

TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES TO PLYMOUTH CITY COUNCIL

Strategic Procurement Unit



These terms and conditions govern the Supplier's provision of Services to the Council and are incorporated into the Contract.

I Interpretation

I.1 In these Conditions, the following definitions apply:

Acceptance Criteria: any criteria with which any Deliverables must comply as set out in the Purchase Order or the Specification or evidenced by written agreement between the parties.

Annex: any of the following annexes (if used): Annex 1 - Special Conditions of Contract; Annex 2 - Specification.

Applicable Law: the laws of England and Wales and the European Union and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services from time to time.

Best Value Duty: the duty on local authorities to provide best value and to provide services efficiently, effectively and economically and to strive for constant improvement of all services as set out in the Local Government Act of 1999 and the Local Government Act of 2000 and any similar duty.

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

Charges: the charges for the Services referred to in Condition 13 and set out in the Purchase Order.

Codes of Practice: the Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records issued pursuant to sections 45 and 46 of the FOIA and any similar or subsequent codes or guidance issued in relation to the Council's FOIA obligations, as amended, updated and replaced from time to time.

Conditions: these terms and conditions, including any Annexes.

Confidential Information: all information of a confidential nature (however recorded or preserved) disclosed or made available, directly or indirectly, by the Council or its Representatives to the Supplier or its Representatives, including any information which is marked confidential or private and any information relating to the Council's members, customers, clients, suppliers, business, strategy, plans, intentions, market opportunities, operations, processes or Intellectual Property.

Contract: the contract between the Council and the Supplier for the provision of the Services comprising the Purchase Order and these Conditions.

Council: Plymouth City Council whose office is at Civic Centre, Plymouth, PL1 2EW.

Council Materials: shall have the meaning given in Condition 4.1.4.

Council Representative: any individual named as such in the Purchase Order or such person or persons as notified to the Supplier by the Council in writing from time to time.

Data Protection Law: the Data Protection Act 1998, all related and subordinate legislation and any guidance or codes of practice issued by the Information Commissioner.

Deliverables: all products of the Services (whether tangible or not), including Documents and data (and drafts of either) and the media on which they are recorded.

Delivery Location: the address specified by the Council in the Purchase Order where the Services are to be performed. Where no address is specified, the Services shall be performed at Plymouth City Council, Civic Centre, Plymouth, PL1 2EW.

Document: includes any document in hard or electronic copy.

EIR 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 regulations.

FOIA: the Freedom of Information Act 2000 and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Information: has the meaning given under section 84 of FOIA.

Intellectual Property Rights: all intellectual property rights, whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world including all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets).

Public Body: any part of the government of the United Kingdom including but not limited to the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales, local authorities, government ministers and government departments and government agencies.

Purchase Order: the written order from the Council for Services incorporating or attached to these Conditions.

Premises: any premises owned, leased to, controlled or occupied by the Council or its Representatives which are made available for use by the Supplier or its Representatives for the delivery or performance of the Services.

Representatives: employees, officers, agents, advisors, sub-contractors, suppliers or other representatives.

Request for Information: a request for Information or an apparent request under the Code of Practice on Access to Government Information, FOIA or EIR.

Services: the services provided or to be provided by the Supplier under the Contract as set out in the Purchase Order and/or Specification including the Deliverables.

Specification: any description of the Services (including any Deliverables to be produced) set out in Annex 2.

Supplier: the person, firm or company to whom the Purchase Order is addressed.

Transfer Regulations: Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended and any successor legislation.

Variation: shall have the meaning given in Condition 5.1.

1.2 In these Conditions, the following rules of interpretation apply:

1.2.1 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.2.2 a reference to a party includes its successors or permitted assigns;

1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted;

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

1.2.5 a reference to **writing** or **written** includes faxes and e-mails

1.3 In the event of any inconsistency or conflict between any Purchase Order and these Conditions, these Conditions shall prevail.

1.4 In the event of any inconsistency or conflict between any Annex and these Conditions, the Annex shall prevail.

2 Formation of Contract

2.1 The Contract shall come into existence and take effect on the Council's issue of a Purchase Order for the Services and shall remain in full force and effect until either:

2.1.1 the parties have discharged all their obligations under it (at which point it shall expire); or

2.1.2 it is terminated in accordance with these Conditions.

2.2 These Conditions apply to the supply of the Services to the exclusion of any other terms that the Supplier may seek to impose or incorporate (including any standard trading terms of the Supplier), or which are implied by trade, custom, practice or course of dealing.

3 Supplier's warranties

3.1 The Supplier shall provide the Services specified in the Purchaser Order and/or the Specification in accordance with these Conditions.

