



# **Oldham Borough Council Purchase Order Terms and Conditions**



# **1 DEFINITIONS AND INTERPRETATION**

## **1.1 Definitions**

In these Terms and Conditions, the following expressions shall have the following meanings:

**“Acquired Rights Directive”** means the Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States of the European Union relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses

**“Arbitrator”** means an independent third party appointed in accordance with clause 14.5 to determine a dispute

**“Authorised Manager”** means the representative of the Council referred to in clause 8.1

**“Best Industry Practice”** means the exercise of that degree of skill, diligence and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor engaged in the provision of services similar to the Supplies or the Works or the Services under the same or similar circumstances

**“Best Value Duty”** means the duty imposed by Part 1 of the Local Government Act 1999 requiring the Council to secure continuous improvement in the exercise of all functions, undertaken by the Council, having regard to a combination of economy, efficiency and effectiveness;

**“CEDR”** means the Centre for Effective Dispute Resolution

**“Change of Control”** means a change in Control of the Contractor or a Sub-Contractor of the Contractor

**“Charges”** means the charge, charges or rate(s) of charge that the Council shall pay the Contractor for the provision of the Services as specified in Schedule 2 to these terms and conditions

**“Confidential Information”** means all confidential information which the Council or its contractors/its contractors' sub-contractors or their representatives directly or indirectly discloses, or makes available, to the Contractor before, on or after the commencement of the Term. This includes but is not limited to:

- (a) the existence and terms of these Terms and Conditions;
- (b) all confidential or proprietary information relating to:
  - (i) the business, affairs, contractors/sub-contractors, partners, suppliers, plans, intentions, or market opportunities of the Council; and

- (ii) the operations, processes, product information, know-how, technical information, designs, trade secrets or software of the Council;
- (iii) any information, findings, data or analysis derived from Confidential Information; and
- (iv) any other information that is identified as being of a confidential or proprietary nature

but excludes Confidential Information if:

- (a) it is, or becomes, generally available to the public other than as a direct or indirect result of the information being disclosed by the Contractor in breach of these Terms and Conditions (except that any compilation of otherwise public information in a form not publicly known shall still be treated as Confidential Information);
- (b) it was available to the Contractor on a non-confidential basis prior to disclosure by the Contractor;
- (c) it was, is, or becomes available to the Contractor on a non-confidential basis from a person who, to the Contractor's knowledge, is not under any confidentiality obligation in respect of that information;
- (d) it was lawfully in the possession of the Contractor before the information was disclosed by the Contractor;
- (e) it is strictly required to enable a determination to be made under clause 14;
- (f) the parties agree in writing that the information is not confidential

**“Contractor”** means the contractor appointed by the Council to deliver the Supplies, Works or Services, as detailed in the Purchase Order

**“Contractor Manager”** means the representative of the Contractor referred to in clause 8.1

**“Control”** means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise)

**“Council”** means Oldham Borough Council whose principal place of business is at Civic Centre, West Street, Oldham, OL1 1UL, as detailed in the Purchase Order

**“Data Protection Legislation”** means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR, which has the meaning given to it in section 3(10) (as

supplemented by section 205(4)) of the Data Protection Act 2018; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party

**“Data Subject Request”** shall mean a request made by, or on behalf of, a Data Subject in accordance with the exercise of an individual’s rights pursuant to the Data Protection Legislation

**“DBS”** means Disclosure and Barring Service

**“EIR”** means the Environmental Information Regulations 2004

**“Employment Liabilities”** means all claims, including claims without limitation for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses

**“Exempt Information”** means any information or class of information (including but not limited to any document, report and contract or other material containing information) relating to the Purchase Order or otherwise relating to the Contractor which falls within an exemption to FOIA (as set out therein)

**“Existing Intellectual Property Rights”** means those Intellectual Property Rights vested in the Council or the Contractor prior to the commencement of the Term

**“FOIA”** means the Freedom of Information Act 2000 and any subordinate legislation made under such Act together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation

**“Force Majeure Event”** shall mean an event or circumstance which is beyond the control and without the fault or negligence of the Party affected and which by the exercise of reasonable diligence the Party affected was unable to prevent provided that event or circumstance is limited to the following:

- (a) riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not) acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power, requisition or compulsory acquisition by any governmental or competent authority;
- (b) ionising radiation or contamination, radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive assembly or nuclear component;
- (c) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- (d) earthquakes, flood, fire or other physical natural disaster, but excluding weather conditions regardless of severity; and
- (e) strikes at national level or industrial disputes at a national level, or strike or industrial disputes by labour not employed by the affected Party, any Sub-Contractors or its suppliers and which affect an essential portion of the works but excluding any industrial dispute which is specific to the performance of the works or these Terms and Conditions

**“Intellectual Property Rights”** shall mean patents, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off

**“Law”** means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;

**“Living Wage Foundation Rate”** means the wage set by the Living Wage Foundation, which is made according to the cost of living based on a basket of household goods and services

**“Losses”** shall include but not be limited to actions claims losses demands proceedings damages costs and expenses

**“Mediator”** means an independent third party appointed in accordance with clause 14.3 to facilitate negotiations between the Parties in relation to a dispute and assist the Parties to endeavour to settle such dispute

**“Modern Slavery”** means the recruitment, movement, harbouring or receiving of children, women or men using force, coercion, abuse of

vulnerability deception or other means for the purpose of exploitation for commercial gain

**"Modern Slavery Helpline"** means the point of contact for reporting suspicion, seeking help or advice and information on the subject of modern slavery available online at: <https://www.modernslaveryhelpline.org/report> or by telephone on 08000 121 700

**"Party"** means the Council or the Contractor and **"Parties"** means both the Council and the Contractor

**"Personal Data"** shall have the meaning given in the UK GDPR

**"Prohibited Act"** means the following:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:
  - (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Purchase Order
- (c) to commit any offence:
  - (iii) under the Bribery Act 2010; or
  - (iv) under section 117(2) of the Local Government Act 1972
  - (v) under legislation creating offences concerning fraudulent acts;
  - (vi) at common law concerning fraudulent acts relating to the Purchase Order or any other contract with the Council; or
  - (vii) defrauding, attempting to defraud or conspiring to defraud the Council

**"Purchase Order"** means the purchase order placed by the Council under which the Contractor shall provide the Supplies and/or the Works and/or the Services specified therein in accordance with these Terms and Conditions

**“Regulatory Body”** means any government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in these Terms and Conditions or any other affairs of the Council

**“Relevant Employees”** shall mean those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Council or a Replacement Provider by virtue of the application of TUPE

**“Relevant Transfer”** shall mean a relevant transfer for the purposes of TUPE

**“Replacement Provider”** shall mean any third party supplier of any services that are fundamentally the same as any of the Services and which the Council receives in substitution for any of the Services following the termination or expiry of the Term, whether those services are provided by the Council internally or by any Replacement Provider

**“Services”** means any services to be provided to the Council by the Contractor, as detailed in the Purchase Order

**“Service Transfer Date”** means the date on which the Services (or any part of the Services), transfer from the Contractor or a Sub-Contractor to the Council or any Replacement Provider

**“Specification”** means the description and specification (including drawings) of the Supplies, Works or Services including quantities, their facilities, functions, deliverables, service levels, quality standards and performance levels, as specified in the Purchase Order

**“Specific Change in Law”** means any change in Law that comes into effect after the commencement of the Term which impacts on the performance of the Purchase Order and that relates specifically to the business of the Council and which would not affect the supply of supplies, works or services to another customer of the Contractor that are similar to any of the Supplies, Works or Services

**“Staff”** shall mean employees, volunteers and agency staff

**“Staffing Information”** shall mean, in relation to all persons with potential rights under TUPE, such information, in an anonymised format, as the Council may reasonably request including the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE and details of whether the Staff are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services

**“Sub-Contractor”** shall mean the contractors or providers engaged by the Contractor to provide goods, services or works to, for or on behalf of

the Contractor for the purposes of providing the Supplies, Works or Services to the Council

**“Supplies”** means any goods/products to be provided to the Council by the Contractor, as detailed in the Purchase Order

**“SVGA”** shall mean Safeguarding Vulnerable Groups Act 2006

**“Term”** shall mean the period over which the Contractor shall deliver any Supplies, Works or Services, as detailed in the Purchase Order

**“Terms and Conditions”** means these terms and conditions

**“TUPE”** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246)

**“VAT”** means value added tax chargeable under the Value Added Tax Act 1994

**“Working Day”** means Monday to Friday in any week, excluding public holidays in England

**“Works”** means any works to be provided to the Council by the Contractor, as detailed in the Purchase Order

1.2 In these Terms and Conditions:

- (a) whenever required by the context the singular includes the plural and vice versa and words importing the masculine shall include the feminine and vice versa;
- (b) the headings used in these terms and conditions are for ease of reference only and shall not affect the interpretation or construction of these Terms and Conditions;
- (c) unless the context otherwise requires, reference to a clause or sub-clause is a reference to a clause or sub-clause of these Terms and Conditions; and
- (d) references to a specific statute include any statutory extension or modification amendment or re-enactment of such statute and any regulations or orders made under such statute.

## **2 PURCHASE ORDER**

2.1 These Terms and Conditions shall apply to the Purchase Order save:

- (a) where the Purchase Order makes reference to a specific contract or framework agreement, the terms and conditions of the specified contract or framework agreement shall apply in conjunction with these Terms and Conditions (where applicable) in the order of priority identified in the specified contract or framework agreement;

- (b) for any minor changes to these Terms and Conditions which are detailed in the Purchase Order.

