



**PURCHASE ORDER
TERMS AND CONDITIONS**



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1. DEFINITIONS AND INTERPRETATION

1.1 In the Terms and Conditions the following words shall have the following meanings:

“Authority” shall mean The Borough Council of Bolton

“Bolton Brand” shall mean:

- (a) Bolton Council (registered trade mark number: 2443977)
- (b) Bolton Family (registered trademark number: 2443967)
- (c) any other phrase which the Authority develops from time to time in relation to the trademarks detailed at (a) and (b) above or in relation to the operation or functions of the Authority

“Bribery Act” shall mean the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation

“Confidential Information” shall mean all confidential information relating to the purpose which the Authority or its contractors/sub-contractors or their representatives directly or indirectly discloses, or makes available, to the Provider before, on or after the Commencement Date. This includes but is not limited to:

- (a) the existence of the Purchase Order and the Terms and Conditions;
- (b) all confidential or proprietary information relating to:
 - (i) the business, affairs, contractors / sub-contractors, partners, suppliers, plans, intentions, or market opportunities of the Authority; and
 - (ii) the operations, processes, product information, know-how, technical information, designs, trade secrets or software of the Authority;
 - (iii) any information, findings, data or analysis derived from Confidential Information; and
 - (iv) any other information that is identified as being of a confidential or proprietary nature

but excludes Confidential Information if:

- (a) it is, or becomes, generally available to the public other than as a direct or indirect result of the information being disclosed by the Provider in breach of the Terms and Conditions (except that any compilation of otherwise public information in a form not publicly known shall still be treated as Confidential Information);

- (b) it was available to the Provider on a non-confidential basis prior to disclosure by the Provider;
- (c) it was, is, or becomes available to the Provider on a non-confidential basis from a person who, to the Provider's knowledge, is not under any confidentiality obligation in respect of that information;
- (d) it was lawfully in the possession of the Provider before the information was disclosed by the Provider;
- (e) it is strictly required to enable a determination to be made under clause 13 below;
- (f) the parties agree in writing that the information is not confidential.

“Charges” shall mean those charges which the Authority shall pay to the Provider in respect of the Goods and/or the Services, as detailed in the Purchase Order

“DBS” shall mean the Disclosure and Barring Service

“Data Protection Legislation” shall mean:

- (a) the UK General Data Protection Regulation;
- (b) the Data Protection Act 2018 (**“DPA 2018”**);
- (c) the Law Enforcement Directive (Directive (EU) 2016/680);
- (d) the Regulation of Investigatory Powers Act 2000;
- (e) the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000;
- (f) the Privacy and Electronic Communications (EC Directive) Regulations 2003, implementing the Electronic Communications Data Protection Directive 2002/58/EC; and
- (g) all other applicable laws and regulations relating to protection, processing and sharing of personal data and privacy (as amended), including where applicable the guidance and codes of practice issued by the Information Commissioner

“EIR” shall mean Environmental Information Regulations 2004

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

“Existing Intellectual Property Rights” shall mean those Intellectual Property Rights vested in the Authority or the Provider prior to the date the Goods and/or Services are first delivered under the Purchase Order

“FOIA” shall mean The Freedom of Information Act 2006

“Force Majeure Event” shall mean any cause affecting the performance of the Provider’s obligations under the Terms and Conditions arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Provider, the Provider’s Staff or any other failure in the Provider or the Provider’s supply chain

“Goods” shall means those goods to be supplied to the Authority by the Provider as detailed in the Purchase Order

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

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

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

“Material Breach” shall mean a substantial failure to perform any of the Terms and Conditions, as determined at the Authority’s sole discretion

“Personal Data” shall have the meaning afforded to it in the DPA

“Prohibited Act” shall mean the following:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper

performance of a relevant function or activity in connection with the Purchase Order;

- (c) to commit any offence:
 - (i) under the Bribery Act; or
 - (ii) under section 117(2) of the Local Government Act 1972
 - (iii) under legislation creating offences concerning fraudulent acts;
 - (iv) at common law concerning fraudulent acts relating to the Purchase Order or any other contract with the Authority; or
 - (v) defrauding, attempting to defraud or conspiring to defraud the Authority

“Provider” shall mean the provider of the Goods and/or Services as detailed in the Purchase Order

“Purchase Order” shall mean the purchase order placed by the Authority under which the Provider agrees to provide the Goods and/or the Services specified therein in accordance with the Terms and Conditions

“Regulated Activity” shall have the meaning afforded to it in the SVGA

“Services” shall mean those services to be provided to the Authority by the Provider as detailed in the Purchase Order

“Staff” shall mean employees, volunteers and agency staff

“SVGA” shall mean Safeguarding Vulnerable Groups Act 2006

“Terms and Conditions” shall mean the terms and conditions detailed in the Purchase Order together with these terms and conditions

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

“Working Day” shall mean Monday to Friday in any week, excluding public holidays in England

1.2 In the Terms and Conditions:

1.2.1 Whenever required by the context the singular includes the plural and vice versa and words importing the masculine shall include the feminine and vice versa;

1.2.2 The headings used in the Terms and Conditions are for ease of reference only and shall not affect the interpretation or construction of the Purchase Order;

- 1.2.3 Unless the context otherwise requires reference to a clause or sub-clause is a reference to a clause or sub-clause of the Terms and Conditions; and
- 1.2.4 References to a specific statute include any statutory extension or modification amendment or re-enactment of such statute and any regulations or orders made under such statute.