3.2 The Supplier warrants that:

3.2.1 it will meet any dates set out in the Purchase Order or Specification for the delivery of the Deliverables or the performance of the Services or (where no dates are so specified) then the Supplier perform the Services (any delivery any Deliverables) within a reasonable time;

3.2.2 the design, construction and quality of Deliverables and the method and quality of performance of the Services will comply in all respects with all relevant requirements of any law, statute, statutory rule or order, or other instrument of law which may be in force at the time when the same are provided;

3.2.3 it has and will maintain all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract;

3.2.4 it will not do or omit to do anything which may cause the Council to lose any licence, consent or permission upon which it relies for the purposes of conducting its business or affairs;

3.2.5 its Representatives will behave in a polite and courteous manner at all times when on the Premises;

3.2.6 the Services will conform as to their quantity, quality and description with the Purchase Order or Specification, including with all Acceptance Criteria;

3.2.7 the Services will be fit for any purpose and meet any standard or performance levels set out in the Purchase Order or Specification or which can reasonably be expected for Services of the type in question;

- 3.2.8 the Services will conform to any literature or description supplied by the Supplier to the Council prior to the issue of the Purchase Order;
- 3.2.9 it will perform the Services with all reasonable care, skill and diligence and in accordance with best practice in the Supplier's industry, profession or trade;
- 3.2.10 it will use personnel to provide the Services who are suitably skilled and experienced, and in sufficient numbers to ensure that it fulfils all of its obligations in accordance with the Contract;
- 3.2.11 it will use the best quality goods, tools, materials, standards and techniques in performing the Services;
- 3.2.12 its Representatives will comply with all of the Council's policies and procedures, signs, notices and other instructions either displayed at the Premises or notified to the Supplier (or its Representatives) from time to time and relating to the use of the Premises or any part of them or any equipment or facilities at the Premises; and
- 3.2.13 (without prejudice to the generality of the foregoing warranties) to the extent that Deliverables are in physical or tangible form, they will:
 - (a) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose;
 - (b) be of sound materials and workmanship;
 - (c) be free from defects in design, materials and workmanship; and
 - (d) be equal in all respects to the examples, samples, patterns or specifications provided or given by the Council.
- 3.2.14 its Representatives will comply with all of the Council's policies and procedures, signs, notices and other instructions either displayed at the Premises or notified to the Supplier (or its Representatives) from time to time and relating to the use of the Premises or any part of them or any equipment or facilities at the Premises.

4 Supplier's general undertakings

4.1 The Supplier undertakes to:

- 4.1.1 provide at its expense and risk all equipment, tools, materials, machines and vehicles and such other items as are required to provide the Services;
- 4.1.2 co-operate with the Council and any third party nominated by the Council in all matters relating to the Contract;
- 4.1.3 comply with all reasonable instructions of the Council;
- 4.1.4 hold all materials, equipment and tools, drawings, specifications and data supplied by the Council to the Supplier (Council Materials) in safe custody at its own risk, maintain the Council Materials in good condition until returned to the Council, and not dispose of or use the Council Materials other than in accordance with the Council's written instructions or authorisation;
- 4.1.5 promptly remove from the Premises any rubbish generated and any of its equipment, tools, materials, machines and vehicles and any other items used in connection with the performance of the Services and leave the Premises in a clean and tidy condition, failing

which the Council may dispose of them and make good the Premises at the expense of the Supplier;

- 4.1.6 use all reasonable endeavours to transfer to the Council the benefit of any warranty or guarantee given by the manufacturer of any goods contained in the Deliverables of which the Supplier is not the manufacturer;
- 4.1.7 notify the Council as soon as practicable of any health and safety or other hazards at the Premises of which it becomes aware; and
- 4.1.8 it will comply with the International Financial Reporting Standard [for Small and Medium-sized Entities (SMEs)] and any other International Financial Reporting Standard that it is required to comply with by Applicable Law.

5 Variation of the Services

- 5.1 The Council reserves the right on giving written notice to the Supplier from time to time to require changes to the Services (including by way of the removal of Services, the addition of new Services, or increasing or decreasing the Services or specifying the order in which the Services are to be performed or the locations where the Services are to be provided) for any reason whatsoever. Such a change is hereinafter called "a Variation".
- 5.2 In the event of a Variation the Charges may also be varied. Such variation in the Charges shall be calculated by the Council and agreed in writing with the Supplier and shall be such amount as properly and fairly reflects the nature and extent of the Variation in all the circumstances.
- 5.3 The Supplier shall provide such information as may be reasonably required to enable such varied price to be calculated.

