



NORTHUMBERLAND COUNTY COUNCIL

**STANDARD TERMS AND CONDITIONS
FOR PURCHASE ORDERS**

**(these terms and conditions shall apply to orders for
goods and / or services placed outside
of a formal tendering process)**

1. INTERPRETATION

1.1 In these Conditions the following definitions apply:-

“Business Day”	a day (other than a Saturday, Sunday or public holiday in England) when the banks in London are open for business;
“Commencement Date”	has the meaning set out in clause 2.2;
“Conditions”	these general Conditions and conditions as amended from time to time in accordance with clause 23.10;
“Contract”	the contract between Northumberland County Council and the Supplier for the supply of Goods and / or Services in accordance with these Conditions;
“Council”	Northumberland County Council;
“Deliverables”	all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media (including drafts);
“Goods”	the goods (including any instalment, component, part of or raw materials used in such goods) described in the Order;
“Intellectual Property Rights”	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) and any other intellectual property rights, in each case 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;
“Price”	the price payable for the Goods and / or Services;
“Order”	the Council’s request for the supply of Goods and / or Services, as set out in the Council’s purchase order form;
“Services”	the services, including without limitation any Deliverables, and / or works (if any described in the

Order to be provided by the Supplier under the Contract as set out in the Specification and / or Order;

“Specification” includes any plans, drawings, data, description or other information relating to the Goods and / or Services;

“Supplier” the person or firm from whom the Council purchases the Goods and / or Services as set out in the Order;

“Writing” includes electronic communication but excludes facsimile transmission; written shall be construed accordingly;

1.2 In these Conditions unless the context otherwise requires:

1.2.1 words in the singular include the plural and words in the plural include the singular;

1.2.2 a reference to any statute, order, regulation or similar instrument shall be construed as a reference to that statute, order, regulation or instrument as from time to time amended modified or re-enacted by any subsequent statute, order, regulation or instrument after the date of the Order and include any by-laws, statutory instruments, rules, regulations, orders, notices, directions, consents or permissions (together with any conditions attaching to any of the foregoing) made thereunder;

1.2.3 any reference to a person shall include any natural person, partnership, joint venture, body corporate, incorporated association, government, governmental agency, persons having a joint or common interest, or any other legal or commercial entity or undertakings;

1.2.4 a reference to a party includes its personal representatives, successors or permitted assigns;

1.2.5 any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

1.2.6 a reference to writing or written excludes faxes.

1.3 The index and headings to the clauses and schedules of these Conditions are for convenience only and will not affect its construction or interpretation.

2. ORDER

2.1 The Order constitutes an offer by the Council to purchase the Goods and / or Services from the Supplier subject to these Conditions.

- 2.2 The Supplier shall be deemed to agree to comply with these Conditions in the event of:
- 2.2.1 any acceptance of an Order by the Supplier; or
 - 2.2.2 the commencement of any work by the Supplier in relation to the Order; or
 - 2.2.3 the delivery of any goods or the performance of any Services by or on behalf of the Supplier, notwithstanding any conditions attached to such offer or acceptance or any purported incorporation of terms and conditions other than these Conditions.
- 2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.4 Where the Order forms part of a separate purchasing arrangement entered into following a formal tendering process (whether such formal procurement process is undertaken by the Council or by way of call-off from a Council or third party framework agreement) and subject to terms previously agreed in writing and signed by the Council and Supplier, the terms and conditions issued as part of the separate procurement process or request for quote shall have priority over these terms.
- 2.5 No variation to the Order or these Conditions shall be binding unless agreed in writing by the authorised representative of the Council.

3. CHANGES

- 3.1 The Council may in its reasonable discretion from time to time change any details specified in its Order by written instructions.

