

SUFFOLK COUNTY COUNCIL GENERAL CONDITIONS OF CONTRACT

1. Definitions & Interpretation

1.1. In these conditions unless the context otherwise requires –

“Confidential Information” means any information which has been designated as confidential by either Party in writing or that would appear to a reasonable person to be confidential in nature (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, all personal data and sensitive personal data within the meaning of the Data Protection Act 1998 or as defined in the Data Protection Legislation,

“Controller”, “Processor”, “Data Subject”, “Personal Data”, “Personal Data Breach” and “Data Protection Officer” take the meanings given in the GDPR, subject to any amendment made under the provisions of the DPA 2018 once in force,

“the Council” means Suffolk County Council,

“the Contract” means the contract arising from the acceptance by the Contractor of an Order, or the acceptance by the Council of a Tender in whole or in part,

“the Contractor” means the person firm or company whose name appears on an Order placed by the Council or on a Tender received by the Council,

“Critical Goods”, “Critical Services” and “Critical Works” means Goods or Services or Works which are critical to the health and well-being of the Council’s service users,

“Data Loss Event” means any event that results, or may result, in unauthorised access to Personal Data held by You under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, 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 i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation as amended from time to time ii) the DPA 2018 once in force iii) the DPA 1998 until such time as the DPA 2018 is in force iv) the LED once in force,

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

“DPA 2018” means the Data Protection Act 2018,

“Force Majeure Event” means civil disturbance, act of terrorism, war, nuclear accident, earthquake, tsunami or other event of similar magnitude,

“GDPR” means the General Data Protection Regulations (Regulation (EU) 2016/679),

“the Goods” means the articles or things referred to in the Order or Tender,

“LED” means the Law Enforcement Directive (Directive (EU) 2016/680), “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,

“Order” means a document which is marked “Official Order” describing the Goods, Services or Works as the case may be and which is placed on behalf of the Council,

“the Services” means the services referred to in the Order or Tender,

“Special Condition” means any special term relating to the Contract which is set out in the Order or otherwise agreed in writing by the parties,

“Sub-processor” means any third Party appointed to process Personal Data on Your behalf in relation to this Agreement, “the Works” means the works referred to in the Order or Tender,

“Tender” means the document by which the Contractor offers to supply or execute the Goods, Services or Works as the case may be and which is sent in response to an invitation by the Council,

“Transferring Employees” means those employee(s) who may transfer to the Contractor as the result of a transfer of undertakings in respect of the Contract.

1.2. In the Contract:

Unless the context otherwise requires or admits the masculine gender includes the feminine and vice versa and the singular includes the plural and vice versa;

Condition headings shall not affect the interpretation of the Contract;

Any Special Conditions form part of the Contract and shall have effect as if set out in full;

A reference to any party shall include that party's personal representatives, successors and permitted assigns;

A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.3. If Special Conditions are incorporated in the Contract and are inconsistent with the General Conditions the Special Conditions shall prevail.

2. Variations

Neither the Council nor the Contractor shall be bound by any variation or waiver of or addition to these Conditions unless that variation or addition shall have been agreed and evidenced in a document(s) signed by or on behalf of both parties.

3. Quality and Description of Goods, Services or Works

3.1. The Goods shall i) conform as to quality kind and description with the particulars stated in the Contract and with any British, European or International specification which is relevant to the Goods and is current at the date of the Contract; goods used in compliance with a Standard for which there is an associated safety mark scheme shall bear the certification mark of the scheme, ii) be of the quantity or in the numbers specified in the Contract, iii) be of sound materials and workmanship, iv) conform in every respect to any sample provided or given by either party, v) be capable of any standard of performance specified in the Contract, vi) where the purpose for which they are required is indicated in the Order either expressly or by implication be fit for that purpose and vii) be provided in compliance with any standards and other requirements stated in the Contract.

3.2. The Contractor shall i) provide the Services with all proper skill and care, ii) use materials as necessary which are a) reasonably fit for the purpose for which they will be used and b) of good quality.