6 Supplier's personnel

- 6.1 The Council reserves the right:
 - 6.1.1 to refuse to admit to the Premises and to require the Supplier to replace with another suitably qualified person any Representative of the Supplier whose admission would in the reasonable opinion of the Council be undesirable; and
 - 6.1.2 to request the replacement of any Representative of the Supplier who in the Council's reasonable opinion is not suitably qualified or experienced to perform the Services.
- 6.2 Where any Representative of the Supplier is named on the Purchase Order or in the Specification as fulfilling a specific role in connection with the performance of the Services, the Supplier will use all reasonable endeavours to ensure that the named Representative continues to fulfil the specified role and will not replace him or her without the Council's written consent, such consent not to be unreasonably withheld.
- 6.3 If reasonably so requested by the Council and subject to compliance by both parties with Data Protection Law, the Supplier shall promptly provide a list of the names and addresses of all persons who may at any time require admission to the Premises in connection with the performance of the Services, specifying the role in which each such person is concerned with the Supplier and giving such other particulars as the Council may require.

7 Testing and acceptance of Deliverables

- 7.1 All Deliverables must meet any relevant Acceptance Criteria.

- 7.2 The Council may test Deliverables at any time during the period of 15 Business Days following notification by the Supplier of completion of the Services (or relevant part of the Services) and production at the Premises of the Deliverables.
- 7.3 If any Deliverables fail to meet their Acceptance Criteria the Council will notify the Supplier accordingly specifying the non-conformity.
- 7.4 Where Deliverables fail to meet the Acceptance Criteria the Council will request the Supplier to remedy the non-compliance at its own expense within 15 Business Days of the Council's notification under Condition 7.3, following which the Council shall have a further 15 Business Days in which to re-test the Deliverables for conformity with the Acceptance Criteria.
- 7.5 If any Deliverables fail to meet the Acceptance Criteria on re-testing under Condition 7.4, the Council may reject them and exercise its rights under Condition 9.

8 Risk and title

- 8.1 Risk in Deliverables shall pass to the Council on acceptance under Condition 7.
- 8.2 Title to Deliverables shall pass to the Council on acceptance under Condition 7.

9 The Council's remedies

- 9.1 If:
- 9.1.1 the Supplier fails to perform the Services by the date required under these Conditions; or
 - 9.1.2 the Supplier fails to comply with its warranties set out in Condition 3; or
 - 9.1.3 Condition 7.5 applies
- the Council may exercise any of the rights set out in Condition 9.2
- 9.2 The rights referred to in Condition 9.1 are:
- 9.2.1 to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
 - 9.2.2 to refuse to accept any delivery of Deliverables which the Supplier attempts to make;
 - 9.2.3 to reject any Deliverables (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
 - 9.2.4 to recover from the Supplier any costs incurred by the Council in having a third party provide substitute Services or in performing the Services itself;
 - 9.2.5 where the Council has paid in advance for Services that have not been performed by the Supplier, to have such sums refunded by the Supplier immediately;
 - 9.2.6 to claim damages for any additional costs, loss or expenses incurred by the Council which are attributable to the Supplier's failures set out in Condition 9.1;
 - 9.2.7 to terminate the Contract with immediate effect by giving written notice to the Supplier.
- 9.3 The rights set out in Condition 9.2 are cumulative and the exercise by the Council of any one of them shall not preclude it from exercising any other.

9.4 The Council's rights under this Condition 9 are in addition to its rights and remedies implied by statute and at common law.

10 The Council's obligations

10.1 The Council will:

10.1.1 provide the Supplier with reasonable access to the Premises at reasonable times during Business Days for the purpose of providing the Services or delivering the Deliverables;

10.1.2 where appropriate, provide reasonable access to facilities on the Premises; and

10.1.3 provide such information as the Supplier may reasonably request in connection with the provision of the Services provided that the Council (acting reasonably) considers such information necessary for the purpose of providing the Services.

11 Transfer Regulations

11.1 The parties do not intend that the Transfer Regulations will apply on commencement, during or on termination of the arrangements under the Contract.

11.2 To the extent that the Transfer Regulations apply, the parties will comply with their respective obligations imposed by the Transfer Regulations and each shall indemnify the other from and against all losses, costs, claims, demands, actions, fines, penalties awards, liabilities and expenses (including legal expenses on an indemnity basis) the it may suffer in connection with or as a result of any claim, action or demand by any person or their representative arising out of any breach of its obligations under the Transfer Regulations.

12 Liability

12.1 In this Condition 12, a reference to the Council's liability for something is a reference to any liability whatsoever which the Council might have for it, its consequences, and any direct, indirect or consequential loss, damage, costs or expenses resulting from it or its consequences, whether the liability arises under the Contract, in tort or otherwise, and even if it results from the Council's negligence or from negligence for which the Council would otherwise be liable.

