

## WEST YORKSHIRE COMBINED AUTHORITY

### STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS & SERVICES (“Conditions”)

#### 1. Definitions and Interpretation

1.1 Unless the context otherwise requires:

1.1.1 the following words shall have the following meanings:

**"Charges"** means the charges for the Services as specified in the Purchase Order;

**"Combined Authority"** means West Yorkshire Combined Authority, whose principal office is at Wellington House, 40-50 Wellington Street, Leeds LS1 2DE.

**"Confidential Information"** means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;

**"Combined Authority Cause"** any breach of the obligations of the Combined Authority or any other default, act, omission, negligence or statement of the Combined Authority, of its employees, servants, agents in connection with or in relation to the subject-matter of the Contract and in respect of which the Combined Authority is liable to the Provider;

**"Contract"** means the legally binding agreement made between the Combined Authority and the Provider for the provision of the Services incorporating the Contract Documents.

**"Contract Documents"** shall mean the Purchase Order and these conditions together with the documents listed in the Purchase Order which may include the invitation to tender documents or the Provider's quotation or tender response and all specifications, plans, drawings and fee schedules which are relevant to the Contract.

**"Controller"** has the meaning given to it in the UK GDPR;

**"Combined Authority Data"** a) the 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, including any of the Combined Authority's Confidential Information, and which: i) are supplied to the Provider by or on behalf of the Combined Authority; or ii) the Provider is required to generate, process, store or transmit pursuant to the Contract; or b) any Personal Data for which the Combined Authority is the Data Controller;

**"Data Processing Agreement"** means an agreement governing the Processing of Personal Data to be entered into by the Parties;

**"Data Protection Legislation"** (i) the UK GDPR, (ii) the Data Protection Act 2018 to the extent that it relates to processing Personal Data and privacy; (iii) all applicable law about the processing of Personal Data and privacy;

**"Data Protection Impact Assessment"** an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

**"Existing IPR"** any and all intellectual property rights that are owned by or licensed to either Party and which have been developed independently of the Contract (whether prior to the date of the Contract or otherwise);

**"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;

**"Force Majeure Event"** any event, occurrence, circumstance, matter or cause affecting the performance by either Party of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control which prevent or materially delay it from performing its obligations under the Contract but excluding: i) any industrial dispute relating to the Provider, the Provider Staff (including any subsets of them) or any other failure in the Provider or the subcontractor's supply chain; ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; iii) any failure of delay caused by a lack of funds; iv. any outbreak of an infectious or communicable disease or infestation unless the same shall be the subject of Regulations made under the Public Health (Control of Diseases) Act 1984 that require the Provider to take measures that substantially prevent it from supplying:

a. the Services; or b. such amended services and terms as the Combined Authority shall propose in writing to the Provider in consequence of such Regulations in order to enable the Contract to remain substantially capable of performance .

**"Goods"** means the goods to be supplied by the Provider to the Combined Authority under the Contract;

**"Good Industry Practice"** standards, practices, methods and procedures conforming to the law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and

ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;

**"Information"** has the meaning given under section 84 of the FOIA;

**"Insolvency Event"** in respect of a person: a) if that person is insolvent; ii) if an order is made or a resolution is passed for the winding up of the person (other than voluntarily for the purpose of solvent amalgamation or reconstruction); iii) if an administrator or administrative receiver is appointed in respect of the whole or any part of the persons assets or business; iv) if the person makes any composition with its creditors or takes or suffers any similar or analogous action to any of the actions detailed in this definition as a result of debt in any jurisdiction;

**Legal Requirement"** means any of the following:

- (i) any enactment to the extent that it applies to that party;
- (ii) any regulation made by the Council or the Commission of the European Union to the extent that it applies to that party or a decision taken by the Commission of the European Union which is binding on that party to the extent that it is so binding; and
- (iii) any interpretation of law, or finding, contained in any judgement given by a court or tribunal of competent jurisdiction in respect of which the period for making an appeal has expired which requires any legal requirement falling within paragraphs (a) or (b) above to have effect in a way which is different to that in which it previously had effect;