3.3. The Contractor shall:

i) carry out the Services or Works diligently and in a proper and efficient manner to the satisfaction of the Council;

ii) unless other instructions have been issued by the Council commence work promptly and complete the Services or Works within the time specified or if none is specified then within a reasonable time and should a delay occur the Council must be notified in writing as soon as possible and the Council's consent sought to a reasonable extension of the period for the completion of the Services or Works;

iii) provide all suitably qualified and skilled labour, plant, tools, transport and equipment necessary for the safe execution of the Services or Works, such plant, tools and equipment to be stored at the sole risk of the Contractor and so as to cause minimum inconvenience to the Council;

iv) throughout the progress of the Services or Works, have full regard for the safety of all persons on the site/receiving the Services and in respect of Works shall keep the site in an orderly state and shall provide and maintain at its own cost all lights, guards, fencing, temporary reinstatements and warning signs for the protection of the Works and the safety and convenience of the public and others;

v) at the completion of the Works, remove all materials from the site (unless otherwise instructed) and permanently reinstate any damaged surfaces and leave the site in a clean condition ready for occupation.

4. Delivery of the Goods

4.1. The Goods (properly packed and secured in such a manner as to reach their destination in good condition under normal conditions of transport) shall unless otherwise agreed be delivered by the Contractor to the Council or be despatched by the Contractor for delivery to the Council at the location specified in the Contract and at the time(s) mentioned therein.

4.2. Delivery and unloading shall be free of charge to the Council and at the Contractor's risk and delivery to a carrier shall not be deemed to be delivery of the Goods to the Council.

4.3. Every delivery of the Goods shall be accompanied or preceded by a delivery or advice note addressed to the appropriate officer of the Council at the establishment named in the Contract and that note shall state in full the name quality sort rate price quantity and number of the Goods delivered therewith or to be delivered thereafter.

4.4. The Contractor, its employees and agents shall comply with all reasonable requirements of the Council at the place of delivery and in particular shall ensure that its vehicles are not reversed or manoeuvred at any establishment where children or other people are or are likely to be present without assistance from a responsible adult.

5. Passing of Title and Risk in the Goods

5.1. The title in the Goods shall pass to the Council immediately on delivery of the Goods in accordance with Clause 4.

5.2. Risk in the Goods shall not pass to the Council until a delivery note has been duly signed on behalf of the Council in accordance with Clause 4.3. If at any time after delivery has been effected the Goods are rejected by the Council for any reason, risk in the Goods shall revert to the Contractor immediately upon the Council notifying the Contractor of such rejection of the Goods.

6. Default by Contractor in the Supply of Goods

If any or part of the Goods to be supplied under the Contract shall:

i) not be duly delivered by the Contractor to the Council at the time (if any) stated in the Contract subject to any extension or extensions of time granted by the Council or resulting from the operation of Condition 8 hereof, or

ii) in the opinion of the officer of the Council for the use of whose department they are required (whose decision shall be conclusive as against the Contractor) not reasonably be of the quality, specification and sort contracted for or otherwise fail to comply with the terms of the Contract, or

iii) be deficient in the quantity or number required by the Contract, or

iv) be delivered without a delivery or advice note containing correct and sufficient particulars of the name quality sort rate price quantity and number of such goods

then the Council may, without prejudice to any other remedy, by notice as defined in Clause 19 served on the Contractor reject those Goods and if the Goods are not removed by the Contractor within twenty four hours after service of the notice, may return them to the Contractor at the expense of the Contractor and in every such case it shall be lawful for the Council to purchase at such prices and on such terms and conditions as the Council thinks fit the same or similar goods and in that event the Contractor shall pay to the Council or it shall be lawful for the Council to deduct from any sum that is due or may become due to the Contractor under the Contract or otherwise all costs charges and expenses of such additional supply or arising from such failure to perform the Contract over and above the rate or price at which such goods are under the Contract to be supplied and delivered.

