

CITY OF YORK COUNCIL GENERAL CONDITIONS OF PURCHASE FOR GOODS AND SERVICES (“the Conditions”)

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This document contains the terms and conditions for the conduct of the business of the Council. It is intended to be used in conjunction with the Purchase Order placed by the Council for the Goods and/or Services described in the Purchase Order. A variation to these Conditions may be set out in the Purchase Order and will take effect as if it were set out in these Conditions.

1. DEFINITIONS

“Confidential Information” means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which

- (a) is known by the receiving Party to be confidential;
- (b) is marked as or stated to be confidential; or
- (c) ought reasonably to be considered by the receiving Party to be confidential;

“Conflict of Interest” means a direct or indirect conflict between the financial, professional or personal interests of the Supplier or the Supplier Staff and the duties owed to the Council under this Contract, in the reasonable opinion of the Council;

“Contract” means the agreement between the Council and the Supplier comprising the Purchase Order, the Specification (if any) and the Conditions;

“Council” means the Council of the City of York, its designated agents and associated companies.

“Council Data” means any:

- (a) data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible

media;

(b) Personal Data for which the Council is a, or the, Data Controller;
or

(c) any meta-data relating to categories of data referred to in (a) or (b) that:

(i) is supplied to the Supplier by or on behalf of the Council;
and/or

(ii) that the Supplier is required to generate, process,
handle, store or transmit under this Contract;

“DPA 2018” means the Data Protection Act 2018;

“Data Protection Legislation” means:

(a) the UK GDPR;

(b) the DPA 2018 to the extent that it relates to processing of
Personal Data and privacy; and

(c) all applicable Law about the processing of Personal Data and
privacy;

“EIR” means the Environmental Information Regulations 2004
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” means any event or occurrence which is
outside the reasonable control of the Party concerned and which is
not attributable to any act or failure to take preventative action by
that Party, including fire; flood; violent storm; pestilence; explosion;
malicious damage; armed conflict; acts of terrorism; nuclear,
biological or chemical warfare; or any other disaster, natural or man-
made, but excluding:

(a) any industrial action occurring within the Supplier’s or any Sub-
Contractor’s organisation; or

(b) the failure by any Sub-Contractor to perform its obligations under
any Sub-Contract;

“FOIA” means the Freedom of Information Act 2000 together with
any guidance and/or codes of practice issued by the Information

Commissioner or relevant Government department in relation to such legislation;

“Goods” means any such goods as are to be supplied by the Supplier as detailed in the Purchase Order or associated Specification;

“Insolvency Event” means each and any of the following in relation to the Supplier:

- (a) any action (corporate or otherwise), legal proceedings or other procedure or step is taken by any person in any jurisdiction in relation to or with a view to: (i) the winding up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Supplier (except that no right to terminate will arise in respect of any procedure commenced for the purpose of a solvent amalgamation or reconstruction); (ii) the appointment of a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator, nominee, supervisor or similar officer in respect of the Supplier or any of its assets; (iii) the enforcement of any security over any assets of the Supplier; or (iv) the expropriation, attachment, sequestration, distress or execution over or affecting any material asset of the Supplier;
- (b) the Supplier is unable to pay its debts as they fall due or is insolvent; or
- (c) the Supplier enters into a composition or arrangement with its creditors or any class of them;

“Law” means any applicable Act of Parliament, sub-ordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, right within the meaning of the European Union (Withdrawal) Act 2018 as amended by the European Union (Withdrawal Agreement) Act 2020, bye-law, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body of which the Supplier is bound to comply;

“Personal Data” takes the meaning given in the UK GDPR and where used in this Contract refers to any such Personal Data processed by the Supplier on behalf of the Council under this Contract;

“Price” means the price (exclusive of any applicable VAT) for the

Goods and/or Services as specified in the Purchase Order which is inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods and/or Services and any duties, imports or levies payable to the Supplier by the Council under the Contract for the full and proper performance by the Supplier of its obligations under the Contract;

“Purchase Order” means the Council’s Purchase Order for the Goods and/or Services referring to the Conditions on its face;

“Services” means any such services as to be provided by the Supplier, as detailed in the Purchase Order or associated Specification.