2.2 Subject to clause 2.1(a) above, unless otherwise agreed by the Council and the Contractor in writing these Terms and Conditions shall override any terms and conditions or terms stipulated or referred to by the Contractor. Any written amendments must be agreed in writing by an authorised officer of the Council.

2.3 The acceptance of a Purchase Order or and/or the delivery of any Supplies, Works or Services detailed in a Purchase Order shall be deemed to be an acceptance by the Contractor of these Terms and Conditions or the applicable terms and conditions referenced in the Purchase Order.

### **3 TERM OF PURCHASE ORDER**

Subject to clause 33, these Terms and Conditions shall be effective for the Term unless the Purchase Order is terminated sooner.

### **4 SCOPE OF PURCHASE ORDER**

4.1 These Terms and Conditions together with the Purchase Order govern the overall relationship between the Council and the Contractor in respect of the provision of any Supplies, Works or Services by the Contractor to the Council under the Purchase Order.

4.2 The Contractor shall, at no additional cost, provide all reasonable co-operation and assistance to the Council and any of the Council's other contractors in connection with the Purchase Order, including in respect of exit management activities.

#### **Social Value**

4.3 The Contractor shall use reasonable endeavours to ensure that, in providing the Services under these Terms and Conditions, the Contractor improves the economic, social and environmental well-being of the Borough of Oldham.

### **5 NON-EXCLUSIVITY**

The Contractor acknowledges that, in accepting a Purchase Order, no form of exclusivity has been granted or guaranteed by the Council regarding the procurement of any Supplies, Works or Services from the Contractor, and that the Council is entitled to place Purchase Orders or enter into other contracts and arrangements with other contractors for the provision of supplies, works or services that are the same as or similar to the Supplies, the Works or the Services.

### **6 PERFORMANCE**

#### **Supplies, Works and Services**

- 6.1 The Contractor shall provide the Supplies, Works or Services in accordance with these Terms and Conditions and any terms and conditions incorporated into or referenced within the Purchase Order.
- 6.2 The Contractor shall permit the Council and/or anyone reasonably authorised by the Council to:
- (a) observe the Contractor delivering the Supplies, the Works or the Services;
  - (b) inspect any premises from which the Contractor is delivering the Supplies, the Works or the Services.
- 6.3 The Council shall, where necessary, permit the Contractor and those authorised by the Contractor to enter onto such Council premises as agreed between the Parties for the purpose of delivering the Supplies, Works or Services. For the avoidance of doubt, the Council may refuse entry to any person.
- 6.4 The Contractor shall not at any time whilst it is providing the Supplies, Works or Services to the Council knowingly act in any capacity for any person(s), partnership, organisation or company in circumstances where a conflict of interest would or might exist between its professional duties towards such person(s), partnership, organisation or company and its duties to the Council under the Purchase Order. The Contractor shall inform the Council immediately if any potential conflict arises.
- 6.5 The Contractor shall at all times comply with any statutory requirements relating to the provision of the Supplies, Works or the Services.
- 6.6 The Contractor shall not do anything by reason of which the Council may incur or become liable to pay any penalty damages compensation costs fees or expenses.
- 6.7 The Contractor shall inform the Council promptly and in writing of any problems encountered by the Contractor in delivering the Supplies, Works or Services which the Contractor is unable to resolve within a reasonable period of time.

### **Supplies**

- 6.8 The Council shall have the right to inspect and test any Supplies supplied under the Purchase Order at any time prior to their delivery and, if following such inspection the Council consider that any of the Supplies do not conform or are unlikely to conform with their description and any Specification and requirement detailed in the Purchase Order, the Council shall inform the Contractor and the Contractor shall immediately take such remedial action as is necessary to ensure compliance. Any inspection or test carried out by the Council under this clause 6.8 shall not reduce or otherwise affect the Contractor's obligations under the Purchase Order.

- 6.9 The Contractor shall ensure that:
- (a) all Supplies are properly packed and secured in such a manner as to enable them to reach their destination in good condition;
  - (b) all Supplies are packaged in accordance with the Council's instructions and any relevant statutory regulations, guidance and standards; and
  - (c) each delivery of Supplies is accompanied by a delivery note which shows the date of the Purchase Order, all relevant reference numbers, the type and quantity of the Supplies (including the code number of the Supplies, where applicable), special storage instructions (if any) and, if the Purchase Order is being delivered in instalments, the outstanding balance of Supplies remaining to be delivered.
- 6.10 Unless otherwise specified in the Purchase Order the Council shall not be liable for any packaging or delivery costs.
- 6.11 The Contractor shall deliver Supplies:
- (a) on the date specified in the Purchase Order or on such date as is agreed in writing between the Council and the Contractor; and
  - (b) to the delivery location specified in the Purchase Order (or such other location as agreed in writing between the Council and the Contractor) at any time after the Contractor notifies the Council that the Supplies are ready for delivery.
- 6.12 If the Contractor fails to deliver Supplies under a Purchase Order, its liability shall be limited to the costs and expenses incurred by the Council in procuring replacement Supplies of similar description and quality in accordance with relevant procurement rules. The Contractor shall have no liability for any failure to deliver the Supplies to the extent that such failure is caused by a Force Majeure Event or the Council's failure to provide the Contractor with adequate delivery instructions.
- 6.13 Without prejudice to any of its other rights under the Purchase Order, the Council may reject any Supplies which do not conform to the standards and requirements detailed in the Purchase Order. The Council shall not be liable to pay for rejected Supplies.
- 6.14 When Supplies are rejected by the Council under clause 6.13 above the Contractor shall:
- (a) at its own expense remove the rejected Supplies from the delivery location specified in the Purchase Order (or such other location as agreed in writing between the Council and the Contractor) within five (5) Working Days of receipt of a request from the Council; and
  - (b) if required by the Council, deliver to the Council replacement

Supplies within the timescale reasonably imposed by the Council.

- 6.15 If the Contractor fails to comply with clause 6.14 above the Council may return the rejected Supplies to the Contractor at the Contractor's expense and risk.
- 6.16 The Council shall not be deemed to have accepted any Supplies under the Purchase Order unless and until:
- (d) the Council has taken the Supplies into use; or
  - (e) the Council has not exercised its rights of rejection under clause 6.13 above.
- 6.17 The risk in any Supplies supplied from time to time under the Purchase Order shall pass to the Council on acceptance of the same in accordance with clause 6.16 above.

### **Warranties**

- 6.18 The Contractor warrants and represents that in providing any Supplies, Works or Services it will:
- (i) deliver the Supplies, Works or Services in accordance with Best Industry Practice exercising all the reasonable skill, care and diligence to be expected of a properly qualified and competent person experienced in the provision of supplies, works or services which are similar in nature to the Supplies, the Works or the Services; and
  - (ii) meet any targets and service levels detailed in any Specification referenced or incorporated into a Purchase Order within the specified timescales;
  - (iii) be responsible for obtaining and maintaining all licences, authorisations, consents or permits required in relation to the performance of its obligations under these Terms and Conditions and/or the Purchase Order;
  - (iv) pay those Staff delivering the Supplies, the Works or the Services the Living Wage Foundation Rate; and
  - (v) comply with the Law.
- 6.19 Without prejudice to any Specification referenced or incorporated into the Purchase Order or other standards specified in these Terms and Conditions, where a relevant standard, code of practice or similar instrument has been issued by the British Standards Institution or the International Standards Organisation before or during the Term, the Contractor warrants that all Supplies, Works or Services shall be provided in compliance with such standard, code of practice or similar instrument (unless agreed otherwise).

6.20 The Contractor warrants and represents that all Supplies provided by the Contractor under the Purchase Order will:

- (i) conform in all material respects with their description and any Specification and requirement detailed or referenced within the Purchase Order;
- (ii) be free from defects in design, material and workmanship; and
- (iii) be of satisfactory quality (within the meaning of the Supply of Goods and Services Act 1982 and the Sale of Goods Act 1979) and fit for any purpose held out by the Contractor or made known to the Contractor by the Council expressly or by implication, and in this respect, the Council relies on the Contractor's skill and judgement;
- (iv) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the said goods.

6.21 If the Council gives notice in writing to the Contractor during the Term that some or all of the Supplies provided do not comply with the warranty set out in clause 6.20 above the Contractor shall cease to provide the relevant Supplies and shall offer to provide replacement supplies to the Council which do comply with the said warranty.

6.22 The Contractor further warrants that:

- (i) it has full capacity and authority and all necessary rights and consents (including but not limited to, where its procedures so require, the consent of its parent company) to comply with these Terms and Conditions and any terms and conditions referenced or incorporated into the Purchase Order and to grant the rights to be granted under these Terms and Conditions;
- (ii) there are no material facts or circumstances in relation to the financial position or operation or constitution of the Contractor which have not been fully and fairly disclosed to the Council in writing and which if so disclosed might reasonably have been expected to affect the decision of the Council to issue the Purchase Order;
- (iii) as at the commencement of the Term, all information disclosed to the Council remains true, accurate and not misleading, save as may have been specified in writing to the Council prior to the issue of the Purchase Order;
- (iv) in accepting the Purchase Order, it is not in breach of clause 18;

- (v) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights and all permissions, authorisations, consents and permits that are necessary for the performance of its obligations under these Terms and Conditions and any terms and conditions referenced or incorporated into the Purchase Order;
- (vi) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under these Terms and Conditions;
- (vii) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under these Terms and Conditions;
- (viii) at the commencement of the Term no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue; and
- (ix) in the three 3 years prior to the commencement of the Term:
  - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
  - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
  - (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under these Terms and Conditions and nay terms and conditions referenced or incorporated into the Purchase Order.

