

## Gedling Borough Council

### Standard Purchase Order Terms and Conditions

#### 1. Interpretation

1.1 In these Conditions:

**Business Hours:** means 9:00am to 5:00pm on a Working Day;

**Conditions:** means the standard terms and conditions of purchase as set out in this document and includes any Special Conditions agreed in writing between the Parties.

**Confidential Information:** means information, data and material of any nature which either Party may receive or obtain from each other or from any third party in connection with the operation of the Contract and which at the time of disclosure is marked or otherwise designated to show expressly or by necessary implication that it is imparted in confidence, and all information that is otherwise imparted in confidence, including information which (i) comprises Personal Data (as defined in the Data Protection Act 2018); (ii) information which could be considered commercially sensitive information, the release of which is likely to prejudice the commercial interests the Council or the Contractor respectively; or (iii) which is a trade secret.

**Conflict of Interest:** means a conflict between the financial or personal duties of the Contractor or Staff and the duties owed to the Council under the Contract, in the reasonable opinion of the Council.

**Contract:** means the contract for the purchase of the Deliverables by the Contractor to the Council and is comprised of these Conditions, the Specification and the Contractor's offer that the Council has accepted and if required by the Council, any additional Special Conditions generated by the Council and set out in a letter.

**Contractor:** means the supplier of the Deliverables as stated in the Purchase Order.

**Council:** means Gedling Borough Council

**Council Policies:** means the Council's constitution and all applicable rules, policies and codes of the Council, including but not limited to, those listed in Schedule 1 below, as amended and notified to the Contractor from time to time.

**Deliverables:** means the Goods, Services, works and / or software as stated in the Purchase Order which the Council may order and the Contractor is to supply under the Contract. **Deliverable** shall mean any part of the Deliverables.

**Delivery:** the satisfactory handover of the Deliverables to the Council which shall include unloading and stacking and any

other specific arrangements stipulated by the Council. "Delivered" and "Delivery" shall be construed accordingly.

**DPL:** means all laws applying privacy in England, including the Data Protection Act 2018 as supplemented by the General Data Protection Regulation (the "GDPR") and other legislation, and any related guidance and codes of practice issued by the Information Commissioner.

**Equality Acts:** means the Equality Act 2010 as amended from time to time or any other Law relating to discrimination in employment or in the provision of goods, facilities and services.

**Goods:** the goods (including any part or parts of them) to be supplied by the Contractor under this Contract, where applicable.

**Good Industry Practice:** using standards, practices, methods and procedures conforming to Law in the place of performance and exercising that degree of skill and care, diligence, prudence and foresight, which would be reasonably and ordinarily expected from a skilled and experienced person engaged within the relevant industry or a similar type of business under the same or similar circumstances.

**IPR:** means all present and future copyright, patents or patent rights registered and unregistered, design rights, trade rights, trademarks, database rights, inventions and knowhow and other intellectual property rights whatsoever in the world enforceable in connection with the Deliverables, including all extensions and renewals.

**Law:** the laws of England and Wales and any other laws or regulations, order, regulatory policies, mandatory guidance or code of conduct, judgement of a relevant court of law, directives or requirements of any regulatory body; and any guidelines or industry codes which apply to the provision of the Deliverables or with which the Contractor is bound to comply.

**National Insurance:** means contributions required by the Social Security Contributions and Benefits Act 1992 and made in accordance with the Social Security (Contributions) Regulations 2001 (SI 2001/1004);

**Necessary Consents:** means all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents (whether statutory, regulatory, contractual or otherwise) necessary from time to time for the provision of the Deliverables.

**Order:** means any purchase order placed by the Council in relation to the Deliverables and any instructions to the Contractor to supply the Deliverables.

**Party / Parties:** means individually or collectively as applicable either the Council and / or the Contractor.

**Pre-existing IPR:** means any IPR (embedded in any work or materials arising from the provision of the Deliverables supplied under the Contract) vested in or licensed to the Contractor by the third party owner of any IPR prior to or independently of performance by the Contractor of its obligations under the Contract.

