**CITY OF BRADFORD METROPOLITAN DISTRICT COUNCIL**

**STANDARD PURCHASE ORDER TERMS AND CONDITIONS FOR GOODS & SERVICES**

## Definitions and Interpretation

## Unless the context otherwise requires:

## the following words shall have the following meanings:

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

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

**"Contract"** means the contract between the Parties which is created by the Purchase Order;

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

**"Council Data"** a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Council's Confidential Information, and which: i) are supplied to the Provider by or on behalf of the Council; or ii) the Provider is required to generate, process, store or transmit pursuant to the Contract; or b) any Personal Data for which the Council is the Data Controller;

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

**"Data Protection Legislation"** (i) the GDPR, the LED and any applicable national implementing laws as amended from time to time (ii) the Data Protection Act 2018 to the extent that it relates to processing Personal Data and privacy; (iii) all applicable law about the processing of Personal Data and privacy;

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

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

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

**"FOIA"** means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the information commissioner or relevant Government department in relation to such legislation;

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

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

 **“GDPR"** the General Data Protection Regulation (Regulation (EU) 2016/679);

**"Goods"** means the goods to be supplied by the Supplier to the Buyer under the Contract;

**"Good Industry Practice"** standards, practices, methods and procedures conforming to the law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;

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

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

**"LED"** Law Enforcement Directive (Directive (EU) 2016/680);

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

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

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

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

**“Purchase Order”** means the order from the Council to the Provider which forms the Contract;

**"Purchase Order Number"** means the Council’s unique number relating to the Purchase Order

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

**"Services"** means the services to be supplied by the Provider to the Council under the Contract as described by the Council;

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

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

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

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

##

* + 1. the schedules form part of this Contract;
		2. the word ‘including’, "for example" and similar words shall be understood as if they were immediately followed by the words "without limitation";
		3. headings in this Contract do not affect the interpretation of the Contract; and
		4. a reference to any law includes a reference to that law as amended, extended, consolidated or re-enacted from time to time;
	1. If any part of the Contract is prohibited by law or judged by a court to be unlawful, void or unenforceable, it shall be removed from the Contract and rendered ineffective insofar as required without affecting the validity or enforcement of the Contract.
	2. No third party has any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
	3. This Contract does not create a partnership, joint venture or employment relationship between the Parties.
	4. Any partial or full waiver of the terms of the Contract is only valid if it is stated to be a waiver in writing to the other Party.
	5. A variation to the Contract is only effective if agreed in writing and signed by both Parties.
	6. This Contract and any issues arising out of it are governed by English law.

## Basis of Contract

* 1. The issue of a Purchase Order constitutes an acceptance of the Provider’s offer to the Council to provide the Goods and/or Services subject to in accordance with these terms and conditions. The Contract shall be effective according to the dates set out in the Purchase Order.
	2. These terms and conditions shall be incorporated automatically into the Contract and shall constitute the entire agreement between the Parties for the Goods and/or Services, replacing all previous statements and agreements whether written or oral. Delivery of Goods and/or performance of Services by the Provider following the Purchase Order shall be deemed to be conclusive evidence of the Provider’s acceptance of these terms and conditions.
	3. No terms or conditions of the Provider, including any it attempts to apply under any sales offer, or to include with any invoices or other documents submitted to the Council shall be incorporated into the Contract.
	4. Notwithstanding clauses 2.1-2.3 above, the Council may, prior to the commencement of the Contract, either: (a) agree in writing to alternative terms and conditions supplied by the Provider; (b) notify and issue in writing any other terms and conditions which shall instead be applicable; or (c) notify and issue in writing any additional special conditions that it requires to be part of the Contract.

## Services

* 1. In consideration of the Council’s payment of the Charges, the Provider shall supply the Services subject to and in accordance with the terms and conditions of the Contract and in compliance with all laws.
	2. The Provider is not given any sole or exclusive rights in relation to the provision of the Services.

* 1. The Provider must provide the Services in compliance with all of the Council’s instructions and with all descriptions and specifications set out. The Services shall be delivered to a professional standard using reasonable skill care and diligence by staff who are suitably skilled and experienced to perform tasks assigned to them, and with sufficient resources and appropriate expertise. Good Industry Practice must be adhered to.
	2. All Provider Staff involved in delivering the Goods and /or Services must be vetted using Good Industry Practice and in accordance with the any instructions set out in the Purchase Order or any Staff Vetting Procedures and comply with all conduct requirements when on the Council's premises. In the event that the Council determines that a member of the Provider's Staff is not suitable to work on the Contract, the Provider must replace them with a suitably qualified alternative.
	3. Late delivery of the Services will be a default of the Contract.
	4. The Council must provide the Provider with reasonable access to its premises at reasonable times for the purpose of supplying the Services.
	5. The Council is entitled to withhold payment for partially or undelivered Services, but doing so does not stop it from using its other rights under the Contract.