6.23 The Council shall at any time be entitled to assign or transfer the benefit of the warranties given under these Terms and Conditions by way of legal assignment without the Contractor's consent.

6.24 Except as expressly stated to the contrary in these Terms and Conditions, all warranties and conditions given under these Terms and Conditions, whether express or implied by statute, common law or otherwise

(including but not limited to fitness for purpose) are hereby excluded to the extent permitted by the Law.

### **Staff**

- 6.25 The Contractor shall at all times employ (or procure the employment) at its own expense sufficient Staff for the purpose of providing the Supplies, the Works or the Services.
- 6.26 The Contractor shall ensure that all Staff engaged in the provision of the Supplies, the Works or the Services are suitably skilled and experienced.
- 6.27 The Contractor shall comply with the Working Time Regulations 1998.
- 6.28 The Contractor shall set up and maintain written personnel policies and procedures for all Staff engaged in the provision of the Supplies, the Works or the Services covering all relevant matters (including but not limited to discipline, grievance, equal opportunities and health and safety). The Contractor shall procure that the terms and implementation of such policies and procedures comply with legislation and best practice and that they are made available to the Council on request.
- 6.29 The Contractor shall be liable for and indemnify and keep indemnified the Council and any Third Party Employer against any failure to meet all remuneration, benefits, entitlements and outgoings for the Contractor's Staff and any other person who is or will be employed or engaged by the Contractor or any Sub-Contractor in connection with the delivery of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions, termination costs and otherwise from and including the Commencement Date.

## **7 CHARGES AND PAYMENT**

- 7.1 Unless specified otherwise in these Terms and Conditions or within the Purchase Order:
  - (a) the Charges shall be fixed;
  - (b) no additional Charges shall apply for any other activity associated with the provision of the Supplies, the Works or the Services.
- 7.2 The Council shall pay to the Contractor those Charges due under the Purchase Order in sterling, in accordance with current legislation and within 30 days of receipt of a valid undisputed invoice. For the avoidance of doubt the Council shall not be liable to pay the Contractor for the provision of unauthorised supplies, works or services. In the event that the Contractor has entered into an Early Payment Agreement under the Early Payment Scheme (<https://www.oxygen-finance.com/client/oldham/>) payment of the Charges shall be made in accordance with that agreement, which shall be supplemental to these terms and conditions.

- 7.3 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Council following delivery of a valid VAT invoice. The Contractor shall indemnify the Council against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Council at any time in respect of the Contractor's failure to account for, or to pay, any VAT relating to payments made to the Contractor under the Purchase Order.
- 7.4 If the Council is not satisfied that the details shown on an invoice are correct, or that an invoice has been issued in respect of Supplies, Works or Services which the Council asserts have not been provided in accordance with these Terms and Conditions or the Purchase Order, the Council shall inform the Contractor within 5 Working Days of receipt of an invoice and the Contractor shall withdraw the relevant invoice and issue a new invoice for the undisputed amount. The Contractor shall not issue an invoice for the disputed amount until the Charges have been confirmed by the Council. In the event of a dispute, clause 14 will apply.
- 7.5 The Council shall accept and process for payment an electronic invoice submitted for payment by the Contractor where the invoice is undisputed and where it complies with the standard on electronic invoicing. For the avoidance of doubt, an electronic invoice will be deemed to comply with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.
- 7.6 If the Council fails to pay any undisputed Charges properly invoiced under these Terms and Conditions, the Contractor shall have the right to charge interest on the overdue amount at a rate of 2% above the Bank of England's base rate, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 7.7 Each invoice of the Contractor shall be delivered to such address as may be notified from time to time by the Council.
- 7.8 Where any monies are or shall become due or recoverable from the Contractor by virtue of these Terms and Conditions or any other agreement with the Council, the Council may deduct or offset those monies from the Charges payable from time to time under these Terms and Conditions. The Council's rights under this clause 7.8 are without prejudice to any other rights or remedies available under these Terms and Conditions or otherwise.
- 7.9 The Contractor shall keep secure and maintain until six (6) years after the expiry of the Term, full and accurate records of the performance of the Supplies, Works or Services, including all payments made by the Council and all expenditure reimbursed by the Council, and the Contractor shall grant to the Council, or its authorised agents and any auditors (including any auditor carrying out functions under the Audit Commission Act 1998 or Local Government Act 1999), such access to those records as they may reasonably require.

- 7.10 The Contractor shall use all reasonable endeavours to ensure measurable and continuous improvement in the performance of the Supplies, the Works or the Services and ensure that best value for money is provided. The Contractor acknowledges that the Council is subject to a Best Value Duty and the Contractor agrees to support and co-operate with the Council in fulfilling its Best Value Duty and agrees to comply with all reasonable requests of the Council in respect of fulfilling its Best Value Duty. The Contractor shall provide any information reasonably requested by the Council, relating to the performance of any obligations under these Terms and Conditions or the Purchase Order to ensure that the Council meets its obligations in respect of its Best Value Duty.

## **8 GOVERNANCE AND AUDIT**

### **Authorised Manager and Contractor Manager**

- 8.1 The Council shall appoint a person to exercise its rights and powers under the Purchase Order, the Authorised Manager, and the Contractor shall appoint a person to exercise its rights and powers under the Purchase Order, the Contractor Manager. Each Party shall disclose the name of the persons appointed under this clause to the other.
- 8.2 Both the Contractor Manager and the Authorised Manager shall comply with any obligations relating to the management of the delivery of the Supplies, Works or Services, as referred to or incorporated within the Purchase Order.
- 8.3 If the Contractor Manager or the Authorised Manager is replaced, the relevant Party shall inform the other of the name of the replacement as soon as reasonable possible.

### **Contractor Performance and Agreement Management**

- 8.4 The Contractor shall provide the Council with such information and assistance as the Council may require in order to assess the Contractor's delivery of the Supplies, the Works or the Services (or any part) under the Purchase Order and its compliance with these Terms and Conditions and any terms and conditions referenced or incorporated within the Purchase Order.

### **Audit**

- 8.5 The Contractor will at all times and on reasonable notice permit for the purposes of audit, the Council and any nominated auditors, access to documentation relating to the provision of the Supplies, the Works or the Services.
- 8.6 The Council reserves the right, at any reasonable time, and as it may deem necessary to require the Contractor at its own cost to:
- (i) provide evidence of financial resources and the level of turnover sufficient to enable it to continue to perform its obligations relating to the Purchase Order;

- (ii) provide a copy of the Contractor's latest audited accounts;
  - (iii) submit any claim for payment or management information provided to support a claim for payment to be audited by an independent auditor chosen by the Council; and
  - (iv) provide any additional evidence to support payments made under the Purchase Order as the Council shall reasonably require.
- 8.7 The Contractor shall at all times during the Term, and for 6 years thereafter, keep and maintain full and detailed records relating to the delivery of the Supplies, the Works or the Services and provide copies of the same to the Council.
- 8.8 In the event of an issue with the Contractor's performance under the Purchase Order, clause 11 shall apply.

## **9 INDEMNITY AND LIMITATION OF LIABILITY**

- 9.1 The Contractor shall, on behalf of itself and its sub-contractors, indemnify and keep fully and effectually indemnified the Council, its Staff and agents from and against all Losses whatsoever incurred in respect of or in any way arising directly out of the negligence or breach by the Contractor and/or its Sub-Contractors of these Terms and Conditions or any terms and conditions referenced or incorporated within the Purchase Order except to the extent that such Losses may arise out of the act default or negligence of the Council.
- 9.2 The Contractor shall not be liable to the Council under clause 9.1 for any indirect or consequential Losses.
- 9.3 The Contractor's total aggregate liability for Losses incurred under these Terms and Conditions or any terms and conditions referenced or incorporated within the Purchase Order:
- (a) is unlimited in respect of:
    - (i) fraud or fraudulent misrepresentation;
    - (ii) death or personal injury caused by its negligence;
    - (iii) breach of any obligation as to title implied by statute;
    - (iv) any act or omission, liability for which may not be limited under any applicable law;
    - (v) the indemnities in clauses 6.29, 22 and 23;
    - (vi) any breach of clause 18;
    - (vii) any breach of Data Protection Legislation; and

(viii) the Contractor's wilful default.

- (b) in respect of property loss or damage resulting from the delivery of the Supplies, Works or Services shall be limited to the amount of insurance cover that is required to be in place under clause 10 below.
- (c) in respect of all other claims, losses (excluding indirect or consequential Losses) or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with these Terms and Conditions or any terms and conditions referenced or incorporated within the Purchase Order, shall be limited to the greater of ten million pounds (£10,000,000) or a sum equivalent to one hundred and fifty percent (150%) of the aggregate Charges paid or payable under the Purchase Order.

9.4 The Council's maximum liability under the Purchase Order in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with these Terms and Conditions or any terms and conditions referenced or incorporated within the Purchase Order (other than a failure to pay any of the Charges that are properly due and payable under the Purchase Order and for which the Council shall remain fully liable), shall be limited to a sum equivalent to one hundred percent (100%) of the aggregate Charges paid or payable under the Purchase Order.