**"New IPR"** all and intellectual property rights in any materials created or developed by or on behalf of the Provider pursuant to the Contract but shall not include the Provider's Existing IPR;

**"Party"** the Provider or the Combined Authority (as appropriate) and **"Parties"** shall mean both of them;

**"Personal Data"** has the meaning given to it in the UK GDPR;

**"Processor"** has the meaning given to it in the UK GDPR;

**"Provider"** means the company whose tender or quotation has been accepted by the Combined Authority to provide the Services including consultancy services and, in the case of a limited company, its successors, and in the case of any other person or persons, his or their executors or administrators, and in the case of joint contractors, they shall be jointly and severally bound by the Contract. The Provider may also be referred to as the contractor or consultant in the Contract Documents.

**"Purchase Order"** means the order from the Combined Authority to the Provider which forms the Contract;

**"Purchase Order Number"** means the Combined Authority's unique number relating to the Purchase Order

**"Request for Information"** has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term "request" shall apply);

**"Services"** means the services including any consultancy services to be supplied by the Provider to the Combined Authority under the Contract as described in the Contract Documents ;

**"Staff"** means all directors, officers, employees, agents, consultants and contractors of the Provider and/or of any sub-contractor of the Provider engaged in the performance of the Provider's obligations under the Contract;

**"Staff Vetting Procedures"** means vetting procedures that accord with good industry practice or, where applicable, the Combined Authority's procedures for the vetting of personnel as provided to the Provider from time to time;

**"UK GDPR"** as defined in section 3(10) of the DPA 2018

**"VAT"** means value added tax in accordance with the provisions of the Value Added Tax Act 1994;

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

1.1.2 the schedules form part of this Contract;

1.1.3 the word 'including', "for example" and similar words shall be understood as if they were immediately followed by the words "without limitation";

1.1.4 headings in this Contract do not affect the interpretation of the Contract; and

1.1.5 a reference to any law includes a reference to that law as amended, extended, consolidated or re-enacted from time to time;

1.2 If any part of the Contract is prohibited by law or judged by a court to be unlawful, void or unenforceable, it shall be removed from the Contract and rendered ineffective insofar as required without affecting the validity or enforcement of the Contract.

1.3 No third party has any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

- 1.4 This Contract does not create a partnership, joint venture or employment relationship between the Parties.
- 1.5 Any partial or full waiver of the terms of the Contract is only valid if it is stated to be a waiver in writing to the other Party.
- 1.6 A variation to the Contract is only effective if agreed in writing and signed by both Parties.
- 1.7 This Contract and any issues arising out of it are governed by English law.

## **2. Basis of Contract**

- 2.1 The Contract shall commence and the Provider is bound contractually to provide the Services in accordance with the Contract Documents upon the Combined Authority's written acceptance of the Provider's tender or quotation by issue of the Purchase Order. The Goods and/or Services shall be subject to these Conditions and shall replace all previous statements and agreements whether written or oral.
- 2.2 The Provider agrees that only these Conditions shall apply to the Contract to the exclusion of all other terms and conditions including any terms and conditions which the Provider may purport to apply under any order, confirmation of order or similar documents or in correspondence with the Combined Authority. The Provider hereby waives any contractual rights which the Provider might otherwise obtain from such terms and conditions.
- 2.3 Notwithstanding clauses 2.1-2.2 above, the Combined Authority may, prior to the commencement of the Contract, either: (a) agree in writing to alternative terms and conditions supplied by the Provider; (b) notify and issue in writing any other terms and conditions which shall instead be applicable; or (c) notify and issue in writing any additional special conditions that it requires to be part of the Contract.