**Price:** means the price of the Deliverables.

**Prohibited Act:** the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage as an inducement or reward for any 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 this Contract;
- (c) committing any offence: (i) under the Bribery Act 2010; (ii) under legislation or common law concerning fraudulent acts; or (iii) of defrauding, attempting to defraud or conspiring to defraud the Council;
- (d) any activity, practice or conduct which would constitute one of the offences listed under c) above, if such activity, practice or conduct had been carried out in the UK.

**Purchase Order:** means the Council's purchase order issued in relation to the Deliverables.

**Services:** the services to be supplied by or on behalf of the Contractor under this Contract, where applicable.

**Specification:** means the Council's requirements in relation to the Deliverables and the Contractor's offer in response to the Council's requirements, including any plans, drawings, data or other information.

**Special Conditions:** means additional conditions that may be incorporated into the Contract as provided under Condition 2.3 below.

**Staff:** means the Contractor's employees, servants, sub-contractors or agents used to supply the Deliverables.

**Staff Vetting Procedures:** means vetting procedures that accord with Good Industry Practice or, where applicable, the Council's procedures or policies for the vetting of personnel as provided to the Contractor in writing following agreement to the same by the Contractor from time to time.

**Working Day:** means Monday to Friday, excluding any public holidays in England and Wales.

1.2 The terms "Data Processor", "Data Controller", "processing" and "appropriate technical and organisational

measures" all have the meanings as defined under the DPL.

- 1.3 Any reference in these Conditions to a statute or provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted, or extended at the relevant time.
- 1.4 The headings in these Conditions are for convenience only and shall not affect their interpretation.
- 1.5 Unless the context requires otherwise, a reference to a Party's staff includes any subcontractors and all directors, officers, employees, personnel, other workers, contractors, agents, advisers and consultants of the relevant party and of any permitted subcontractors of the relevant party from time to time.
- 1.6 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

## 2. Basis of Purchase

- 2.1 On the issue of the Purchase Order by the Council these Conditions shall apply and shall be binding on the Contractor.
- 2.2 These Conditions shall apply to the Contract to the exclusion of any other terms and conditions which the Contractor may have sought or subsequently seeks to impose on the Council. For the avoidance of doubt any terms and conditions of the Contractor, including without limitation any terms and conditions printed on any invoices or other documents submitted by the Contractor shall not be deemed incorporated into this Contract and shall be of no effect in relation to the provision of the Deliverables.
- 2.3 If the Council requires the Contractor to comply with any additional Special Conditions such conditions shall be in writing, drawn up by the Council and shall be deemed to be part of this Contract. Unless otherwise expressly stated by the Council any Special Conditions shall take precedence over these Conditions to the extent that there is any conflict between the two.
- 2.4 No variation to the Contract shall be binding unless agreed in writing between the authorised representatives of the Parties.
- 2.5 Any Deliverables supplied by the Contractor that do not correspond with the Council's Specification or otherwise do not comply with the provisions of the Contract may be rejected by the Council.
- 2.6 Rejected Deliverables shall be removed by and at the expense of the Contractor within seven (7) days after the Council has notified the Contractor of rejection. If

not so removed, the Council may return the rejected Deliverables at the Contractor's risk and expense.

2.7 The Contractor shall provide the Deliverables:

- (a) using reasonable care and skill;
- (b) in accordance with Good Industry Practice;
- (c) using its own policies, processes and internal quality control measures as long as they do not conflict with this Contract;
- (d) on the dates agreed; and
- (e) in accordance with all applicable Law.

2.8 The Contractor and its Staff shall only undertake processing of Personal Data as part of the Contract if:

- (a) instructed by the Council to act as Data Processor as part of the performance of the Contract; and
- (b) the Contractor has first entered into a Data Sharing Agreement with the Council;

2.9 The Contractor shall complete a Data Processing Schedule and / or Data Protection Impact Assessment if required by the Council.