## **10 INSURANCE**

10.1 Unless otherwise specified in the Purchase Order or in or any terms and conditions referenced or incorporated within the Purchase Order, the Contractor shall take out and maintain for the period ending 6 years following expiry of the Term:

- (a) Public liability insurance in an amount of not less than £10,000,000 for any one occurrence or series of occurrences arising during each policy year;
- (b) Employers' liability insurance in an amount of not less than £5,000,000 for any one occurrence or series of occurrences arising during each policy year;
- (c) Professional indemnity insurance in an amount of not less than £2,000,000 for any one occurrence or series of occurrences arising during each policy year.

10.2 The Contractor shall, on request from the Council, supply copies of certificates of insurance to the Council as evidence that the Contractor has in force the relevant insurance policies, as required under clause 10.1.

## **11     *DEFAULTS, REMEDIATION AND TERMINATION***

- 11.1 Without prejudice to the Council's other rights or remedies, if at any time the Contractor fails to comply with its obligations under these Terms and Conditions, or any terms and conditions referenced or incorporated within the Purchase Order, and the Council deems the failure to be capable of remedy, the Council shall not terminate the Purchase Order without first operating the remediation process set out in this clause 11.
- 11.2 The Council shall not be obliged to issue a Remediation Notice if the Council deems the failure to be substantially the same as a previous failure which has been addressed in a Remediation Notice within the previous six (6) months. In such event, the Council, acting reasonably, may serve a notice of termination of the Purchase Order in whole or part.

### **Remediation Notices and Plans**

- 11.3 If the Council deems that the Contractor has failed to comply with its obligations under the Purchas Order, and that such failure is capable of remedy, the Council shall, acting reasonably, issue a written notice to the Contractor which shall set out the nature of the failure and the actions which the Council requires the Contractor to take to remedy the default ("**Remediation Notice**").
- 11.4 The Contractor shall, at its own cost and expense, remedy such failure within the time specified in the Remediation Notice, or if no such time is specified within a reasonable time, or where this is not reasonably practicable, submit a draft written plan to the Council within the timescales specified in the Remediation Notice specifying the actions that the Contractor proposes to take to remedy the failure and the timescales for doing so ("**Remediation Plan**").
- 11.5 If the Contractor submits a draft Remediation Plan pursuant to this clause 11, the Council shall, within ten (10) days of its receipt, either approve the draft Remediation Plan or shall, acting reasonably, inform the Contractor that the Council rejects the draft Remediation Plan with an explanation as to why the Council cannot accept the draft Remediation Plan.
- 11.6 Where the Council rejects the draft Remediation Plan, the Contractor shall address all such concerns in a revised Remediation Plan, which it shall submit to the Council In accordance with the timescales specified in the Remediation Notice, or, if no timescales are specified, within ten (10) days of being informed that the Council has rejected the draft Remediation Plan. The Council shall either approve the revised Remediation Plan within ten (10) days of receipt, or the Council shall, acting reasonably, inform the Contractor why the Council cannot accept the revised Remediation Plan. If a Remediation Plan cannot be agreed in accordance with clauses 11.3 to 11.5, the Council may terminate the Purchase Order in whole or part.
- 11.7 Once a Remediation Plan has been agreed by the Council, the Contractor shall undertake the actions set out in the Remediation Plan within the

prescribed timescales and provide evidence to the Council that the actions have been undertaken.

- 11.8 The Council shall review all steps taken by the Contractor to remediate the matters in a Remediation Notice, acting reasonably, and confirm to the Contractor if and when it is satisfied that they have been remediated.

### **Staffing Issues**

- 11.9 In the event that the Council is at any time during the Term of the reasonable opinion that any member of the Contractor's Staff is unable or unfit to deliver the Supplies, Works or Services or any part of the same, the Council will provide written details of the issue or issues to the Contractor and the Contractor shall, within the prescribed timescales:

- (a) deliver to the Council a written action plan detailing the way in which the Contractor proposes to deal with the issue or issues, including the temporary or permanent redeployment of the relevant Staff member; and
- (b) comply with any reasonable guidance or instructions issued by the Council in relation to the action plan, including any requirement by the Council for the Contractor to temporarily or permanently redeploy the relevant Staff member; and
- (c) comply with the action plan and any timescales detailed therein.

### **Increased Monitoring**

- 11.10 If the Contractor receives a Remediation Notice, the Council may increase the Council's monitoring of the Contractor and the performance of the Supplies, Works or Services until such time as the Contractor has demonstrated, to the reasonable satisfaction of the Council, that the Contractor shall perform, and is capable of performing, the Contractor's obligations fully under these Terms and Conditions or any terms and conditions referenced or incorporated within the Purchase Order.
- 11.11 The Contractor may not increase its Charges to take account of any additional monitoring under this clause 11 and the Contractor shall be liable for any additional costs reasonably and necessarily incurred by the Council in respect of carrying out any such additional monitoring under this clause. The Contractor shall promptly, on demand, reimburse the Council for such costs. If the Contractor fails to reimburse the Council, the Council shall have the right to deduct such sums from any payment due to the Contractor.

### **Failure to remedy defaults**

- 11.12 If a Remediation Plan is agreed between the Parties, but the Contractor fails to implement or successfully complete the Remediation Plan by the required Remediation Plan completion date, the Council may, at its option, either:

- (a) grant the Contractor a further opportunity to fully implement the Remediation Plan and continue any suspension period imposed in respect of new orders; or
- (b) escalate any issues arising out of the failure to implement the Remediation Plan in accordance with clause 14; or
- (c) terminate the Purchase Order in whole or in part by serving a written notice of termination on the Contractor.

### **Remediation Costs and Charges**

- 11.13 The Council shall be entitled to charge the Contractor twenty pounds (£20) for each Remediation Notice that the Council issues.
- 11.14 The Council shall be entitled to charge up to one hundred and fifty pounds (£150) for the administrative costs, the cost of travel and inspection incurred by the Council to verify a Remediation Plan has been implemented satisfactorily.
- 11.15 The Council may deduct such sums due under this clause 11 from the payment of any Charges, issue a separate charge to the Contractor or recover the monies under any other contract held with the Contractor.

### **Termination for Change of Control**

- 11.16 The Council shall be entitled to terminate the Purchase Order if there is a Change of Control to which the Council reasonably objects, having regard to the identity, trading interests, financial standing and intentions of the new controller, and having afforded the Contractor a reasonable opportunity to make representations in this respect and having given such representations reasonable consideration except where:
- (a) the Council has given its prior written consent to the particular Change of Control, which subsequently takes place as approved; or
  - (b) the Contractor notifies the Council no less than one month prior to the date upon which a Change of Control will take place and the Council fails to object to that notice within 6 months of receipt.

### **Termination without Remediation Process**

- 11.17 The Council may, without prejudice to any other rights or remedies that the Council might have, terminate the Purchase Order in whole or part, immediately on notice, if the Contractor:
- (a) makes any material misrepresentations during the process leading up to its appointment;
  - (b) commits a material breach of these Terms and Conditions or any

terms and conditions referenced or incorporated within the Purchase Order, that the Council deems cannot be remedied; or

- (c) is persistently in breach of these Terms and Conditions or any terms and conditions referenced or incorporated within the Purchase Order; or
- (d) fails to comply with a Remediation Notice or successful deliver a Remediation Plan; or
- (e) fails to comply with any anti-discrimination or safeguarding provisions to which the Purchase Order is subject;
- (f) makes a composition or arrangement with or for the benefit of its creditors; or
- (g) becomes bankrupt or, being a company, makes a proposal for a voluntary arrangement for a composition of debts or scheme of arrangement to be approved in accordance with the Companies Act 2006 or the Insolvency Act 1986 as the case may be or any amendment or re-enactment thereof, or
- (h) has a provisional liquidator appointed, or has a winding-up order made, or passes a resolution for voluntary winding-up (except for the purposes of amalgamation or reconstruction), or, under the Insolvency Act 1986 or any amendment or re-enactment thereof, has an administrator or an administrative receiver appointed.

11.18 The Council may, without prejudice to any other rights or remedies that the Council might have, terminate the Purchase Order immediately if the Contractor or any person on its behalf, whether employed by the Contractor or not and whether acting with or without the knowledge of the Contractor, shall commit a Prohibited Act.

### **Public Contracts Regulations 2015**

11.19 Where the Public Contract Regulations 2015 (PCR 2015) apply, the Council shall be entitled to terminate the Purchase Order with immediate effect where:

- (a) The Purchase Order has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of the PCR 2015; or
- (b) the Contractor has, at the commencement of the Term, been in one of the situations referred to in regulation 57(1) of the PCR 2015, including as a result of the application of regulation 57(2) of the PCR 2015, and should therefore have been excluded from the procurement procedure; or
- (c) the Purchase Order should not have been awarded to the

Contractor in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU (Treaty for the Functioning of the European Union).

### **No fault termination**

11.20 Unless specified otherwise in the Contract, either Party shall have the right to terminate the Purchase Order in whole without consequence (financial or otherwise):

- (a) upon one (1) month's written notice to the other;
- (b) if, in the reasonable opinion of the Party wishing to terminate the Purchase Order, the conduct of the other Party is having or may have a negative or adverse effect on the reputation of the Party wishing to terminate.

### **Contractor termination**

11.21 The Contractor may terminate the Purchase Order in whole forthwith in writing if the Council commits any breach of these Terms and Conditions or any terms and conditions referenced or incorporated within the Purchase Order (and fails to remedy the breach within a reasonable period of it having been requested to do so).