2. TERMS AND CONDITIONS

- 2.1 The Terms and Conditions shall apply to the Purchase Order save:
 - (a) Where the Purchase Order makes reference to a specific contract, the terms and conditions of the specified contract shall apply in conjunction with the Terms and Conditions in the order of priority identified in the specified contract;
 - (b) For minor changes which are detailed in the Purchase Order.
- 2.2 Subject to clause 2.1(a) above, unless otherwise agreed in writing these conditions shall override any terms and conditions or terms stipulated or referred to by the Provider. Any written amendments must be agreed in writing by an authorised officer of the Authority.
- 2.3 The acceptance of a Purchase Order or and/or delivery of goods/provision of services is deemed to be acceptance of the Terms and Conditions.

3. THE CHARGES

- 3.1 The Authority shall pay the Charges to the Provider in sterling, in accordance with current legislation and within 30 days of receipt of a valid undisputed invoice. For the avoidance of doubt the Authority shall not be liable to pay the Provider for the provision of unauthorised goods and services.
- 3.2 The prices in the Purchase Order shall apply (without variation) for both the period and/or stated quantity of the Goods and/or the Services, unless specifically otherwise agreed in writing by the Authority and the Provider.
- 3.3 All advice notes, invoices and packing notes issued by the Provider shall be clearly marked by the Provider with the Provider's name and address, the Purchase Order number, the item code, date of despatch, a description of the Goods and/or Services, the address of their intended destination and the due delivery date.
- 3.4 The Authority shall accept and process for payment an electronic invoice submitted for payment by the Provider where the invoice is undisputed and where it complies with the standard on electronic invoicing. For the avoidance of doubt, an electronic invoice will be deemed to comply with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.

- 3.5 Each invoice of the Provider shall be delivered to such address as may be notified from time to time by the Authority.
- 3.6 Where any monies are or shall become due or recoverable from the Provider by virtue of the Purchase Order or any other agreement with the Authority the Authority may deduct or offset those monies from the Charges payable from time to time. The Authority's rights under this clause 3.5 are without prejudice to any other rights or remedies available to the Authority under the Purchase Order or otherwise.

4. THE GOODS AND THE SERVICES

- 4.1 The Provider shall provide the Goods and/or the Services to the Authority in accordance with the Terms and Conditions.
- 4.2 The Authority shall have the right to inspect and test any Goods supplied under the Purchase Order at any time prior to their delivery and, if following such inspection the Authority consider that any of the Goods do not conform or are unlikely to conform with their description and any specification and requirement detailed in the Purchase Order, the Authority shall inform the Provider and the Provider shall immediately take such remedial action as is necessary to ensure compliance. Any inspection or test carried out by the Authority under this clause 4.2 shall not reduce or otherwise affect the Provider's obligations under the Purchase Order.
- 4.3 The Provider shall ensure that:
 - 4.3.1 all Goods are properly packed and secured in such a manner as to enable them to reach their destination in good condition;
 - 4.3.2 all Goods are packaged in accordance with the Authority's instructions and any relevant statutory regulations, guidance and standards; and
 - 4.3.3 each delivery of Goods is accompanied by a delivery note which shows the date of the Order, all relevant reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered in instalments, the outstanding balance of Goods remaining to be delivered.
- 4.4 Unless otherwise specified in the Purchase Order the Authority shall not be liable for any packaging or delivery costs.
- 4.5 The Provider shall deliver Goods:
 - 4.5.1 on the date specified in the Purchase Order or on such date as is agreed in writing between the Authority and the Provider; and
 - 4.5.2 to the delivery location specified in the Purchase Order (or such other location as agreed in writing between the Authority and the Provider)

at any time after the Provider notifies the Authority that the Goods are ready for delivery.

- 4.6 If the Provider fails to deliver Goods under a Purchase Order, its liability shall be limited to the costs and expenses incurred by the Authority in procuring replacement goods of similar description and quality in accordance with relevant procurement rules. The Provider shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Authority's failure to provide the Provider with adequate delivery instructions.
- 4.7 Without prejudice to any of its other rights under the Purchase Order, the Authority may reject any Goods which do not conform to the standards and requirements detailed in the Purchase Order. The Authority shall not be liable to pay for rejected Goods.
- 4.8 When Goods are rejected by the Authority under clause 4.7 above the Provider shall:
- 4.8.1 at its own expense remove the rejected Goods from the delivery location specified in the Purchase Order (or such other location as agreed in writing between the Authority and the Provider) within five (5) Working Days of receipt of a request from the Authority; and
 - 4.8.2 if required by the Authority, deliver to the Authority replacement goods within the timescale reasonably imposed by the Authority.
- 4.9 If the Provider fails to comply with clause 4.8 above the Authority may return the rejected Goods to the Provider at the Provider's expense and risk.
- 4.10 The Authority shall not be deemed to have accepted any Goods under the Purchase Order unless and until:-
- 4.10.1 the Authority has taken the Goods into use; or
 - 4.10.2 the Authority has not exercised its rights of rejection under clause 4.7 above.
- 4.11 The risk in any Goods supplied from time to time under the Purchase Order shall pass to the Authority on acceptance of the same in accordance with clause 4.9 above
- 4.12 The Provider shall permit the Authority and/or anyone reasonably authorised by the Authority to:
- 4.12.1 observe the Provider delivering the Goods and/or the Services;
 - 4.12.2 inspect any premises from which the Provider is delivering the Goods and/or Services

