

Chesterfield Borough Council terms and conditions for the supply of goods and services

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

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

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 9.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 20.7.

Articles of Agreement: means the above Articles of Agreement incorporating these terms and conditions and any other documents referred to in the Articles of Agreement which shall be collectively referred to as the Contract Documents

Contract: the contract between the Customer and the Supplier for the sale and purchase of the Goods created by the Articles of Agreement

Customer: Chesterfield Borough 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 without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

Delivery date: the date specified in the Contract Documents, or, if none is specified, within 7 Business days of the date of the Articles of Agreement

Delivery Location: the address for delivery of Goods as set out in the Contract Documents

Goods: the goods (or any part of them) detailed in the Articles of Agreement

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, 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.

Services: the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Specification.

Specification: any specification for the Goods and / or Services, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier.

Supplier: the person or firm from whom the Customer purchases the Goods.

In these Conditions, unless the context requires otherwise, the following rules apply:

- 1.1.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.1.2 A reference to a party includes its personal representatives, successors or permitted assigns.
- 1.1.3 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- 1.1.4 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.1.5 A reference to **writing** or **written** includes faxes and e-mails.

2. BASIS OF CONTRACT

- 2.1 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.
- 2.2 The Supplier waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Supplier that is inconsistent with these Conditions.

3. THE GOODS

- 3.1 The Supplier shall ensure that the Goods shall:
 - 3.1.1 Correspond with their description and any applicable Specification;
 - 3.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgement;

- 3.1.3 where applicable, be free from defects in design, material and workmanship and remain so for 12 months after Delivery; and
- 3.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.
- 3.3 The Customer shall have the right to inspect and test the Goods at any time before delivery.
- 3.4 If following such inspection or testing the Customer considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 3.5 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 Customer shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

4. DELIVERY OF GOODS

- 4.1 The Supplier shall ensure that:
 - 4.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
 - 4.1.2 each delivery of the Goods is accompanied by a delivery note which shows the date of the contract , the Customers order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - 4.1.3 if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.
- 4.2 The Supplier shall deliver the Goods:
 - 4.2.1 on the date specified in the Contract Documents , or, if no such date is specified, within 7 days of the date of the Articles of Agreement

- 4.2.2 to the Customer's premises at the Town Hall, Rose Hill, Chesterfield S40 1LP or such other location as is set out in the Contract Documents or as instructed by the Customer prior to delivery (**Delivery Location**); and
- 4.2.3 during the Customer's normal business hours, or as instructed by the Customer.
- 4.3 Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location.
- 4.4 If the Supplier delivers less than 95% of the quantity of Goods ordered, the Customer may reject the Goods and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and the Customer accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.
- 4.5 The Supplier shall not deliver the Goods in instalments without the Customer's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Customer to the remedies set out in clause 5.

5. CUSTOMER REMEDIES FOR GOODS

- 5.1 If the Goods are not delivered on the date they are due as referred to in clause 4.2(a), or do not comply with the undertakings set out in clause 3.1, then, without limiting any of its other rights or remedies, the Customer shall have the right to any one or more of the following remedies, whether or not it has accepted the Goods:
 - 5.1.1 to terminate the Contract;
 - 5.1.2 to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
 - 5.1.3 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);
 - 5.1.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
 - 5.1.5 to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods from a third party; and
 - 5.1.6 to claim damages for any other costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.

- 5.2 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
- 5.3 The Supplier shall keep the Customer indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by the Customer as a result of or in connection with:
- 5.3.1 any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
 - 5.3.2 any claim made against the Customer by a third party arising out of, or in connection with, the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and
 - 5.3.3 any claim made against the Customer by a third party for 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.

This clause 5.3 shall survive termination of the Contract.