7. Default by Contractor in Execution of Works or Services

7.1. The Council through its appropriate officer shall have the power to order the removal and proper re-execution of any Works or Services which are not, in the officer's reasonable opinion (which shall be conclusive), in accordance with the requirements of the Contract and the Contractor shall comply with the Council's written instructions within the time stated therein and all the costs of meeting the instructions shall be met by the Contractor.

7.2. If the Contractor without reasonable cause fails to proceed diligently with the supply of the Works or Services, or wholly suspends the carrying out of the Works or Services before completion, or if default is made by the Contractor in providing the Works or Services in accordance with the terms of the Contract, the Council may (in addition to any other remedy) serve notice on the Contractor giving the Contractor details of the breach and giving 30 days in which to remedy the breach, following which the Council may (if the breach is not fully remedied and without prejudice to any other right or remedy):

7.2.1 terminate the Contract and in relation to Works, enter upon the site of the Works and expel the Contractor therefrom and may itself or through another Contractor complete the Works or make good the default, in which event the Contractor shall pay to the Council or it shall be lawful for the Council to deduct from any sum that is due or may become due to the Contractor under the Contract or otherwise all costs, charges and expenses of such work over and above the rate or price at which such work was to have been carried out under the Contract.

7.2.2 terminate the Contract and in relation to Services, may itself or through another contractor provide the Services or make good the default, and the Contractor shall pay to Council or it shall be lawful for the Council to deduct from any sum that is due or may become due to the Contractor under the Contract or otherwise all costs, charges and expenses of providing such Services over and above the rate or price at which the Services were to have been provided under the Contract

7.3. The Contractor shall make good any defect which occurs within six months of completion as may be required by the Council.

8. Postponement or Cancellation of Delivery of Goods, Services or Works

8.1. If either party is affected by a Force Majeure Event so that it is unable to continue to supply or to accept delivery as the case may be of the Goods, Services or Works, the party so affected shall not be in breach of its obligations provided that:

8.1.1 the party affected by the Force Majeure Event shall first notify the other party of the Force Majeure Event before it shall be entitled to rely on such Event;

- 8.1.2 the party affected by the Force Majeure Event must make all reasonable efforts to mitigate and end the impact of the Force Majeure Event;
- 8.1.3 during the period of the Force Majeure Event, there shall be no obligation to make payment for any Goods or Services, or Works which are not provided;
- 8.1.4 if the Force Majeure Event continues for more than one month, the party not affected by the Force Majeure Event may terminate the Contract without any breach of contract or liability to pay damages.

9. Inspection of Goods and Premises

The Contractor shall without hindrance permit any authorised officer or agent of the Council to enter at any reasonable time without prior notice upon any land or premises or vehicles which are used for the preparation distribution or storage of any of the Goods to be supplied under the Contract for the following purposes:

9.1. To inspect all or any part of the said land premises or vehicles to ascertain whether they are suitable for the preparation distribution or storage of the said Goods

9.2. To check the quantity and/or quality of the Goods their description and their country of origin for this purpose to take such samples as are deemed necessary

and the Contractor shall afford all reasonable assistance to the officer or agent in carrying out such inspections (and this shall include the provision of samples where requested).

10. Cancellation on Account of Corruption

The Council shall be entitled to cancel the Contract and to recover from the Contractor the amount of any loss resulting from such cancellation if the Contractor shall have offered or given or agreed to give any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or foreborne to do any action in relation to the obtaining or the execution of the Contract or any other contract with the Council or for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other contract with the Council or if the like acts shall have been done by any person employed by it or acting on its behalf (whether with or without the knowledge of the Contractor) or if in relation to any contract with the Council the Contractor or any person employed by it or acting on its behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or any amendment of them or shall have given any fee or reward the receipt of which is an offence under sub-section (2) of Section 117 of the Local Government Act 1972 or shall have committed an offence under the Bribery Act 2010.

11. Payment

11.1. The Contractor shall send an invoice which shall be electronic in the case of an order placed by electronic means, to the address given in the contract unless otherwise provided for.