- 4.13 The Authority shall, where necessary, permit the Provider and those authorised by the Provider to enter onto such Authority premises as agreed between the parties for the purpose of delivering the Goods and/or the Services. For the avoidance of doubt, the Authority may refuse entry to any person.
- 4.14 The Provider shall not at any time whilst it is providing the Goods and/or the Services to the Authority knowingly act in any capacity for any person(s), partnership, organisation or company in circumstances where a conflict of interest would or might exist between its professional duties towards such person(s), partnership, organisation or company and its duties to the Authority under the Purchase Order. The Provider shall inform the Authority immediately if any potential conflict arises.
- 4.15 The Provider shall at all times comply with any statutory requirements relating to the provision of the Goods and/or the Services.
- 4.16 The Provider shall not do anything by reason of which the Authority may incur or become liable to pay any penalty damages compensation costs fees or expenses.
- 4.17 The Provider shall inform the Authority promptly and in writing of any problems encountered by the Provider in delivering the Goods and/or Services which the Provider is unable to resolve within a reasonable period of time.
- 4.18 The Provider shall:
- 4.18.1 comply with all relevant health and safety legislation and guidance; and
 - 4.18.2 ensure that it employs a sufficient number of Staff competent in health and safety to meet its obligations under the Terms and Conditions.
- 4.19 The Provider shall at all times employ (or procure the employment) at its own expense sufficient Staff for the purpose of providing the Goods and/or the Services.
- 4.20 The Provider shall ensure that all Staff engaged in the provision of the Goods and/or the Services are suitably skilled and experienced.
- 4.21 The Provider shall set up and maintain written personnel policies and procedures for all Staff engaged in the provision of the Goods and/or Services covering all relevant matters (including but not limited to discipline, grievance, equal opportunities and health and safety). The Provider shall procure that the terms and implementation of such policies and procedures comply with legislation and best practice and that they are made available to the Authority on request.
- 4.22 The Provider will at all times and on reasonable notice permit for the purposes of audit the Authority and any nominated auditors access to documentation relating to the provision of the Goods and/or the Services.

- 4.23 Where required to do so by the Authority the Provider shall at its own expense promote the Bolton Brand in a manner to be agreed between the Authority and the Provider. Such promotion may include but not be limited to attaching the Bolton Brand to correspondence, signage, notices, web pages and electronic documents ("Material").
- 4.24 In using and reproducing the Bolton Brand the Provider will comply with all instructions issued from time to time by the Authority and remove the Bolton Brand from Material immediately if at any time authority to use and reproduce the same is withdrawn.

5. WARRANTIES AND REPRESENTATIONS

- 5.1 The Provider warrants and represents that all Goods provided under the Purchase Order:
- 5.1.1 conform in all material respects with their description and any specification and requirement detailed in the Purchase Order;
 - 5.1.2 be free from defects in design, material and workmanship; and
 - 5.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Provider or made known to the Provider by the Authority expressly or by implication, and in this respect, the Authority relies on the Provider's skill and judgement;
 - 5.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 5.2 If the Authority gives notice in writing to the Provider that some or all of the Goods do not comply with the warranty set out in clause 5.1 above the Provider shall at the Authority's discretion provide replacement goods which do comply with the said warranty or refund to the Authority any Charges paid to the Provider for the Goods.
- 5.3 The Provider warrants and represents that in providing the Services:
- 5.3.1 it will exercise all the reasonable skill, care and diligence to be expected of a properly qualified and competent person experienced in the provision of services which are similar in nature to the Services; and
 - 5.3.2 it will meet any targets and service levels detailed in the Purchase Order within the timescales detailed therein; and
 - 5.3.3 it will comply with the Law including but not limited to the legal requirement to pay the National Minimum Wage.
- 5.4 The Authority shall at any time be entitled to assign or transfer the benefit of the warranties given by way of legal assignment without the Provider's consent.

5.5 Except as expressly stated in the Purchase Order, all warranties and conditions, whether express or implied by statute, common law or otherwise (including but not limited to fitness for purpose) are hereby excluded to the extent permitted by law.

6. DISCRIMINATION AND THE PROMOTION OF EQUALITY

The Provider will not unlawfully discriminate directly or indirectly by way of victimisation or harassment within the meaning of any law, enactment, order, regulation or other similar instrument relating to discrimination in employment (whether in relation to race, age, gender, religion, sexual orientation or otherwise).