2.10 As Data Processor, the Contractor shall perform its obligations in accordance with and so as to enable the Council to comply with its obligations as Data Controller. The Contractor will take appropriate technical and organisational measures to ensure that any Personal Data is processed securely.

### 3. Specification

3.1 The Contractor shall comply with all applicable regulations and / or other legal requirements concerning the manufacture, packaging, delivery and / or performance of the Deliverables.

3.2 All Deliverables must meet the governing specification(s) as to quantity, quality, standard or description stipulated in the Council's Order.

3.3 The Contractor shall comply with the reasonable instructions of the Council in connection with the provision of the Deliverables.

3.4 The Contractor shall allocate sufficient resources and appropriate expertise to the Contract.

3.5 Timely provision of the Deliverables shall be of the essence of the Contract.

3.6 Without prejudice to the Council's rights to terminate this Contract, the Contractor shall, at the Council's request, remedy any failure to comply with the Contract

in accordance with the Council's reasonable instructions, at no additional cost to the Council.

### 4. Price and Payment

4.1 The Price of the Deliverables shall be as offered by the Contractor to the Council and shall be inclusive of all labour costs, equipment, materials, charges for packaging, shipping, carriage, insurance and delivery and any duties or levies other than Value Added Tax ("VAT").

4.2 No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Council in writing.

4.3 The Contractor's official invoice should be sent to the Council within three (3) months after Delivery of the Deliverables (unless otherwise expressly agreed by the Council) and must show:

- (a) the Council's Purchase Order number;
- (b) an invoice number;
- (c) a description of the Deliverable or Deliverables Delivered;
- (d) a full breakdown of the Price;
- (e) any discount allowed; and
- (f) VAT if applicable.

4.4 Failure by the Contractor to submit invoices to the Council within three (3) months of Delivery as required in Condition 4.3 above, may result in the sums due under such invoices ("Late Invoices") not being recoverable from the Council by the Contractor, if and to the extent the Council has incurred any loss as a direct consequence of the late submission of invoices by the Contractor.

4.5 The payment of the Price will be made by the Council within thirty (30) days of receipt of a valid, undisputed invoice if the Deliverables have been Delivered in accordance with the Contract.

4.6 The Council shall be entitled to set-off against any invoice, any amount due from the Contractor under this Purchase Order or under any other contractual arrangement with the Council.

4.7 VAT, where applicable, shall be shown separately on all invoices as a strictly extra charge. All invoices containing VAT must conform to the requirements of HM Revenue and Customs.

4.8 The Contractor shall, at the request of the Council, provide all information necessary to support the invoice

amount including all relevant time sheets, details of expenses incurred and invoices paid.

4.9 The Contractor shall be wholly responsible for all applicable taxes including income tax and National Insurance and other similar contributions or taxes (together "Taxes") which may be payable out of, or as a result of the receipt of, any monies paid or payable by the Council under the Contract.

4.10 No payment of or on account of the Contract Price shall constitute an admission by the Council as to the Contractor's proper provision of the Deliverables.

## **5. Delivery**

5.1 The Deliverables shall be delivered to or performed during the Council's Business Hours and to the address stated in the Council's Order, or as otherwise agreed by the Council in writing.

5.2 The Council shall have the right to change its Delivery Instructions at any time on giving not less than seven (7) days' notice to the Contractor.

5.3 Where the date of delivery of the Deliverables is specified to be after the Placing of the Purchase Order, the Contractor shall give the Council reasonable notice of the specified date.

5.4 A Delivery note which specifies the Purchase Order number shall accompany each delivery or consignment of the Goods and must be displayed prominently.

5.5 The Council shall be under no obligation to accept delivery of the Deliverables or any part of the Deliverables before the specified delivery time but reserves the right to do so.