## Goods

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

## Charges

* 1. In exchange for the Goods and/or Services, the Provider shall be entitled to invoice the Council for the Charges. The Provider shall raise invoices promptly and in any event within 90 days from when the Charges are due.
	2. All Charges include all costs connected with the supply of the Goods and/or Services and exclude VAT, which is payable on provision of a valid VAT invoice.
	3. The Council must pay the Provider the Charges within 30 days of receipt by the Council of a valid, undisputed invoice, in cleared funds to the Provider's account on the invoice.
	4. A Provider invoice is only valid if it includes all appropriate references including the Purchase Order Number and other details reasonably requested, and a detailed breakdown of Services which have been delivered (if any).
	5. If there is a dispute between the Parties as to the amount invoiced, the Council shall pay the undisputed amount. The Provider shall not suspend the provision of the Services unless the Provider is entitled to terminate the Contract for a failure to pay undisputed sums in accordance with clause 9. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 15.
	6. The Council may retain or set-off payment of any amount owed to it by the Provider if notice and reasons are provided.
	7. The Provider must ensure that all subcontractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this doesn't happen, the Council can publish the details of the late payment or non-payment.

## Council Cause

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

##

## Warranties and Representations

* 1. The Provider warrants and represents that it has full capacity and authority to enter into and to perform the Contract and that throughout the Contract it maintains all necessary rights, authorisations, licences and consents to perform its obligations under the Contract;
	2. The Provider indemnifies the Council against wilful misconduct of the Provider, any of its subcontractor and/or Provider Staff that impacts the Contract, and any non-payment by the Provider of any tax or National Insurance.
	3. If the Provider becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify the Council.
	4. All third party warranties and indemnities covering the Services must be assigned for the Council's benefit by the Provider.

## Intellectual Property Rights (IPRs)

* 1. Each Party keeps ownership of its own Existing IPRs. The Provider gives the Council a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change and sub-license the Provider's Existing IPR to enable it and its sub- licensees to both receive and use the Services and to use the New IPR.
	2. Any New IPR created under the Contract is owned by the Council. The Council gives the Provider a licence to use any Existing IPRs for the purpose of fulfilling its obligations under the Contract and a perpetual, royalty-free, non-exclusive licence to use any New IPRs.
	3. If any claim is made against the Council for actual or alleged infringement of a third party’s intellectual property arising out of, or in connection with, the supply or use of the Services (an "**IPR Claim**"), then the Provider indemnifies the Council against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result of the IPR Claim.

## Termination

* 1. The Council has the right to terminate the Contract at any time without reason or liability by giving the Provider not less than 30 days' written notice.
	2. The Council has the right to immediately terminate the Contract by issuing a termination notice in writing to the Provider in the event that: (a) there is a Provider Insolvency Event; (b) the Provider repeatedly breaches the Contract in a way to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Contract; (c) the Provider is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Provider receiving notice specifying the breach and requiring it to be remedied; (d) there is a change of control (within the meaning of section 450 of the Corporation Tax Act 2010) of the Provider which isn't pre-approved by the Council in writing; or (e) the Provider or its affiliates embarrass or bring the Council into disrepute or diminish the public trust in them.
	3. Where the Council terminates the Contract under clause 9.2 the Provider is responsible for the Council's reasonable costs of procuring replacement Services for the rest of the Contract and the Council's payment obligations under the terminated Contract stop immediately
	4. The Provider has the right to terminate the Contract if the Council does not pay an undisputed invoice on time, if it has first issued a reminder notice. If the Council fails to pay an undisputed invoiced sum due and worth over 10% of the total Contract value or £1,000, whichever is the lower, within 30 days of the date of the reminder notice the Provider may terminate by written notice.
	5. Where the Provider terminates the Contract under clause 9.4 the Council must promptly pay all outstanding Charges incurred to the Provider together with reasonable committed and unavoidable losses for which the Provider must provide a fully itemised and costed schedule with evidence. The maximum value of these losses payment is limited to the total sum payable under the Contract.
	6. In the event of any termination, the accumulated rights of the Parties are not affected and the Provider must promptly delete or return the Council Data, except where required to retain copies by law, and any of the Council's property provided to it.

## Liability

* 1. Each Party's total aggregate liability under or in connection with the Contract (whether in tort, contract or otherwise) is no more than 125% of the Charges paid or payable to the Provider.
	2. No Party is liable to the other for any indirect losses, loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
	3. Notwithstanding clause 10.1, neither Party limits or excludes any liability for (a) death or personal injury caused by its negligence, or that of its employees, agents or subcontractors, (b) bribery or fraud or fraudulent misrepresentation by it or its employees; or (c) any liability that cannot be excluded or limited by law.
	4. Notwithstanding clause 10.1 the Provider does not limit or exclude its liability for any indemnity given under these terms and conditions.
	5. Each Party must use all reasonable endeavours to mitigate any loss or damage which it suffers under or in connection with the Contract, including any indemnities.
	6. The Provider indemnifies the Council against any costs resulting from any default by the Provider relating to any applicable law to do with the Contract.