- 5.4 The Customer's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

6. SUPPLY OF SERVICES

- 6.1 The Supplier shall from the Commencement Date or the date set in the Contract Documents and for the duration of this Contract provide the Services to the Customer in accordance with the terms of the Contract.
- 6.2 The Supplier shall meet any performance dates for the Services specified in the Contract Documents or notified to the Supplier by the Customer.
- 6.3 In providing the Services, the Supplier shall:
- 6.3.1 co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;
 - 6.3.2 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;

- 6.3.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
- 6.3.4 ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Customer;
- 6.3.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- 6.3.6 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 Customer, will be free from defects in workmanship, installation and design;
- 6.3.7 obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
- 6.3.8 and shall procure that each member of its Group comply with:
all applicable laws, statutes, regulations and codes from time to time in force;
- 6.3.9 observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises;
- 6.3.10 hold all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier (**Customer Materials**) in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation;
- 6.3.11 not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services;

7. CUSTOMER REMEDIES FOR SERVICES

- 7.1 If the Supplier fails to perform the Services by the applicable dates, the Customer shall, without limiting its other rights or remedies, have one or more of the following rights:
 - 7.1.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - 7.1.2 to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
 - 7.1.3 to recover from the Supplier any costs incurred by the Customer in obtaining substitute services from a third party;

- 7.1.4 where the Customer has paid in advance for Services that have not been provided by the Supplier, to have such sums refunded by the Supplier; or
 - 7.1.5 to claim damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to meet such dates.
- 7.2 These Conditions shall extend to any substituted or remedial services provided by the Supplier.
- 7.3 The Customer's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

8. CUSTOMER'S OBLIGATIONS FOR SERVICES

The Customer shall:

- 8.1.1 provide the Supplier with reasonable access at reasonable times to the Customer's premises for the purpose of providing the Services.
- 8.1.2 provide such information to the Supplier as the Supplier may reasonably request and the Customer considers reasonably necessary for the purpose of providing the Services; and

9. CHARGES AND PAYMENT FOR SERVICES

- 9.1 The Charges for the Services shall be set out in the Contract Documents 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 Customer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 9.2 The Supplier shall invoice the Customer on completion of the Services. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.
- 9.3 In consideration of the supply of the Services by the Supplier, the Customer shall pay the invoiced amounts within 30 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
- 9.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer 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 Services at the same time as payment is due for the supply of the Services.

- 9.5 If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 4% per annum above Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments that the defaulting party disputes in good faith.
- 9.6 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services and shall allow the Customer to inspect such records at all reasonable times on request.
- 9.7 The Customer may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 In respect of any goods that are transferred to the Customer 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 Customer, it will have full and unrestricted rights to transfer all such items to the Customer.
- 10.2 The Supplier assigns to the Customer, 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.

11. TITLE AND RISK

Title and risk in the Goods shall pass to the Customer on completion of delivery.

12. PRICE AND PAYMENT

- 12.1 The price of the Goods shall be the price set out in the Contract Documents , or, if no price is quoted, the price set out in the Supplier's published price list as detailed in Section B of the Tender Schedules annexed to this Agreement in Schedule 2 in force as at the date the Contract came into existence.
- 12.2 The price of the Goods is exclusive of amounts in respect of value added tax (**VAT**), but includes the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by the Customer.
- 12.3 The Customer 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.

- 12.4 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.
- 12.5 The Customer shall pay correctly rendered invoices within 30 days of receipt of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier.

13. CUSTOMER PROPERTY

The Supplier acknowledges that all materials, equipment and tools, drawings, Specifications, and data supplied by the Customer to the Supplier (**Customer Materials**) and all rights in the Customer material are and shall remain the exclusive property of the Customer. The Supplier shall keep the Customer Materials in safe custody at its own risk, maintain them in good condition until returned to the Customer, and not dispose or use the same other than in accordance with the Customer's written instructions or authorisation.

14. INDEMNITY

- 14.1 The Supplier shall keep the Customer indemnified 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 reasonable professional costs and expenses) suffered or incurred by the Customer as a result of or in connection with:

- 14.1.1 any claim brought against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the receipt, use or supply of the Services, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
- 14.1.2 any claim made against the Customer by a third party arising out of, or in connection with, the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.

- 14.2 This clause 14 shall survive termination of the Contract.

15. INSURANCE

During the term of the Contract and for the period of 12 months thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover such heads of liability as may arise under or in connection with the Contract, and shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

16. CONFIDENTIALITY

- 16.1 A party (**receiving party**) 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 receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.
- 16.2 This clause 16 shall survive termination of the Contract.