12.2 The Council is not in breach of the Contract, and does not have any liability for anything, to the extent that its apparent breach or liability is attributable to the Supplier's breach of the Contract.

12.3 Subject to Condition 12.5 the Council shall not have any liability for:

12.3.1 any indirect or consequential loss or damage;

12.3.2 any loss of business, rent, profit or anticipated savings whether direct or indirect unless it has expressly assumed such liability;

12.3.3 any damage to goodwill or reputation;

12.3.4 loss, theft, damage or destruction to any equipment, tools, machinery, vehicles or other equipment brought onto the Premises by the Supplier or its Representatives; or

12.3.5 any loss, damage, costs or expenses suffered or incurred by any third party.

12.4 Subject to Condition 12.5, the Council's total liability shall be limited to the Charges it has paid or is due to pay to the Supplier under the Contract.

12.5 Nothing in these Conditions restricts the Council's liability for:

12.5.1 death or personal injury resulting from negligence for which it is responsible; or

12.5.2 its fraud (including fraudulent misrepresentation).

13 Charges and payment

13.1 The Charges for the Services and the date or dates on which they are payable are set out in the Purchase Order or any Annex; and

13.1.1 (in the case of Deliverables) shall be inclusive of any costs of packaging, insurance and carriage;

13.1.2 (in the case of Services) shall include all costs and expenses of the Supplier and its Representatives directly or indirectly incurred in connection with their performance; and

13.1.3 unless otherwise specified shall be inclusive of any amounts in respect of valued added tax chargeable from time to time (VAT).

13.2 Unless otherwise provided in the Purchase Order, the Supplier may invoice the Charges at any time on or after whichever is the later of acceptance of the Deliverables or completion of the Services.

13.3 Invoices must include the Purchase Order number and sufficient supporting information to enable the Council to identify the Deliverables and Services for which payment is claimed.

13.4 Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Council, the Supplier shall provide a valid VAT invoice.

13.5 Where Charges for the Services are based on the cost of time and materials at rates set out in the Purchase Order, the Supplier shall maintain and provide to the Council complete and accurate records of the time spent and materials used in providing them and attach such records to the relevant invoice.

13.6 Subject to compliance by the Supplier with the foregoing provisions of this Condition 13, the Council shall pay the Charges as invoiced within 30 days of receipt of the invoice.

13.7 The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Council in order to justify withholding payment of any amount in whole or in part. The Council may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier against any amount payable by the Council to the Supplier.

14 Intellectual property rights

14.1 The Supplier warrants that:

14.1.1 the Supplier has all Intellectual Property Rights, permissions, licences and consents necessary to carry out its obligations under the Contract and shall not carry out its obligations in breach of any Intellectual Property Right permission, licence or consent; and

14.1.2 in respect of the Deliverables, the Supplier has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Council, it has full and unrestricted rights to transfer full title to all such items to the Council.

14.2 Unless otherwise provided in the Specification, the Supplier grants to the Council, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including all Deliverables.

- 14.3 The Supplier shall, promptly at the Council's request, do (or procure to be done) all such further acts and things and execute (or procure the execution of) all such other documents as the Council may from time to time require for the purpose of securing for the Council the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned or licensed to the Council in accordance with the Contract.
- 14.4 The Council reserves to itself or its licensors all the Council Materials and any Intellectual Property Rights in them and the Contract shall not operate to vest in the Supplier any rights in the Council Materials other than a licence, for the duration of the Contract, to use them to the extent necessary to enable the Supplier to carry out its obligations under the Contract.

15 Indemnity

- 15.1 The Supplier shall indemnify, and shall keep indemnified, the Council in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses, awarded against or incurred or paid by the Council as a result of or in connection with:
- 15.1.1 any claim made against the Council for death, personal injury or damage to property arising out of, or in connection with, any non-compliance of the Deliverables or Services with the Contract;
 - 15.1.2 any claim made against the Council arising out of, or in connection with, the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier;
 - 15.1.3 any claim made against the Council arising out of, or in connection with the negligence of the Supplier or its Representatives whilst on, entering, or leaving the Premises;
 - 15.1.4 any claim made against the Council for infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the Council's use of the Services;
 - 15.1.5 all damage to the Council's property or the Premises caused by the Supplier or its Representatives (including any damage or destruction to, corruption of, or loss of data held by the Council);
 - 15.1.6 any breach of Data Protection Law by the Supplier or its Representatives; and
 - 15.1.7 any claim made against the Council by a third party resulting from, or arising out of any breach by the Supplier of its obligations under Conditions 14 or 17.
- 15.2 The Supplier shall not be liable to the Council for any losses, damage or injury to the extent that they are caused by or arise directly out of the act or omissions of the Council in breach of its obligations under the Contract.