4. SUPPLY OF GOODS

- 4.1 The quantity, quality and description of the Goods shall be as specified in the Order and / or in any applicable Specification supplied by the Council to the Supplier.
- 4.2 Any Specification supplied by the Council to the Supplier, together with any intellectual property rights shall be the exclusive property of the Council.
- 4.3 Goods made to the Council's Specification shall not be manufactured for or supplied to any other party without the Council's prior written consent.
- 4.4 The Supplier shall ensure that the Goods shall:
- 4.4.1 correspond with their description, any relevant sample and any applicable Specification;

- 4.4.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and be fit for any purpose held out by the Supplier or made known to the Supplier by the Council, expressly or by implication, and in this respect the Council relies upon the Supplier's skill and judgement;
- 4.4.3 where applicable, be free from defects in design, material and workmanship and remain so for a minimum of 12 months, or such other period as may be specified in the Order or Specification, after delivery; and
- 4.4.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 4.5 The Supplier shall ensure that at all times it has and maintains all the licenses, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.
- 4.6 The Council reserves the right to inspect and test the Goods at any time prior to delivery as well as upon delivery;
- 4.7 If as a result of inspection or testing, the Council is not satisfied that the Goods and or Services comply in all respects with the Order, Specification or the Supplier's undertakings at clause 4.4, the Council shall inform the Supplier and the Supplier shall take such steps as are necessary to ensure compliance.
- 4.8 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and the Council shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.
- 4.9 All equipment paid for and / or provided by the Council shall be and shall remain the Council's property and must be returned to the Council in good condition upon request or upon completion of the Order, whichever is sooner.

5. DELIVERY OF GOODS

- 5.1 The Supplier shall ensure that:
 - 5.1.1 the Goods are properly packed and secured in such matter as to enable them to reach their destination in good condition;
 - 5.1.2 each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, the 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 balance of the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered;

- 5.1.3 each delivery is received by an authorised representative of the Council; and
- 5.1.4 if the Supplier requires the Council to return any packaging material for the Goods to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.
- 5.2 The Supplier shall deliver the Goods:
 - 5.2.1 On the date specified in the Order or, if not such date is specified, then within seven (7) days of the date of the Order;
 - 5.2.2 to the Council's premises at such address as is set out in the order or as instructed by the Council before delivery (the "**Delivery Location**").
 - 5.2.3 during the Council's normal hours of business on a Business Day, or as instructed in writing prior to delivery by the Council.
- 5.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 5.4 Time of delivery shall be of the essence.
- 5.5 The Council reserves the right to amend any delivery instructions.
- 5.6 The Supplier shall not deliver the Goods in instalments without the Council's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. Failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle to the Council to the remedies set out in clause 10.

6. ACCEPTANCE

- 6.1 The Supplier shall supply the Council in good time with any instructions or other information required, to enable the Council to accept delivery of the Goods and / or performance of the Services.
- 6.2 The Council shall be entitled to reject all or any part of the Goods delivered and / or Services performed which are not in accordance with the Order, any Specification and these Conditions even if the defect is minor. Any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and the Council accepts delivery, a pro rata adjustment shall be made to the invoice for the Goods.
- 6.3 The Council shall not be deemed to have accepted any Goods and / or services until the Council has had a reasonable time to inspect and / or test

them following delivery or, if later, within a reasonable time after any latent defect has become apparent.

7. RISK AND PROPERTY

- 7.1 Risk of damage to and / or loss of the Goods shall pass to the Council upon delivery to the Council.
- 7.2 Transit, offloading and delivery of the Goods to the delivery address specified in the Order or otherwise in accordance with condition 4, shall be at the Supplier's risk.

8. INFORMATION

- 8.1 The Supplier shall provide to the Council on request, evidence of the place of origin of the Goods and any information requested in relation to components, parts or raw materials used in the manufacturing of the Goods.
- 8.2 The Supplier shall provide to the Council forthwith any information the Council may request for the purposes of monitoring the Supplier's performance of its obligations to provide the Goods and / or Services detailed on the Order in accordance with these Conditions or any other Contract.
- 8.3 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the Council to inspect such records at all reasonable times on request.