11.2. The Contractor's invoice shall quote the Order or Tender number or otherwise make reference to the Contract and shall be sent within seven days of the delivery of the Goods or final performance of the Services or final completion of the Works together with, where applicable, a proof of delivery. Interim payments will only be made where they are specifically provided for in the Contract or Order

11.3. Payment will normally be made 30 days after the date on which a correct invoice is received by the Council or within any timescales specifically provided for in the Contract or Order. If there are queries regarding details on the invoice or compliance with the terms of the Contract or Order payment will not be made until the queries are resolved.

11.4. Payment will normally be made directly to the Contractor's bank account (by BACS). The Contractor shall ensure that the Council has received details of the Contractor's latest bank details.

11.5. The Contractor will ensure that it pays any sub-contractor appointed in accordance with Clause 18 (Assignment and Sub Letting) of these Conditions, within 30 days of the receipt of a correct invoice.

12. Business Continuity and Emergency Planning

12.1 Where the Contractor provides Critical Goods and/or Critical Services and or Critical Works:

12.1.1 the Contractor shall have in place business continuity arrangements to ensure that the Critical Goods or Critical Services (as applicable) are maintained during disruptions such as (but not limited to) severe weather, flooding utility failure, fuel shortage, flu pandemic, industrial action, transport infrastructure failure, loss of premises or access to premises or IT failure.

12.1.2 the business continuity arrangements referred to at condition 12.1.1 shall include (but not be limited to) maintenance of a business continuity plan, an annual review of that plan, an officer responsible for the plan and training for those staff who have a key role in the implementation of the plan.

12.1.3 the Contractor shall provide evidence and copies of its business continuity arrangements upon written request from the Council.

12.2 If the Contractor is unclear whether it provides Critical Goods or Critical Services, it shall be the Contractor's responsibility to request written clarification from the Council of this issue and the Council's decision shall be final.

12.3 If an emergency is declared by Suffolk emergency services (police, fire etc), under the Civil Contingencies Act 2004, the Contractor shall (so far as reasonably practicable) co-operate with and support the Council in safeguarding human welfare, including:

12.3.1 providing Goods and Services as directed by the Council to assist in the provision of relief to those in need or to protect the environment as a result of the emergency, in accordance with the Council's instructions;

12.3.2 stopping the provision of Goods and/or Services for the duration of the emergency if requested to do so by the Council.

12.4 The Contractor shall make its employees available, so far as reasonably practicable, to participate in emergency planning training and exercises.

13. Right of Set-off

The Council shall have the right to deduct from any sum that is due or may become due to the Contractor under the Contract or otherwise, all costs charges and expenses due to the Council from the Contractor

14. Compliance with Law

14.1. The Contractor declares that the design, construction, standard and quality of the Goods, Works or Services or of any goods or materials used in the execution of the Works and the supply of any Services complies in all respects with all relevant requirements of any statute statutory rule or order or other instrument having the force of law or British, European or International specification which may be in force at the time when the same are supplied.

14.2. The Council conducts itself in accordance with the principles and duties of Best Value contained in the Local Government Act 1999 and encourages its Contractors to embrace similar principles into their own operations.

14.3 The Council shall have the discretion to disclose any information in its possession or held on its behalf in relation to the Contract or the tender to any person who makes a request under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 and which in the opinion of the Council it has to disclose to discharge its statutory duty under the Act/Regulations.

14.4 As part of the government's drive for greater transparency in public spending, the Council is obliged to publish information about its contracts. The Contractor agrees that details of the Contract may be published by the Council (and open for public view). In publishing this information the Council shall take all reasonable steps to ensure the protection of information which is protected from disclosure under the Freedom of Information Act 2000, the Data Protection Act 1998 or the Environmental Information Regulations, as applicable.

14.5. Data Protection

14.5.1 The Contractor and the Council shall comply with the provisions of the Data Protection Act 1998 until 24 May 2018.