16 Insurance

- 16.1 For the duration of the Contract and for a period of 6 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, insurance to provide a level of cover sufficient for all risks which may be incurred by the Supplier under the Contract, including death or personal injury, or loss of or damage to property.
- 16.2 The insurance required under Condition 16.1 shall include as a minimum:
- 16.2.1 employer's liability insurance with a limit of indemnity of not less than [five] million pounds [(£5,000,000)] per claim;

- 16.2.2 public liability insurance with a limit of indemnity of not less than [five] million pounds [(£5,000,000)] per claim;
 - 16.2.3 professional indemnity insurance with a limit of not less than [two] million pounds [(£2,000,000)] per claim; and
 - 16.2.4 product liability insurance with a limit of not less than [two] million pounds (£2,000,000) per claim.
- 16.3 The Supplier shall, at the request of the Council, produce to the Council a valid certificate of insurance and such other written documentation as is necessary to demonstrate that the Supplier has complied with its obligations under this Condition 16.
- 16.4 The Supplier shall not do or permit anything, or make any omission, which might cause any insurance to be voided.
- 16.5 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities incurred in connection with the Contract.
- 16.6 The Supplier shall inform the Council in writing whenever there is any change to the insurance referred to in this Condition 16 (including any change in the scope or level of cover or the identity of the insurer).

17 Confidentiality

- 17.1 Subject to Condition 17.2, the Supplier shall not acquire any rights of ownership or use in any Confidential Information originating from or provided by the Council.
- 17.2 The Supplier undertakes:
- 17.2.1 to restrict disclosure of Confidential Information to such of its Representatives as need to know it for the purpose of discharging the Supplier's obligations under the Contract, and shall ensure that all such Representatives are subject to obligations of confidentiality corresponding to those set out in this Condition 17.
 - 17.2.2 that the Supplier and its Representatives shall use Confidential Information only for the purposes of performing their respective obligations under the Contract;
 - 17.2.3 that any person employed or engaged by the Supplier in connection with the Contract shall not, in the course of such employment or engagement, disclose any Confidential Information to any third party without the prior written consent of the Council;
 - 17.2.4 to take all necessary precautions to ensure that all Confidential Information is treated as confidential and not disclosed (save as aforesaid) or used other than as permitted by this Condition 17; and
 - 17.2.5 that, without prejudice to the generality of the foregoing, neither the Supplier nor any of its Representatives shall use the Confidential Information for the solicitation of business from the other or from any third party.
- 17.3 The provisions of Condition 17 shall not apply to any information which:
- 17.3.1 is or becomes public other than by breach of this Condition 17 or
 - 17.3.2 is in the possession of the Supplier without restriction on disclosure before the date of receipt from the disclosing person; or

- 17.3.3 is independently developed by the Supplier without access to the Confidential Information;
or
- 17.3.4 must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

18 Termination

- 18.1 Without limiting its other rights or remedies, the Council may terminate the Contract with immediate effect by giving written notice to the Supplier if:
 - 18.1.1 the circumstances set out in Conditions 9.2.7 or 23.1 or 32 apply;
 - 18.1.2 the Supplier commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 Business Days of receipt of written notice of the breach;
 - 18.1.3 the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
 - 18.1.4 the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
 - 18.1.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
 - 18.1.6 the Supplier (being an individual) is the subject of a bankruptcy petition order;
 - 18.1.7 a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - 18.1.8 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier (being a company);
 - 18.1.9 a floating charge holder over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - 18.1.10 a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
 - 18.1.11 the Supplier becomes the subject of administration or an administration order (in each case whether or not the out of court procedure is used);

18.1.12 any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Condition 18.1.3 to Condition 18.1.11 (inclusive);

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

18.1.14 the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

18.2 Without limiting its other rights or remedies, the Council may at any time terminate the Contract in whole or in part by giving the Supplier one month's written notice, in which case the Council shall pay the Supplier for any Services performed up until the date of termination, but shall not be liable for any anticipated profits or any other loss in respect of the termination.

19 Consequences of termination

19.1 On expiry or termination of the Contract or any part of it for any reason the following shall apply:

19.1.1 where the Services are terminated, the Supplier shall immediately deliver to the Council all Deliverables, whether or not then complete, and return all the Council Materials to the Council. If the Supplier fails to do so, then the Council may, without limiting its other rights or remedies, enter the Supplier's premises and take possession of the Deliverables and/or the Council Materials. Until they have been delivered or returned, the Supplier shall be solely responsible for their safe-keeping and will not use them for any purpose; and

19.1.2 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and

19.2 The following Conditions shall survive expiry or termination and shall continue in full force and effect: 1, 2.2, 3, 4, 7, 9, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 36, 37, 38, 39 and any other Condition which expressly or by implication has effect after expiry or termination shall continue in full force and effect.