9. SUPPLY OF SERVICES

- 9.1 The Supplier shall from the date set out in the Order and for the duration of this Contract provide the Services to the Council in accordance with the terms of this Contract.
- 9.2 The Supplier shall meet any performance dates for the Services specified in the Order or notified to the Supplier by the Council.
- 9.3 In providing the Services, the Supplier shall:
 - 9.3.1 co-operate with the Council in all matters relating to the Services, and comply with all instructions of the Council.
 - 9.3.2 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
 - 9.3.3 use personnel who are appropriately qualified, trained and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;

- 9.3.4 ensure that the Services and Deliverables will conform with all descriptions set out in the Specification and / or Order, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Council;
- 9.3.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- 9.3.6 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Council, will be free from defects in workmanship, installation and design;
- 9.3.7 obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
- 9.3.8 with due care and diligence and to such high standards of quality as it is reasonable for the Council to expect in all the circumstances; and
- 9.3.9 observe all health and safety rules and regulations and any other security requirements that apply at any of the Council's premises as appropriate;
- 9.3.10 hold all material, equipment and tools, drawings, specifications and data supplied by the Council to the Supplier ("**Council's Materials**") in safe custody at its own risk, and not dispose of or use the Council's Materials other than in accordance with the Council's written instructions or authorisation.

10. COUNCIL REMEDIES

- 10.1 If the Supplier fails to deliver the Goods and / or perform the Services by the applicable date, the Council shall, without limiting its other rights or remedies, have one or more of the following rights:
 - 10.1.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - 10.1.2 to refuse to accept any subsequent performance of the Services and / or delivery of the Goods which the Supplier attempts to make;
 - 10.1.3 to recover from the Supplier any costs incurred by the Council in obtaining substitute goods and / or services from a third party;
 - 10.1.4 where the Council has paid in advance for Services that have not been provided by the Supplier and / or Goods which have not been delivered by the Supplier, to have such sums refunded by the Supplier within fourteen (14) days of demand; and

- 10.1.5 to claim damages for any additional costs, loss or expenses incurred by the Council which are in any way attributable to the Supplier's failure to meet such dates.
- 10.2 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 4.4, then, without limiting its other rights or remedies, the Council shall have one or more of the following rights, whether or not it has accepted the Goods:
 - 10.2.1 to reject the 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;
 - 10.2.2 to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - 10.2.3 to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
 - 10.2.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
 - 10.2.5 to recover from the Supplier any expenditure incurred by the Council in obtaining substitute goods from a third party; and
 - 10.2.6 to claim damages for any additional costs, loss or expenses incurred by the Council arising from the Supplier's failure to supply Goods in accordance with clause 4.4.
- 10.3 These Conditions shall extend to any substituted or remedial services and / or repaired or replacement goods supplied by the Supplier.
- 10.4 The Council's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

11. COUNCIL'S OBLIGATIONS

- 11.1 The Council shall:
 - 11.1.1 Provide the Supplier with reasonable access to the Delivery Location at reasonable times for the purpose of delivering the Goods;
 - 11.1.2 provide the Supplier with reasonable access at reasonable times to the Council's premises for the purpose of providing the Services; and
 - 11.1.3 provide such information as the Supplier may reasonably request for the provision of the Services and the Council considers reasonable necessary for the purpose of providing the Services.

12. PRICE

12.1 The Price of the Goods and / or Services:

- 12.1.1 shall be as stated in the Order and, unless otherwise so stated, shall be fixed, exclusive of any applicable Value Added Tax and inclusive of all charges for packaging and delivery to the Delivery Location; and
 - 12.1.2 shall be inclusive of the costs of packaging, insurance and carriage of the Goods, unless otherwise agreed in writing by the Council. No extra charges shall be effective unless agreed in writing and signed by the Council.
- 12.2 The charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Council, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 12.3 If there is no Price stated in the Order, the Price shall be the lowest price quoted or charged at the date of the Order by the Supplier for the Goods and / or the Services subject always to the requirements that the Price shall in no event be higher than the price most recently charged to the Council by the Supplier for such goods / Services.
- 12.4 The Supplier shall not make any increase to the Price without the prior written consent of the Council.
- 12.5 All amounts payable by the Council under the Contract are exclusive of amounts in respect of value added tax (“VAT”) chargeable from time to time. Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Council, the Council shall, on receipt of a valid VAT invoice from the Supplier pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and / or Services at the same time as payment is due for the supply of the Goods and ./ or Services).

13. PAYMENT

- 13.1 Unless otherwise stated in the Order, the Supplier may only invoice the Council:
- 13.1.1 on or after delivery of the Goods or the completion of the Services; and
 - 13.1.2 at a frequency of no more than one invoice per month,
- with a separate invoice (including such supporting information as may be required by the Council to verify the accuracy of the invoice) for each individual supply or delivery.