“Specification” means any document supplied by the Council setting out details of the Council’s requirements;

“Sub-Contract means any contract or agreement (or proposed contract or agreement), other than this Contract, pursuant to which a third party:

- (a) provides the Goods and/or Services (or any part of them);
- (b) provides facilities or services necessary for the provision of the Goods and/or Services (or any part of them); and/or
- (c) is responsible for the management, direction or control of the provision of the Goods and/or Services (or any part of them);

“Sub-Contractor” means any third party with whom:

- (a) the Supplier enters into a Sub-Contract; or
- (b) a third party under (a) above enters into a Sub-Contract, or the servants or agents of that third party;

“Supplier” means the person, firm or company to whom the Purchase Order is addressed;

“Supplier Staff” means any individual engaged, directly or indirectly, or employed by the Supplier or any Sub-Contractor, in the management or performance of the Supplier's obligations under this Contract;

“Transparency Information” means:

- (a) any information permitted or required to be published by the Procurement Act 2023, any regulations published under it, and any Procurement Policy Notes, subject to any exemptions set out in Sections 94 and 99 of the Procurement Act 2023 which shall be determined by the Council;
- (b) any information about this Contract, including the content of this Contract requested and required to be disclosed under FOIA or the EIRs, and any changes to this Contract agreed from time to time, subject to any relevant exemptions, which shall be determined by the Council;
- (c) any information which is published in accordance with guidance issued by His Majesty's Government, from time to time; and
- (d) any of the information that the Council is permitted or required to publish by the Procurement Act 2023, any regulations published under it and any Procurement Policy Notes, relating to the performance of the Supplier, subject to any exemptions set out in Sections 94 and 99 of the Procurement Act 2023, or under the provisions of FOIA, which shall be determined by the Council;

“UK GDPR” takes the meaning given in section 3(10) (supplemented by section 205(4)) of the DPA 2018; and

“Working Day” means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

2. THE CONTRACT

- 2.1 The Purchase Order constitutes an offer by the Council to purchase the Goods and or acquire the Services in accordance with the Specification (if any) and subject to the Conditions.
- 2.2 The Purchase Order will lapse unless unconditionally accepted by the Supplier within seven days of its date either in writing, or by delivery of the Goods or any part of the Goods, or by commencement of supply of the Services to the appropriate contact named on the Purchase Order.
- 2.3 The Conditions govern the Contract between the Council and the Supplier. No other conditions, whether introduced before or after the date of the Purchase Order shall have any relevance to this Contract. Nothing in this agreement shall be deemed to constitute a

partnership between the Parties nor constitute any Party as the agent of the other Party.

3. THE PRICE

3.1 The Price of the Goods and/or Services shall be as set out in the Purchase Order other than value added tax. Value added tax shall be payable in addition to the Price.

3.2 The Price shall be fixed.

4. DELIVERY

4.1 Goods shall be delivered to, and the Services shall be performed at the address for delivery, not later than the date specified on the Purchase Order. Where access is required the Supplier shall at all times comply with the reasonable requirements of the Council's premises manager.

4.2 Unless otherwise specified in the Purchase Order, where Goods are delivered by the Supplier the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises.

4.3 The Supplier shall indemnify the Council in respect of any actions, suits, claims, demands, losses, charges, costs and expenses which the Council may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Supplier or any of his sub-contractors.

4.4 A packing note quoting the number of the Purchase Order and a description of the Goods must accompany each delivery of Goods and must be displayed prominently. All containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.

4.5 The Council shall not be obliged to:

4.5.1 return to the Supplier any packaging or packing materials for the Goods, whether or not any Goods are accepted by the Council; or

4.5.2 accept or pay for any Goods delivered in excess of the quantity ordered.

5. QUALITY OF GOODS

- 5.1 The Goods shall be in accordance with the Purchase Order and the Specification (if any), new, and free from defects in design, workmanship and materials.
- 5.2 If the Goods are sold by description, the Goods will correspond with the description, notwithstanding (if it be the case) that the sale is also a sale by sample.
- 5.3 The Goods shall be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 5.4 The Goods shall be fit for any particular purpose which the Council has made known, expressly or by implication, to the Supplier and the Council shall be deemed to have relied on the Supplier's skill and judgment.
- 5.5 The Goods will comply with all Laws.

6. QUALITY OF SERVICES

- 6.1 The Services shall be supplied to the Council in accordance with and for the duration specified in the Purchase Order and the Specification (if any).
- 6.2 The Supplier shall carry out the Services:
 - 6.2.1 in a proper, skilful and workmanlike manner with reasonable care and skill and in accordance with industry best practice; and
 - 6.2.2 in accordance with the Contract and the reasonable instructions of the Council (including any Council Policies specified in the Purchase Order);
- 6.3 The Supplier shall at all times make available sufficient personnel and all other resources as are required for the successful and timely completion of the Services.
- 6.4 The Services shall at all times be supplied by appropriately supervised, experienced, qualified, trained and competent personnel.
- 6.5 The Council shall have the right to decide whether any person is to be admitted to or is to be removed from the Council's premises or is not to become involved in or is to be removed from involvement in the performance of the Contract. Any such decision shall be final

and conclusive.