## Confidential Information

## Each Party must: (a) keep all Confidential Information it receives confidential and secure; (b) not disclose, use or exploit the disclosing Party's Confidential Information without the disclosing Party's prior written consent, except for the purposes anticipated under the Contract; (c) immediately notify the disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.

## Notwithstanding clause 11.1 a Party may disclose Confidential Information which it receives from the disclosing Party in any of the following instances: (a) disclosure is required by applicable law or by a court with the relevant jurisdiction; (b) the information was in the public domain at the time of the disclosure; (c) the information was independently developed without access to the disclosing Party's Confidential Information; (d) the recipient Party already had the information without obligation of confidentiality before it was disclosed by the disclosing Party; (d) the information was given to it by a third party without obligation of confidentiality.

## The Provider acknowledges that the Council is subject to the requirements of the FOIA and the EIR and shall provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligation including: (a) transferring all Requests for Information that it receives as soon as practicable; (b) providing a copy of all Information belonging to the 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; and (c) not respond directly to a Request for Information unless authorised in writing to do so by the Council.

## Where possible, the Council will seek to consult with the Provider before disclosing any Information but the Council shall be responsible for determining in its absolute discretion whether any Information is exempt form disclosure. The Provider acknowledges that the Council may be required under the FOIA and the EIR to disclose Information concerning the Provider or the Goods and/or Services.

## Data Protection Legislation

* 1. If there is to be any Processing of Personal Data for the purposes of the Data Protection Legislation, the Parties shall as soon as reasonably practical agree and enter into a Data Sharing Agreement in a format to be agreed in relation to all Personal Data that is to be shared, which shall designate in writing the nature of the Processing and which Party is the Processor and which the Controller. If the Provider is required to process Personal Data by law it shall promptly notify the Council before processing the Personal Data, unless prohibited by law.
	2. Both Parties shall (and shall procure that their Staff shall) comply with any notification and other requirements contained in the Data Protection Legislation which arise in connection with this agreement. The only Processing that shall be done shall be pursuant to the written instructions provided by the Controller from time to time and may not be determined by the Processor. A Data Sharing Impact Assessment must be undertaken prior to any Processing.

## Council Data

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

## Legislation

* 1. The Provider shall not offer, give, or agree to give anything, to any person (whether working for or engaged by the Council or any other public body) an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other public function or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any other public function.
	2. The Provider must follow all applicable equality law when they perform their obligations under the Contract, including: (a) protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise; (b) any other requirements and instructions which the Council reasonably imposes related to equality law. The Provider must take all necessary steps, and inform the Council of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on the Contract.

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

## General

* 1. The Provider shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Provider arising out of the Provider’s performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss.
	2. The Provider must keep and maintain full and accurate records and accounts on all matters related to the Contract for seven years after the date of expiry or termination of the Contract.
	3. The Provider must allow any auditor appointed by the Council access to their premises to verify all contract accounts and records of everything to do with the Contract and provide copies for the audit. The Provider must provide information to the auditor and reasonable co-operation at their request.
	4. The Provider must, in connection with provision of the Services, use reasonable endeavours to: (a) comply and procure that its subcontractors comply with the Council’s Code of Conduct as provided and such other corporate social responsibility requirements as the Council may notify to the Provider from time to time; (b) support the Council in fulfilling its Public Sector Equality duty under s149 of the Equality Act 2010; (c) not use nor allow its subcontractors to use modern slavery, child labour or inhumane treatment; and (d) support the Council in sustainable procurement.
	5. Any Party affected by a Force Majeure Event is excused from performing its obligations under the Contract while the inability to perform continues, if it both: (a) provides written notice to the other Party; and (b) uses all reasonable measures practical to reduce the impact of the Force Majeure Event. If the provision of the Goods and/or Services is materially affected by a Force Majeure Event which lasts for 90 days continuously either Party may terminate the Contract in full or part.

* 1. The Provider cannot sub-contract, assign novate or in any way dispose of the benefit and/or burden of the Contract or any part of it without the Council's prior written consent. In the event that the Council consents to sub-contracting the Provider shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
	2. The Council can assign, novate or transfer its Contract or any part of it to any Crown Body, public or private sector body which performs the functions of the Council. The parties in such instance shall enter a novation agreement in the form that the Council specifies.

* 1. All notices under the Contract must be in writing to the addresses stated in the Purchase Order and are considered effective on the Working Day of delivery if delivered before 17:00 on a Working Day. Otherwise the notice is effective on the next Working Day. An email is effective when sent unless an error message is received.
	2. The Provider must take action to ensure that neither the Provider nor the Provider Staff are placed in the position of an actual or potential conflict between the financial or personal duties of the Provider or the Provider Staff and the duties owed to the Council under the Contract, in the reasonable opinion of the Council.
	3. If there is a dispute between the Parties, their senior representatives who have authority to settle the dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the dispute. If the dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the dispute.