## **3. Services**

- 3.1 In consideration of the Combined Authority's payment of the Charges, the Provider shall supply the Services subject to and in accordance with the terms and conditions of the Contract and in compliance with all laws.
- 3.2 The Provider is not given any sole or exclusive rights in relation to the provision of the Services.
- 3.3 The Provider must provide the Services in compliance with all of the Combined Authority's instructions and with all descriptions and specifications set out. The Services shall be delivered to a professional standard using reasonable skill care and diligence by staff who possess such qualifications, skills and experience as are necessary for the proper supply of the Services , and with sufficient resources and appropriate expertise. Good Industry Practice and Legal Requirements must be adhered to.
- 3.4 All Provider Staff involved in delivering the Goods and /or Services must be vetted using Good Industry Practice and in accordance with the any instructions set out in the Purchase Order or any Staff Vetting Procedures and comply with all conduct requirements when on the Combined Authority's premises. In the event that the Combined Authority determines that a member of the Provider's Staff is not suitable to work on the Contract, the Provider must replace them with a suitably qualified alternative.
- 3.5 The Provider must provide all necessary facilities, equipment, materials, tools, vehicles and such other items as are required to provide the Services and use the best quality goods, materials, standards and techniques in the provision of the Services, observing all health and safety rules and regulations and any other security requirements that apply at the Combined Authority's premises;
- 3.6 The Provider must hold all materials, equipment and tools, drawings, specifications and data (the "Combined Authority's Materials") supplied by the Combined Authority to the Provider in safe custody at its own risk and maintain the Combined Authority's Materials in good condition until such time as they

are returned to the Combined Authority and do not dispose of or use the Combined Authority's Materials other than in accordance with the Combined Authority's written instructions or authorisation;

- 3.7 The Provider shall at all times ensure that it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.
- 3.8 Late delivery of the Services will be a default of the Contract.
- 3.9 The Combined Authority must provide the Provider with reasonable access to its premises at reasonable times for the purpose of supplying the Services.
- 3.10 The Combined Authority is entitled to; reject any work which it does not consider to have been carried out reasonably in accordance with the Contract and in such an event the Provider shall if so required by the Combined Authority in writing forthwith cause the work rejected to be done again with all reasonable despatch, withhold payment for partially or undelivered Services, but in doing so does not stop it from using its other rights under the Contract. The Provider shall not be entitled to receive any additional payment from the Combined Authority for any work rejected by it.

#### **4. Goods**

- 4.1 All Goods delivered must be new (or as new if recycled) unused and of recent origin and all manufacturer warranties must be assignable, at no cost, to the Combined Authority on request.
- 4.2 The Provider warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership. Ownership of the Goods transfers on completion of delivery (including off-loading and stacking) or payment for those Goods, whichever is earlier.
- 4.3 Risk in the Goods transfers to the Combined Authority on delivery, subject to inspection following delivery for any damage. Provided that the Combined Authority notifies the Provider within three Working Days of delivery, risk in the Goods shall remain with the Provider.
- 4.4 The Provider must deliver the Goods on the date and at the location specified.
- 4.5 All deliveries must have a delivery note attached that specifies the order number, type and quantity of Goods, and the Goods must be in sufficient packaging to reach the point of delivery safely and undamaged.
- 4.6 The Combined Authority may reject any Goods that do not comply with this clause 4, at the Provider's expense.
- 4.7 The Combined Authority will not be liable for any actions, claims, costs and expenses incurred by the Provider or any third party during delivery of the Goods unless and to the extent that it is caused by negligence or other wrongful act of the Combined Authority or its servant or agent. If the Combined Authority suffers or incurs any damage or injury (whether fatal or otherwise) occurring in the course of delivery or installation then the Provider shall indemnify from any losses, charges costs or expenses which arise as a result of or in connection with such damage or injury where it is attributable to any act or omission of the Provider or any of its sub-contractors.

#### **5. Charges**

- 5.1 In exchange for the Goods and/or Services, the Provider shall be entitled to invoice the Combined Authority for the Charges. The Provider shall raise invoices promptly and in any event within 30 calendar days of completion of the Services or of the Good being accepted by the Combined Authority.
- 5.2 All Charges include all costs connected with the supply of the Goods and/or Services and exclude VAT, which is payable on provision of a valid VAT invoice.

