

Supply of Goods Conditions

For Contracts for the Supply of Personal Protective Equipment (PPE)

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1. INTERPRETATION

1.1 Definitions:

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

Commencement Date: the date the Contract commences, as set out in the Purchase Order or otherwise when the Contract is created pursuant Clause 3.1.

Conditions: these terms and conditions.

Contract: the contract created between the Council and the Supplier by the Supplier's acceptance of a Purchase Order and consisting of the Purchase Order, any Specification and these Conditions.

Delivery Date: the date specified for delivery of a Purchase Order, in accordance with Clause 3.2.

Delivery Location: the address for delivery of the Goods as set out in the Purchase Order.

Disclosure and Barring Service: means the Disclosure and Barring Service established under the Protection of Freedoms Act 2012.

EIR: the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations

Employment Checks: means the pre-appointment checks that are required by law and applicable guidance, including without limitation, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, criminal record checks and occupational health checks.

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.

Goods: the goods (or any part of them) as set out in the Purchase Order.

Law: means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply.

Necessary Consents: means all approvals, certificates, authorisations, permissions, licences, permits and consents necessary from time to time for the performance of the Contract.

Purchase Order: the Council's order for the Goods submitted by the Council on the Business World system.

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Price: the price for the Goods as set out in the Purchase Order.

Regulated Activity: in relation to children as defined in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

Specification: the specification for the Goods including any related plans and drawings that are agreed in writing by the Council and the Supplier.

UK Data Protection Legislation: means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679), the Data Protection Act 2018, the Privacy and Electronic Communications Directive 2002/58/EC (as update by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

1.2 Interpretation:

- (a) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (b) 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
- (c) a reference to **writing** or **written** includes emails.

2. COMMENCEMENT AND TERM

This Contract shall commence on the Commencement Date and shall continue until the obligations of the Supplier have been fulfilled.

3. PURCHASE ORDERS

- 3.1 The Council may submit Purchase Orders for Goods by issuing a Purchase Order with a Purchase Order Number. The Contract is created by the acceptance of a Purchase Order by the Supplier. The Council shall have no obligation to make any payment unless the Purchase Order Number is stated on the Supplier's invoice.
- 3.2 The Supplier shall use its best endeavours to supply Goods in accordance with the Purchase Order, these Conditions and any Specification, by the Delivery Date.
- 3.3 The Council may amend or cancel a Purchase Order in whole or in part without liability at any time before delivery by giving the Supplier at least 3 (three) days written notice.

4. THE GOODS

- 4.1 The Supplier shall ensure that the Goods:
 - (a) correspond with their description and any applicable Specification;
 - (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Council expressly or by implication, and in this respect the Council relies on the Supplier's skill and judgement;

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(c) where they are manufactured products, be free from defects in design, material and workmanship and remain so for 12 months after delivery; and

(d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods

4.3 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.

5. DELIVERY OF GOODS

5.1 The Supplier shall ensure that:

(a) Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;

(b) each delivery of Goods is accompanied by a delivery note which shows the order number, the type and quantity of Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the relevant Purchase Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

(c) if the Supplier requires the Council to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.

5.2 The Supplier shall deliver Goods in the manner specified in each Purchase Order and/or the Specification

5.3 Delivery of Goods is completed on the completion of unloading of those Goods at the Delivery Location and signature of a Goods receipt.

5.4 The Council has the right to inspect and test Goods at any time before delivery. If the Council rejects any Goods they are returnable at the Supplier's risk and expense. If the Supplier fails to collect rejected Goods within a reasonable period after notification of the rejection, the Council may charge the Supplier storage costs and sell or dispose of the rejected Goods. The Council will account to the Supplier for the proceeds of sale (if any) after deducting the purchase price paid for the Goods, storage costs and its reasonable costs and expenses in connection with the sale.

5.5 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and the Council shall have the right to conduct further inspections and tests at any time.

5.6 The Supplier shall not deliver Goods in instalments without the Council's prior written consent. Where it is agreed that Goods may be delivered by instalments, such instalments shall be invoiced separately. However, failure by the Supplier to deliver any one instalment on time or at all, or any defect in an instalment, shall entitle the Council to the remedies set out in Clause 6.

6. COUNCIL REMEDIES

6.1 If the Goods are not delivered in accordance with the requirements of any Purchase Order or Specification or do not comply with the undertakings set out in Clause 4.1, then, without limiting any of its other rights or remedies, and whether or not it has accepted any Goods and the Council may exercise any one or more of the following remedies:

(a) to terminate the Contract;

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(b) to reject any Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;

(c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);

(d) to refuse to accept any subsequent delivery of Goods which the Supplier attempts to make;

(e) to recover from the Supplier any costs incurred by the Council in obtaining substitute goods from a third party; and

(f) to claim damages for any other costs, loss or expenses incurred by the Council which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.