- 13.2 The Council shall not be obliged to accept an invoice unless the Order number and a correctly nominated bank account of the Supplier is quoted.
- 13.3 Invoices shall be sent to the address specified on the Order as the invoicing address. Where no such address is provided invoices shall be sent to Northumberland County Council, County Hall, Morpeth, Northumberland NE61 2EF.
- 13.4 Unless otherwise stated in the Order, the Council shall pay the Price for the Goods and / or Services within thirty (30) days of receipt by the Council of a valid invoice or, if later, after acceptance of the Goods and / or Services in question by the Council. Time of payment shall not be of the essence of these Conditions.
- 13.5 The Council shall be entitled to deduct from the Price:
- 13.5.1 the unit price for such proportion of the Goods as may be defective and rejected by the Council, together with the costs of returning such Goods to the Supplier; and / or
 - 13.5.2 any costs or expenses incurred by the Council as a consequence of the Supplier failing to deliver the goods to the correct destination; and / or
 - 13.5.3 any fees, other charges or other costs incurred by the Council arising out of the Services not being provided or provided inadequately by the Supplier to the Council; and / or
 - 13.5.4 any amount which is disputed by the Council, pending resolution of such dispute; and / or
 - 13.5.5 any sums owing by the Supplier to the Council under any other Contract or purchase order.
- 13.6 If the Council fails to pay any amount properly due and payable by it under the Contract, the Supplier shall have the right to charge interest on the overdue amount at the rate of four (4) percent per annum above the base rate for the time being of the Bank of England accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgement. This clause 13.6 shall not apply to payments that the Council disputes in good faith.

14. COMPLIANCE WITH THE LAW

- 14.1 The Supplier shall comply with all applicable statutory or regulatory requirements concerning the supply of Goods and the performance of the Services.
- 14.2 The Supplier shall ensure that it shall comply with all equal opportunities legislation in force from time to time and shall ensure that its equalities policies comply with the policies of the Council.

- 14.3 The Supplier shall ensure that it complies with the Council's whistleblowing policy which is available at the Council's website at www.northumberland.gov.uk or upon request from the Council.

15. INTELLECTUAL PROPERTY RIGHTS

- 15.1 In respect of the Goods and any goods that are transferred to the Council as part of the Services under this Contract, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Council, it will have full and unrestricted rights to sell and transfer all such items to the Council.
- 15.2 The Supplier assigns to the Council, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables.
- 15.3 The Supplier shall, promptly at the Council's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Council may from time to time require for the purpose of securing for the Council the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Council in accordance with clause 15.2.
- 15.4 All Council Materials are the exclusive property of the Council.

16. INDEMNITY

- 16.1 The Supplier shall indemnify the Council in full against all liabilities, losses, damages, costs and expenses incurred directly or indirectly, and 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:
- 16.1.1 any claim in relation to the death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- 16.1.2 any claim arising out of, or in connection with, the supply of the Goods and / or Services, by the Supplier, or its employees, agents, volunteers or sub-contractors in supplying, delivering and installing the Goods and / or in performing the Services;
- 16.1.3 any claim made against the Council for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with the manufacture, supply or use of the Goods, or receipt, use or supply of the Services;

16.1.4 any claim made against the Council of any statutory provision, regulation or bye-laws or other rule of law arising from the acts or omissions of the Supplier, or its employees, agents, volunteers or sub-contractors;

16.1.5 any claim arising out of any breach of Data Protection Legislation.

17. INSTALLATION AND WORK ON SITE

17.1 The Supplier shall at all time whilst on the Council's premises or on site, comply with and procure that its employees, agents, volunteers and subcontractors comply with:

17.1.1 all relevant legal requirements relating to the provision of the Services;

17.1.2 all relevant health and safety legislation;

17.1.3 all security and safety regulations and rules;

from time to time in force, and will be deemed to have full knowledge of such regulations.

17.2 Where the Supplier is responsible for the installation of the Goods and / or providing other Services, such Services shall be carried out to the satisfaction of the Council's authorised representative.