17. TERMINATION

- 17.1 The Customer may terminate the Contract in whole or in part at any time before delivery with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the Contract. The Customer shall pay the Supplier fair and reasonable compensation for work-in-progress at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.
- 17.2 The Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if the Supplier becomes subject to any of the following events:
- 17.2.1 the Supplier suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
 - 17.2.2 the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Supplier is a company) these events take place for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;

- 17.2.3 (being a company) 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, other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
 - 17.2.4 (being an individual) the Supplier is the subject of a bankruptcy petition or order;
 - 17.2.5 a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - 17.2.6 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier;
 - 17.2.7 (being a company) a floating charge holder over the Supplier's assets has become entitled to appoint or has appointed an administrative receiver;
 - 17.2.8 a person becomes entitled to appoint a receiver over the Supplier's assets or a receiver is appointed over the Supplier's assets;
 - 17.2.9 any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 17.2(a) to clause 17.2(h) inclusive;
 - 17.2.10 the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on, all or substantially the whole of its business;
 - 17.2.11 the Supplier's financial position deteriorates to such an extent that in the Customer's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
 - 17.2.12 (being an individual) the Supplier dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 17.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

18. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason, the Supplier shall immediately deliver to the Customer all Deliverables whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, then the Customer may enter

the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

19. FORCE MAJEURE

Neither party shall be liable to the other for any delay or failure in performing its obligations under the Contract to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable, provided that the Supplier shall use all reasonable endeavours to cure any such events or circumstances and resume performance under the Contract. If any events or circumstances prevent the Supplier from carrying out its obligations under the Contract for a continuous period of more than 20 Business Days, the Customer may terminate this Contract immediately by giving written notice to the Supplier.

20. SERVICE STANDARDS

Without prejudice to Clause 21 the Supplier shall provide the Services, with reasonable skill and care and in accordance with the best practice prevailing from time to time;

20.1.1 in all respects in accordance with the Authority's policies in force from time to time; and

20.1.2 in accordance with all relevant legislation including but not limited to

20.1.2.1 EU Procurement Directive 2014

20.1.2.2 Social Value Act 2012

20.1.2.3 Public Contracts Regulations 2015

20.1.2.4 Local Government Transparency Code 2014

20.1.2.5 CDM Regulations

20.1.2.6 Environmental Policies and Procedures

20.1.2.7 Human Rights Act 1998

20.1.2.8 Equality Act 2010

20.1.2.9 Counter Terrorism and Security Act 2015

20.1.2.10 Crime and Disorder Act 1998

20.1.2.11 Care Act 2014

20.1.2.12 Children Act 2004

20.1.2.13 The Data Protection Act 2018 (DPA) and the UK General Data Protection Regulation 2015 (UK GDPR)

21. GENERAL

21.1 Assignment and subcontracting.

21.1.1 The Customer may at any time assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.

21.1.2 The Supplier may not assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract without the Customer's prior written consent.

21.2 Notices.

21.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post, recorded delivery, commercial courier, fax or e-mail.

21.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 20.2(a); if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.

21.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

21.3 Severance.

21.3.1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

21.3.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

- 21.4 **Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. 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.
- 21.5 **No partnership or agency.** Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 21.6 **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 21.7 **Variation.** Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Customer.
- 21.8 **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.
- 21.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).
- 21.10 **Ombudsman Investigation and Freedom of Information**
- a) The Customer is under a legal obligation by virtue of the Local Government Acts to observe the rights and powers of the Local Government ombudsman who has independent and impartial powers and to require persons to provide information and/or produce documents for the purposes of carrying out investigations into relevant matters that may have been referred to him for consideration when maladministration has been alleged against the Customer.
 - b) The Supplier shall at no additional cost to the Customer make available any documentation or allow to be interviewed any of the Supplier's personnel and assist at all times the ombudsman or his personnel and will co-operate with any enquiries that are requested by the ombudsman or his personnel in investigating any complaint whatsoever relating to the Services.