20 Publicity

20.1 The Supplier shall not make any press announcements or publicise the existence or terms of the Contract without the Council's prior written consent and shall ensure the observance of the provisions of this Condition 20 by its Representatives.

20.2 The Council shall be entitled to publicise the Contract or any Purchase Order (or any information concerning either) for any reason without any obligation to give notice to the Supplier.

21 Dispute resolution

21.1 The parties shall attempt, in good faith, to resolve any dispute promptly by negotiation which shall be conducted as follows:

21.1.1 the dispute shall first be referred, on the request of either party, to a senior manager within each of the parties; and

21.1.2 if the dispute cannot be resolved by the parties' senior managers within 10 Business Days after it has been referred to them, either party may give notice to the other party in writing referring the matter to mediation to be conducted in accordance with Condition 21.2.

- 21.2 The following provisions shall apply to any such reference to mediation:
- 21.2.1 the reference shall be a reference under the Model Mediation Procedure (MMP) of the Centre of Dispute Resolution (CEDR) for the time being in force;
 - 21.2.2 both parties shall, immediately on such referral, co-operate fully, promptly and in good faith with CEDR and the mediator and shall do all such acts and sign all such documents as CEDR or the mediator may reasonably require to give effect to such mediation, including an agreement in, or substantially in, the form of CEDR's Model Mediation Agreement for the time being in force; and
 - 21.2.3 to the extent not provided for by such agreement of the MMP, the mediation shall commence by either party serving on the other written notice setting out, in summary form, the issues in dispute and calling on that other party to agree the appointment of a mediator. The mediation shall be conducted by a sole mediator (which shall not exclude the presence of a pupil mediator) agreed between the parties or, in default of agreement, appointed by CEDR.
- 21.3 If the parties are able to resolve the dispute through mediation under this Condition 21, the parties' authorised Representatives will document the resolution and sign a memorandum evidencing its terms.
- 21.4 The commencement of a mediation will not prevent the parties commencing or continuing court proceedings.
- 21.5 Nothing in this Condition 21 shall prevent either party from instigating legal proceedings where an order for an injunction, disclosure or legal precedent is required.
- 21.6 The Supplier shall continue to provide the Services and to perform its obligations under the Contract notwithstanding any dispute or the implementation of the procedures set out in this Condition 21.

22 Conflict of interest

- 22.1 The Supplier shall take all appropriate steps to ensure that neither it nor any of its Representatives is placed in a position where (in the reasonable opinion of the Council) there is or may be an actual, perceived or potential conflict between, on the one hand, the pecuniary or personal interests of the Supplier or its Representatives and, on the other hand, such persons' duties owed to the Council under the provisions of the Contract.
- 22.2 The Supplier must disclose to the Council full details of any actual or potential conflict of interest in writing and comply with any reasonable instructions of the Council in connection with their resolution.

23 Corruption

- 23.1 The Supplier undertakes to:
- 23.1.1 comply with all applicable laws and regulations and codes relating to anti bribery and anti corruption including, but not limited to, the Bribery Act 2010;
 - 23.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom;
 - 23.1.3 comply with the Council's anti corruption policies disclosed to the Supplier from time to time;

- 23.1.4 ensure that any of its Representatives associated with the supply of the Services comply with this clause 23; and
- 23.1.5 immediately notify the Council if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier.
- 23.2 For the purposes of clause 23.1, the meaning of "foreign public official" and whether a person is "associated" with another person shall be determined in accordance with sections 6(2), 6(5), 6(6) and 8 of the Bribery Act 2010.
- 23.3 The Council shall be entitled to terminate the Contract forthwith and to recover from the Supplier the amount of any loss resulting from such termination if the Supplier or a Supplier's Representative:
 - 23.3.1 offers or agrees to give any person working for or engaged by the Council or any other Public Body any favour, gift or other consideration, which could act as an inducement or a reward for any act or failure to act connected to the Contract, or any other agreement between the Supplier and the Council or any Public Body, including its award to the Supplier and any of the rights and obligations contained within it;
 - 23.3.2 has entered into the Contract if it has knowledge that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the Council or any other Public Body by or for the Supplier, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Council before the Contract is entered into;
 - 23.3.3 breaches the undertaking set out in clause 23.1; or
 - 23.3.4 gives any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.
- 23.4 For the purposes of Condition 23.1, "loss" shall include, but shall not be limited to:
 - 23.4.1 the Council's costs in finding a replacement Supplier.
 - 23.4.2 direct, indirect and consequential losses.
 - 23.4.3 any loss suffered by the Council as a result of a delay in its receipt of the Deliverables and / or Services.