- 5.3 The Combined Authority must pay the Provider the Charges within 30 days of receipt by the Combined Authority of a valid, undisputed invoice, in cleared funds to the Provider's account on the invoice.
- 5.4 A Provider invoice is only valid if it includes all appropriate references including the Purchase Order Number and other details reasonably requested, and a detailed breakdown of Services which have been delivered (if any).
- 5.5 If there is a dispute between the Parties as to the amount invoiced, the Combined Authority shall pay the undisputed amount. The Provider shall not suspend the provision of the Services or repossess the Goods unless the Provider is entitled to terminate the Contract for a failure to pay undisputed sums in accordance with clause 9. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 15.
- 5.6 The Combined Authority may retain or set-off payment of any amount owed to it by the Provider if notice and reasons are provided.
- 5.7 The Provider must ensure that all subcontractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this doesn't happen, the Combined Authority can publish the details of the late payment or non-payment.

## **6. Combined Authority Cause**

- 6.1 If the Provider fails to comply with the Contract as a result of a Combined Authority Cause the Combined Authority cannot terminate the Contract under clause 9 and the Provider is entitled to reasonable and proven additional expenses and to relief from liability under this Contract. The Provider is also entitled to additional time needed to deliver the Services cannot suspend the ongoing supply of Services.
- 6.2 To rely on clause 6.1 the Provider must first give notice to the Combined Authority within 10 Working Days of becoming aware of a Combined Authority Cause, and must demonstrate that the failure was solely due to the Combined Authority Cause, the impact of which it has mitigated.

## **7. Warranties and Representations**

- 7.1 The Provider warrants and represents that:
- (a) it has full capacity and authority to enter into and to perform the Contract and that throughout the Contract it maintains all necessary rights, authorisations, licences and consents to perform its obligations under the Contract;
  - (b) the Contract is executed by a duly authorised representative of the Provider
  - (c) in entering the Contract it has not committed any Fraud;
  - (d) as at the Contract commencement date set out in the Contract Documents, all information, statements and representations contained in the tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Combined Authority prior to execution of the Contract and it will advise the Combined Authority of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
  - (e) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract;
  - (f) it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Contract;

- (g) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue;
- (h) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (i) (in the three (3) years prior to the date of the Contract:
  - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
  - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
  - (iii) (it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

7.2 If the Provider becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify the Combined Authority.

7.3 All third party warranties and indemnities covering the Services must be assigned for the Combined Authority's benefit by the Provider.

## **8. Royalties, Licence Fees and Transfer of Intellectual Property Rights (IPRs)**

8.1 Each Party keeps ownership of its own Existing IPRs. The Provider gives the Combined Authority a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change and sub-license the Provider's Existing IPR to enable it and its sub-licensees to both receive and use the Services and to use the New IPR.

8.2 On receipt of full payment for the Services, the Provider shall transfer to the Combined Authority the Intellectual Property Rights in all drawings, specifications, briefs, reports, designs or other documents (the "Transferred Material") created, written or completed by the Provider in connection with the Contract.

8.3 Upon acquiring Intellectual Property Rights under Condition 8.2 the Combined Authority shall then be free to licence the Transferred Material to a third party for any purpose whatsoever.

8.4 The Provider shall procure that the Transferred Material shall not infringe the Intellectual Property Rights of any third party.

8.5 Any New IPR created under the Contract is owned by the Combined Authority. The Combined Authority gives the Provider a licence to use any Existing IPRs for the purpose of fulfilling its obligations under the Contract and a perpetual, royalty-free, non-exclusive licence to use any New IPRs.

8.6 If any claim is made against the Combined Authority for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Services (an "**IPR Claim**"), then the Provider indemnifies the Combined Authority against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result of the IPR Claim.

## **9. Termination**

9.1 The Combined Authority has the right to terminate the Contract at any time without reason or liability by giving the Provider not less than 30 days' written notice.