7. ACCEPTANCE, INSPECTION AND REJECTION

- 7.1 The Supplier shall permit the Council to inspect and test the Goods during manufacture, processing or storage at the premises of the Supplier or any third party before dispatch, and the Supplier shall provide the Council with all facilities reasonably required for such inspection and testing.
- 7.2 If, on inspection, the Goods or any part of them are found not to be in accordance with the Contract, the Council may, by notice reject the Goods or the relevant part of the Goods. No failure to make a complaint at the time of such inspection or tests and no approval given during or after such tests or inspections shall constitute a waiver by the Council of any rights or remedies in respect of the Goods and the Council reserves the right to reject the Goods in accordance with condition 7.3.
- 7.3 The Council may reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until the Council has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.
- 7.4 If the Goods or any part of the Goods are rejected, in addition to any other right or remedy available to the Council, the Supplier shall remove them at the Supplier's own risk and expense within five working days of notification and shall, at the Council's sole discretion within seven working days, replace the Goods or refund the total value of the Goods (including delivery charges) to the Council.
- 7.5 For the avoidance of doubt the Council's signature on the Supplier's delivery note shall signify delivery and not that the Goods have been inspected and accepted.

8. COMPLIANCE WITH LAW

- 8.1 In carrying out its obligations under the Contract the Supplier shall observe and perform all requirements made applicable to the supply of goods or services under the Contract by Law.

9. PROPERTY AND RISK

- 9.1 Risk in the Goods shall, without prejudice to any of the rights or remedies of the Council under this Contract (including the Council's right to reject any Goods which are found not to be in accordance with the Contract), pass to the Council on delivery.
- 9.2 Title in the Goods shall, without prejudice to any of the rights or remedies of the Council under this Contract (including the Council's right to reject any Goods which are found not to be in accordance with the Contract), pass to the Council on delivery (or payment, if earlier).
- 9.3 If the Goods are rejected following inspection, title and risk shall revert to the supplier.
- 9.4 If payment is made before delivery:
- 9.4.1 the Supplier shall forthwith appropriate the Goods to the Council by storing them separately from other similar goods belonging to the Supplier and by labelling them clearly as the property of the Council, and
 - 9.4.2 title in the Goods shall pass to the Council upon appropriation, but
 - 9.4.3 risk shall remain with the Supplier until delivery in accordance with condition 9.1

10. INDEMNITY AND INSURANCE

- 10.1 The Supplier shall indemnify the Council against all losses, damage, injury or expense, and injury to or death of any person, howsoever caused by or arising from, either directly or indirectly;
- 10.1.1 in the consequence of the supply, installation and/or commissioning of the Goods or the late or purported supply, installation and/or commission of the Goods or
 - 10.1.2 from the performance or non-performance by the Supplier of its obligations under the Contract;
 - 10.1.3 from any liability under the Consumer Protection Act 1987 in respect of the Goods;
 - 10.1.4 from any acts or omissions by the Supplier, the Supplier's employees, agents or subcontractors including but not limited to a breach of the provisions of the Contract.

10.2 The Supplier shall fully indemnify the Council against any expenses arising from any alleged or actual infringement of any proprietary right including but (not limited to) patents, trademarks, copyrights, intellectual or any of the rights arising from this Contract.

10.3 The Supplier shall maintain satisfactory insurance cover with a reputable insurer in respect of all liabilities, both statutory and contractual, arising from this Contract, to a minimum of £2m or such higher figure as the Council may specify. The Supplier shall produce evidence of such insurance and payment of the current premium to the Council on request.

10.4 The Council, its employees, agents or associated companies shall in no circumstances whatsoever be liable for:

10.4.1 any loss of profits, business, revenue, goodwill, or anticipated savings; or

10.4.2 indirect or consequential loss, howsoever arising from this Contract.

10.5 Neither Party excludes or limits liability to the other Party for:

10.5.1 death or personal injury caused by its negligence; or

10.5.2 fraud or fraudulent misrepresentation; or

10.5.3 any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; or

10.5.4 any other matter in respect of which, as a matter of Law, liability cannot be excluded or limited.

11. PAYMENT

11.1 The Supplier shall invoice the Council for payment within 30 days after delivery of the Goods or completion of the Services unless otherwise agreed in writing. All invoices for the supply of Goods shall be accompanied by proof of delivery. The Council shall pay invoices within 30 days of receipt or, if later, by the date on which the payment falls due in accordance with the invoice. Value added tax where applicable will be shown separately on all invoices as a net extra charge.

