

## Terms and Conditions for Professional Services

### 1 INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement (unless the context requires otherwise).

**Assignment Manager** means the Council's representative as identified in the Order

**Capacity** means as agent, professional, director, employee, owner, partner, shareholder or in any other capacity.

**Commencement Date** the date specified as such in the Order Form.

**Council Property** means all documents, books, manuals, materials, records, correspondence, papers and information (on whatever media and wherever located) relating to the functions or affairs of the Council or its customers and business contacts, and any equipment, keys, hardware or software provided for the Supplier's use by the Council during the Engagement, and any data or documents (including copies) produced, maintained or stored by the Supplier on the Supplier's computer systems or other electronic equipment during the Engagement.

**Confidential Information** means information in whatever form (including without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the Services, customers, products, affairs and finances of the Council for the time being confidential to the Council including (but not limited to) information that the Supplier creates, develops, receives or obtains in connection with his Engagement, whether or not such information (if in anything other than oral form) is marked confidential.

**Data Protection Legislation** means (a) the UK GDPR, (b) the Data Protection Act 2018; (c) all applicable Law about the processing of personal data and privacy and guidance issued by the Information Commissioner and other regulatory authority; and (d) (to the extent that it applies) the EU GDPR (and in the event of conflict, the UK GDPR shall apply);

**Data Subject** has the meaning given to it as defined in the Data Protection Legislation;

**Data Subject Access Request** means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

**Data Loss Event** means any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this contract, including any Personal Data Breach (such term as defined by the Data Protection Legislation);

**EIRs** means the Environmental Information Regulations 2004

**Engagement** means the engagement of the Supplier by the Council on the terms of this agreement.

**EU GDPR** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it has effect in European Union law;

**Finish Date** means the date specified as such in the Order Form

**Freedom of Information/FOIA** means the Freedom of Information Act 2000

**Insurance Policies** means employer's liability insurance cover professional indemnity insurance cover and public liability insurance cover.

**Intellectual Property Rights** means patents, rights to Inventions, copyright and related rights, moral rights, trademarks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world.

**Invention** means any invention, idea, discovery, development, improvement or innovation made by the Supplier in the provision of the Services, whether or not patentable or capable of registration, and whether or not recorded in any medium.

**Key Personnel** means any persons specified as such in the Order, the Specification or otherwise notified as such by the Council to the Supplier in writing;

**Order** means the Council's order for the supply of Services, as set out in the Council's order form or in the Council's written acceptance of the tender/quotation as the case may be

**Personal Data** has the meaning as defined in the Data Protection Legislation;

**Pre-Contractual Statement** means any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the Engagement other than as expressly set out in this agreement or any documents referred to in it.

**Protective Measures** means technical and organisational measures which must take account of (a) the nature of the data to be protected; (b) the harm that might result from a Data Loss Event; (c) the state of technological development; and (d) the cost of implementing any measures; including pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;

**Required Professional Standard** means the exercise of that degree of skill, care and diligence which would reasonably and ordinarily be expected from a skilled and experienced professional provider of services (similar to the Services to a customer like the Council).

**Services** means the services provided by the Supplier in a consultancy capacity for the Council as more particularly described in the Order.

**Staff** means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier's obligations under the Agreement.

**Staff Vetting Procedures** means vetting procedures that accord with good industry practice or, where applicable, the Council's procedures for the vetting of personnel as provided to the Supplier from time to time.

**Subprocessor** means any third party appointed to process Personal Data on behalf of the Processor related to this contract;

**Substitute** means a substitute for the Supplier appointed under the terms of clause 3.3

**Termination Date** means the date of termination of this agreement, however arising.

**UK GDPR** has the meaning as set out in section 3(10) of the Data Protection Act 2018, supplemented by section 205(4).

**Works** means all records, reports, documents, papers, drawings, designs, transparencies, photos, graphics, logos, typographical arrangements, software, and all other materials in whatever form, including but not limited to hard copy and electronic form, prepared by the Supplier in the provision of the Services.