- 9.2 The Combined Authority has the right to immediately terminate the Contract by issuing a termination notice in writing to the Provider in the event that: (a) there is a Provider Insolvency Event; (b) the Provider repeatedly breaches the Contract in a way to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Contract; (c) the Provider is in material breach of any obligation which is not capable of remedy, if it is capable of remedy and that breach is not remedied within 30 days of the Provider receiving notice specifying the breach and requiring it to be remedied; (d) there is a change of control (within the meaning of section 450 of the Corporation Tax Act 2010) of the Provider which isn't pre-approved by the Combined Authority in writing; or (e) the Provider or its affiliates embarrass or bring the Combined Authority into disrepute or diminish the public trust in them; or (f) has made any material misrepresentation prior to the award of the Contract or issue of a Purchase Order; or (g) is guilty of any misconduct which the Combined Authority reasonably considers to be prejudicial to the Combined Authority's interest.
- 9.3 Where the Combined Authority terminates the Contract under clause 9.2:
- 9.3.1 any sum due or accruing from the Combined Authority to the Provider may be withheld or reduced by such amount as the Combined Authority in either case considers reasonable and appropriate in the circumstances;
- 9.3.2 the Combined Authority may make all arrangements which are in its view necessary to procure the orderly completion of the Services including the letting of another contract or contracts;
- 9.3.3 where the total costs reasonably and properly incurred by the Combined Authority, by reason of such arrangements exceed the amount that would have been payable to the Provider for the completion of the Services, the excess shall be recoverable from the Provider and the Combined Authority reserves the right to recover such excess by set-off against any amount withheld by the Combined Authority.
- 9.4 The Provider has the right to terminate the Contract if the Combined Authority does not pay an undisputed invoice on time, if it has first issued a reminder notice. If the Combined Authority fails to pay an undisputed invoiced sum due and worth over 10% of the total Contract value or £1,000, whichever is the lower, within 30 days of the date of the reminder notice the Provider may terminate by written notice.
- 9.5 Where the Provider terminates the Contract under clause 9.4 the Combined Authority must promptly pay all outstanding Charges incurred to the Provider together with reasonable committed and unavoidable losses for which the Provider must provide a fully itemised and costed schedule with evidence. The maximum value of this losses payment is limited to the total sum payable under the Contract.
- 9.6 The Combined Authority has the right to terminate the Contract at any time and for any reason by giving to the Provider not less than 30 calendar days' notice in writing to that effect. Upon the expiry of the notice the Contract shall be terminated without prejudice to the rights of the parties accrued to the date of termination.
- 9.7 The Combined Authority has the power to temporarily suspend the Contract at any time by giving to the Provider 14 calendar days' written notice. Upon the expiry of the notice the Contract shall be suspended without prejudice to the rights of the parties accrued to the date of suspension.
- 9.8 Where the Contract is terminated the Combined Authority may, during any notice period:
- 9.8.1 direct the Provider, where the Services have not been commenced, to refrain from commencing such Services or where the Services have been commenced, to cease work immediately;
- 9.8.2 direct the Provider to complete in accordance with the Contract all or any of the Services, or any part or component thereof.
- 9.9 In the event of any termination, the accumulated rights of the Parties are not affected and the Provider must promptly delete or return the Combined Authority Data, except where required to retain copies by law, and any of the Combined Authority's property provided to it.