11.2 The Authority shall accept for processing any electronic invoice that

complies with the Electronic Invoice Standard, provided that it is valid and undisputed.

11.3 The Electronic Invoice Standard in relation to an electronic invoice means a form that:

11.3.1 complies with the standard for electronic invoicing approved and issued by the British Standards Institution in the document numbered BS EN 16931-1:2017 (Electronic invoicing - Part 1: Semantic data model of the core elements of an electronic invoice); and

11.3.2 uses a syntax which is listed as a syntax that complies with that standard in the document numbered PD CEN/TS 16931-2:2017 (Electronic invoicing - Part 2: List of syntaxes that comply with EN 16931-1) approved and issued by the British Standards Institution;

11.4 The Supplier's invoice must be addressed to City of York Council, West Offices, Station Rise, York YO16GA and shall include the following information:

11.4.1 the name of the invoicing party,

11.4.2 a description of the goods, services or works supplied,

11.4.3 the sum requested,

11.4.4 a unique identification number (Invoice Ref No),

11.4.5 the Purchase Order Number,

11.4.6 the Dates to which the Invoice relates to,

11.4.7 Invoice Date,

11.4.8 Total Net Price & VAT where applicable (broken down),

11.4.9 VAT registration No. (if applicable),

11.4.10 Department that requires the Goods and/or Services.

11.5 The Council shall not be responsible for any delays in payment arising from failure to comply with these invoicing instructions.

11.6 Payment by the Council shall be without prejudice to any rights or remedies available to it under this Contract, or otherwise, and shall not constitute any binding admission by the Council as to the

suitability, quantity, quality or fitness for purpose of Goods received by the Council or satisfactory performance and completion of the Services by the Supplier.

11.7 The Supplier shall indemnify the Council on a continuing basis 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 Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Contract. Any amounts due under this condition 11.7 shall be paid by the Supplier to the Council not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Council.

11.8 The Supplier shall ensure that all Sub-Contractors are paid, in full:

11.8.1 within 30 days beginning with the day on which an invoice is received by the Council in respect of the sum; or

11.8.2 if later, the date by which the payment falls due in accordance with the invoice,

subject to the invoice being verified as valid and undisputed.

11.9 If the invoice is not paid in accordance with the timescales in clause 11.8, the Council is permitted to publish the details of the late payment or non-payment.

12. RECOVERY OF SUMS DUE

12.1 The Council may deduct from any sum due to the Supplier under this Contract, any amounts owed by the Supplier to the Council.

12.2 Any overpayment by the Council, whether of the Price or of VAT or otherwise, shall be a sum of money recoverable by the Council from the Supplier.

13. PUBLICITY

13.1 The Supplier shall not publish or reproduce or arrange press releases or make public statements in connection with the Purchase Order or make use of the name of the Council in any publicity without the Council's prior written approval from the Commercial Procurement Hub who can be contacted at ["procurement@york.gov.uk"](mailto:procurement@york.gov.uk)

14. CONFIDENTIALITY

14.1 Each Party must:

14.1.1 keep all Confidential Information it receives confidential and secure;

14.1.2 not disclose, use or exploit the disclosing Party's Confidential Information without the disclosing Party's prior written consent, except for the purposes anticipated under the Contract; and

14.1.3 immediately notify the disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.

14.2 In spite of clause 14.1, a Party may disclose Confidential Information which it receives from the disclosing Party to the extent that it is or was:

14.2.1 already in the possession of the other free of any duty of confidentiality on the date of its disclosure;

14.2.2 in the public domain other than as a result of a breach of clause 14.2.1;

14.2.3 required to be disclosed:

(a) pursuant to Law, or the rules of any recognised exchange on which the securities of a Party are or are to be listed;
or

(b) in connection with proceedings before a court of competent jurisdiction or under any court order or for the purpose of receiving legal advice,

but only to the extent and for the purpose of that disclosure.

14.3 The Supplier may disclose Confidential Information on a confidential basis to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations under the Contract. The Supplier shall remain responsible at all times for compliance with the confidentiality obligations set out in this Contract by the persons to whom disclosure has been made.

14.4 The Council may disclose Confidential Information in any of the following cases:

- 14.4.1 on a confidential basis to the employees, agents, consultants and contractors of the Council;
 - 14.4.2 on a confidential basis to any successor body that the Council transfers or proposes to transfer all or any part of its business to;
 - 14.4.3 if the Council (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;
 - 14.4.4 where requested by Parliament; and
 - 14.4.5 under clauses 11.9 (ability to publish where sub-contractor not paid) and 23 (FOIA).
- 14.5 For the purposes of clauses 14.2 to 14.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in clause 14.
- 14.6 Transparency Information and any information which is disclosed under clause 23 is not Confidential Information.