## **12 CONSEQUENCES OF TERMINATION AND EXPIRY**

12.1 Notwithstanding the service of a notice to terminate the Purchase Order, in whole or part, in accordance with clause 12, the Contractor shall continue to fulfil its obligations under the Purchase Order until the date of expiry or termination or such other date as required under this clause 12.

12.2 Within fourteen (14) days of the date of termination or the expiry of the Term, the Contractor shall return to the Council any Council information in the Contractor's possession, power or control, and any other information and copies of such information owned by the Council and, as applicable, copies of all specifications of any Supplies, Works or Services, the subject of the Purchase Order, and, where applicable, associated drawings, all either in their then current format or in a format specified by the Council, except that the Contractor may keep one (1) copy of any such data or information for a period of up to twelve (12) months to comply with its obligations under the Purchase Order, or such other period as is reasonably necessary for such compliance, or where it is necessary to do so to comply with any legal requirements or those of a regulatory body.

12.3 The Council shall be entitled to access data or information, arising from the Purchase Order until the later of the expiry of a period of twelve (12) months following termination or expiry of the Purchase Order, or the expiry of a period of three (3) months following the date on which the

Contractor ceases to provide the Supplies, Works or Services.

- 12.4 The Contractor shall provide the Council with all reasonable assistance, co-operation and information, at no charge, to enable the Council to manage the exit from the Purchase Order and, where applicable, to obtain supplies, works or services similar to the Supplies, Works or Services from an alternative contractor.
- 12.5 Termination or expiry of the Purchase Order howsoever arising shall be without prejudice to any rights, remedies, obligations or liabilities of either Party accrued under these Terms and Conditions or any terms and conditions referenced or incorporated within the Purchase Order prior to termination or expiry. The clauses of these Terms and Conditions or any terms and conditions referenced or incorporated within the Purchase Order which expressly or impliedly have effect after termination or expiry shall continue to be enforceable notwithstanding such termination or expiry.

### **13 FORCE MAJEURE AND EPIDEMICS**

- 13.1 In the event of Force Majeure Event, the Party affected by the Force Majeure Event shall have no liability to the other Party for any failure to perform, arising from the Force Majeure Event, subject to that Party:
- (a) giving the other Party written notice that a Force Majeure Event has occurred, the nature of the Force Majeure Event, the anticipated duration of the Force Majeure Event and the steps it proposes to take to minimise the effects of a Force Majeure Event; and
  - (b) taking all reasonable steps to minimise the effects of a Force Majeure Event.
- 13.2 If a Force Majeure Event continues for a period in excess of thirty (30) days, the other Party may terminate that part of the Purchase Order affected by a Force Majeure Event, or the whole of the Purchase Order if the whole of the Purchase Order is affected by a Force Majeure Event, by giving written notice to the Party affected by a Force Majeure Event, without liability in respect of that part of the Purchase Order terminated or, where applicable, the whole of the Purchase Order.

#### ***Epidemics***

- 13.3 The Parties agree that epidemics, including pandemics such as Covid-19, are not a Force Majeure Event.
- 13.4 The Contractor shall comply with all government actions, guidance and regulations relating to any epidemic and any instructions issued by the Council from time to time relating to the safe performance of the Purchase Order ("**Epidemic Requirements**").
- 13.5 If the Contractor is unable to adhere to all or any of the Epidemic

Requirements, the Contractor shall notify the Council in writing immediately upon becoming aware of such inability.

13.6 If the Council becomes aware that the Contractor is not complying with all or any of the Epidemic Requirements, the Council shall have the right to:

- (a) suspend the Purchase Order pending further investigations being carried out by the Council with a view to ensuring continuity of delivery in future by serving a notice to such effect on the Contractor; or
- (b) vary these Terms and Conditions or any terms and conditions referenced or incorporated within the Purchase Order to address the outcome of the Council's investigations including any necessary amendments to a relevant Specification arising from the Epidemic Requirements or the Contractor's inability to perform the whole or any part of these Terms and Conditions or any terms and conditions referenced or incorporated within the Purchase Order; or
- (c) terminate the Purchase Order upon giving no less than fourteen (14) days' written notice to such effect on the Contractor.

13.7 If a notice to terminate the Purchase Order is served by the Council, termination shall be effective from the date of termination as specified in the notice.

#### **14 GOOD FAITH AND DISPUTE RESOLUTION**

14.1 The Contractor and the Council shall act in good faith with one another in relation to the application of the provisions of these Terms and Conditions or any terms and conditions referenced or incorporated within the Purchase Order and, while these Terms and Conditions or any terms and conditions referenced or incorporated within the Purchase Order remain in force, conduct all dealings between the Contractor and the Council in good faith. The Parties shall attempt to negotiate a settlement to any dispute between them arising out of or in connection with these Terms and Conditions or any terms and conditions referenced or incorporated within the Purchase Order.

14.2 If a dispute cannot be resolved by the Parties pursuant to clause 14.1, the dispute may, by agreement between the Parties, be referred to mediation in accordance with clause 14.3.

14.3 The procedure for mediation is as follows:

- (a) a Mediator shall be chosen by agreement between the Parties or, if the Parties are unable to agree upon the identity of a Mediator within fourteen (14) days, the Parties shall apply to the CEDR to appoint a Mediator;

- (b) the Parties shall, within fourteen (14) days of the appointment of the Mediator, meet with the Mediator in order to agree a programme for the exchange of all relevant information and to agree the negotiation process;
- (c) unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings and the Mediator shall not be called as a witness by the Parties, or anyone claiming through one of the Parties, in any future proceedings arising out of or connected with any matter so referred to the Mediator;
- (d) if the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded to writing and shall be binding on the Parties once it is signed by both the Council and the Contractor;
- (e) failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing which opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Purchase Order without the prior written consent of both Parties;
- (f) either Party may give notice to the other Party at any time that it is withdrawing from the mediation process; and
- (g) each Party shall bear its own expenses and the Parties shall share equally the charges for the mediation services of CEDR and associated costs of the mediation procedure.

14.4 If the Parties fail to reach agreement as provided for in clause 14.3 above, within sixty (60) days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may, by agreement between the Parties, be finally determined by reference to arbitration in accordance with clause 14.5.

14.5 The procedure for arbitration is as follows:

- (c) an Arbitrator shall be chosen by agreement between the Parties or, if the Parties are unable to agree upon the identity of an Arbitrator within fourteen (14) days, the Parties shall apply to the President for the time being of the Law Society of England and Wales to appoint an Arbitrator;
- (d) if an Arbitrator declines the appointment or after appointment is removed by order of a competent court or is incapable of acting or dies and the Parties do not within one (1) month of the vacancy arising fill the vacancy, the Parties shall apply to the President for the time being of the Law Society of England and Wales to appoint another Arbitrator to fill the vacancy;

- (e) in any case where the President for the time being of the Law Society of England and Wales is not able to exercise the functions detailed in this clause 14.5, the said functions shall be exercised on his behalf by a Vice-President of said Law Society;
- (f) any reference to arbitration under this clause 14.5 shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory re-enactment or amendment thereof for the time being in force;
- (g) neither Party shall be limited in the arbitration to the evidence or arguments put to the Mediator pursuant to clause 14.3;
- (h) the award of the Arbitrator shall be binding on the Parties;
- (i) the Arbitrator shall not be empowered to award any damages that exceed the limits of or disregard any exclusions of liability in these Terms and Conditions or any terms and conditions referenced or incorporated within the Purchase Order; and
- (j) each Party shall bear its own expenses and the Parties shall share equally the charges for the arbitration services provided by the Arbitrator and associated costs of the arbitration procedure.

14.6 If the Parties fail to agree to a dispute being referred to a Mediator and/or an Arbitrator or where the Parties have agreed to refer a dispute to a Mediator but fail to reach an agreement in accordance with clause 14.3 (d), within sixty (60) days of the Mediator being appointed (and fail to agree thereafter to refer the dispute to an Arbitrator), either Party may exercise any remedy that it has under the Purchase Order.