14.5.2 From 25 May 2018 this clause 14.5.2 will apply. Where the LED is applicable this clause 14.5.2 will apply from 6 May 2018.

14.5.2.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, We are the Controller and You are the Processor. The only processing that You are authorised to do is listed in **Schedule XX** by Us and may not be determined by You.

14.5.2.2 You shall notify Us immediately if You consider that any of Our instructions infringe the Data Protection Legislation.

14.5.2.3 You shall provide all reasonable assistance to Us in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at Our discretion, include:

14.5.2.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;

14.5.2.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;

14.5.2.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and

14.5.2.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

14.5.2.4 You shall, in relation to any Personal Data processed in connection with Your obligations under this Agreement:

14.5.2.4.1 process that Personal Data only in accordance with the **Schedule XX**, unless You are required to do otherwise by Law. If it is so required, You shall promptly notify Us before processing the Personal Data unless prohibited by Law;

14.5.2.4.2 ensure that You have in place Protective Measures, which have been reviewed and approved by Us as appropriate to protect against a Data Loss Event, having taken account of the:

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

14.5.2.4.3 ensure that:

- (i) the Staff do not process Personal Data except in accordance with this Agreement (and in particular **Schedule XX**);
- (ii) You take all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with Your duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with You 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 Us or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

14.5.2.4.4 not transfer Personal Data outside of the EU unless Our prior written consent has been obtained and the following conditions are fulfilled:

- i) We or You have provided appropriate safeguards in relation to the transfer (in accordance with GDPR Article 46) as determined by Us;
- (ii) the Data Subject has enforceable rights and effective legal remedies;
- (iii) You comply with Your obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if You are not so bound, use Your best endeavours to assist Us in meeting Our obligations); and
- (iv) You comply with any reasonable instructions notified to You in advance by Us with respect to the processing of the Personal Data;

14.5.2.4.5 at Our written direction, delete or return Personal Data (and any copies of it) to Us on termination of the Agreement unless You are required by Law to retain the Personal Data.

14.5.2.5 Subject to clause 14.5.2.6, You shall notify Us immediately if You:

14.5.2.5.1 receive a Data Subject Access Request (or purported Data Subject Access Request);

14.5.2.5.2 receive a request to rectify, block or erase any Personal Data;

14.5.2.5.3 receive any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

14.5.2.5.4 receive any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;

14.5.2.5.5 receive 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

14.5.2.5.6 become aware of a Data Loss Event.

14.5.2.6 Your obligation to notify under clause 14.5.2.5 shall include the provision of further information to Us in phases, as details become available.

14.5.2.7 Taking into account the nature of the processing, You shall provide Us with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 14.5.2.5 (and insofar as possible within the timescales reasonably required by Us) including by promptly providing:

14.5.2.7.1 Us with full details and copies of the complaint, communication or request;

14.5.2.7.2 such assistance as is reasonably requested by Us to enable Us to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

14.5.2.7.3 Us, at Our request, with any Personal Data You hold in relation to a Data Subject;

14.5.2.7.4 assistance as requested by Us following any Data Loss Event;

14.5.2.7.5 assistance as requested by Us with respect to any request from the Information Commissioner's Office, or any consultation by Us with the Information Commissioner's Office.

14.5.2.8 You shall maintain complete and accurate records and information to demonstrate Your compliance with this clause. This requirement does not apply where You employ fewer than 250 staff, unless:

14.5.2.8.1 We determine that the processing is not occasional;

14.5.2.8.2 We determine 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

14.5.2.8.3 We determine that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

14.5.2.9 You shall allow for audits of Your Data Processing activity by Us or Our designated auditor.

14.5.2.10 You shall designate a Data Protection Officer if required by the Data Protection Legislation.

14.5.2.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, You must:

14.5.2.11.1 notify Us in writing of the intended Sub-processor and processing;

14.5.2.11.2 obtain Our written consent;

14.5.2.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 14.5.2 such that they apply to the Sub-processor; and

14.5.2.11.4 provide Us with such information regarding the Sub-processor as We may reasonably require.