7. SAFEGUARDING AND PROMOTING WELFARE

7.1 In the event that a Regulated Activity is to be delivered by the Provider under the Purchasing Order the Provider shall be a Regulated Activity Provider for the purposes of the SVGA with ultimate responsibility for the management and control of the Regulated Activity.

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

7.2.1 subject to a valid enhanced disclosure check undertaken through the DBS;

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

7.2.3 monitored to ensure the level and validity of the checks under this clause 7.1.

7.3 Where required to do so by the Authority or under legislation, the Provider will ensure that all Staff providing the Goods and/or the Services (or any part) shall be subject to a valid standard disclosure check undertaken through the DBS which check shall not at no time during the period in which the Goods are/or Services are being provided be more than 3 years old.

7.4 The Provider shall renew no less than 10% of enhanced disclosure checks annually on a random sample basis, and undertake other renewals, where deemed appropriate by the Provider.

7.5 The Provider warrants that it has no reason to believe that any person who is or will be employed or engaged by the Provider in the provision of the Goods and/or the Services is barred from the activity in accordance with the provisions of the SVGA and any regulations made thereunder, as amended from time to time.

7.6 The Provider shall upon immediate request provide such information to the Authority as the Authority reasonably requires in order satisfy it that the obligations of this clause 7 have been met.

- 7.7 The Provider shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out a Regulated Activity or who may otherwise present a risk to service users.
- 7.8 The Provider shall refer information about any person providing the Goods and/or the Services to the DBS where it removes permission for such person to provide the Goods and/or the Services (or would have, if such person had not otherwise ceased to provide the Goods and/or the Services) because, in his opinion, such person has harmed or poses a risk of harm to any service users, children or vulnerable adults.

8. FRAUD AND PROHIBITED ACTS

- 8.1 The Provider shall notify the Authority immediately where it becomes aware of any instance of suspected fraud or financial irregularity in the delivery of the Goods and/or the Services, but not limited to, cases of:

- 8.1.1 collusion with Authority Staff;
- 8.1.2 computer fraud;
- 8.1.3 the submission to the Authority of inaccurate, incomplete, misleading or falsified management information; and 8.1.4 fraud involving awarding bodies

provided that nothing in this clause 8.1 shall require the Provider to do anything which may cause it to infringe any law.

- 8.2 The Provider shall neither:

- 8.2.1 offer nor give nor agree to give any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or performance of the Purchase Order or any other agreement with the Authority or for showing or forbearing to show favour or disfavour to any person in relation to the Purchase Order; nor,
- 8.2.2 accept the Purchase Order if in connection with it commission has been paid or agreed to be paid by the Provider or on the Provider's behalf or to the Provider's knowledge, unless before the Purchase Order is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Authority.

- 8.3 The Provider:

- 8.3.1 shall not, and shall procure that any Staff, agents, contractors or subcontractors of the Provider shall not, in connection with the provision of the Goods and/or the Services commit a Prohibited Act;

- 8.3.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority, or that an agreement has been reached to that effect, in connection with the Purchase Order, excluding any arrangement of which full details have been disclosed in writing to the Authority before the Purchase Order was issued.
- 8.4 The Provider shall if requested, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act.
- 8.5 The Provider shall report any breach or potential breach of this clause 8 to the Authority and in doing so comply with the Authority's Whistleblowing Policy, which is available on request.
- 8.6 The Authority may terminate the Purchase Order by written notice with immediate effect if the Provider or any Staff, agents, contractors or subcontractors of the Provider (in all cases whether or not acting with the Provider's knowledge) breaches this clause 8. In determining whether to exercise the right of termination under this clause 8, the Authority shall give all due consideration, where appropriate, to action other than termination of the Purchase Order unless the Prohibited Act is committed by the Provider, a member of its Staff, a sub-contractor or a supplier not acting independently of the Provider. The expression "not acting independently of" (when used in relation to the Provider or a sub-contractor) means and shall be construed as acting:
- 8.6.1 with the authority, or,
- 8.6.2 with the actual knowledge
- of any one or more of the directors of the Provider or the sub-contractor (as the case may be); or
- 8.6.3 in circumstances where any one or more of the directors of the Provider ought reasonably to have had knowledge.
- 8.7 Any notice of termination under clause 8.6 must specify:
- 8.7.1 the nature of the Prohibited Act;
- 8.7.2 the identity of the party whom the Authority believes has committed the Prohibited Act; and
- 8.7.3 the date on which the Purchase Order will terminate.
- 8.8 Despite clause 13 (Dispute Resolutions), any dispute relating to:
- 8.8.1 the interpretation of this clause 8; or
- 8.8.2 the amount or value of any gift, consideration or commission,

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

9. COMPLAINTS

- 9.1 The Provider shall at all times operate a complaints procedure and provide details of the same to the Authority upon request.
- 9.2 The Provider shall notify the Authority of all complaints received relating in any way to the provision of the Goods and/or the Services (including but not limited to complaints relating to any Staff of the Provider engaged in the provision of the Goods and/or the Services) within two working days of receipt of the complaint by the Provider.