## **15 CONFIDENTIALITY AND ACCESS TO INFORMATION**

### **Confidentiality**

15.1 Subject to its obligations under clause 15.10 – 15.15 (inclusive) below, the Contractor undertakes to the Council that it shall:

- 15.1.1 keep the Confidential Information secret and confidential;
- 15.1.2 not use or exploit the Confidential Information in any way except for the purpose it was supplied;
- 15.1.3 not directly or indirectly disclose or make available any Confidential Information in whole or in part to any person, except as expressly permitted by, and in accordance with the Purchase Order;
- 15.1.4 not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the purpose for which it was supplied. Any such copies, reductions to writing and records shall be the property of the Council;

- 15.1.5 not use, reproduce, transform or store the Confidential Information in an externally accessible computer or electronic information retrieval system or transmit it in any form or by any means outside its usual place of business;
- 15.1.6 apply the same security measures and degree of care to the Confidential Information as the Contractor applies to its own confidential information, which the Contractor warrants as providing adequate protection from unauthorised disclosure, copying or use;
- 15.1.7 keep a written record of:
- (i) any document or Confidential Information received from the Council in tangible form; and
  - (ii) any copies made of the Confidential Information;
  - (iii) establish and maintain adequate security measures (including any reasonable security measures proposed by the Council from time to time) to safeguard the Confidential Information from unauthorised access or use; and
  - (iv) where instructed to do so by the Council, ensure that any document or other records containing Confidential Information shall not be removed from the premises identified by the Council.
- 15.2 Subject to the provisions of clause 15.1 and clause 15.3 to clause 15.9 (inclusive), the Contractor may disclose Confidential Information to the minimum extent required only by an order of any court of competent jurisdiction or any regulatory, judicial, governmental or similar body or any taxation authority of competent jurisdiction.
- 15.3 Before the Contractor discloses any Confidential Information pursuant to clause 15.1 and clause 15.2 it shall, to the extent permitted by the Law, give the Council as much notice of this disclosure as possible. Where notice of such disclosure is not prohibited and is given in accordance with these Terms and Conditions, the Contractor shall take into account the Council's requests in relation to the content of this disclosure.
- 15.4 If the Contractor is unable to inform the Council before Confidential Information is disclosed pursuant to these Terms and Conditions it shall, to the extent permitted by the Law, inform the Council of the full circumstances of the disclosure and the information that has been disclosed as soon as reasonably practicable after such disclosure has been made.
- 15.5 If so requested by the Council at any time by notice in writing to the

Contractor, the Contractor shall promptly:

- (a) destroy or return to the Contractor all documents and materials (and any copies) containing, reflecting, incorporating or based on the Council's Confidential Information;
- (b) erase all the Council's Confidential Information from its computer and communications systems and devices used by it, or which is stored in electronic form; and
- (c) to the extent technically and legally practicable, erase all the Council's Confidential Information which is stored in electronic form on systems and data storage services provided by third parties; and
- (d) certify in writing to the Council that it has complied with the requirements of this clause.

15.6 Nothing in these Terms and Conditions shall require the Contractor to return or destroy any documents and materials containing or based on the Council's Confidential Information that the Contractor is required to retain by applicable Law, or to satisfy the requirements of a Regulatory Body of competent jurisdiction or the rules of any listing authority or stock exchange, to which it is subject. The provisions of these Terms and Conditions shall continue to apply to any documents and materials retained by the Contractor pursuant to these Terms and Conditions.

15.7 The Council reserves all rights in its Confidential Information. The disclosure of Confidential Information by the Council to the Contractor does not give the Contractor or any other person any licence or other right in respect of any Confidential Information beyond the rights expressly set out in these Terms and Conditions.

15.8 Except as expressly stated in these Terms and Conditions, the Council makes no express or implied warranty or representation concerning its Confidential Information, including but not limited to the accuracy or completeness of the Confidential Information.

15.9 Without prejudice to any other rights or remedies that the Council may have, the Contractor acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of the confidentiality provisions in these Terms and Conditions. Accordingly, the Council shall be entitled to the remedies of injunctions, specific performance or other equitable relief for any threatened or actual breach of the provisions.

#### **FOIA & EIR**

15.10 The Contractor recognises that the Council is subject to legal duties which may require the release of information under FOIA or the EIR or any other applicable legislation or codes governing access to

information ("Access Duties") and that the Council may be under an obligation to provide information on request. Such information may include matters arising out of or under the Purchase Order in any way.

- 15.11 In the event that the Council receives a request for information under its Access Duties, the Council is entitled to disclose all such information and documentation (in whatever form) as it is obliged to disclose under its Access Duties.
- 15.12 The Council shall not disclose Exempt Information provided always that the Council shall be responsible for determining at its absolute discretion what information it is obliged to disclose under its Access Duties and what is Exempt Information.
- 15.13 In respect of any disclosure under its Access Duties, the Council shall, prior to disclosure, endeavour to advise the Contractor of the intention to disclose any information which the Parties have agreed in writing may be Exempt Information and allow a maximum of (10) Working Days for the Contractor to make submissions to the Council in respect of that disclosure.
- 15.14 The Council shall not be liable for any loss, damage, harm or other detriment however caused arising from the disclosure of any information relating to the Purchase Order which the Council is obliged to disclose under its Access Duties.
- 15.15 The Contractor will assist the Council in complying with its obligations under its Access Duties. In the event that the Council receives a request for information under its Access Duties and requires the Contractor's assistance in obtaining the information that is subject to such request or otherwise, the Contractor will respond to any such request for assistance from the Council at the Contractor's own cost and promptly and in any event within 10 days of receiving the Council's request.
- 15.16 The Contractor shall notify any sub-contractor of the provisions of this clause 15 and any sub-contract, between the Contractor and its Sub-Contractors relating to the Purchase Order, shall contain materially similar terms to this clause 15.

## **16 DISCRIMINATION**

- 16.1 The Contractor shall:
  - 16.1.1 not unlawfully discriminate directly or indirectly by way of victimisation or harassment within the meaning of any Law, enactment, order, regulation or other similar instrument relating to discrimination in employment (whether in relation to race, age, gender, religion, disability, sexual orientation or otherwise);
  - 16.1.2 comply with all relevant anti-discrimination legislation, have

proper regard to any relevant codes of practice and treat people fairly and equally;

16.1.3 inform the Council forthwith of any finding of unlawful discrimination against the Contractor by any Court, Tribunal, the Equality and Human Rights Commission and as soon as reasonably practicable:

(a) take all necessary steps to prevent a reoccurrence of such unlawful discrimination; and,

(b) provide to the Council full details of all steps taken.

16.2 The Contractor shall not treat a person less favourably than another on grounds of trade union membership or trade union activities, in contravention of The Employment Relations Act 1999 (Blacklists) Regulations 2010) and, in particular, the Contractor will not:

16.2.1 compile, supply, sell or use a Prohibited List (as defined in The Employment Relations Act 1999 (Blacklists) Regulations 2010);

16.2.2 refuse employment to a job applicant, to dismiss an employee, or to subject an employee to any other detriment for a reason related to a Prohibited List; and

16.2.3 engage with an employment agency which refuses to provide its services to an individual for a reason related to a Prohibited List.

16.3 The Contractor shall, on request, provide to the Council such written evidence as the Council reasonably requires that the Contractor has not breached clause 16.2 above.

16.4 The Contractor recognises that the Council is bound to comply with the Human Rights Act 1998 ("HRA") and that those duties imposed on the Council under the HRA must be met in the delivery of the Purchase Order. As a result, the Contractor shall comply with the provisions of the HRA as if it were a public authority (as defined under the HRA).

16.5 The Contractor shall, where required by the Council, at all times have a written equalities policy which shall as a minimum cover race, age, gender, religion, disability, sexual orientation and provide a copy of the same to the Council on request ("Equalities Policy").

16.6 The Contractor shall provide all reasonable assistance to the Council to enable each to meet any duties imposed in relation to the prevention of discrimination and the promotion of equality.

## **17 SAFEGUARDING**

17.1 The Contractor:

- (a) shall not use, or allow its Sub-Contractors or suppliers to use forced, bonded or involuntary prison labour;
- (b) shall not require any contractor, Sub-Contractor or supplier Staff to lodge or deposit identity papers with such contractor, Sub-Contractor or supplier or deny such contractor, Sub-Contractor or supplier staff freedom to leave their employer after reasonable notice;
- (c) warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;
- (d) warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offenses anywhere around the world;
- (e) shall make reasonable enquiries to ensure that its Staff and Sub-Contractors and suppliers have not been convicted of slavery or human trafficking offences anywhere around the world;
- (f) shall have and maintain its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and shall include in its contracts with its Sub-Contractors and suppliers, anti-slavery and human trafficking provisions;
- (g) shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under the Purchase Order;
- (h) on request, prepare and deliver to the Council, a slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business;
- (i) shall not use, or allow its Staff or Sub-Contractors or suppliers to use, physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or the Staff of its Sub-Contractors or suppliers;
- (j) shall not use, or allow its Sub-Contractors or suppliers to use, child or slave labour, and
- (k) shall report the discovery or suspicion of any slavery or trafficking by the Contractor or its Sub-Contractors or suppliers to the Council and Modern Slavery Helpline.

17.2 In the event that a Regulated Activity is to be delivered by the Contractor under the Purchase Order, the Contractor shall be a Regulated Activity

Provider for the purposes of the SVGA with ultimate responsibility for the management and control of the Regulated Activity.

17.3 The Contractor shall ensure that all Staff engaged in the provision of a Regulated Activity are:

17.3.1 subject to a valid enhanced disclosure check undertaken through the DBS, which check shall at no time during the period in which the Services are being provided be more than 3 years old;

17.3.2 subject to a check against the adults' barred list or the children's barred list, as appropriate; and

the Contractor shall monitor all checks to ensure the level and validity of the checks are maintained.

17.4 The Contractor warrants that at all times for the purposes of the Purchase Order it has no reason to believe that any person who is or will be employed or engaged by the Contractor in the provision of the Purchase Order is barred from the activity in accordance with the provisions of the SVGA and any regulations made thereunder, as amended from time to time.

17.5 The Contractor shall:

17.5.1 upon immediate request by the Council, provide such information to the Council as the Council reasonably requires in order satisfy it that the obligations of this clause 17 have been met; and/or

17.5.2 notify the Council in writing without delay where the Contractor is made aware of any concerns or allegations against one or more members of the Contractor's or Sub-Contractor's Staff that could or would impact or affect the health, safety of wellbeing of any person in receipt of the Services or any associated person, following which the Council shall have the right to serve a Remediation Notice.

17.6 The Contractor shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out a Regulated Activity or who may otherwise present a risk to service users.

17.7 The Contractor shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to any service users, children or vulnerable adults.