5.6 The Contractor shall not deliver the Goods in instalments without the Council's prior written consent. Where it is agreed that the Goods may be delivered by instalments, such instalments shall be invoiced separately. However, failure by the Contractor to deliver any one instalment on time or at all, or any defect in an instalment shall constitute a default by the Contractor. If the Deliverables are to be delivered by instalments, the Contract will be treated as a single contract and will not be severable.

5.7 The Council shall not be deemed to have accepted any Deliverables until it has had a reasonable time to inspect them following Delivery or after any latent defect has become apparent.

5.8 For the avoidance of doubt no inspection or testing by the Council, whether before or after Delivery of the Deliverables nor the signing of any delivery note or other document acknowledging physical receipt of any

Goods on behalf of the Council shall be deemed to constitute evidence of acceptance or approval of the Goods for the purposes of the Sale of Goods Act 1979 (as amended) nor be deemed to be a waiver of the Council's rights either to cancel or return all or any part thereof where the Deliverables are found to be defective or not in accordance with the Contract.

5.9 The Contractor shall supply the Council in good time with any instructions or other information required to enable the Council to accept delivery of the Deliverables.

5.10 If the Deliverables are not Delivered on the due date, then without prejudice to any other right or remedy, the Council is entitled to deduct from the Price or to withhold payment for the partially Delivered or undelivered Deliverables. If the Council has already paid the Price, the Council may claim from the Contractor an amount equal to the additional costs incurred by the Council as a result of the delay.

5.11 Risk of damage to or loss of the Deliverables shall pass to the Council upon completion of Delivery to the Council, in accordance with the Contract.

5.12 Ownership of the Deliverables shall pass to the Council on completion of Delivery or payment for those Deliverables, whichever is earlier.

5.13 Whilst on the Council's premises, the Contractor shall comply with the Council's rules, regulations and reasonable instructions relating to the premises.

## **6. Quality Assurance**

6.1 The Contractor shall operate a self-regulatory system of quality assurance and quality measures relating to the Contract in addition to any industry quality standards and the requirements in the Specification which ensures that the Deliverables are provided in accordance with the requirements of the Contract. As part of this requirement, the Contractor shall check that information, data or software supplied pursuant to the Contract is fit for the purpose for which the Council intends to use it.

6.2 The Contractor shall immediately notify the Council in writing providing all relevant details if it discovers that there is:

(a) any defect in the Deliverables which have been delivered to the Council at any time or;

(b) any error or omission in the instructions for the use, handling, storage and/or assembly of the Deliverables;

(whether or not any such defect, error or omission represents a breach of any of these Conditions) which causes or may cause any risk of death, injury or damage to property.

## **7. Warranties and Liability**

7.1 The Contractor warrants to the Council that the Goods shall:

- (a) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979 and the Consumer Rights Act 2015);
- (b) be free from defects in materials and workmanship;
- (c) be equal in all respects to the samples, patterns, description or specification provided or given by either Party;
- (d) be fit for the intended purpose held out by the Contractor or made known to the Contractor by the Council expressly (such as stated in the Specification or Order) or by implication;
- (e) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;
- (f) be formulated, designed, constructed, finished and packaged as to be safe and without risk to health; and
- (g) be packaged sufficiently to reach the point of Delivery safely and undamaged.

7.2 The Contractor warrants to the Council that the Services will:

- (a) be performed by appropriately trained and qualified personnel;
- (b) be performed with due care and diligence and in accordance with Good Industry Practice; and
- (c) and anything used to deliver the Services, be of good quality and free from defects.

7.3 The Contractor shall indemnify and keep the Council indemnified in full against the following:

- (a) All loss, liability, damages, costs, expenses (including legal expenses) or injury whatsoever and whenever arising, caused to the Council, or for which the Council may be liable to third parties, due to defective workmanship or unsound quality of the Deliverables supplied or due to the act

or omission of the Contractor, including Contractor Staff;

- (b) All claims in respect of death, illness, disease or injury, howsoever caused, to any of the employees or those of the agent or subcontractors of the Contractor, while in or about the Council's premises;
- (c) Any consequential loss or damage sustained by the Council for which the Council may be liable as a result of the failure of the Contractor to supply the Deliverables in accordance with the Contract.