24 Audit

- 24.1 The Supplier shall keep and maintain until six years after the Contract has come to an end, or for such longer period as may be specified by the Council in writing from time to time:
 - 24.1.1 all Information relating to the Contract.
 - 24.1.2 full and accurate records of the following:
 - (a) the Services provided under the Contract;
 - (b) all Charges paid by the Council; and
 - (c) such other information as the Council specifies in writing from time to time.
- 24.2 The Supplier shall on request afford the Council, the Council's Representatives or the Council's auditors such access to such information or records (including the information referred to in

Conditions 24.1.1 and 24.1.2) as may (in the reasonable opinion of the Council) be required by the Council in order to comply with its legal obligations (including its obligations under FOIA and its obligations in connection with the Best Value Duty).

25 Discrimination

- 25.1 The Supplier shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in the provision of the Services.
- 25.2 The Supplier shall take all reasonable steps to secure the observance of Condition 25.1 by all of its Representatives employed in the performance of the Contract.
- 25.3 The Supplier shall:
- 25.3.1 have appropriately trained staff available to deal with racial issues or complaints and monitor the same and the manner of dealing therewith. Such information shall be passed to the Council on a regular basis as agreed with the Council; and
 - 25.3.2 actively endeavour to achieve a workforce representative of the ethnic diversity of the area.

26 Human rights

- 26.1 The Supplier shall (and shall use its reasonable endeavours to procure that its Representatives shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of the Contract.
- 26.2 The Supplier shall undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998.

27 Data Protection Law

- 27.1 The Supplier shall comply at all times with Data Protection Law and shall not do anything or perform its obligations under or in connection with the Contract in such a way as to cause the Council to breach any of its obligations under Data Protection Law.
- 27.2 If the Supplier, pursuant to its obligations under the Contract, processes Personal Data (as defined in the Data Protection Act 1998) on behalf of the Council, the Supplier shall:
- 27.2.1 process the Personal Data only in accordance with instructions from the Council;
 - 27.2.2 process the Personal Data only to the extent, and in such manner, as is necessary for the performance of its obligations under the Contract;
 - 27.2.3 implement appropriate technical and organisational measures to protect Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure, such measures to be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
 - 27.2.4 notify the Council promptly if it becomes aware of any breach of any of its measures put in place under Condition 27.2;
 - 27.2.5 take reasonable steps to ensure the reliability of any personnel who have access to the Personal Data;

- 27.2.6 obtain prior written consent from the Council in order to transfer the Personal Data to any third party for the provision of the Services;
- 27.2.7 ensure that any personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Condition 27;
- 27.2.8 ensure that none of those personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the other party;
- 27.2.9 notify the Council immediately if it receives:
 - (a) a request from a Data Subject (as defined in the Data Protection Act 1998) to have access to that Data Subject's Personal Data; or
 - (b) a complaint or request relating to the other party's obligations under Data Protection Law;
- 27.2.10 provide the Council with full co-operation and assistance in relation to any complaint or request made, including by providing the other party with full details of the complaint or request; and
- 27.2.11 not transmit or process Personal Data outside the European Economic Area without the prior written consent of the other party and, where the other party so consents to a transfer, to comply with:
 - (a) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998; and
 - (b) any reasonable instructions notified to it by the other party.

28 Best value

- 28.1 The Supplier shall:
 - 28.1.1 not do anything which would cause the Council to be in breach of the Best Value Duty.
 - 28.1.2 act at all times in a manner which is compatible with and corresponds with the Council's Best Value Duty.
 - 28.1.3 in relation to its obligations in the Contract, make arrangements to secure continuous improvement in the way in which the Services are provided, having regard to a combination of economy, efficiency and effectiveness.

29 Freedom of information

- 29.1 The Supplier acknowledges that the Council is subject to the requirements of FOIA and EIR and shall assist and co-operate with the Council (at the Supplier's expense) to enable the Council to comply with its obligations under FOIA and EIR. The Supplier shall act in accordance with the FOIA, the Codes of Practice, the EIR and any other similar codes of practice or guidance from time to time.
- 29.2 The Supplier shall and shall procure that its Representatives shall:
 - 29.2.1 transfer any Request for Information to the Council as soon as practicable after receipt and in any event within two Business Days of receiving a Request for Information;

- 29.2.2 provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council requesting that Information; and
- 29.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of FOIA or regulation 5 of EIR.

29.3 The Council shall be responsible for determining (in its absolute discretion) whether any Information:

29.3.1 is exempt from disclosure in accordance with the provisions of FOIA or EIR;

29.3.2 is to be disclosed in response to a Request for Information,

and in no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so in writing by the Council.