15. TERMINATION

15.1 The Council may:

- 15.1.1 terminate this Contract at any time without reason by giving the Supplier not less than ninety (90) days' notice (unless a different notice period is set out in the Purchase Order) and, if it is terminated, Clause 15.3 applies.
- 15.1.2 immediately terminate this Contract by written notice to the Supplier if:
 - (a) the Supplier is in breach of any of the provisions of this Contract; and, in the case of a breach capable of being remedied, has not remedied the breach within thirty days of notice to do so; or
 - (b) an Insolvency Event occurs in relation to the Supplier;
 - (c) the Supplier is an individual:
 - (i) if he shall be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or ceases, or threatens to cease,

- to carry on business; or
- (ii) if the Supplier dies; or
- (d) the Supplier is convicted of a criminal offence; or
- (e) for whatever reason, the Supplier is bringing, or may bring, bad publicity or disrepute upon the Council
- (f) in accordance with Section 78, and/or Section 79 (where applicable), of the Procurement Act 2023, and provided that the requirements of Section 78(7) of the Procurement Act 2023 have been met, where:
- (i) the Council considers that the Contract was awarded or modified in material breach of the Procurement Act 2023 or regulations made under it;
 - (ii) the Supplier has, since the award of the Contract become an excluded supplier or excludable supplier (including by reference to an associated person) as set out in Section 57 of the Procurement Act 2023 and provided that the conditions in Sections 78(8) (where applicable) of the Procurement Act 2023 have been met; and/or
 - (iii) any Sub-Contractor has, since the award of the Contract become an excluded supplier or excludable supplier as set out in Section 57 of the Procurement Act 2023 and provided that the conditions in Section 78(3) to 78(8) of the Procurement Act 2023 have been met;
- (g) the Supplier fails to enter into a legally binding agreement with any Sub-Contractor in accordance with Section 72 of the Procurement Act 2023; and/or
- (h) where any Sub-Contractor has, since the award of the Contract, become an excluded supplier or excludable supplier as defined in Section 57 of the Procurement Act 2023, provided that prior to exercising its right of termination under this Clause 15.1.2(h) the Council:
- (i) has notified the Supplier of its intention to terminate under this Clause, and why the Council has decided to terminate the Contract;

- (ii) has given the Supplier reasonable opportunity to make representations about whether this Clause applies and the Council 's decision to terminate; and
 - (iii) has given the Supplier a reasonable opportunity to end its Sub-Contract with the excluded or excludable supplier, and if necessary, find an alternative Sub-Contractor.
- (i) the Supplier has offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not done any action in relation to the obtaining or execution of this or any other Contract with the Council, or for showing or refraining to show favour or disfavour to any person in relation to this or any other Contract with the Council, if the like acts shall have been done by any person employed by the Supplier or acting on his behalf (whether with or without the knowledge of the Supplier), or
- (j) if, in relation to this or any other Contract with the Council, the Supplier or any person employed by him or acting on his behalf has committed an offence under the Bribery Act 2010.

15.2 The Supplier may terminate this Contract:

15.2.1 on giving the Council thirty (30) days' written notice where the Council is in breach of clause 11.1 (Payment) and the Council has failed to rectify the breach within thirty (30) days of receiving written notice from the Provider specifying such breach and requesting it to be remedied; or

15.2.2 in accordance with clause 19.5 (Insolvency of private sector successor body) or clause 34 (Force Majeure).

15.3 Where the Council terminates this Contract under Clause 15.1.1 or the Supplier terminates this Contract under Clause 15.2:

15.3.1 the Council must promptly pay any outstanding amount of the Price incurred to the Supplier;

15.3.2 the Council must pay the Supplier reasonable committed and unavoidable losses as long as the Supplier provides a fully

itemised and costed schedule with evidence – the maximum value of this payment is limited to the total sum payable to the Supplier if this Contract had not been terminated; and

15.3.3 Clauses 15.4.2 to 15.4.8 apply.

15.4 If the Contract is terminated by the Council under clause 15.1.2:

15.4.1 the Supplier is responsible for the Council's reasonable costs of procuring replacement Goods and/or Services for the rest of the Contract period as set out in the Purchase Order;

15.4.2 neither Party shall have any further obligation to the other under the Contract;

15.4.3 the Council shall be liable to pay to the Provider only such elements of the Price, if any, that have properly accrued in accordance with the Contract or the affected part of the Contract up to the time of termination;

15.4.4 the Council's payment obligations under the terminated Contract stop immediately;

15.4.5 the Supplier shall refund any payment made by the Council in respect of any part of the Contract which has not been performed at the date of termination;

15.4.6 the Supplier must promptly delete or return the Council Data except where required to retain copies by Law, other than Council Data (i) that is Personal Data in respect of which the Supplier is a Controller; and (ii) in respect of which the Supplier has rights to hold the Council Data independently of this Contract;

15.4.7 the Supplier shall return to the Council any items belonging to the Council in its possession (except for any copies required by the Supplier for statutory purposes); and

15.4.8 the Supplier must, at no cost to the Council, co-operate fully in the handover and re- procurement (including to a replacement Supplier).

