its business or in a supply chain which has a connection with this Agreement.

19.2 If the Supplier fails to comply with any of its obligations under this clause 19, without prejudice to any other rights or remedies, which the Council may have, the Council shall be entitled to:

- (a) terminate this Agreement without liability to the Supplier immediately on giving notice to the Supplier; and/or
- (b) reduce, withhold or claim a repayment (in full or in part) of the Charges; and/or
- (c) share with third parties information about such non-compliance.

20 ASSIGNMENT

20.1 The Supplier shall not, without the prior written consent of the Council, assign, transfer, charge, create a trust in, or deal in any other manner with all or any of its rights or obligations under this Agreement.

21 WAIVER

21.1 A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

22 ENTIRE AGREEMENT

22.1 This Agreement and any documents referred to in it constitute the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and supersede, cancel and replace all prior agreements, licences, negotiations and discussions between the parties relating to it. Each party confirms and acknowledges that it has not been induced to enter into this Agreement by, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) not expressly incorporated into it. However, nothing in this Agreement purports to exclude liability for any fraudulent statement or act.

23 VARIATION

23.1 No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.

24 SEVERANCE

24.1 If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of this Agreement, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

25 THIRD PARTY RIGHTS

25.1 This Agreement does not create any rights or benefits enforceable by any person not a party to this Agreement, including any rights enforceable under the Contracts (Rights of Third Parties) Act 1999.

26 NO PARTNERSHIP OR AGENCY

26.1 Nothing in this Agreement is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or

power) and neither party shall incur any expenditure in the name of or for the account of the other.

27 FORCE MAJEURE

27.1 Subject to clauses 27.2 and 27.3, neither party shall be in breach of this Agreement if it is prevented from or delayed in carrying on its business by acts, events, omissions or accidents beyond its reasonable control (a **“Force Majeure Event”**) including (insofar as beyond such control but without prejudice to the generality of the foregoing expression) strikes, lock-outs or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, volcanic ash, earthquake, explosion, terrorist act, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm.

27.2 A party that is subject to a Force Majeure Event shall not be in breach of this Agreement provided that:

- (a) it promptly notifies the other party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance;
- (b) it could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all the matters known to it before the Force Majeure Event, it ought reasonably to have taken, but did not; and
- (c) it has used all reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under this Agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.

27.3 Nothing in this clause 27 shall excuse a party for non-performance (or other breach) of this Agreement if such non-performance (or other breach) results from the acts or omissions of any of that party's consultants and/or sub-contractors (except where such acts or omissions are caused by any of the circumstances specifically listed in clause 27.1).

28 NOTICE

28.1 Any notice to be given under this Agreement shall be in writing and may be served by personal delivery, first class recorded or e-mailed to the address of the relevant party or such other address as that party may from time to time notify to the other party in accordance with this clause:

28.2 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.

29 GOVERNING LAW AND DISPUTE RESOLUTION PROCEDURE

29.1 This Agreement and any dispute or claim (including any non-contractual dispute or claim) arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the laws of England and Wales.

29.2 Subject to the remainder of clause 29, the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including any non-contractual dispute or claim) that arises out of or in connection with this Agreement or its subject matter.

29.3 In the event that any claim or dispute arises out of or in connection with this Agreement, the parties shall, following service of written notice by one party on the other, attempt to resolve amicably by way of good faith negotiations and discussions any such dispute or claim as soon as reasonably practicable (and in any event within fourteen (14) calendar days after such notice or by such later date as the parties may otherwise agree in writing). If the parties are unable to resolve the dispute or claim in accordance with this clause 29.3, either party may commence proceedings in accordance with clause 29.2.

29.4 Nothing in this clause 29 shall prevent either party from applying at any time to the court for injunctive relief on the grounds of infringement, or threatened infringement, of the other party's obligations of confidentiality contained in this Agreement or infringement, or threatened infringement, of Intellectual Property Rights

ANNEX

1. [Counter-Fraud & Corruption Strategy](#)
2. [Equality & Diversity Document Framework](#)
3. [Environmental/Climate Change Net Zero Strategy](#)
4. [Modern Anti-Slavery & Human Trafficking Statement](#)
5. [Safeguarding Guidelines for External Providers](#)
6. [Whistleblowing Policy](#)