7.4 The Contractor's liability to indemnify the Council as per Condition 7.3 shall be reduced proportionately to the extent that the act or neglect of the Council, its officers, servants or agents may have contributed to the said loss, injury or damage.

7.5 Without limiting the Contractor's obligations and responsibilities under the indemnity given by the Contractor in Condition 7.3, the Contractor shall insure against any damage, loss or injury which may occur to any property or to any person by or arising out of this Contract.

7.6 Without prejudice to any other remedy, if any of the Deliverables are not supplied or performed in accordance with the Contract then the Council shall be entitled:

- (a) To require the Contractor to repair or to supply replacement Deliverables and / or to remedy any failure to perform the Deliverables in compliance with the Contract within fourteen (14) days or such other period specified by the Council; or
- (b) At the Council's sole option and whether or not the Council has previously required the Contractor to repair or supply replacement Deliverables and / or to remedy any failure to perform the Deliverables, to treat the Contract as discharged by the Contractor's breach and require repayment of any part of the Price which has been paid.

## **8. Termination**

8.1 The Council shall be entitled to terminate the Contract without liability to the Contractor by giving written notice to the Contractor at any time if:

- (a) The Contractor makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company)

becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or

- (b) An encumbrancer takes possession of, or a receiver is appointed to, any of the property or assets of the Contractor; or
  - (c) The Contractor dies, or ceases, or threatens to cease to carry on business; or
  - (d) The Contractor does anything improper to influence the Council to give the Council any contract or commits a Prohibited Act; or
  - (e) There is an actual or potential Conflict of Interest which, in the reasonable opinion of the Council, cannot be resolved or mitigated by the Contractor and / or the Council taking appropriate measures; or
  - (f) There is any action by the Contractor, whether in relation to the Deliverables and this Contract or otherwise, which in the reasonable opinion of the Council, has or may cause significant harm to the reputation of the Council and/or has diminished or may diminish public trust in the Council; or
  - (g) the Contractor is in breach of any of its obligations under this Contract that is capable of remedy, and which has not been remedied to the satisfaction of the Council within fourteen (14) days, or such other reasonable period as may be specified by the Council after issue of a written notice specifying the breach and requesting it to be remedied; or
  - (h) the Contractor repeatedly breaching any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract; or
  - (i) The Council reasonably believes that any of the events mentioned above is about to occur in relation to the Contractor and notifies the Contractor immediately.
- 8.2 Where the Council terminates the Contract in accordance with the provisions of Condition 8.1, the Contractor shall compensate the Council for any losses suffered by the Council as a result of the termination.
- 8.3 The Council may terminate the Contract at any time by the Council giving the Contractor reasonable notice in writing. Where the Council terminates the Contract in accordance with this Condition 8.3, the Council shall pay the Contractor's reasonable committed and

unavoidable losses as long as the Contractor provides a fully itemised and costed schedule with evidence. The maximum value of this payment is limited to the total sum that would have been payable to the Contractor if the Contract had not been terminated. The Council shall not be liable for any loss to the Contractor including consequential loss.

- 8.4 On the expiry or termination of this Contract (however arising), the Contractor shall deliver to the Council all documents, formulae, papers, drawings, software, data, specifications, reports, notes, programs, portfolios, equipment, materials of any sort, identity cards and keys which were furnished by the Council to the Contractor, or which were prepared by or on behalf of the Contractor for the Council in the course of providing the Deliverables.