10. RECORDS AND DATA PROTECTION

- 10.1 The Provider shall at all times comply with and maintain data in accordance with the Data Protection Legislation.
- 10.2 If at any time the Provider is determined to be a Processor (as defined in the DPA 2018) the Provider shall enter into a data processor agreement:
- (a) with the Authority on the Authority's standard terms and conditions; and
 - (b) with a sub-contractor on terms substantially similar to the terms of the data processor agreement entered into with the Authority with each agreement governing the way in which Personal Data will be processed.
- 10.3 The Provider shall, if required by the Authority, enter into a data sharing agreement with the Authority (and any other relevant parties) which will govern the way in which the parties to the agreement share Personal Data.
- 10.4 In the event that the Provider is a "Data Controller" (as defined in the DPA 2018) the Provider shall at all times be responsible to third parties for any Personal Data held, including the individuals to whom the Personal Data relates and the Provider shall have appropriate data protection and information security policies in place which demonstrate how the Provider will meet its responsibilities under the Data Protection Legislation.
- 10.5 When recording Personal Data, in whatever format, each piece of information must contain the date created or recorded and whether it comprises fact, opinion, hypotheses or a mixture of these together with the identity of the person recording the information.
- 10.6 The Provider acknowledges and agrees that the Authority shall be entitled to share any Personal Data supplied by the Provider to the Authority under the Purchase Order where it has a lawful and legitimate reason for doing so.

- 10.7 In meeting its obligations under the Purchase Order, the Provider shall only share Personal Data with a third party where it has a lawful and legitimate reason for doing so.
- 10.8 On expiry of the Purchase Order, or earlier termination of the Purchase Order, the Provider shall immediately provide to the Authority written details of all Personal Data held by the Provider relating to the Purchase Order or any individual in receipt of any part of services under the Purchase Order. The Provider shall then transfer to the Authority all Personal Data requested in writing by the Authority. Personal Data shall be transferred in a secure manner in compliance with Data Protection Legislation and any reasonable instructions issued by the Authority, including instructions relating to timescales. Where legally required to do so, the Provider shall be responsible for obtaining any individual consents needed to lawfully transfer Personal Data.
- 10.9 The Provider shall indemnify and keep indemnified the Authority against any Losses whatsoever incurred in respect of or in any way arising directly out of a breach by the Provider of this clause 10.

11. FOIA, EIR AND CONFIDENTIALITY

11.1 FOIA & EIR

- 11.1.1 The Provider recognises that the Authority is subject to legal duties which may require the release of information under FOIA or the EIR or any other applicable legislation or codes governing access to information ("Access Duties") and that the Authority may be under an obligation to provide information on request. Such information may include matters arising out of or under the Purchase Order in any way.
- 11.1.2 In the event that the Authority receives a request for information under its Access Duties, the Authority is entitled to disclose all such information and documentation (in whatever form) as it is obliged to disclose under its Access Duties.
- 11.1.3 The Authority shall not disclose Exempt Information provided always that the Authority shall be responsible for determining at its absolute discretion what information it is obliged to disclose under its Access Duties and what is Exempt Information.
- 11.1.4 In respect of any disclosure under its Access Duties, the Authority shall, prior to disclosure, endeavour to advise the Provider of the intention to disclose any information which the Provider has:
- (a) identified in writing to the Authority as Exempt Information; and
 - (b) the Authority has agreed in writing may be Exempt Information

and the Authority shall allow at least ten (10) Working Days for the Provider to make submissions to the Authority in respect of that disclosure.

11.1.5 The Authority shall not be liable for any loss, damage, harm or other detriment however caused arising from the disclosure of any information relating to the Purchase Order which the Authority is obliged to disclose under its Access Duties.

11.1.6 The Provider will assist the Authority in complying with the Authority's obligations under its Access Duties. In the event that the Authority receives a request for information under its Access Duties and requires the Provider's assistance in obtaining the information that is subject to such request or otherwise, the Provider will respond to any such request for assistance from the Authority at the Provider's own cost and promptly and in any event within 10 days of receiving the Authority's request.

11.2 Confidentiality

11.2.1 Subject to its obligations under clause 11.1 above, the Provider undertakes to the Authority that it shall:

- (a) keep the Confidential Information secret and confidential;
- (b) not use or exploit the Confidential Information in any way except for the purpose for which it is held;
- (c) not directly or indirectly disclose or make available any Confidential Information in whole or in part to any person, except as expressly permitted by, and in accordance with the Purchase Order;
- (d) not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the purpose for which it is held. Any such copies, reductions to writing and records shall be the property of the Authority;
- (e) not use, reproduce, transform or store the Confidential Information in an externally accessible computer or electronic information retrieval system or transmit it in any form or by any means outside its usual place of business;
- (f) apply the same security measures and degree of care to the Confidential Information as the Provider applies to its own confidential information, which the Provider warrants as providing adequate protection from unauthorised disclosure, copying or use;
- (g) keep a written record of:

- (i) any document or Confidential Information received from the Authority in tangible form; and
 - (ii) any copies made of the Confidential Information;
 - (h) establish and maintain adequate security measures (including any reasonable security measures proposed by the Authority from time to time) to safeguard the Confidential Information from unauthorised access or use; and
 - (i) where instructed to do so by the Authority, ensure that any document or other records containing Confidential Information shall not be removed from the premises identified by the Authority.
- 11.2.2 Subject to the provisions of this clause 11.2.2, the Provider may disclose Confidential Information to the minimum extent required only by an order of any court of competent jurisdiction or any regulatory, judicial, governmental or similar body or any taxation authority of competent jurisdiction.
- 11.2.3 Before the Provider discloses any Confidential Information pursuant to clause 11.2.2 it shall, to the extent permitted by law, give the Authority as much notice of this disclosure as possible. Where notice of such disclosure is not prohibited and is given in accordance with clause 11.2.2, the Provider shall take into account the Authority's requests in relation to the content of this disclosure.
- 11.2.4 If the Provider is unable to inform the Authority before Confidential Information is disclosed pursuant to clause 11.2.2 it shall, to the extent permitted by law, inform the Authority of the full circumstances of the disclosure and the information that has been disclosed as soon as reasonably practicable after such disclosure has been made.
- 11.2.5 If so requested by the Authority at any time by notice in writing to the Provider, the Provider shall promptly:
- (a) destroy or return to the Provider all documents and materials (and any copies) containing, reflecting, incorporating or based on the Authority's Confidential Information;
 - (b) erase all the Confidential Information from its computer and communications systems and devices used by it, or which is stored in electronic form; and
 - (c) to the extent technically and legally practicable, erase all the Confidential Information which is stored in electronic form on systems and data storage services provided by third parties; and
 - (d) certify in writing to the Authority that it has complied with the requirements of this clause 11.2.2.

- 11.2.6 Nothing in clause 11.2.1 shall require the Provider to return or destroy any documents and materials containing or based on the Confidential Information that the Provider is required to retain by applicable law, or to satisfy the requirements of a regulatory authority or body of competent jurisdiction or the rules of any listing authority or stock exchange, to which it is subject. The Terms and Conditions shall continue to apply to any documents and materials retained by the Provider pursuant to this clause 11.2.6.
- 11.2.7 The Authority reserves all rights in its Confidential Information. The disclosure of Confidential Information by the Authority to the Provider does not give the Provider or any other person any licence or other right in respect of any Confidential Information beyond the rights expressly set out in the Purchase Order.
- 11.2.8 Except as expressly stated in the Purchase Order, the Authority makes no express or implied warranty or representation concerning its Confidential Information, including but not limited to the accuracy or completeness of the Confidential Information.
- 11.2.9 Without prejudice to any other rights or remedies that the Authority may have, the Provider acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this clause
- 11.2. Accordingly, the Authority shall be entitled to the remedies of injunctions, specific performance or other equitable relief for any threatened or actual breach of this clause 11.2 by the Provider.

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 The parties hereto shall not cause or permit anything which may damage or endanger the Existing Intellectual Property Rights of the other or assist or allow others to do so.
- 12.2 Any Intellectual Property Rights created by the Provider in connection with the provision of the Goods and/or the Services shall vest in the Authority and the Authority shall be entitled to use and reproduce all materials originated by the Provider (including basic factual data) for any purpose whatsoever whether in connection with the Purchase Order or otherwise. The Provider shall not be liable in any way for use by the Authority of any materials generated under or in respect of the Purchase Order for any purpose other than that for which the same was prepared and provided by the Provider.
- 12.3 The Provider warrants to the Authority that to the best of its knowledge the delivery of the Purchase Order will not infringe, in whole or in part, any third party Intellectual Property Rights and agrees to indemnify the Authority and keep fully and effectually indemnified the Authority its Staff and agents from and against all Losses arising directly or indirectly out of any act of the foregoing, where such act is, or is alleged to be, an infringement of a third party's Intellectual Property Rights.

13. DISPUTE RESOLUTION

- 13.1 The Authority and the Provider shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Purchase Order within 20 Working Days of either party notifying the other of the dispute.
- 13.2 If the dispute cannot be resolved by the Authority and the Provider pursuant to clause 13.1 the parties shall refer it to mediation pursuant to the procedure set out in clause 13.4 unless:
- 13.2.1 the Authority considers that the dispute is not suitable for resolution by mediation; or
- 13.2.2 the Provider, acting reasonably, does not agree to mediation.
- 13.3 The obligations of the parties under the Terms and Conditions shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Provider and its Staff shall comply fully with the requirements of the Purchase Order at all times.
- 13.4 The procedure for mediation and consequential provisions relating to mediation are as follows:
- 13.4.1 A neutral adviser or mediator (the "Mediator") shall be chosen by agreement between the parties, or if they are unable to agree upon a Mediator within 10 Working Days after a request by one party to the other or if the Mediator agreed upon is unable or unwilling to act, either party shall within 10 Working Days from the date of the proposal to appoint a Mediator, or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to a mediation provider to appoint a Mediator;
- 13.4.2 The parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the parties may at any stage seek assistance from a mediation provider to provide guidance on a suitable procedure;
- 13.4.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings;
- 13.4.4 If the parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the parties once it is signed by their duly authorised representatives;
- 13.4.5 Failing agreement, either of the parties may invite the Mediator to provide a non-binding but informative written opinion. Such an

opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Purchase Order without the prior written consent of both parties;

13.4.6 If the parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

13.5 Neither the Authority nor the Provider shall institute court proceedings until the procedures set out in clauses 13.1 and 13.4 have been completed and reasonable notice of the intention to institute court proceedings has been given.