15.5 Termination of this Contract shall not prejudice or affect:

15.5.1 the rights or liabilities of the Parties which have accrued on or before termination; and

15.5.2 the continuance in force of any conditions of the Contract which expressly or by their implication survive termination of this Contract.

16. WAIVER

16.1 Failure on the part of the Council at any time to enforce any provision of this Contract shall not affect the Council's rights at a later date to require performance of the Contract nor shall a waiver of any breach be taken or held to be a waiver of any subsequent breach of any provision.

17. GIFTS AND INDUCEMENTS

17.1 The Supplier shall not give or offer to any of the Council's staff, employees or agents, any gift or inducement or otherwise commit any offence under the Bribery Act 2010 whatsoever in relation to this or any other Contract between the Council and the Supplier.

18. HEALTH AND SAFETY

18.1 The Supplier shall comply at all times with the requirements of the Health and Safety at Work etc. Act 1974 and all subsequent amendments thereto, the Council's Health and Safety Guidance Notes and any health and safety or related instructions which may be issued to the Supplier by the Council at any time.

19. ASSIGNMENT AND SUB-CONTRACTING

19.1 The Supplier shall not transfer, novate or assign directly or indirectly to any person or persons whatsoever any portion of the Contract without the Council's written consent, such consent to be obtained from the Commercial Procurement Hub. Requests should be e-mailed to "procurement@york.gov.uk".

19.2 The Supplier cannot sub-contract this Contract or any part of it without the Council's prior written consent. The Supplier shall provide the Council with information about the Sub-Contractor as it reasonably requests. The decision of the Council to consent or not will not be unreasonably withheld or delayed. If the Council does not communicate a decision to the Supplier within ten

(10) Working Days of the request for consent then its consent will be deemed to have been given. The Council may reasonably withhold its consent to the appointment of a Sub-Contractor if it considers

that:

19.2.1 the appointment of a proposed Sub-Contractor may prejudice the provision of the Goods and/or Services or may be contrary to its interests;

19.2.2 the proposed Sub-Contractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers;

19.2.3 the proposed Sub-Contractor employs unfit persons; and/or

19.2.4 the proposed Sub-Contractor is an excluded or excludable supplier within the meaning of the Procurement Act 2023 and any associated regulations.

19.3 The Council can assign, novate or transfer its Contract or any part of it to any public or private sector body which performs the functions of the Council.

19.4 When the Council uses its rights under Clause 19.3 the Supplier must enter into a novation agreement in the form that the Council specifies.

19.5 The Supplier can terminate this Contract novated under Clause 19.3 to a private sector body that is experiencing an Insolvency Event.

19.6 The Supplier remains responsible for all acts and omissions of the Supplier Staff as if they were its own.

19.7 If at any time the Council asks the Supplier for details about Sub-Contractors, the Supplier must provide details of Sub-Contractors at all levels of the supply chain including:

19.7.1 their name;

19.7.2 the scope of their appointment;

19.7.3 the duration of their appointment;

19.7.4 a copy of the Sub-Contract; and

19.7.5 whether the Supplier considers that an exclusion ground within the meaning of the Procurement Act 2023 and any associated regulations does or may apply to the Sub-Contractor.

19.8 No sub-contracting by the Supplier shall in any way relieve the

Supplier of any of his responsibilities under the Contract.

19.9 The Supplier must exercise due skill and care when it selects and appoints Sub-Contractors.

19.10 For Sub-Contracts in the Supplier's supply chain entered into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract:

19.10.1 where such Sub-Contracts are entered into after the Start Date, the Supplier will ensure that they all contain provisions that; or

19.10.2 where such Sub-Contracts are entered into before the Start Date, the Supplier will take all reasonable endeavours to ensure that they all contain provisions that:

(a) allow the Supplier to terminate the Sub-Contract if the Sub-Contractor fails to comply with its obligations in respect of environmental, social or employment Law; and

(b) require that all Sub-Contractors are paid:

(i) before the end of the period of 30 days beginning with the day on which an invoice is received by the Supplier or other party in respect of the sum; or

(ii) if later, the date by which the payment falls due in accordance with the invoice,

subject to the invoice being verified by the party making payment as valid and undisputed;

(c) require the party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion and notify the Sub-Contractor without undue delay if it considers the invoice invalid or it disputes the invoice; and

(d) allow the Council to publish the details of the late payment or non-payment if this 30 day limit is exceeded.