## **2 TERMS OF ENGAGEMENT**

- 2.1 The Council shall engage the Supplier and the Supplier shall provide the Services on the terms of this agreement.
- 2.2 The Engagement shall commence on the Commencement Date and shall continue until the Finish Date unless and until terminated as provided by the terms of this agreement.
- 2.3 Notwithstanding clause 2.2 above, the parties may by mutual agreement in writing extend this agreement beyond the Finish Date by a further period or periods as set out in the Order. If an extension period is agreed then this agreement will be extended on the same terms and conditions as the original agreement, subject to any changes that may be agreed between the parties in writing.

## **3 DUTIES**

- 3.1 During the Engagement, the Supplier shall:
  - 3.1.1 provide the Services in accordance with the Required Professional Standard and use his reasonable endeavours to promote the interests of the Council;
  - 3.1.2 unless prevented by ill-health or accident, devote such time as is necessary in providing the Services as may be required for their proper performance including any minimum periods as specified in the Order (if applicable); and
  - 3.1.3 promptly give to the Assignment Manager all such information and reports as many reasonably be required in connection with matters relating to the provision of the Services.
- 3.2 If the Supplier is unable to provide the Services due to ill health or injury, the Supplier shall advise the Council of that fact as soon as reasonably practicable. For the avoidance of doubt, no fee shall be payable in respect of any period during which the Services are not provided.

- 3.3 The Supplier may, with the prior written approval of the Assignment Manager, appoint a suitable qualified and skilled Substitute to perform the Services on his behalf, PROVIDED THAT the Substitute shall be required to enter into direct undertakings with the Council, including with regard to confidentiality. If the Council accepts the Substitute, the Supplier shall continue to invoice the Council in accordance with clause 4 and shall be responsible for the remuneration of the Substitute. The Supplier shall use reasonable endeavours to ensure that he is available at all times on reasonable notice to provide such assistance or information as the Council may require.
- 3.4 Subject to clause 3.1.3 and 3.3, the Supplier shall not assign, charge or transfer the benefit of this Agreement nor sub-contract any part of the Services without the prior written consent of the Council. The Council shall be permitted to assign, charge or transfer the entire benefit of this Agreement with the prior written consent of the Supplier.
- 3.5 Unless the Supplier has been specifically authorised to do so by the Council in writing, the Supplier shall not:
- 3.5.1 have any authority to incur any expenditure in the name of or for the account of the Council; or
- 3.5.2 hold himself out as having authority to bind the Council.
- 3.6 The Supplier shall comply with all reasonable standards of safety and comply with the Council's health and safety procedures from time to time in force at the premises where the Services are provided, and report to the Council any unsafe working conditions or practices.
- 3.7 The Supplier may use a third party to perform any administrative, clerical or secretarial functions which are reasonably incidental to the provision of the Services, provided that:
- 3.7.1 the Council will not be liable to bear the cost of such functions; and
- 3.7.2 at the Council's request, the third party shall be required to enter into direct undertakings with the Council, including with regard to confidentiality.
- 3.8 Save to the extent required by law or where such matters are already within the public domain or where strictly necessary for proper performance of the Services hereunder, the Supplier shall treat as confidential and shall not disclose to any person any information of a confidential nature relating to the Council, the Services, this Agreement or any other related agreement disclosed and/or acquired by the Supplier.
- 3.9 The Supplier shall, as and when the Council requires, promptly and in any event no later than ten (10) days from the Council's request to do so, execute and deliver a deed or deeds of warranty in favour of such of beneficiaries as the Council may require and such deed(s) of warranty shall be in the form as provided by the Council with reasonable amendments to be agreed between the Parties.
- 3.10 The Supplier shall, during the course of Engagement, maintain professional registration with any applicable recognised professional body in the Supplier's field of expertise, as more particularly set out in the Order.

## **4 FEES**

- 4.1 The Council shall pay the Supplier a fee set out in the Order Form at such intervals and in such manner as may be specified in the Order Form exclusive of VAT.
- 4.2 In consideration of the provision of the Services, and subject to the invoicing procedure as set out in the Order Form, the Council shall pay each invoice submitted by the Company within thirty (30) days of receipt.
- 4.3 Payment in full or in part of the fees claimed under clause 4 or any expenses claimed under clause 4 shall be without prejudice to any claims or rights of the Council against the Supplier in respect of the provision of the Services.

## **5 EXPENSES**

- 5.1 The reimbursement of any expenses (if applicable) shall be as set out in the Order.