6.2 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

6.3 The Council's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

7. TITLE AND RISK IN GOODS

Title and risk in the Goods shall pass to the Council on completion of delivery in accordance with Clause 5.3.

8. PRICE AND PAYMENT

8.1 The Price:

(a) excludes amounts in respect of value added tax (**VAT**), which the Council shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and

(b) includes the costs of packaging, insurance and carriage of Goods.

8.2 No extra charges shall be effective unless agreed in writing and signed by the Council.

8.3 The Supplier may invoice the Council for price of Goods, on or at any time after the completion of delivery unless a different schedule of invoicing/payment has been agreed in writing at the time of the Purchase Order being issued.

8.4 The Council shall pay correctly rendered undisputed invoices within 30 days of receipt of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier.

8.5 If a party fails to make any payment due to the other under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 2% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments the defaulting party disputes in good faith.

8.6 The Council may at any time, without limiting any of its other rights or remedies, withhold or set off any liability of the Supplier to the Council against any liability of the Council to the Supplier.

8.7 The Supplier shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Council pursuant to this Agreement. Such records shall be

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retained for inspection by the Council for 6 years from the end of Term.

9. COUNCIL MATERIALS

The Supplier acknowledges that all materials, equipment and tools, drawings, Specifications, and data supplied by the Council to the Supplier (**Council Materials**) and all rights in the Council Materials are and shall remain the exclusive property of the Council. The Supplier shall keep the Council Materials in safe custody at its own risk, maintain them in good condition until returned to the Council, and not dispose or use the same other than in accordance with the Council's written instructions or authorisation.

10. INDEMNITY

10.1 The Supplier shall keep the Council indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct losses, and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Council as a result of or in connection with:

- (a) any claim made against the Council for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- (b) any claim made against the Council by a third party for death, personal injury or damage to property arising out of or in connection with defects in Goods to the extent that the defects in the Goods are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
- (c) any claim made against the Council by a third party arising out of or in connection with the supply of the Goods 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, its employees, agents or subcontractors.

11. INSURANCE

During the term of the Contract and for a period of six years thereafter, the Supplier shall maintain in force, with a reputable insurance company

- (a) product liability insurance in a minimum indemnity sum of £5 million in respect of each claim or series of connected claims; and
- (b) public liability insurance in a minimum indemnity sum of £5 million in respect of each claim or series of connected claims; and
- (c) employers liability insurance in a minimum indemnity sum of £5 million in respect of each claim or series of connected claims; and

to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Council's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

12. COMPLIANCE WITH RELEVANT LAWS AND POLICIES

12.1 In performing its obligations under the Contract, the Supplier shall comply with all applicable Laws, statutes, regulations and codes from time to time in force.

12.2 The Council may immediately terminate the Contract for any breach of this Clause 12 by the Supplier.

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13. TERMINATION

- 13.1** Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 20 Business Days of that party being notified in writing to do so;
 - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 13.2** Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination.
- 13.3** Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.
- 13.4** If this Contract is terminated by the Council for cause such termination shall be at no loss or cost to the Council and the Supplier hereby indemnifies the Council against any such loss or costs which the Council may suffer as a result of any such termination for cause including the cost of procuring replacement goods.

14. GENERAL

- 14.1 Force majeure.** Except as may be provided in the Purchase Order or the Specification, neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control, FOR THE AVOIDANCE OF DOUBT the coronavirus/COVID-19 pandemic will not constitute a force majeure event. If the period of delay or non-performance continues for twenty (20) Business Days, the party not affected may terminate this Contract by giving ten (10) Business Days' written notice to the affected party.
- 14.2 Assignment and Subcontracting.**
- (a) The Supplier may not assign or subcontract any or all of its rights or obligations under this Contract without the prior written consent of the Council. If the Council consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all acts and omissions of its subcontractors as if they were its own.
 - (b) The Council shall be entitled to novate the Agreement to any other body which substantially performs any of the functions that previously had been performed by the Council.

14.3 Confidentiality.

- (a) Each party undertakes that it shall not at any time during this agreement, and for a period of two (2) years after termination of this agreement, disclose to any person any confidential information concerning

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the business, affairs, customers, clients or suppliers of the other party except as permitted by Clause 14.3(b).

(b) Each party may disclose the other party's confidential information:

(i) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this Clause 14.3(b); and

(ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

(c) No party shall use any other party's confidential information for any purpose other than to perform its obligations under this Contract.

14.4 Entire agreement. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

14.5 Variation. No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

14.6 Waiver. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

14.7 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

14.8 Notices.

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.

(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 14.8(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, at the time of transmission, except that, an email sent after 5.00 pm on any Business day, shall be deemed to be received at 9.00 am on the next Business Day after transmission.