17.8 The Contractor shall comply with any safeguarding policies of which it is made aware of during the Term by the Council.

- 17.9 The Contractor shall, where required by the Council, have and maintain relevant safeguarding policies and supply a copy of the same to the Council upon request.
- 17.10 The Contractor shall, as and when required, work with other agencies and share information with the same to ensure the safeguarding and promotion of the welfare of children and vulnerable adults subject always to the duty of the Contractor to comply with all relevant Law, statutory instruments rules regulations orders or directives.

## **18 FRAUD AND PROHIBITED ACTS**

- 18.1 The Contractor shall notify the Council immediately where it becomes aware of any instance of suspected fraud or financial irregularity in the delivery of the Purchase Order including, but not limited to:

- 18.1.1 collusion with Council Staff;
- 18.1.2 computer fraud;
- 18.1.3 the submission to the Council of inaccurate, incomplete, misleading or falsified management information; and
- 18.1.4 fraud involving awarding bodies

provided that nothing in this clause 18.1 shall require the Contractor to do anything which may cause it to infringe any Law.

- 18.2 Where the Council has reasonable cause to suspect that fraud or irregularity has occurred in relation to the delivery of the Purchase Order and any payments made under the Purchase Order or in relation to any other agreement made between the Council and the Contractor:

- 18.2.1 the Council shall have the right of access to any premises of the Contractor at any reasonable time with or without notice to examine and remove or copy all relevant documents and records and to interview any Staff of the Contractor or Sub-Contractors engaged to deliver the Services (or any part); and
- 18.2.2 the Council shall have the right to suspend payments of the Charges or any monies owed under any other agreement made between the Council and the Contractor until such time as the Council's concerns are abated; and
- 18.2.3 a Remediation Notice can be served.

- 18.3 The Contractor warrants that no commission has been paid or agreed to be paid by the Contractor or on the Contractor's behalf or to the Contractor's knowledge unless, before the Purchase Order was issued, particulars of any such commission and of the terms and conditions of any agreement for the payment thereof were disclosed in writing to and authorised by the Council.

- 18.4 The Contractor shall not offer nor give nor agree to give any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or performance of these Terms and Conditions or any other agreement with the Council or for showing or forbearing to show favour or disfavour to any person in relation to these Terms and Conditions.
- 18.5 The Contractor:
- 18.5.1 shall not, and shall procure that any Staff, agents, contractors or Sub-Contractors of the Contractor shall not, in connection with the Purchase Order commit a Prohibited Act;
  - 18.5.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the issuing of the Purchase Order, excluding any arrangement of which full details have been disclosed in writing to the Council before the issuing of the Purchase Order.
  - 18.5.3 shall, if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010;
  - 18.5.4 shall, if required by the Council, have an anti-bribery policy (which shall be disclosed to the Council) to prevent any Staff, agents, contractors or sub-contractors of the Contractor from committing a Prohibited Act and shall enforce it where appropriate.
- 18.6 If any breach of this clause 18 is suspected or known, the Contractor shall notify the Council immediately and respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation.
- 18.7 The Contractor acknowledges and agrees that the Council shall be entitled to share information relating to the Contractor or relating to the Purchase Order with any department, office or agency of the Government or any auditor appointed by the Council or the aforementioned public

bodies for the purpose of data matching and fraud prevention (as more particularly described at:

[https://www.oldham.gov.uk/downloads/download/1262/privacy\\_notices](https://www.oldham.gov.uk/downloads/download/1262/privacy_notices))

18.8 Despite clause 14, any dispute relating to:

18.8.1 the interpretation of this clause 18; or

18.8.2 the amount or value of any gift, consideration or commission,

shall be determined by the Council and its decision shall be final and conclusive.

## **19 DATA PROTECTION**

19.1 The Contractor shall at all times comply with and maintain data in accordance with the Data Protection Legislation.

19.2 If at any time during the Term the Contractor is determined to be a Processor (as defined in the DPA 2018) the Contractor shall enter into a data processor agreement:

(a) with the Council on the Council's standard terms and conditions; and

(b) with a Sub-Contractor on terms substantially similar to the terms of the data processor agreement entered into with the Council

with each agreement governing Processing and Data Subject Requests.

19.3 If at any time during the Term the Contractor is determined to be a Joint Controller (as defined in the UK GDPR) with the Council, the Contractor shall enter into a data sharing agreement with the Council, which shall govern all Processing and Data Subject Requests. These Terms and Conditions shall govern any FOIA or EIR requests or the exercising of any rights relating to the Data Protection Legislation.

19.4 In the event that the Contractor is a "Controller" (as defined in the UK GDPR) the Contractor shall at all times be responsible to third parties for any Personal Data held, including the individuals to whom the Personal Data relates and the Contractor shall at all times during the Term have appropriate data protection and information security policies in place which demonstrate how the Contractor will meet its responsibilities under the Data Protection Legislation and any other relevant legislation, code of practice and guidance issued from time to time.

19.5 When recording Personal Data, in whatever format, each piece of information must contain the date created or recorded and whether it comprises fact, opinion, hypotheses or a mixture of these together with the identity of the person recording the information.

- 19.6 The Contractor acknowledges and agrees that the Council shall be entitled to share any Personal Data supplied by the Contractor to the Council under the Purchase Order where it has a lawful and legitimate reason for doing so.
- 19.7 The Contractor shall only share Personal Data with a third party where it has a lawful and legitimate reason for doing so.
- 19.8 On expiry of the Term or earlier termination of the same, the Contractor shall, at its own cost, immediately provide to the Council or nominated third party, written details of all Personal Data held by the Contractor relating to the Purchase Order. The Contractor shall then, at its own expense, transfer to the Council or nominated third party all Personal Data requested in writing by the Council or nominated third party. Personal Data shall be transferred in a secure manner in compliance with the Data Protection Legislation and any reasonable instructions issued by the Council or nominated third party, including instructions relating to timescales. Where legally required to do so, the Contractor shall be responsible for obtaining any individual consents needed to lawfully transfer Personal Data to the Council or nominated third party.
- 19.9 The Contractor shall indemnify and keep indemnified the Council against any Losses whatsoever incurred in respect of or in any way arising directly out of a breach by the Contractor of this clause 19.

## **20 HEALTH AND SAFETY**

- 20.1 The Contractor shall notify the Council of any health and safety hazards which may arise in connection with the Purchase Order.
- 20.2 The Contractor shall:
- 20.2.1 comply with all relevant health and safety legislation and any relevant guidance issued by the Council or a Regulatory Body;
  - 20.2.2 co-operate with and provide information to the Council to give assurance that adequate arrangements exist to ensure the health and safety of any members of the public affected by the provision of the Supplies, Works or Services, to enable the Council to review any incidents involving members of the public and to assist the Council to comply with its health and safety policies;
  - 20.2.3 carry out health and safety risk assessments in respect of the provision of the Supplies, Works or Services, as and when necessary;
  - 20.2.4 in relation to the environment in which the Supplies, Works or Services will be delivered, ensure that risks have been reduced to the lowest level practicable;

- 20.2.5 ensure that it employs a sufficient number of Staff competent in health and safety to meet its obligations under the Purchase Order;
- 20.2.6 maintain adequate records in relation to health and safety, including but not limited to:
- (a) assessments of Staff/environment suitability;
  - (b) agreements or commitments on health and safety with Staff;
  - (c) information relating to potential harm to any members of the public.
- 20.3 In the event that any part of the Supplies, Works or Services is provided in an environment outside the direct control of the Contractor, the Contractor shall carry out a risk assessment of the environment to ensure its suitability.

## **21 CORPORATE REQUIREMENTS**

### **Corporate Policies**

- 21.1 The Council shall, where appropriate, supply to the Contractor details of any relevant policies (including but not limited to any safeguarding policies) and rules under the Purchase Order and on receipt of the same the Contractor shall comply with the policies.

### **Branding**

- 21.2 In the event that the Contractor is authorised to use any of the Council's brands or logos, it shall comply with all instructions issued from time to time by the Council. The Contractor shall not be entitled to reproduce or copy any brand or logo of the Council's without written consent.

## **22 INTELLECTUAL PROPERTY RIGHTS**

- 22.1 Neither Party shall cause or permit anything which may damage or endanger the Existing Intellectual Property Rights of the other or assist or allow others to do so.
- 22.2 Save where expressed to the contrary in these Terms and Conditions or any other terms and conditions referenced or incorporated within the Purchase Order, any Intellectual Property Rights created by the Contractor in connection with the Purchase Order shall vest in the Council and the Council shall be entitled to use and reproduce all materials originated by the Contractor (including basic factual data) for any purpose whatsoever whether in connection with the Purchase Order or otherwise. The Contractor shall not be liable in any way for use by the Council of any materials generated under or in respect of the Purchase Order for any

purpose other than that for which the same was prepared and provided by the Contractor.

- 22.3 The Contractor warrants to the Council that to the best of its knowledge it will not infringe, in whole or in part, any third party Intellectual Property Rights and agrees to indemnify the Council and its Staff and agents and keep fully and effectually indemnified the Council and its Staff and agents from and against all Losses arising directly or indirectly out of any act of the foregoing, where such act is, or is alleged to be, an infringement of a third party's Intellectual Property Rights.
- 22.4 The Contractor grants to the Council a non-exclusive transferable perpetual irrevocable licence to use and share with any relevant Regulatory Body any management information or quality assessment and any other information supplied to the Council under the Purchase Order for the purposes of the normal operational activities of the Council.