17.3 The Supplier shall clear away and remove from the Council's premises or site all installation plant, service material, rubbish, debris and temporary works (when no longer in use) and shall leave the premises or site in a clean and workmanlike condition to the satisfaction of the Council.

18. INSURANCE

18.1 For the duration of the Contract and for a period of six (6) years thereafter the Supplier shall at all times maintain insurance cover with a reputable insurer, professional indemnity insurance, product liability insurance and public liability insurance against its liabilities that may arise under or in connection with the Contract and shall produce the policy and latest premium receipt to the Council on request.

18.2 The Supplier will provide all facilities, assistance and information reasonable required by the Council or its insurers for the purposes of bringing an action or claim arising out of the performance of the Order and these Conditions.

18.3 This clause 18 shall survive termination of the Contract.

19. LICENSES

- 19.1 The Supplier grants the Council an irrevocable, non-exclusive and royalty free licence to use, repair, alter or relocate the Goods whether by itself or through its employees, agents or sub-contractors.

20. TERMINATION AND CONSEQUENCES OF TERMINATION

- 20.1 Without limiting its other rights or remedies, the Council may terminate this Contract with immediate effect by giving written notice to the Supplier if:

20.1.1 the Supplier commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within seven (7) days of receipt of notice in writing of the breach;

20.1.2 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;

20.1.3 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;

20.1.4 the Supplier (being an individual) is the subject of a bankruptcy petition / order;

20.1.5 the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business;

20.1.6 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;

20.1.7 The Supplier (being an individual) is convicted of a criminal offence).

- 20.2 Without limiting its other rights or remedies, the Council may terminate the Contract:

20.2.1 in respect of the supply of the Services, by giving the Supplier fourteen (14) written notice;

20.2.2 in respect of the supply of Goods, with immediate effect by giving written notice to the Supplier, in which case the Council shall pay the Supplier fair and reasonable compensation for Goods already

received and any work in progress on any other Goods at the date of termination but such compensation shall not include loss of anticipated profits or any consequential loss.

20.3 In any of the circumstances in these Conditions in which the Council may terminate the Contract, where both Goods and Services are supplied, the Council may instead terminate part of the Contract in respect of the Goods or in respect of the Services, and the Contract shall continue in respect of the remaining supply.

20.4 On termination of the Contract or any part of it for any reason:

20.4.1 Where the Services are terminated, the Supplier shall immediately deliver to the Council all Deliverables, whether or not then complete, and return all Council Materials;

20.4.2 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.

20.4.3 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

21. CONFIDENTIALITY

21.1 The Supplier shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier, its employees, agents or subcontractors, and any other confidential information concerning the Council's business or its products or its services which the Supplier may obtain. The Supplier shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Supplier's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Supplier.

21.2 The Supplier shall not advertise or announce the supply of the Goods and / or the Services to the Council without the Council's prior written consent.

21.3 This clause 21 shall survive the termination of the Contract.

22. FREEDOM OF INFORMATION

22.1 The Supplier acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 (collectively the "**FOI Legislation**") and shall assist and cooperate with the Council to enable the Council to comply with its disclosure obligations.

- 22.2 The Supplier shall transfer to the Council all requests for information under FOI Legislation that it receives as soon as practicable and in any event within three (3) days of receiving a request for information or an apparent request under the FOI Legislation ("**FOI Request**") and provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the FOI Request within the time for compliance set out in FOI Legislation. In no event shall the Supplier respond directly to a FOI Request unless expressly authorised to do so by the Council.
- 22.3 The Supplier acknowledges that the Council may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000, be obliged to disclose information without consulting or obtaining consent from the Supplier, or despite having taken the Supplier's views into account.
- 22.4 The Supplier shall ensure that any documents that it considers may be partially or fully exempt from disclosure under the FOI are clearly marked indicating the basis of such exemption (whether "commercially sensitive" or otherwise). Notwithstanding the foregoing, the Council shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of the FOI Legislation.
- 22.5 The Council shall not be held liable for any loss or prejudice caused by the disclosure of information that:
- 22.5.1 has not been notified to the Council as being commercially sensitive with supporting reasons (referring to the relevant category of the FOI Legislation where possible);
 - 22.5.2 does not fall into a category of information that is exempt from disclosure under the FOI Legislation (for example a trade secret or would be likely to prejudice the commercial interests of any person); or
 - 22.5.3 in cases where there is no absolute statutory duty to withhold information, notwithstanding the previous clauses, in circumstances where it is in the public interest to disclose any such information.
- 22.6 The Supplier acknowledges that the Council is a public body and will provide all reasonable assistance to the Council to allow the Council to comply with any transparency requirements including where the Council is obliged to publish this Contract.