(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

14.9 Third party rights. No one other than a party to the Contract shall have any right to enforce any of its terms.

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- 14.10 Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the law of England.
- 14.11 Jurisdiction.** Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.
- 14.12 Audit.** The Supplier shall keep and maintain full and accurate records of this Agreement for 6 (six) years following the end of the Contract and will provide access for the Council to such records as may be reasonably requested.
- 14.13 Non-solicitation.** Neither party shall during the term of this Contract solicit the services of any staff of the other party who have been engaged in the provision of the Goods except by means of an open national advertising campaign and not specifically targeted at such staff of the other party.
- 14.14 Publicity.** The Supplier shall not make or consent to the making of any public statement or announcement, or engage in any promotional or marketing activity (whether through online or offline channels - including, but not limited to, posters, leaflets, flyers, media activity, websites, social media sites, signage, events or the use of the Council logo), concerning the Contract without the Council's prior written consent.
- 14.16 Taxation, National Insurance and Employment Liability** The Supplier shall at all times indemnify the Council and keep the Council indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Council is alleged or determined to have been assumed or imposed with the liability or responsibility for the Supplier's personnel as an employer of the Supplier's personnel and/or any liability or responsibility to HM Revenue or Customs as an employer of the Supplier's personnel whether during the Term or arising from termination or expiry of this Agreement

14.17 Safeguarding

- (a) Where the Purchase Order specifies or the Council requests that Employment Checks or other checks required by the Disclosure and Barring Service are required such Employment Checks or other checks requested will be undertaken and completed before the Commencement Date.
- (b) Any proven Improper Conduct on the part of the Supplier or Supplier's Personnel shall be considered to be a breach of contract and may result in the immediate termination of the Contract.

15. DISPUTE RESOLUTION

- 15.1 If any dispute arises in connection with these terms and conditions or delivery of the Goods, the Council's Representative and the Supplier's Representative shall, within 5 Business Days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.
- 15.2 If the dispute is not resolved at that meeting, the parties will attempt to settle it by referring the matter to the relevant senior officer at the Council and the Business Manager (or equivalent) of the Supplier who will meet in a good faith effort to resolve the matter within 20 Business Days of referral.
- 15.3 If the dispute is not resolved by the parties referred to in clause 15.2, the parties will attempt to settle it by referring the matter to the parties respective Directors (or equivalent) who will meet in a good faith effort to resolve the matter within 20 Business Days of referral.
- 15.4 If the matter is not resolved through negotiation either party may refer the matter to the Centre for Dispute Resolution ("CEDR") for mediation under its Model Mediation Procedure ("MMP").

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16. LIMITATION OF LIABILITY

- 16.1 Subject to Clause 16.4, neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with this Contract which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.
- 16.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this Contract. Subject to Clause 16.4, the Council's total aggregate liability in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Contract (other than a failure to pay the Price that is properly due and payable and for which the Council shall remain fully liable), shall in no event exceed the Price paid or payable under or pursuant to this Contract.
- 16.3 Subject to Clause 16.4, the Suppliers total liability in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Contract shall in no event exceed the sum of £5 million in relation to any one claim or series of connected claims;.
- 16.4 Notwithstanding any other provision of this Contract neither party limits or excludes its liability for:
- fraud or fraudulent misrepresentation;
 - death or personal injury caused by its negligence;
 - breach of any obligation as to title implied by statute; or
 - any other act or omission, liability for which may not be limited under any applicable Law.

17. PREVENTION OF BRIBERY

- 17.1 The Council may terminate the Contract by written notice with immediate effect, and recover from the Supplier all losses resulting from such termination, if the Supplier, or any of its employees, agents or sub-contractors (in all cases whether or not acting with the Supplier's knowledge):
- directly or indirectly offers, promises or gives any person working for or engaged by the Council a financial or other advantage to;
 - induces that person to perform improperly a relevant function or activity;
 - rewards that person for improper performance of a relevant function or activity;
 - directly or indirectly requests, agrees to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;
 - commits any offence:
 - under Section 117(2) of the Local Government Act 1972;
 - under the Bribery Act 2010;
 - under legislation creating offences concerning fraudulent acts; or
 - at common law concerning fraudulent acts relating to this Contract or any other contract with the Council.
 - defrauds, attempts to defraud, or conspires to defraud the Council.

Any termination under Clause 17.1 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

18. MODERN SLAVERY

- 18.1 To the extent that the Modern Slavery Act 2015 may apply to the Supplier, the Supplier:

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- (a) represents and warrants that it is compliant with its obligations under the Modern Slavery Act 2015 and that neither the Supplier nor any of its officers, employees, agents, subcontractors or other persons associated with it:
 - (i) have been convicted of any offence involving slavery and human trafficking anywhere in the world;
 - (ii) have been or are the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body anywhere in the world regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- (b) shall implement and maintain throughout the term of any contract with the Council, due diligence procedures for its own suppliers, sub-contractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.
- (c) Shall report to the Council any breach or alleged breach of the Supplier's anti-slavery and human trafficking policies and procedures or those of its suppliers, sub-contractors and other participants in its supply chain and shall provide reasonable assistance to the Council to allow the Council to carry out any audit of the Suppliers anti-slavery and human trafficking policies and procedures or those of any suppliers, sub-contractors and other participants in its supply chains.