## **6 STAFF**

- 6.1 If the Council reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:
  - 6.1.1 refuse admission to the relevant person(s) to the Council's premises;
  - 6.1.2 direct the Supplier to end the involvement in the provision of the Goods and/or the Services of the relevant person(s); and/or
  - 6.1.3 require that the Supplier replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Council to the person removed is surrendered,
  - 6.1.4 and the Supplier shall comply with any such notice.
- 6.2 The Supplier shall:
  - 6.2.1 ensure that all Staff are vetted in accordance with the Staff Vetting Procedures and if requested, comply with the Council's Staff Vetting Procedures as supplied from time to time;
  - 6.2.2 if requested, provide the Council with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Council's premises in connection with the Agreement; and
  - 6.2.3 procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Council.
- 6.3 Any Key Personnel shall not be released from supplying the Services without the agreement of the Council, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.
- 6.4 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Council (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and

skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

## **7 OTHER ACTIVITIES**

7.1 Nothing in this agreement shall prevent the Supplier from being engaged, concerned or having any financial interest in any Capacity in any other business, trade, profession or occupation during the Engagement provided that:

7.1.1 such activity does not cause a breach of any of the Supplier's obligations under this agreement;

7.1.2 the Supplier shall not engage in any such activity if it conflicts in any way with the Services without the prior written consent of the Assignment Manager.

## **8 CONFIDENTIAL INFORMATION AND COUNCIL PROPERTY**

8.1 The Supplier acknowledges that in the course of the Engagement he will have access to Confidential Information. The Supplier has therefore agreed to accept the restrictions in this clause 8.

8.2 The Supplier shall not (except in the proper course of his duties) either during the Engagement or at any time after the Termination Date, use or disclose to any third party (and shall use his best endeavours to prevent the publication or disclosure of) any Confidential Information. This restriction does not apply to:

8.2.1 any use or disclosure authorised by the Council or required by law; or

8.2.2 any information which is already in, or comes into, the public domain otherwise than through the Supplier's unauthorised disclosure.

8.3 Subject to clause 14.1.2, at any stage during the Engagement, the Supplier will, promptly on request, return all and any Council Property in his possession to the Council.

8.4 Notwithstanding anything else in this agreement, the Supplier may include general details of the Project in proposals to potential clients for the purpose of exhibiting the experience and professional capabilities of the Supplier.

## **9 DATA PROTECTION**

9.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 9 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

9.2 The parties acknowledge that, unless otherwise set out in the Order Form, for the purposes of the Data Protection Legislation, the Council is the data controller and the Supplier is the data processor (where Controller and Processor have the meanings as defined in the Data Protection Legislation).

9.3 Where a party is a Processor, it must only process Personal Data if authorised to do so by the Controller.

- 9.4 The Processor must give all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment before starting any processing, including:
  - 9.4.1 a systematic description of the expected processing and its purpose;
  - 9.4.2 the necessity and proportionality of the processing operations;
  - 9.4.3 the risks to the rights and freedoms of Data Subjects; and
  - 9.4.4 the intended measures to address the risks, including safeguards, security measures and mechanisms to protect Personal Data.
- 9.5 The Processor must notify the Controller immediately if it thinks the Controller's instructions breach the Data Protection Legislation.
- 9.6 The Processor must put in place appropriate Protective Measures to protect against a Data Loss Event which must be approved by the Controller.
- 9.7 If lawful to notify the Controller, the Processor must promptly notify the Controller if the Processor is otherwise required to process Personal Data by Law before processing it.
- 9.8 The Processor must use all reasonable endeavours to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
  - 9.8.1 are aware of and comply with the Processor's duties under this clause 9;
  - 9.8.2 are subject to appropriate confidentiality undertakings with the Processor or any Subprocessor;
  - 9.8.3 are informed of the confidential nature of the Personal Data and do not provide any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise allowed by the Contract; and
  - 9.8.4 have undergone adequate training in the use, care, protection and handling of Personal Data.
- 9.9 The Processor must not transfer Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
  - 9.9.1 the transfer is in accordance with Article 45 of the UK GDPR (or section 73 of Data Protection Act 2018) or, where this is not possible, the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or section 75 of the Data Protection Act 2018) as determined by the Controller which could include relevant parties entering into the International Data Transfer Agreement (the "IDTA"), or International Data Transfer Agreement Addendum to the European Commission's SCCs (the "Addendum"), as published by the Information Commissioner's Office from time to time as well as any additional measures determined by the Controller;
  - 9.9.2 the Data Subject has enforceable rights and effective legal remedies when transferred;