19.11 The Supplier must ensure that a term equivalent to Clause 19.10 is included in each Sub-Contract in its supply chain, such that each Sub-Contractor is obliged to include those terms in any of its own Sub-Contracts in the supply chain for the delivery of this Contract.

19.12 At the Council's request, the Supplier must terminate any Sub-Contracts in any of the following events:

19.12.1 there is a change of control within the meaning of Section 450 of the Corporation Tax Act 2010 of a Sub-Contractor which isn't pre-approved by the Council in writing;

19.12.2 the acts or omissions of the Sub-Contractor have caused or materially contributed to a right of termination under clause 15.1.2;

19.12.3 a Sub-Contractor or its affiliates embarrasses or brings into disrepute or diminishes the public trust in the Council; and/or

19.12.4 the Sub-Contractor fails to comply with its obligations in respect of environmental, social or employment Law.

19.13 The Supplier is responsible for all acts and omissions of its Sub-Contractors and those employed or engaged by them as if they were its own.

20. NOTICES

20.1 All notices and communications required to be given under this Contract shall be made in writing and shall be regarded as properly served if sent by E-mail to the address on the front of the Purchase Order.

21. RIGHTS OF THIRD PARTIES

21.1 Subject to clause 21.2, no third parties may use the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract unless stated in the Contract. This does not affect third party rights and remedies that exist independently from Contracts (Rights of Third Parties) Act 1999.

21.2 Clauses 19.10.2(b), 19.10 and 19.11 confer benefits on persons named or identified in such provisions other than the Parties (each such person a "Third Party Beneficiary") and are intended to be enforceable by Third Parties Beneficiaries by virtue of the Contracts (Rights of Third Parties) Act 1999.

22. DATA PROTECTION

22.1 The Supplier shall and shall ensure that its agents, employees and sub-contractors shall, in performing its obligations under this

Contract, comply in all respects with the Data Protection Legislation and will indemnify the Council against all actions costs expenses claims proceedings and demands which may be brought or made against the Council for breach of statutory duty under the Data Protection Legislation which arises from the use disclosure or transfer of personal data by the Supplier and its agents, employees and/or sub-contractors.

22.2 The Supplier shall and shall ensure that its agents, employees and sub-contractors shall not do or permit anything to be done which might jeopardise or contravene the Council's compliance with the Data Protection Legislation.

22.3 The Supplier shall notify the Council immediately if it:

22.3.1 receives a Data Subject Access Request (as defined under the UK GDPR) or purported Data Subject Access Request; or

22.3.2 becomes aware of a data security breach.

22.4 The Supplier shall allow for audits of its data processing activity and premises by the Council or the Council's designated auditor and authorised representatives and make available to the Council all information necessary to demonstrate compliance with its obligations under this Contract and the Data Protection Legislation.

23. FREEDOM OF INFORMATION

23.1 The Council is under a statutory duty which may require the release of information under the Freedom of Information Act 2000 and or the Environmental Information Regulations 2004. Such information may include matters relating to or arising out of or under this Contract. The Council shall be entitled to disclose such information in the event that it receives a request to do so.

23.2 In accordance with a reasonable timetable and in any event within 5 Working Days of a request from the Council, at no additional cost, the Supplier must give the Council full co-operation and information needed so the Council can:

23.2.1 comply with any such request; and

23.2.2 comply with any of its obligations in relation to publishing Transparency Information.

23.3 Any such co-operation and/or information from the Supplier shall be

provided at no additional cost.

23.4 To the extent that it is allowed and practical to do so, the Council will use reasonable endeavours to notify the Supplier of a such a request and may talk to the Supplier to help it decide whether to publish information under clause 23. However, the extent, content and format of the disclosure shall be decided by the Council, in its sole discretion.

23.5 The Supplier must tell the Council within 48 hours if it receives a request for information under the Freedom of Information Act 2000 and or the Environmental Information Regulations 2004 for a matter relating to or arising out of or under this Contract.

23.6 The Council may disclose any relevant term of this Contract in accordance with the local spending data guidelines published by the Local Government Authority and/or Local Public Data Panel as updated from time to time.

24. CONFLICT OF INTEREST

24.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier Staff are placed in the position of an actual or potential Conflict of Interest.