23. DATA PROTECTION

- 23.1 For the purpose of this clause 23 the following definitions shall apply:

“Controller”	shall have the meaning specified in the UK Data Protection Legislation in force at that time;
“Data Loss Event”	means any event that results, or may result, in unauthorised access to Personal Data held by the Processor 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;
“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 Legislation”	means the UK Data Protection Legislation and any other European Union legislation relating to Personal Data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications);
“Data Subject”	shall have the meaning specified in the UK Data Protection Legislation in force at that time;
“Data Subject Request”	means a request made by, or on behalf of, a Data Subject in accordance with the rights granted pursuant to the Data Protection legislation to access their Personal Data;
“DPA”	means the Data Protection Act 2018 including any amendments effected by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019;
“GDPR”	means the General Data Protection Regulation (Regulation (EU) 2016/679)) including any amendments effected by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 following which GDPR will become known as UK-GDPR;

“Personal Data”	shall have the meaning specified in the UK Data Protection Legislation in force at that time;
“Processing”	shall have the meaning specified in the UK Data Protection Legislation in force at that time;
“Processor”	shall have the meaning specified in the UK Data Protection Legislation in force at that time;
“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;
“Sub-processor”	means any third party appointed to process Personal Data on behalf of that Processor related to this Contract;
“UK Data Protection Legislation”	means all applicable data protection and privacy legislation in force from time to time in the UK including: <ul style="list-style-type: none"> (i) the GDPR, the Law Enforcement Directive 2016/680 (‘LED’) and any applicable national implementing Laws as amended from time to time; (ii) DPA 2018; (iii) the Privacy and Electronic Communications Direction 2002/58/EC (as updated by Directive 2009/136/EC); and (iv) the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

23.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 23 is in addition to, and does not relieve, remove or replace, a party’s obligations or rights under the Data Protection Legislation. In this clause 23, **“Applicable Laws”** means (for so long as and to the extent

that they apply to the Consultant) the law of the European Union, the law of any member state of the European union and / or domestic UK Law; and Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK.

- 23.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Supplier is the Processor. The only processing that the Supplier is authorised to do is as instructed in writing by the Council and may not be determined by the Supplier.
- 23.4 The Supplier shall notify the Council immediately if it considers that;
- 23.4.1 any of the Council's instructions infringe the Data Protection Legislation; or
 - 23.4.2 the Supplier will be a Controller of any Personal Data in relation to the Order.
- 23.5 The Supplier shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment at any time. Such assistance may, at the discretion of the Council, include:
- 23.5.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 23.5.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 23.5.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 23.5.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 23.6 The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
- 23.6.1 process that Personal Data only in accordance with the Contract, unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Council before processing the Personal Data unless prohibited by Law;
 - 23.6.2 ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Council may reasonably reject (but failure to reject shall not amount to approval by the Council of the adequacy of the Protective Measures), having taken account of the:
 - 23.6.2.1 nature of the data to be protected;

- 23.4.2.2 harm that might result from a Data Loss Event;
- 23.4.2.3 state of technological development; and
- 23.4.2.4 cost of implementing any measures;
- 23.6.3 ensure that :
 - 23.4.3.1 the Supplier's employees, staff, agents or volunteers do not process Personal Data except in accordance with this Contract;
 - 23.4.3.2 it takes all reasonable steps to ensure the reliability and integrity of any Supplier employees, staff, agents or volunteers who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Supplier's duties under this clause 23;
 - (B) are subject to appropriate confidentiality undertakings with the Supplier 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;
- 23.6.4 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:
 - 23.4.4.1 the Council or the Supplier 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;
 - 23.4.4.2 the Data Subject has enforceable rights and effective legal remedies;
 - 23.4.4.3 the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Council in meeting its obligations); and