- 9.9.3 the Processor meets its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - 9.9.4 the Processor complies with the Controller's reasonable prior instructions about the processing of the Personal Data.
- 9.10 The Processor must notify the Controller immediately if it:
  - 9.10.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
  - 9.10.2 receives a request to rectify, block or erase any Personal Data;
  - 9.10.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - 9.10.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
  - 9.10.5 receives a request from any third Party for disclosure of Personal Data where compliance with the request is required or claims to be required by Law; and
  - 9.10.6 becomes aware of a Data Loss Event.
- 9.11 Any requirement to notify under clause 9.10 includes the provision of further information to the Controller in stages as details become available.
- 9.12 The Processor must promptly provide the Controller with full assistance in relation to any Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 9.10. This includes giving the Controller:
  - 9.12.1 full details and copies of the complaint, communication or request;
  - 9.12.2 reasonably requested assistance so that it can comply with a Data Subject Access Request within the relevant timescales in the Data Protection Legislation;
  - 9.12.3 any Personal Data it holds in relation to a Data Subject on request;
  - 9.12.4 assistance that it requests following any Data Loss Event; and
  - 9.12.5 assistance that it requests relating to a consultation with, or request from, the Information Commissioner's Office or any other regulatory authority.
- 9.13 The Processor must maintain full, accurate records and information to show it complies with this clause 9. This requirement does not apply where the Processor employs fewer than 250 staff, unless either the Controller determines that the processing:
  - 9.13.1 is not occasional;
  - 9.13.2 includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
  - 9.13.3 is likely to result in a risk to the rights and freedoms of Data Subjects.



- 9.14 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 9.15 Before allowing any Subprocessor to process any Personal Data, the Processor must:
  - 9.15.1 notify the Controller in writing of the intended Subprocessor and processing;
  - 9.15.2 obtain the written consent of the Controller;
  - 9.15.3 enter into a written contract with the Subprocessor so that this clause 9 applies to the Subprocessor; and
  - 9.15.4 provide the Controller with any information about the Subprocessor that the Controller reasonably requires.
- 9.16 The Processor remains fully liable for all acts or omissions of any Subprocessor.
- 9.17 At any time the Council can, with 30 Working Days' notice to the Supplier, change this clause 9 to replace it with any applicable standard clauses (between the controller and processor) or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the Contract).
- 9.18 The parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office or any other regulatory authority.

## **10 FREEDOM OF INFORMATION**

- 10.1 The Supplier acknowledges that the Council is subject to the requirements of the FOIA and the EIRs and shall:
  - 10.1.1 provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and the EIRs;
  - 10.1.2 transfer to the Council all Requests for Information relating to the Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
  - 10.1.3 provide the Council with a copy of all Information belonging to the Council requested in the Request for Information which is in its possession or control in the form that the Council requires within 5 Working Days (or such other period as the Council may reasonably specify) of the Council's request for such Information; and
  - 10.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Council. The Supplier acknowledges that the Council may be required under the FOIA and the EIRs to disclose Information concerning the Supplier or the Services (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances the Council shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure

- 10.2 Notwithstanding any other provision in the Agreement, the Council shall be responsible for determining in its absolute discretion whether any Information relating to the Supplier or the Services is exempt from disclosure in accordance with the FOIA and/or the EIRs.

## **11 INTELLECTUAL PROPERTY**

- 11.1 In the absence of prior written agreement by the Council to the contrary, all Intellectual Property Rights created by the Supplier:
- 11.1.1 in the course of performing the Services; or
  - 11.1.2 exclusively for the purpose of performing the Services,
- shall vest in the Council on creation.
- 11.2 Notwithstanding the foregoing, the Supplier does not convey to the Council, nor does the Council obtain any right to document, any material utilised by the Supplier that was created separate to this agreement or was pre-existing material (not already owned by the Council). To the extent that pre-existing materials are incorporated into the work, the Supplier grants the Council an irrevocable, non-exclusive, royalty-free right and/or license to use, execute, and reproduce the pre-existing material, but only as an inseparable part of the Services. The Council acknowledges and agrees that the Supplier retains all rights to the know-how with respect to how to perform the Services provided hereunder.
- 11.3 Subject to clause 12.4, the Supplier shall indemnify the Council against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Council's acts or omissions, Provided Always that:
- 11.3.1 the Council shall give notice to the Supplier of any claims or proceedings following receipt of them; and
  - 11.3.2 the Council shall make no admission of liability and will give the Supplier sole authority to defend or settle the claims or proceedings at the Supplier's cost and expense.