24.2 The Supplier must promptly notify and provide details to the Council if an actual, perceived or potential Conflict of Interest happens or is expected to happen.

24.3 The Council will consider whether there are any reasonable steps that can be put in place to mitigate an actual, perceived or potential Conflict of Interest. If, in the reasonable opinion of the Council, such steps do not or will not resolve an actual or potential Conflict of Interest, the Council may terminate its Contract immediately by giving notice in writing to the Supplier where there is or may be an actual or potential Conflict of Interest and, subject to Clause 24.4, where the reason for the unresolvable actual or potential Conflict of Interest is in the reasonable opinion of the Council

24.3.1 outside of the control of the Supplier, Clauses 15.4.2 to 15.4.8 shall apply; or

24.3.2 within the control of the Supplier, the whole of Clause 15.4 shall apply.

24.4 Where the Supplier has failed to notify the Council about an actual or

potential Conflict of Interest and the Council terminates under Clause 24.3, the whole of Clause 15.4 shall apply.

25. DISCRIMINATION

25.1 The Supplier, its agents, employees or sub-contractors shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief or age or any other basis as defined by the Equalities Act 2010 and the Human Rights Act 1998 or by the Council in writing from time to time.

26. EMPLOYMENT LEGISLATION

26.1 The Supplier shall comply with the provisions of all Acts of Parliament, statutory instruments and codes of practice relating to employment.

27. DISPUTE RESOLUTION

27.1 If any dispute arises in connection with this Contract, the Parties will attempt to settle it with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator will be nominated by CEDR.

28. SEVERABILITY

28.1 If any provision of these Conditions is held by any court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provision of these Conditions and the remainder of the provision in question shall not be affected.

29. VARIATION

29.1 Any variation to these Conditions (including any special terms and conditions agreed between the Parties) or to any Purchase Order shall be inapplicable unless agreed to in writing by the Council. The Council is not required to accept a variation request made by the Supplier.

30. HEADINGS

30.1 The headings to Conditions shall not affect their interpretation.

31. ENTIRE AGREEMENT

31.1 Subject to clause 31.2, this Contract and the documents referred to in it constitute the entire agreement and understanding of the Parties in respect of the subject matter of this Contract and supersedes any previous arrangement, understanding or agreement between them.

31.2 Where the Parties enter into a subsequent written agreement executed by both Parties that subsequent written agreement shall constitute the entire agreement and understanding between the Parties and shall supersede this Contract.

31.3 Each Party acknowledges that, in entering into this Contract, it has not relied on any statement, representation, assurance or warranty (whether made negligently or innocently) other than those expressly set out in this Contract or the documents referred to in it.

31.4 Each Party agrees that all liability for and remedies in respect of any representations are excluded except as expressly provided in this Contract.

32. NO AGENCY OR PARTNERSHIP

32.1 Nothing contained in this Contract, and no action taken by the Parties pursuant to this Contract, will be deemed to constitute a relationship between the Parties of partnership, joint venture, principal and agent or employer and employee. Neither Party has, nor may it represent that it has, any authority to act or make any commitments on the other Party's behalf.

32.2 Nothing in this Contract in any way affects the right of the Council to exercise (or not to exercise) any of its statutory powers and/or its statutory functions.

33. GOVERNING LAW

33.1 This Contract shall be governed by and construed in accordance with English Law and the Council and the Supplier hereby irrevocably submit to the exclusive jurisdiction of the English Courts.

34. FORCE MAJEURE

34.1 Any Party affected by a Force Majeure Event is excused from performing its obligations under the Contract while the inability to perform continues, if it both:

34.1.1 provides written notice to the other Party; and

34.1.2 uses all reasonable measures practical to reduce the impact of the Force Majeure Event.

34.2 Any failure or delay by the Supplier to perform its obligations under the Contract that is due to a failure or delay by an agent, Sub-Contractor and/or Supplier Staff will only be considered a Force Majeure Event if that third party is itself prevented from complying with an obligation to the Supplier due to a Force Majeure Event.

34.3 Either Party can partially or fully terminate the Contract if the provision of the Goods and/or Services is materially affected by a Force Majeure Event which lasts for 90 days continuously and the consequences of termination in clauses 15.4.2 to 15.4.8 shall apply.

34.4 Where a Party terminates under clause 34.3:

34.4.1 each Party must cover its own losses; and

34.4.2 clauses 15.4.2 to 15.4.8 apply.

35. PROCUREMENT ACT 2023

35.1 The Supplier acknowledges that the Procurement Act 2023 contains certain implied terms which are incorporated into this Contract.

35.2 The Supplier shall co-operate with the Council to enable the Council to comply with its obligations under the Procurement Act 2023.