14. TERMINATION OF THE PURCHASE ORDER

14.1 The Authority is entitled to terminate the Purchase Order forthwith in writing if:

14.1.1 a material misrepresentation by the Provider during the process leading up to the placing of the Purchase Order is discovered;

14.1.2 the Provider commits a Material Breach of the Terms and Conditions;

14.1.3 the Provider persistently breaches the Terms and Conditions;

14.1.4 the Provider fails to comply in any way with the terms of clause 6 (Discrimination and the Promotion of Equality) or clause 7 (Safeguarding and Promoting Welfare);

14.1.5 (i) the Provider becomes unable to pay its debts (within the meaning of Section 123 of the Insolvency Act 1986), admits its inability to pay its debts or becomes insolvent

(ii) a petition is presented, an order made or a resolution passed for the liquidation (otherwise than for the purpose of a solvent amalgamation or reconstruction), administration, bankruptcy or dissolution of the Provider

(iii) an administrative or other receiver, manager, trustee, liquidator, administrator or similar person or officer is appointed to the Provider and over all or any part of the assets of the Provider

(iv) the Provider enters into or proposes any composition or arrangement concerning its debts with its creditors (or any class of its creditors) generally

(v) anything equivalent to any of the events or circumstances stated in clauses 14.1.5(i) to 14.1.5(iv) inclusive occurs in any applicable jurisdiction

14.1.6 the Provider commits a Prohibited Act.

- 14.2 The Provider is entitled to terminate the Purchase Order in writing if:
- 14.2.1 the Authority fails to make any payment within 30 days of the Provider notifying the Authority in writing that payment of the Charges is overdue;
 - 14.2.2 the Authority commits any other breach of the Terms and Conditions (and fails to remedy the breach within a reasonable period of it having been requested to do so) which in the reasonable opinion of the Provider justifies termination of the Purchase Order.
- 14.3 Either party shall have the right to terminate the Purchase Order without consequence (financial or otherwise) if in the reasonable opinion of the party wishing to terminate the Purchase Order, the conduct of the other party is having or may have a negative or adverse effect on the reputation of the party.

15. CONSEQUENCES OF TERMINATION

- 15.1 Upon termination in accordance with clause 14.1 above and in addition to such consequences as are set out in other provisions of the Terms and Conditions:
- 15.1.1 the Provider shall forthwith cease to provide the Goods and/or the Services;
 - 15.1.2 the Provider shall fully and promptly indemnify and compensate the Authority in respect of the cost of causing to be provided such of the Goods and/or the Services as would have been provided had the Purchase Order not been terminated;
 - 15.1.3 the Authority shall be under no obligation to make any further payment to the Provider and shall be entitled to retain any payment which may have fallen due to the Provider before termination until the Provider has paid in full to the Authority all sums due or arising under the Terms and Conditions or any agreement between the parties; and
 - 15.1.4 the Provider shall forthwith release and handover to the Authority any and all property belonging to the Authority which may be in the Provider's possession or under its control including but not limited to records whether in the form of documents computer data or other material in any medium.
- 15.2 Termination shall be without prejudice to the accrued rights and remedies of either party.

16. INDEMNITY AND LIMITATION OF LIABILITY

- 16.1 The Provider shall indemnify on behalf of itself and its sub-contractors and keep fully and effectually indemnified the Authority its Staff and agents from and against all Losses whatsoever incurred in respect of or in any way arising directly out of the negligence or breach by the Provider and its sub-contractors except to the extent that such Losses may arise out of the act default or

negligence of the Authority provided always that the Provider shall not be liable for any indirect or consequential losses.

- 16.2 Unless otherwise agreed in writing between the Authority and the Provider, the Provider shall take out and maintain for the period in which the Goods and/or Services are provided under the Purchase Order:
- 16.2.1 public liability insurance covering its liabilities in an amount of not less than ten million pounds (£10,000,000) for any one occurrence or series of occurrences arising out of any one event;
 - 16.2.2 professional indemnity insurance (where applicable) covering its liabilities in an amount not less than five million pounds (£5,000,000) for any one occurrence or series of occurrences arising out of any one event;
 - 16.2.3 sufficient employer's liability insurance to meet its obligations under clause 16.1 above;
 - 16.2.4 sufficient motor vehicle insurance in respect of any motor vehicles used in the delivery of the Goods and/or the Services.
- 16.3 The Provider shall supply to the Authority on request certified copies of insurance policies, cover notes, premiums, receipts and other documents deemed by the Authority to be necessary to comply with clause 16.2 above.