## **12 INSURANCE AND LIABILITY**

- 12.1 Nothing in this agreement shall limit or exclude the Supplier's or the Council's liability for:
- 12.1.1 death or personal injury caused by its negligence or the negligence of its Employees;
  - 12.1.2 fraud or fraudulent misrepresentation; or
  - 12.1.3 any other liability which cannot be limited or excluded by applicable law.
- 12.2 Nothing in this agreement shall limit or exclude the Supplier's liability under clause 11.3 (IPR indemnity), 15.2 (indemnity) and clause 9 (Data Protection) where applicable.

- 12.3 Subject to clause 12.1 and clause 12.2, neither party shall have any liability to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise for any indirect or consequential loss arising under or in connection with this agreement.
- 12.4 Subject to clause 12.1 and clause 12.2, the Supplier's total aggregate liability to the Council, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this agreement shall, in no event, exceed a sum equal to 125% of the fee paid or payable to the Supplier under clause 4.
- 12.5 Nothing in the agreement shall be taken as in any way reducing or affecting a general duty to mitigate loss suffered by a party.
- 12.6 Without prejudice to the above, the Supplier shall ensure that the Insurance Policies are taken out and maintained with reputable insurers with, as a minimum, the levels of cover specified in the Order or, if no such minimum levels are provided, an adequate level of cover in respect of all risks which may be incurred by the Supplier arising out of the Supplier's performance of the Agreement, including professional indemnity, death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier and shall include public liability insurance with a limit of liability of not less than £5 million in relation to any one claim or series of claims
- 12.7 The Supplier shall on request supply to the Council copies of such Insurance Policies (or a Broker's certification of insurance) and evidence that the relevant premiums have been paid.
- 12.8 The Supplier shall comply with all terms and conditions of the Insurance Policies at all times. If cover under the Insurance Policies shall lapse or not be renewed or be changed in any material way or if the Supplier is aware of any reason why the cover under the Insurance Policies may lapse or not be renewed or be changed in any material way, the Supplier shall notify the Council without delay.

## **13 TERMINATION**

- 13.1 Notwithstanding the provisions of clause 13.2, the Council may terminate the Engagement with immediate effect with no liability to make any further payment to the Supplier (other than in respect of amounts accrued before the Termination Date) if at any time the Supplier:
  - 13.1.1 commits any act considered by the Council to be gross misconduct whilst delivering the Services;
  - 13.1.2 commits any serious or repeated breach or non-observance of any of the provisions of this agreement or refuses or neglects to comply with any reasonable and lawful directions of the Council;
  - 13.1.3 is convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed);

- 13.1.4 is in the reasonable opinion of the Assignment Manager negligent or incompetent in the performance of the Services or incapable of performing the Services;
  - 13.1.5 is declared bankrupt or makes any arrangement with or for the benefit of his creditors or has a county court administration order made against him under the County Court Act 1984;
  - 13.1.6 commits any fraud or dishonesty or commits any Offence under the Bribery Act 2010 or acts in any manner which in the opinion of the Assignment Manager brings or is likely to bring the Supplier or the Council into disrepute or is materially adverse to the interests of the Council;
  - 13.1.7 a conflict of interest arises that might inhibit the Supplier from performing the Services which cannot be reconciled to the satisfaction of the Council; or
  - 13.1.8 fails to maintain professional registration in accordance with clause 3.10.
- 13.2 The rights of the Council under clause 13 are without prejudice to any other rights that it might have at law to terminate the Engagement or to accept any breach of this agreement on the part of the Supplier as having brought the agreement to an end. Any delay by the Council in exercising its rights to terminate shall not constitute a waiver of these rights.