19 EQUAL OPPORTUNITIES

- 19.1 The Supplier shall not unlawfully harass or victimise a person or discriminate either directly or indirectly because of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, colour, nationality, ethnic or national origin, religion, or belief, sex, or sexual orientation (the **Protected Characteristics**) and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010, the Human Rights Act 1998 or other relevant legislation, or any statutory modification or re-enactment thereof.
- 19.2 The Supplier shall give due regard to the need to eliminate discrimination, advance equality and foster good relations within the meaning and scope of the Public Sector Equality Duty in Section 149 of the Equality Act 2010 in the execution of the Contract.
- 19.3 The Supplier shall take all reasonable steps to secure the observance of Clauses 19.1 and 19.2 by all servants, employees or agents of the Supplier and all suppliers and sub-contractors employed in the execution of the Contract.
- 19.4 The Supplier shall demonstrate to the Council that it has a policy to comply with its statutory obligations under the legislation referred to above in Clauses 19.1 and 19.2.
- 19.5 If there should be any findings of unlawful discrimination made against the Supplier by any court or employment tribunal, or an adverse finding in a formal investigation by the Equality and Human Rights Commission, the Supplier shall take appropriate steps to prevent repetition of the unlawful discrimination.
- 19.6 The Council reserve the right to test the Supplier's equality performance through the life of the Contract. The Supplier shall cooperate with the Council regarding the provision of a data and/or access for site visits as reasonably required by the Council.

20 DATA PROTECTION

The Supplier shall comply in all respects with the provision of the UK Data Protection Legislation and will indemnify the Council against all actions, costs, expenses, claims, proceedings and demands which may be brought against the Council for any breach of the UK Data Protection Legislation attributable to the Supplier.

21 WARRANTIES

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21.1 The Supplier represents and warrants that:

- (a) it has full capacity and authority to enter into and to perform its obligations under the Contract;
- (b) there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might adversely affect its ability to perform its obligations under the Contract;
- (c) it has not done, and in performing its obligations under the Contract, it shall not do, any act or thing that contravenes the Bribery Act 2010 or any other applicable anti-bribery or anti-money laundering laws and/or regulations and it has maintained and monitored, and will maintain and monitor, policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance with the Bribery Act 2010 and related applicable Laws; and
- (d) its obligations under the Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or Law).

21.2 The Supplier represents and warrants :

- (a) it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- (b) it has obtained all Necessary Consents;
- (c) all information contained in the Supplier's quotation remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to the Commencement Date and separately warrants to inform the Council in the event there are any changes to such information during the Contract term; and
- (d) shall promptly notify the Council in writing if it becomes aware during the performance of this Contract of any inaccuracies in any information provided to it by the Council during such due diligence which materially and adversely affects its ability to perform the Contract.

21.3 Each of the representations and warranties set out in Clauses 21.1 to 21.2 (inclusive) shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in the Contract. Save as expressly set out in this Contract, all warranties, representations, conditions and other terms implied by Law (whether statutory or otherwise), are hereby excluded to the fullest extent permitted by Law.

22. FREEDOM OF INFORMATION

22.1 The Supplier acknowledges that the Council is subject to the requirements of the FOIA and the EIR and shall assist and co-operate with the Council (at the Supplier's expense) to enable the Council to comply with these information disclosure requirements.

22.2 The Supplier shall and shall procure that its sub-contractors shall:

- (a) transfer the Request for Information to the Council as soon as practicable after receipt and in any event within 2 Working Days of receiving a Request for Information;
- (b) provide the Council with a copy of all Information in its possession or power in the form that the

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- Council requires within 5 Working Days (or such other period as the Council may specify) of the Council requesting that Information; and
- (c) 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 the FOIA or regulation 5 of the EIR.
- 22.3 The Council shall be responsible for determining at its absolute discretion whether any Information:
- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the EIR; and/or
- (b) is to be disclosed in response to a Request for Information.
- 22.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 22.5 The Supplier acknowledges that the Council may be obliged under the FOIA or the EIR to disclose Information:
- (a) without consulting with the Supplier; or
- (b) following consultation with the Supplier and having taken its views into account,
- provided always that where Clause 22.5(b) applies the Council shall, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 22.6 The Supplier shall ensure that all Information produced in the course of the Contract or relating to the Agreement is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.