- 23.6.2.2 the Supplier complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
- 23.6.3 on the written direction of the Council or upon the expiry or termination of this Contract (howsoever caused) or if earlier when required to do so in accordance with any exit plan from time to time in force, the Supplier shall, at the direction of the Council, either:
 - 23.6.3.1 return Personal Data (and any copies of it) to the Council at such location or locations within the United Kingdom as the Council may nominate for this purpose; or
 - 23.6.3.2 delete Personal Data (and any copies of it)unless the Supplier is required by Law to retain the Personal Data.
- 23.7 Subject to clause 23.8, the Supplier shall notify the Council immediately if it:
 - 23.7.1 receives a Data Subject Request (or purported Data Subject Request);
 - 23.7.2 receives a request to rectify, block or erase any Personal Data;
 - 23.7.3 receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation;
 - 23.7.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - 23.7.5 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 Law; or
 - 23.7.6 becomes aware of a Data Loss Event.
- 23.8 The Supplier's obligation to notify under clause 23.7 shall include the provision of further information to the Council in phases, as details become available.
- 23.9 Taking into account the nature of the processing, the Supplier shall provide the Council with full assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 23.7 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:
 - 23.9.1 the Council with full details and copies of the complaint, communication or request;

- 23.9.2 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 Legislation;
 - 23.9.3 the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 23.9.4 assistance as requested by the Council following any Data Loss Event; and
 - 23.9.5 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.
- 23.10 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause 23. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:
- 23.10.1 the Council determines that the processing is not occasional;
 - 23.10.2 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
 - 23.10.3 the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 23.11 The Supplier shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor.
- 23.12 The Supplier shall designate a data protection officer if required by the Data Protection Legislation.
- 23.13 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Supplier must:
- 23.13.1 notify the Council in writing of the intended Sub-processor and processing;
 - 23.13.2 obtain the written consent of the Council;
 - 23.13.3 enter into a written agreement with the Sub-processor which give effect to the Conditions set out in this clause 23 such that they apply to the Sub-processor; and
 - 23.13.4 provide the Council with such information regarding the Sub-processor as the Council may reasonably require.

23.14 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.

23.15 The Council may, at any time on not less than thirty (30) Working Days' notice, revise this clause 23 by replacing it with any applicable Controller to processor standard clauses or similar Conditions forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).

23.16 The parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than thirty (30) Working Days' notice to the Supplier amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

24. GENERAL CONDITIONS

24.1 **Assignment:** The Order is personal to the Supplier and the Supplier shall not transfer, assign, charge, dispose of or deal with the Order in any manner or purport to do the same with any of its rights or beneficial interests.

24.2 **Subcontracting:** The Supplier shall not sub-contract any of its obligations under the Order without the prior written consent of the Council

24.3 **Force Majeure:** Neither the Supplier nor the Council shall be liable to the other as a result of any delay or failure to perform its obligations under the Contract if and to the extent such delay or failure is caused by an event or circumstance which is beyond that party's reasonable control, and which by its nature could not have been foreseen by such party or if it could be foreseen was unavoidable. If such event or circumstance prevents the Supplier from supplying the Goods and / or Services for more than six (6) weeks, the Council shall have the right, without limiting its other rights or remedies, to terminate this Contract with immediate effect by giving written notice to the Supplier.

24.4 Notice:

24.4.1 Any notice to be given by either party to the other under these Conditions must be in writing addressed to the other at its registered office and delivered personally or sent by first class post and will be deemed to have been delivered: .

24.4.1.1 if delivered by hand or courier – the date of actual delivery;
or

24.4.1.2 if by first class pre-paid mail – 48 hours after dispatch;

24.4.2 Notices addressed to the Council shall be marked for the attention of the Authorised Officer.

23.5 Waiver:

- 23.5.1 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 23.5.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 23.6 **Severance:** If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 23.7 **Governance:** These Conditions shall be governed by the laws of England and the parties submit to the exclusive jurisdiction of the English Courts.
- 23.8 **No Partnership:** Nothing in this Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 23.9 **Third Parties:** A party who is not a party to the Contract shall not give any right under or in connection with it.
- 23.10 **Variation:** The Contract, and any dispute or claim arising out of or in connection with it shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.