14.5.2.12 You shall remain fully liable for all acts or omissions of any Sub-processor.

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

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

14.6. The Contractor shall ensure that all individuals involved in the provision of the Goods, Services or Works are suitably vetted and shall, where applicable:

14.6.1 ensure that all such individuals are subject to a valid disclosure check (at the appropriate level) undertaken through the Disclosure and Barring Service and a check against the adults' barred list or the children's barred list, and that disclosures indicate that the staff are suitable to be involved in the provision of the Works, Services or Goods; and

14.6.2 comply with the provisions of the Safeguarding Vulnerable Groups Act 2006 or any successor legislation having similar effect.

14.7. The Contractor at its own expense shall co-operate with any request from the Council for the disclosure of information or documents held by the Contractor on behalf of the Council.

15. Indemnity

15.1. Patents etc.

15.1.1. The Contractor shall fully indemnify the Council against any action claim demand costs charges and expenses arising from or incurred by reason of any infringement or alleged infringement of any copyright letters patent registered design trade mark or trade name protected in the United Kingdom by the use or sale of the Goods or arising from the Services or any of the Goods or Services and against all costs and damages which the Council may incur in any action for such infringement or for which the Council may become liable in any such action PROVIDED ALWAYS that this indemnity shall not apply to any infringement which is due to the use of the Goods or Services in question in a manner or for a purpose not reasonably to be inferred by the Contractor or disclosed to the Contractor prior to the making of the Contract.

15.1.2 In the event of any claim being made or action brought against the Council arising out of the matters referred to in this condition the Contractor shall be promptly notified thereof and may with the agreement of the Council at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom. The Council shall not unless and until the Contractor shall have failed to take over the conduct of the negotiations or litigation make any admission which might be prejudicial thereto. The conduct by the Contractor of such negotiations or litigation shall be conditional upon the Contractor having first given to the Council such reasonable security as shall from time to time be required by the Council to cover the amount ascertained or

agreed or estimated as the case may be of any compensation damages expenses and costs for which the Council may become liable. The Council shall at the request of the Contractor afford all available assistance for any such purposes and shall be repaid any expenses incurred in so doing.

15.2. Injury or Damage

15.2.1. The Contractor shall indemnify and keep indemnified the Council against all losses and claims for death, injuries or damage to any person or property whatsoever (including where the Contract is for the supply of goods the goods themselves) which may arise out of or in consequence of the performance of the Contract and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto provided always that:

15.2.2. The Contractor's liability to indemnify the Council as aforesaid shall be reduced proportionately to the extent that the act or neglect of the Council, its servants or agents may have contributed to the said death, loss, injury or damage, and

15.2.3. Nothing herein shall render the Contractor liable for or in respect of or to indemnify the Council against any compensation or damages with respect to damage which is the unavoidable result of the way in which the Contract is required to be performed.

16. Professional Indemnity

16.1. Where the Contractor is acting for the Council providing services on a consultancy basis the Contractor shall indemnify and keep indemnified the Council against any claims arising from incorrect or inappropriate professional advice given by the Contractor during the period of the Contract and for a period of not less than 6 (six) years from the date of termination.

16.2. Where the Contractor is acting for the Council on a consultancy basis, the Contractor shall maintain professional indemnity insurance sufficient to satisfy a claim up to an including £2 million for any one act of default, or such other amount as shall be agreed in writing in advance with the Council.

17. Intellectual Property

Intellectual property rights in any works, methods or revisions thereof created by virtue of the Contract shall vest in the Council unless otherwise agreed in writing.

18. Assignment and Sub-Letting

18.1 The Contractor shall not transfer or assign directly or indirectly to any person whatever any portion of the Contract without the prior written permission of the Council. Sub-letting other than that which may be customary in the trade concerned shall not take place without the prior written permission of the Council.

18.2. The Contractor will procure that any assignees or sub-contractors appointed in accordance with sub-clause 18.1, will abide by and comply fully with these General Conditions of contract.