- c) Upon determination of any case by the ombudsman in which the Supplier has been involved or has been implicated, the Contract Manager shall forward copies of such determination to the Supplier for its comments before reporting details to the relevant Committees of the Customer. Should the ombudsman make recommendations in his report that compensation should be paid for maladministration and this by implication has been due wholly or in part to the failure, default, act, omission or neglect of the Supplier or its personnel or agents or sub-contractors to comply with the provisions of this Contract, the Customer will recover such compensation from the Supplier and the same may be deducted from any payment to be made by the Customer pursuant to the Contract.
- d) Should the ombudsman make recommendations relating to procedural matters which will result in changes or alterations which will require implementation, the Customer will enter into discussions with the Supplier to agree a suitable procedure to resolve such matters. Any cost implications relating to any changes will be calculated in accordance with Condition 8 where they arise from altered or revised requirements by the Customer.
- e) The Supplier hereby acknowledges the statutory obligations on the Customer imposed by the Freedom of Information Act 2000 in respect of the disclosure of information held by the Customer generally, and to the intent that the same impacts on this Contract such obligations shall have affect and take precedence notwithstanding anything otherwise contained or referred to in the tender submitted or any Conditions of Contract relevant to such tender and the Supplier shall use its reasonable endeavors to assist the Customer to ensure compliance with the same.

20.11 Standards

Where an appropriate British Standard specification or British Standard Code of Practice issued by the British Standards Institution is current, all goods used or supplied and all workmanship shall, as a minimum requirement, be in accordance with the standard or an equivalent European standard, without prejudice to any higher standard required by the Contract. Any reference in the Contract Documents to a standard published by the British Standards Institution, or the specification of another body, shall be construed equally as a reference to an equivalent one.

20.12 Whistleblowing

The Customer is committed to the highest possible standards of openness probity and accountability when conducting its affairs. In line with that commitment it is expected that employees of the Customer, elected Members, Contractors working for the Customer on Customer premises as well as suppliers and those providing services under a contract with the Customer, will

come forward and voice any serious concerns they may have about any aspect of the Customer's work. A copy of the Customers' Whistleblowing policy is available on request.

20.13 Health and Safety

The Supplier shall at all times comply with the requirements of the Health and Safety at Work, etc. Act 1974, the Management of Health and Safety at Work Regulations 1992 (including the provision of the Supplier of copies of its risk assessments under these Regulations when requested by the Customer), and of other Acts, Regulations, Orders, rules of law or Codes of Practice pertaining to health and safety.

The Supplier shall, so far as the same may impact on the Customer, adopt safe methods of work in order to protect the health and safety of its own employees and, to the extent applicable, the employees of the Customer and all other persons (including members of the public).

The Supplier shall indemnify the individual Customer for any loss, costs or damage caused for breach of this Condition.

20.14 Anti-Bribery

- a) The Customer operates an anti-fraud and anti-corruption policy. The Supplier shall comply with the Customer's anti-fraud and anti-corruption policy. Additionally, the Supplier shall comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act ("the Relevant Policy").
- b) The Supplier shall not engage in any Prohibited Act or any activity, practice or conduct which would constitute an offence under sections 1,2 or 6 of the Bribery Act, if such activity, practice or conduct has been carried out in the UK.
- c) The following constitutes Prohibited Acts:-
- d) To directly or indirectly offer, promise or give any person working for the Customer or engaged by the Customer, a financial or other advantage to Induce that person to perform improperly a relevant function or activity or reward that person for improper performance of a relevant function or activity
- e) To directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this contract.

20.15 Committing any offence

- (i) Under the Bribery Act 2010
- (ii) Under legislation creating offences concerning fraudulent acts
- (iii) At common law concerning fraudulent acts as relating to this Contract or any other contract with the Customer, or

- (iv) Defrauding, attempting to defraud or conspiring to defraud the Customer
- a) The Supplier shall have and shall maintain throughout the term of this agreement its own policies and procedures, including but not limited to an adequate procedure under the Bribery Act, to ensure compliance with the Relevant Policy and will enforce them where appropriate. The Supplier shall disclose the policies and procedures the Customer upon request.
- b) The Supplier shall ensure that any offer or provision of any form of gift or gratuity or hospitality complies with the Relevant Policy and, where relevant, the Customer's Gifts and Hospitality Protocol.
- c) The Supplier shall promptly report to the Customer any request or demand for any undue financial or other advantage, of any kind, received by the Supplier in connection with the
- d) For the purpose of this agreement the meaning of adequate procedures and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act (and any guidance issued under section 9 of that act) sections 6(5) and 6(6) of that act and section 8 of that act respectively.