17. TRANSFER OF RESPONSIBILITY

- 17.1 The Provider warrants that where applicable it shall:
- 17.1.1 comply with TUPE; and
 - 17.1.2 indemnify and keep indemnified the Authority against all Losses incurred as a result of non-compliance with TUPE
- 17.2 The Provider shall; where applicable:
- 17.2.1 take all reasonable steps to minimise any disruption which expiry or early termination of the Purchase Order may cause in respect of the delivery of the delivery of the Services;
 - 17.2.2 assist the Authority in implementing a contingency plan to deal with the effects of termination or expiry in so far as it is practicable to do so; and
 - 17.2.3 at no cost to the Authority, promptly provide such assistance and comply with such timetable as the Authority may reasonably require for the purpose of ensuring an orderly transfer of responsibility in respect of the Services. The Provider will use all reasonable endeavours to ensure that its Staff and its sub-contractors (if any) are under a similar obligation. The assistance which the Authority may require under this clause 17.2.3 shall include but not be limited to the

delivery of documents and data in the Provider's possession or control or in its sub-contractors' possession or control, which relate to performance, monitoring, management and reporting of the Purchase Order.

17.3 The Provider undertakes that it shall not knowingly do or omit to do anything which may adversely affect its ability to ensure an orderly transfer of responsibility for the delivery of the Services.

18. ACTIONS UNDER CONTRACT

The Provider shall pay to the Authority on an indemnity basis all costs, fees, charges, disbursements and expenses including, without prejudice to the generality of the above, those payable to counsel, solicitors, surveyors and bailiffs properly incurred by the Authority in relation to or incidental to the recovery of any outstanding monies due to the Authority under the Terms and Conditions.

19. FORCE MAJEURE

19.1 Neither party will be liable for any delay in performing or failure to perform any of its obligations under the Terms and Conditions due to a Force Majeure Event.

19.2 Any delay or failure caused by a Force Majeure Event will not constitute a breach of the Terms and Conditions and the time for performance of the affected obligation shall be extended by such period as is reasonable. As regards any delay or stoppage:

19.2.1 any costs arising from the delay or stoppage shall be borne by the party incurring those costs;

19.2.2 either party may if the delay or stoppage continues for more than 28 days terminate the Purchase Order with immediate effect on giving written notice to the other party, and neither party shall be liable for such termination; and

19.2.3 the party claiming the Force Majeure Event will take all necessary steps to bring the event to a close or to find a solution by which the Goods and/or the Services may be provided despite the Force Majeure Event.

20. VARIATION

No variations or additions to the Terms and Conditions may be made unless done so in writing and with the signed consent of both parties.

21. ASSIGNMENT AND SUB-CONTRACTING

21.1 The Provider shall not be entitled to assign the Purchase Order or any part thereof without the previous written consent of the Authority which consent shall not be unreasonably withheld.

- 21.2 The Provider shall not be entitled to sub-contract the provision of the Goods and/or the Services or any part thereof without the previous written consent of the Authority which consent shall not be unreasonably withheld.
- 21.3 In the event that any part of the Purchase Order is sub-contracted the Provider hereby warrants that it:
- 21.3.1 it shall pay all invoices issued to it by its sub-contractor(s) within 30 days of receipt of a valid invoice; and
 - 21.3.2 it will make it a term of any contract entered into with a sub-contractor that the sub-contractor complies with the Terms and Conditions.

22. PARTNERSHIP

Nothing in the Purchase Order will create any joint venture or partnership between the Authority and the Provider, and the Authority shall not be liable for any actions, costs, proceedings, claims or demands arising out of delivery of the Purchase Order.

23. AGENCY

Neither the Provider nor its employees shall in any circumstances hold itself or themselves out as being the agent or servant of the Authority otherwise than in circumstances expressly permitted by the Purchase Order.

24. WAIVER

Failure by the Authority at any time to enforce the provisions of the Purchase Order or require performance by the Provider of any of the provisions of the Purchase Order shall not be construed as a waiver or any such provision and shall not affect the validity of the Purchase Order or any part thereof or the right of the Authority to enforce any provision in accordance with the Terms and Conditions.

25. NOTICES

- 25.1 Any notice under the Purchase Order must be in writing and can only be sent by recorded delivery post or personal delivery to the addresses specified in the Purchase Order.
- 25.2 Any other communication under the Purchase Order must be in writing and can only be sent by recorded delivery post, personal delivery, fax or electronic mail.

26. THIRD PARTIES

The Contract (Rights of third Parties) Act 1999 shall not apply to the Purchase Order.

27. SURVIVAL OF TERMS

Clauses 4.22, 5, 10, 11, 12, 13, 15, 16, 17, 18 and 29 shall survive the expiry or early termination of the Purchase Order.

28. ENTIRE AGREEMENT

The Purchase Order (including the Terms and Conditions) supersedes all prior agreements, arrangements and understandings between the parties and constitutes the entire agreement between the parties (save that neither party seeks to exclude liability for any fraudulent pre-contractual misrepresentation upon which the other party can be shown to have relied).

29. LAW & JURISDICTION

The Purchase Order shall be governed by and shall be construed in accordance with English law; and be subject to the exclusive jurisdiction of the Courts of England and Wales, to which both parties submit.