## **10. Indemnity and Insurance**

- 10.1 The Combined Authority's total aggregate liability under or in connection with the Contract (whether in tort, contract or otherwise) shall in no event exceed the Charges paid or payable to the Provider.
- 10.2 The Provider's total aggregate liability (including that of its partners and employees) to the Combined Authority (whether in contract, tort or otherwise) shall not exceed 125% of the Charges the aggregate.
- 10.3 No Party is liable to the other for any indirect or consequential loss or damage, loss of profits, loss of revenue, turnover, loss of savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 10.4 Notwithstanding clause 10.1, neither Party limits or excludes any liability for (a) death or personal injury caused by its negligence, or that of its employees, agents or subcontractors, (b) bribery or fraud or fraudulent misrepresentation by it or its employees; (c) any liability under clause 12, (d) any liability that cannot be excluded or limited by law; (e) 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; (f) any claim under clause 7; (g) any claim under the indemnity in Condition 8.6 (Intellectual Property Rights).
- 10.5 The Provider indemnifies the Combined Authority against wilful misconduct of the Provider, any of its subcontractor and/or Provider Staff that impacts the Contract, and any non-payment by the Provider of any tax or National Insurance.
- 10.6 Notwithstanding clause 10.1 the Provider does not limit or exclude its liability for any indemnity given under these terms and conditions.
- 10.7 Each Party must use all reasonable endeavours to mitigate any loss or damage which it suffers under or in connection with the Contract, including any indemnities.
- 10.8 The Provider indemnifies the Combined Authority against any costs resulting from any default by the Provider relating to any applicable law to do with the Contract.

## **11. Confidential Information**

- 11.1 Each Party must: (a) keep all Confidential Information it receives confidential and secure; (b) 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; (c) immediately notify the disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.
- 11.2 Notwithstanding clause 11.1 a Party may disclose Confidential Information which it receives from the disclosing Party in any of the following instances: (a) disclosure is required by applicable law or by a court with the relevant jurisdiction; (b) the information was in the public domain at the time of the disclosure; (c) the information was independently developed without access to the disclosing Party's Confidential Information; (d) the recipient Party already had the information without obligation of confidentiality before it was disclosed by the disclosing Party; (e) the information was given to it by a third party without obligation of confidentiality.
- 11.3 The Provider acknowledges that the Combined Authority is subject to the requirements of the FOIA and the EIR and shall provide all necessary assistance and cooperation as reasonably requested by the Combined Authority to enable the Combined Authority to comply with its obligation including: (a) transferring all Requests for Information that it receives as soon as practicable; (b) providing a copy of all Information belonging to the Combined Authority requested in the Request for Information which is in its possession or control in the form that the Combined Authority requires within 5 Working Days; and (c) not respond directly to a Request for Information unless authorised in writing to do so by the Combined Authority.
- 11.4 Where possible, the Combined Authority will seek to consult with the Provider before disclosing any information but the Combined Authority shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure. The Provider acknowledges that the Combined



Authority may be required under the FOIA and the EIR to disclose Information concerning the Provider or the Goods and/or Services.

## **12. Data Protection Legislation**

- 12.1 If there is to be any Processing of Personal Data for the purposes of the Data Protection Legislation, the Parties shall as soon as reasonably practical agree and enter into a Data Processing Agreement in a format to be agreed in relation to all Personal Data that is to be shared, which shall designate in writing the nature of the Processing and which Party is the Processor and which the Controller. If the Provider is required to process Personal Data by law it shall promptly notify the Combined Authority before processing the Personal Data, unless prohibited by law.
- 12.2 Both Parties shall (and shall procure that their Staff shall) comply with any notification and other requirements contained in the Data Protection Legislation which arise in connection with this agreement. The only Processing that shall be done shall be pursuant to the written instructions provided by the Controller from time to time and may not be determined by the Processor A Data Protection Impact Assessment must be undertaken prior to any Processing by the relevant party.
- 12.3 The Provider shall comply with the Data Protection Legislation and indemnify the Combined Authority against any claims for loss or damage or otherwise brought against the Combined Authority and any cost and expenses in relation to a breach of the Data Protection Legislation (including but not limited to the Data Protection Act 2018 and the UK General Data Protection Regulation) caused as a result of the misuse by the Provider, whether negligently or otherwise, of personal information obtained under this Contract.