## **23 EMPLOYMENT EXIT PROVISIONS**

- 23.1 In the event of a Relevant Transfer the Council or a Replacement Provider will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date and the Contractor indemnifies and keeps the Council indemnified against any Employment Liabilities and costs incurred in respect of the Relevant Employees prior to the Service Transfer Date.
- 23.2 The Contractor shall and shall procure that any Sub-Contractor shall, within 14 days of receipt of a written notice from the Council:
- (a) that the Council intends to either re-tender the Services or deliver the Services itself following expiry of the Purchase Order (or earlier termination)
  - (b) of termination of the Purchase Order
  - (c) a written notice under the provisions of TUPE

provide in respect of any person engaged or employed by the Contractor or any Sub-Contractor in the provision of the Services, the Staffing Information together with any other information required by the Council, including information as to the application of TUPE to the Staff. The Contractor shall notify the Council of any material changes to this information as and when they occur.

- 23.3 At least 28 days prior to the Service Transfer Date, the Contractor shall supply to the Council, or at the Council's direction to the Replacement Provider, such information as is required by the Council to identify which of the Provider's and the Sub-Contractor's Staff are Relevant Employees.
- 23.4 The Council shall be permitted to use and disclose the Staffing Information and any other information requested and supplied for informing any tenderer or other prospective Replacement Provider for any

services that are substantially the same type of services as the Services (or any part of the Services).

- 23.5 The Contractor warrants to the Council and the Replacement Provider that the Staffing Information and any other information requested and supplied (the "TUPE Information") will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those who may have rights in relation to the Services under TUPE.
- 23.6 The Contractor shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under the Data Protection Legislation.
- 23.7 The Council regards compliance with this clause 23 as fundamental to the Purchase Order. In particular, failure to comply with clause 23.2 in respect of the provision of accurate information about the Relevant Employees shall entitle the Council to suspend payment of the Charges indefinitely or until such information is provided. The maximum sum that may be retained under this clause 23.7 shall not exceed an amount equivalent to the Charges that would be payable in the three month period following the Contractor's failure to comply with clause 23.2.
- 23.8 Any change to the TUPE Information which would increase the total employment costs of those of the Contractor's Staff delivering the Services (or any part) in the six months prior to the expiry of the Term or during any termination notice period shall not (so far as reasonably practicable) take place without the Council's prior written consent, unless such changes are required by Law. The Contractor shall supply to the Council full particulars of such proposed changes and the Council shall be afforded reasonable time to consider them.
- 23.9 In the six months prior to expiry of the Term or during any termination notice period, the Contractor shall not and shall procure that any Sub-Contractor shall not materially increase or decrease the total number of those of the Contractor's Staff delivering the Services (or any part), their remuneration, or make any other change in the terms and conditions of those employees without the Council's prior written consent.
- 23.10 The Contractor shall indemnify and keep indemnified in full the Council and every Replacement Provider against all Employment Liabilities relating to:
- (a) any person who is or has been employed or engaged by the Contractor or any Sub-Contractor in connection with the provision of any of the Services;
  - (b) any trade union or staff association or employee representative
- arising from or connected with any failure by the Contractor and/or any Sub-Contractor to comply with any legal obligation, whether under

regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.

23.11 The relevant parties shall co-operate to ensure that any requirement to inform and consult with the Staff and Staff representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.

23.12 The Contracts (Rights of Third Parties) Act 1999 shall apply to clause 24.11, to the extent necessary to ensure that any Replacement Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Provider by the Contractor or the Council in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

23.13 Despite clause 23.12, it is expressly agreed that the Parties may by written agreement rescind or vary any of these Terms and Conditions without the consent of those persons who have the right to enforce this clause 23 even though such rescission or variation may extinguish or alter entitlement under that right.

## **24 CHANGES**

### **Variations**

24.1 These Terms and Conditions may not be released, discharged, supplemented, interpreted, amended, varied, changed or modified in any manner unless agreed in writing and signed by both Parties.

### **Change in Law**

24.2 The Contractor shall neither be relieved of its obligations under the Purchase Order nor be entitled to an increase in the Charges as the result of:

- (a) a General Change in Law; or
- (b) a Specific Change in Law where the effect of that Specific Change in Law on the Supplies, Works or Services is reasonably foreseeable at the commencement of the Term.

24.3 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in clause 24.2(b)), the Contractor shall:

24.3.1 notify the Council as soon as reasonably practicable of the likely effects of that change, including:

- (a) whether any change is required to the Supplies, Works or Services, the Charges or these Terms and Conditions; and

- (b) whether any relief from compliance with the Contractor's obligations is required; and

24.3.2 provide the Council with evidence:

- (a) that the Contractor has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
- (b) as to how the Specific Change in Law has affected the cost of providing the Supplies, Works or Services; and
- (c) demonstrating that any expenditure that has been avoided has been taken into account in amending the Charges.

24.4 Any variation in the Charges or relief from the Contractor's obligations resulting from a Specific Change in Law (other than as referred to in clause 24.2(b)) shall be implemented in writing and recorded in writing in accordance with clause 24.1.

## **25 ASSIGNMENT AND SUB-CONTRACTING**

25.1 The Contractor shall not transfer, sub-contract, delegate or assign, directly or indirectly, any of its rights or obligations under the Purchase Order, except with the written consent of the Council and subject to any terms and conditions that the Council may specify. Where the Council agrees to the Contractor sub-contracting the performance of any of its obligations, this shall not relieve the Contractor from any of its obligations to the Council.

25.2 In the event that any part of the Purchase Order is sub-contracted the Contractor hereby warrants that it:

25.2.1 shall pay all invoices issued to it by its Sub-Contractor(s) within 30 days of receipt of a valid invoice; and

25.2.2 will make it a term of any contract entered into with a Sub-Contractor that the Sub-Contractor complies with the terms of these Terms and Conditions or any terms and conditions referenced or incorporated within the Purchase Order.

## **26 NOTICES**

Any notice required to be given under the Purchase Order may be given by sending the same by actual delivery, special delivery or recorded delivery at the address of the Party concerned specified in the Purchase Order. If sent by special delivery or recorded delivery, the notice shall, subject to proof to the contrary, be deemed to have been received forty-eight (48) hours after the date of posting (excluding Saturday and Sunday and Public Holidays in England and Wales).

## **27      *WAIVER***

No failure or delay on the part of the Council to enforce any provision of the Purchase Order shall result in the Council being taken to have waived or being precluded permanently or temporarily from enforcing or relying on any provision of the relevant terms and conditions and no right, power or remedy available under the Purchase Order is exclusive of any other right, power or remedy available to the Council.

## **28      *CONFLICT OF INTEREST***

The Contractor shall, and, where applicable, shall procure that its Staff and its Sub-Contractor's Staff, shall, take appropriate steps to ensure that there is no conflict of interest between its interests and its responsibilities under the Purchase Order.

## **29      *CHANGE OF CONTROL OR OPERATIONS***

- 29.1 The Contractor shall inform the Council of any proposed Change of Control.
- 29.2 If the Council objects to a proposed Change of Control, clause 11.16 will apply.

## **30      *RELATIONSHIP BETWEEN THE PARTIES***

The Purchase Order shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship, a contract of employment, a relationship of principal and agent or other relationship between the Parties other than the contractual relationship expressly provided for in these Terms and Conditions or any terms and conditions referenced or incorporated within the Purchase Order. Nothing in these Terms and Conditions or any terms and conditions referenced or incorporated within the Purchase Order shall be construed as an appointment of the Contractor as the exclusive provider of supplies, works or services to the Council.

## **31      *ENTIRE AGREEMENT***

These Terms and Conditions and any terms and conditions referenced or incorporated within the Purchase Order supersede all prior agreements, arrangements, negotiations, representations and undertakings, whether written or oral, between the Parties and constitutes the entire agreement between the Parties relating to the subject matter of the Purchase Order and, unless agreed otherwise in writing, any terms and conditions specified, stipulated or referred to by the Contractor shall not be incorporated in these Terms and Conditions, except that this clause 31 shall not exclude liability in respect of any fraudulent misrepresentation.

### **32 GOVERNING LAW**

The Purchase Order shall be governed by the laws of England and Wales and, subject to clause 14, the Parties submit to the exclusive jurisdiction of the courts of England.

### **33 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

Save where expressed to the contrary, no third party has any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

### **34 SEVERABILITY**

If any provision of these Terms and Conditions or any terms and conditions referenced or incorporated within the Purchase Order is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of its provisions shall continue in full force and effect as if these Terms and Conditions or any terms and conditions referenced or incorporated within the Purchase Order had been executed with the invalid, illegal or unenforceable provision omitted.

### **35 REMEDIES CUMULATIVE**

Except where expressly specified otherwise in these Terms and Conditions or any terms and conditions referenced or incorporated within the Purchase Order, all remedies available to either Party for breach of these Terms and Conditions or any terms and conditions referenced or incorporated within the Purchase Order are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

### **36 SURVIVAL OF TERMS**

On termination or expiry of the Purchase Order clauses 6.18 – 6.23 (inclusive), 6.29, 7.3, 7.6, 7.8, 7.9, 8.5 – 8.8 (inclusive), 9, 10, 12, 13, 14, 15, 19, 22, 23, 25.2, 26, 27, 31, 32, 33 and 35 of these Terms and Conditions shall survive and continue in full force and effect.