18.3 The Council may without the consent of Contractor assign or transfer any of its rights or obligations under this Agreement, in whole or in part, to any entity to which all or part of the business and assets of the Council are subsequently transferred including, without limitation, any special purpose company in which the Council is a shareholder and through which the Council's business (or part thereof) may be conducted in the future.

18.4 If the Council wishes to novate this Agreement in accordance with Clause 18.3, the Contractor will do or procure the doing of all such acts and things and will execute or procure the execution of all such documents as may be required to give effect to such novation. The Contractor hereby irrevocably appoints the Council as its attorney in its name to execute any document and do any act or thing which may be necessary to comply with the provisions of this clause.

19. Notice to Contractor and to Council

Any notice or other document whatsoever to be served by either party to the other shall be sufficiently made if sent by first class post, postage paid, by facsimile transmission, or by e-mail to the address of the other party specified in the Contract, or to any other address as either party may substitute by written notice to the other and shall be deemed to have been made on the day on which such communications ought to have been delivered in due course of postal or facsimile transmission, or e-mail Notice to the Council shall only be effective if it identifies the name of the officer appearing on the Contract, Order or Tender and the Contract to which it relates.

20. Insurance

The Contractor shall before the commencement of the Works or the delivery of any of the Goods or Services insure itself and keep itself insured in a sum of £5 million (or such other amount as shall be agreed in writing in advance with the Council, being commensurate with the level of risk) during the continuance of the Contract against the liabilities defined in the Contract. To avoid doubt, this Condition shall require the Contractor to maintain public liability and employer's liability insurance. The Contractor shall if required produce to the Council the policy or policies of insurance required to be effected hereunder together with the receipt for the payment of the last premium in respect of each policy.

21. Effect of Bankruptcy, etc.

In the event of the Contractor becoming bankrupt or making a composition or arrangement with its creditors or having a winding up order made or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding up passed or having a provisional liquidator, receiver or manager of its business or undertaking duly appointed or having possession taken by or on behalf of the holder of any debentures secured by a floating charge of any property comprised in or subject to the floating charge or if in Scotland he shall become insolvent or any application shall be made under any Bankruptcy Act for the time being in force for sequestration of its estate or a trust deed shall be granted by it on behalf of its creditors the Council shall be at liberty to terminate the Contract forthwith by notice in writing to the Contractor or to the receiver or liquidator or to any person in whom the Contract may become vested and to act in the manner provided in Conditions 6 or 7 (as the case may be).

22. Equality and Diversity

Without prejudice to Condition 14 the Contractor shall at all times comply with their statutory obligations, including but not limited to their obligations under the Equality Act 2010 and shall not treat one group of people less favourably than others because of their colour, race, religion and belief, nationality, ethnic origin, disability, sex or sexual orientation in relation to decisions to recruit, train or promote staff or in connection with the provision of services.

23. Confidentiality

The Contractor shall not, other than that statutorily required or for the purpose of obtaining insurance, divulge, advertise or make any public announcement concerning any contracts with the Council without consent.

24. Dispute Resolution

If any dispute arises in connection with this Contract, the parties may attempt to settle it by mediation. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. This shall not prevent either party from commencing legal proceedings or from terminating the Contract where it is entitled to do so in accordance with the terms of the Contract or common law.

25. Legal Effect

25.1. The invalidity, illegality or unenforceability of any term or condition of this Contract shall not affect the validity, legality or enforceability of any other term or condition of this Contract.

25.2. The Contracts (Rights of Third Parties) Act shall not apply to the Contract save in respect of those Transferring Employees seeking to enforce their rights in accordance with Paragraph 5(ii) of the Best Value Authorities Staff Transfers (Pensions) Direction 2007.

25.3 These are the only conditions upon which the Council is prepared to deal with the Contract and which shall govern the Contract to the exclusion of any other terms and conditions.

25.4. The Contract shall be construed in accordance with English Law