## **14 OBLIGATIONS ON TERMINATION**

- 14.1 On the Termination Date the Supplier shall:
- 14.1.1 immediately deliver to the Council all Council Property in his possession or under his control;
  - 14.1.2 irretrievably delete any information (apart from that which they are required to retain by law) relating to the Services stored on any magnetic or optical disk or memory and all matter derived from such sources which is in his possession or under his control outside the premises of the Council. Notwithstanding the foregoing, the Supplier shall not be deemed to have retained or failed to return or destroy any of the Council Property if such Council Property is automatically archived or backed up on secured servers or other secured back-up sources so long as no attempt is made to recover such Council Property from such servers or back-up sources, and further provided that:
    - (a) such servers or back-up sources are sufficiently wiped of all data prior to their disposal in the normal course; and
    - (b) until such disposal any such retained Council Property shall remain subject to the non-disclosure and use restrictions set forth herein, notwithstanding any termination of this Agreement; and
  - 14.1.3 provide a signed statement that he has complied fully with his obligations under this clause 14.

## **15 STATUS**

- 15.1 The relationship of the Supplier to the Council will be that of independent contractor and nothing in this agreement shall render him an employee, worker or agent of the Council and the Supplier shall not hold himself out as such.
- 15.2 This agreement constitutes a contract for the provision of services and not a contract of employment and accordingly the Supplier shall be fully responsible for and shall indemnify the Council for and in respect of:
- 15.2.1 any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services, where the recovery is not prohibited by law. The Supplier shall further indemnify the Council against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Council in connection with or in consequence of any such liability, deduction, contribution, assessment or claim;
- 15.2.2 any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Supplier against the Council arising out of or in connection with the provision of the Services.
- 15.3 The Council may at its option satisfy such indemnity (in whole or in part) by way of deduction from any payments due to the Supplier.
- 15.4 Where the Supplier is self-employed then from the Commencement Date and for a period of 6 years following the Finish Date, the Supplier shall maintain accurate and complete records of all income tax, National Insurance and social security contributions made in connection with the performance of the Services, as may be required by law, and shall promptly disclose these records to the Council upon request.

## **16 NOTICES**

- 16.1 Any notice given under this agreement shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it personally, or sending it by pre-paid recorded delivery or registered post to the relevant party at (in the case of the Council) its registered office for the time being and (in the case of the Supplier) his last known address. Any such notice shall be deemed to have been received:
- 16.1.1 if delivered personally, at the time of delivery;
- 16.1.2 in the case of pre-paid recorded delivery or registered post, 48 hours from the date of posting.
- 16.2 In proving such service, it shall be sufficient to prove that the envelope containing the notice was addressed to the address of the relevant party and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery or registered post.

## **17 ENTIRE AGREEMENT AND PREVIOUS CONTRACTS**

- 17.1 Each party on behalf of itself acknowledges and agrees with the other party that:

- 17.1.1 this agreement together with any documents referred to in it constitutes the entire agreement and understanding between the Supplier and the Council and supersedes any previous arrangement, understanding or agreement between them relating to the Engagement (which shall be deemed to have been terminated by mutual consent);
- 17.1.2 in entering into this agreement neither party has relied on any Pre-Contractual Statement and
- 17.1.3 each party agrees that the only rights and remedies available to it or arising out of or in connection with any Pre-Contractual Statement shall be for breach of contract. Nothing in this agreement shall, however, limit or exclude any liability for fraud.

## **18 VARIATION**

- 18.1 No variation of this agreement or of any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of each of the parties.

## **19 PREVENTION OF BRIBERY ACT 2010**

- 19.1 The Supplier shall:
  - 19.1.1 comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;
  - 19.1.2 promptly report to the Council any request or demand for undue financial or other advantage of any kind received by the Supplier in connection with the performance of this agreement;
  - 19.1.3 ensure that any person associated with the Supplier who is performing services in connection with this agreement does so only on the basis of a written contract which imposes on and secures from such person's terms equivalent to those imposed on the Supplier in this clause 19
- 19.2 Breach of this clause 19 shall entitle the Council to terminate under clause 13 above.

## **20 THIRD PARTY RIGHTS**

- 20.1 A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement but this does not affect any right or remedy of a third party which exists, or is available, apart from under that Act.
- 20.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any person that is not a party to this agreement.

## **21 GOVERNING LAW AND JURISDICTION**

- 21.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

21.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).