29.4 The Supplier acknowledges that the Council may be obliged under the FOIA or EIR to disclose Information:

29.4.1 without consulting with the Supplier, or

29.4.2 following consultation with the Supplier and having taken its views into account.

29.5 Where Condition 29.4.2 applies the Council shall, in accordance with any recommendations issued under any code of practice issued under section 45 of FOIA, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention as soon as practicable after any such disclosure.

30 Transfer of services

30.1 Where the Council intends to continue to procure services equivalent to any or all of the Services after termination or expiry of the Contract, either by performing them itself or by the appointment of a replacement supplier, the Supplier shall use all reasonable endeavours to ensure the seamless transition of the Services to the Council or a replacement supplier and to ensure that the transition is effected with the minimum of disruption to the Council.

30.2 The Supplier shall co-operate fully during the transition period and provide full access to all data, documents, manuals, working instructions, report and any information, whether held in electronic or written form, which the Council (acting reasonably) considers necessary.

31 Notice

31.1 Any notice to be served on either of the parties hereto by the other shall be sent by pre-paid recorded delivery or first class post or by e-mail¹ to the address of the relevant party as detailed in the Contract or, such other address as notified by one party to the other in writing from time to time.

32 Severance

32.1 If any provision of the Contract is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, or indications to that effect are received by either of

¹ Please see cover letter.

the parties from any competent authority the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality or at the discretion of the Council it may be severed from the rest of the Contract which shall remain in full force and effect unless the Council in its reasonable discretion decides that the effect of such a declaration is to defeat the original intention of the parties, in which event the Council shall be entitled to terminate the Contract by 10 Business Days' written notice to the Supplier.

33 Waiver and accumulation of remedies

- 33.1 The rights and remedies provided by the Contract may be waived only in writing by the relevant Representative in a manner that expressly states that such waiver is intended for, and such waiver shall only be operative with regard to, the specific circumstances referred to.
- 33.2 Unless a right or remedy of the Council is expressed to be an exclusive right or remedy, the exercise of it by the Council is without prejudice to the Council's rights and remedies in equity (including, without limitation, specific performance or injunctive relief), law or under or in connection with the Contract. Any failure to exercise, or any delay in exercising, a right or remedy by either party shall not constitute a waiver of that right or remedy, or of any other rights or remedies.
- 33.3 The Council's rights and remedies under the Contract are cumulative and may be exercisable at any time and, unless otherwise specified in these Conditions, are not exclusive of any right or remedies provided at law, in equity or otherwise.

34 Variations

- 34.1 Subject to Condition 5, neither the Council nor the Supplier shall be bound by any variation, waiver of, or addition to the Contract (including the Specification) unless evidenced in writing and signed by an authorised Representative on their behalf.

35 Assignment or sub-contracting

- 35.1 The Supplier shall not assign or transfer its rights or obligations under the Contract or any part thereof to any third party without the Council's prior written consent.
- 35.2 The Supplier shall not sub-contract the performance of the Services or any part of them without the Council's prior written consent and any such consent shall not relieve the Supplier of any of its obligations under the Contract.
- 35.3 Where the Supplier enters into a sub-contract with a third party in connection with the Contract, it shall cause a term to be included in such sub-contract that requires payment to be made of undisputed sums by the Supplier to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.
- 35.4 The Council may assign, novate, outsource or otherwise dispose of any or all of its rights and obligations under the Contract at any time to any person having the legal capacity, power and authority to become a party to and to perform its obligations, being:
- 35.4.1 a Minister of the Crown pursuant to any order under the Ministers of the Crown Act 1975;
- 35.4.2 any other local authority which has sufficient financial standing or financial resources to perform the obligations; or
- 35.4.3 any other public authority, and

35.5 Nothing in these Conditions shall restrict the rights of the Secretary of State to effect a statutory transfer.

36 Law and jurisdiction

36.1 The Contract shall be construed and be subject to English law and the exclusive jurisdiction of the English Courts.

37 Rights of third parties

37.1 No person other than the Council or the Supplier shall have any rights under the Contract and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply.

38 Whistleblowing policy

38.1 The Supplier shall comply with the Council's whistleblowing procedure, which ensures that employees of the Supplier are able to bring to the attention of the Council malpractice, fraud and breach of laws on the part of the Supplier without fear of disciplinary and other retribution or discriminatory action. The Council's Whistleblowing Policy can be found on the following link: - www.plymouth.gov.uk/strategicprocurementunit .

39 The Local Involvement Networks (Duty of Service-Providers to Allow Entry) Regulations 2008

39.1 The Supplier shall comply in all respects and at all times with The Local Involvement Networks (Duty of Services Providers to Allow Entry) Regulations 2008 in the provision of the Services under the Contract.