20.16 The Social Value Act (2013)

- a) Where it is deemed necessary the contracting authority will set down "special conditions relating to the performance of a contract" which may, in particular, concern social and environmental considerations
- b) Taking Account of Social Considerations in Public Procurement", covers the promotion of employment opportunities, social and labour rights, social inclusion, ethical trade issues, corporate social responsibility and promoting SMEs.

20.17 The Equality Act (2010)

- a) The Equality Act 2010 (the Act) sets out anti-discrimination law in the UK. It identifies 'protected characteristics', age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, pregnancy and maternity and marriage and civil partnerships.
- b) The Act sets out the public sector equality duty (PSED) which applies to most public authorities in England, such as local authorities, police, schools, universities and central government departments. It also applies to organisations carrying out a public function. It therefore includes private companies or voluntary sector organisations that have been contracted to carry out public functions on behalf of a public authority. The duty only applies in respect of the public function being carried out and not the wider business of the contracted body.
- c) The PSED requires public authorities to have due regard to the need to:

- i) Eliminating unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- ii) Advance equality of opportunity between people who share a protected characteristic and those who do not, and
- iii) Foster good relations between people who share a protected characteristic and those who do not.
- iv) The Act also explains that advancing equality of opportunity involves having due regard to the need to:
- v) Remove or minimise disadvantages suffered by people due to their protected characteristics.
- vi) Take steps to meet the needs of people with certain protected characteristics where these are different from the needs of other people, and
- vii) Encourage people with certain protected characteristics to participate in public life or in other activities where their participation is disproportionately low.
- vii) The Supplier shall comply with the requirements of the Act whilst performing the Services.

21.18 Data Protection

- a) The Supplier will comply with any notification requirements under the Data Protection Act 2018(DPA) and the UK General Data Protection Regulation 2016 (UK GDPR) and both parties will comply with all their obligations under the DPA or UK GDPR which arise in connection with the Contract.
- b) Notwithstanding the general obligation in clause 14.1, where the Supplier is processing Personal Data as a Data Processor (as defined in the DPA) and the UK GDPR) for the Customer, the Supplier will ensure that it has in place appropriate technical and contractual measures to ensure the security of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, as required under the DPA and the UK GDPR); and
- c) provide the Customer with such information as the Customer may reasonably require to satisfy itself that the Supplier is complying with its obligations under the DPA and the UK GDPR)
 - i. promptly notify the Customer of any breach of its security measures;
- d) promptly notify the Customer of any breach of its security measures
- e) ensure it does not knowingly or negligently do or omit to do anything which places the Customer in breach of the Customer's obligations under the DPA and

the UK GDPR

- c) The Supplier will be liable for and fully indemnify the Customer against all losses, damages, costs, expenses and liabilities (including legal fees) incurred by or awarded against the Customer or its officers, agents, employees, Customer Members and its successors in interest, in connection with any proceedings, claim or action against the Customer as a result of any failure by the Supplier to comply with its obligations under this clause.
- d) The Supplier will be liable for and fully indemnify the Customer against any material adverse reputational damage as a result of any failure by the Supplier to comply with its obligations under this clause.
- e) The provisions of this clause will apply during the Contract and continue after its completion or termination.
- f) notwithstanding the provisions of clause 21.18 the Supplier and Customer acknowledge they expect no personal data to be shared between them for the purposes of providing the Services to be delivered under this Agreement other than business contact details of the relevant employees shared for the purposes of facilitating the provision of the Services (in respect of which the parties agree they shall each act as independent 'controllers' for the purposes of the DPA and the UK GDPR) but in the event personal data is shared the provisions of clause 21.18 will apply