## **13. Combined Authority Data**

- 13.1 The Provider must not remove any ownership or security notices in or relating to the Combined Authority Data.
- 13.2 The Provider must make accessible back-ups of all Combined Authority Data, and ensure that any Provider system holding any Combined Authority Data, is a secure system that complies with any security requirements specified by the Combined Authority.
- 13.3 If at any time the Provider suspects or has reason to believe that the Combined Authority Data provided under the Contract is corrupted, lost or sufficiently degraded, then the Provider must notify the Combined Authority and immediately suggest remedial action.
- 13.4 The Provider must: (a) provide the Combined Authority with all Combined Authority Data in an agreed openformat within 10 Working Days of a written request; (b) have documented processes to guarantee prompt availability of Combined Authority Data if the Provider stops trading; (c) securely destroy all Storage Media that has held Combined Authority Data atthe end of life of that media using Good Industry Practice; and (d) securely erase all Combined Authority Data and any copies it holds when asked todo so by the Combined Authority unless required by law to retain it;

## **14. Legislation**

- 14.1 The Provider shall not offer, give, or agree to give anything, to any person (whether working for or engaged by the Combined Authority or any other public body) an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, anyact in relation to the obtaining or execution of the Contract or any other public function or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any other publicfunction.
- 14.2 The Provider must follow all applicable equality law when they perform their obligations under the Contract, including: (a) protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise; (b) any other requirements and instructions which the Combined Authority reasonably imposes related to equality law. The Provider must take all necessary steps, and inform the Combined Authority of the

steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on the Contract.

- 14.3 The Provider must perform its obligations meeting the requirements of: (a) all applicable law regarding health and safety; (b) the Combined Authority's current health and safety policy while at the Combined Authority's premises, as provided to the Provider.
- 14.4 When working on Site the Provider must perform its obligations under the Combined Authority's current Environmental Policy, which the Combined Authority must provide.
- 14.5 The Provider must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines.

## **15. General**

- 15.1 The Provider shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Provider arising out of the Provider's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss.
- 15.2 The Provider must keep and maintain full and accurate records and accounts on all matters related to the Contract for seven years after the date of expiry or termination of the Contract.
- 15.3 The Provider must allow any auditor appointed by the Combined Authority access to their premises to verify all contract accounts and records of everything to do with the Contract and provide copies for the audit. The Provider must provide information to the auditor and reasonable co-operation at their request.
- 15.4 The Provider must, in connection with provision of the Services, use reasonable endeavours to: (a) comply and procure that its subcontractors comply with the Combined Authority's Code of Conduct as provided and such other corporate social responsibility requirements as the Combined Authority may notify to the Provider from time to time; (b) support the Combined Authority in fulfilling its Public Sector Equality duty under s149 of the Equality Act 2010; (c) not use nor allow its subcontractors to use modern slavery, child labour or inhumane treatment; and (d) support the Combined Authority in sustainable procurement.
- 15.5 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: (a) provides written notice to the other Party; and (b) uses all reasonable measures practical to reduce the impact of the Force Majeure Event. If the provision of the Goods and/or Services is materially affected by a Force Majeure Event which lasts for 90 days continuously either Party may terminate the Contract in full or part.
- 15.6 The Provider cannot sub-contract, assign novate or in any way dispose of the benefit and/or burden of the Contract or any part of it without the Combined Authority's prior written consent. In the event that the Combined Authority consents to sub-contracting the Provider shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
- 15.7 The Combined Authority can assign, novate or transfer its Contract or any part of it to any Crown Body, public or private sector body which performs the functions of the Combined Authority. The parties in such instance shall enter a novation agreement in the form that the Combined Authority specifies.
- 15.8 All notices under the Contract must be in writing to the addresses stated in the Purchase Order and are considered effective on the Working Day of delivery if delivered before 17:00 on a Working Day. Otherwise the notice is effective on the next Working Day. An email is effective when sent unless an error message is received.
- 15.9 The Provider must take action to ensure that neither the Provider nor the Provider Staff are placed in the position of an actual or potential conflict between the financial or personal duties of the Provider or the Provider Staff and the duties owed to the Combined Authority under the Contract, in the reasonable opinion of the Combined Authority.

15.10 If there is a dispute between the Parties, their senior representatives who have authority to settle the dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the dispute. If the dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the dispute.