## **9. Intellectual Property Rights**

- 9.1 Subject to Pre-existing IPR, all IPR created by the Contractor as a result of providing the Deliverables ("Contract-generated IPR") shall be owned by the Council and the Contractor shall enter into such documentation and perform such acts as the Council may request to properly vest the Contract-generated IPR in the Council. The Contractor assigns (by way of present assignment of future Contract-generated IPR) all Contract-generated IPR.
- 9.2 The Contractor hereby grants to the Council a perpetual, royalty-free, irrevocable, nonexclusive, assignable, global licence for use, sub-licence and/or commercial exploitation of any Pre-Existing IPR in the Deliverables, together with the ability to sub-licence the same.
- 9.3 The Contractor agrees to indemnify and keep indemnified the Council against any costs, claims, proceedings, expenses and demands arising from the use, application, supply or delivery of any process article, matter or thing supplied under the Contract that would constitute or is alleged to constitute any infringement of any IPR including third party IPR.

## **10. Confidentiality & Freedom of Information**

- 10.1 Subject to requirements by Law, including but not limited to, under the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR"), any Confidential Information supplied by either Party to the other Party shall be kept confidential and shall only be used by the Contractor for the performance of its obligations under this Contract.
- 10.2 The Contractor shall use all reasonable efforts to assist the Council to comply with such obligations as are

imposed on the Council by the FOIA and the EIR in connection with the Deliverables. The Contractor shall:

- (a) transfer to the Council all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
- (b) 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 five (5) Working Days (or such other period as the Council may reasonably specify) of the Council's request for such Information; and
- (c) not respond directly to a Request for Information unless authorised in writing to do so by the Council.

10.3 The Contractor acknowledges that the Council may be required under the FOIA and EIRs to disclose Information (including information which may be considered commercially sensitive information) without consulting or obtaining consent from the Contractor. The Council shall take reasonable steps to notify the Contractor of a Request for Information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) the Council shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information or any other information is exempt from disclosure in accordance with the FOIA or the EIRs.

10.4 Upon expiry or termination of the Contract for whatever reason, the Contractor shall either immediately destroy, or at the Council's request immediately return to the Council, any Confidential Information provided to it pursuant to the Contract.

## **11. Compliance with Law and Corporate Requirements**

### **Health & Safety**

11.1 The Contractor and its Staff involved in the supply of the Deliverables shall comply with the Council Policies relevant to the performance of the Contractor's obligations under the Contract and that are effective at any time during the Contract; including but not limited to the Council's Health and Safety Policy, the Health and Safety at Work etc. Act 1974, the Control of Asbestos Regulations 2012 and all relevant codes of practice in force. The Contractor accepts full responsibility to obtain complete details of all Law and copies of all Council

Policies by reviewing the Council website or by request to an authorised representative of the Council.

11.2 The Contractor undertakes that it and its Staff shall at all times throughout the Contract and at their own expense:

- (a) maintain all Necessary Consents and comply with all Law in the performance of the Contract;
- (b) perform its obligations under the Contract in accordance with all Law regarding health and safety, all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Council's premises from time to time and have been provided to the Contractor;
- (c) notify the Council as soon as practicable of any health and safety incidents or health and safety hazards at the Council's premises of which it becomes aware;
- (d) assist the Council (and any person nominated by the Council) in the investigation of any accident or incident or the resolution of any dispute. Such assistance shall include but it not limited to, making Staff available for interview, providing access to documents and records and providing information reasonably requested by the Council;
- (e) comply with all applicable Law relating to the classification, labelling and packaging of substances and mixtures, ensuring that those substances supplied bear labels which itemise the chemical constituents and indicate whether those constituents are toxic, irritant, corrosive etc. and give instructions on the safe use of such substances;
- (f) without prejudice to the generality of the foregoing Conditions, adopt safe working practices and ensure that in performing its obligations under the Contract, it does not cause disturbance or damage to the Council's staff, operations and property at the relevant sites.

### **Staff Vetting & Eligibility**

11.3 The Contractor warrants and undertakes that all Staff engaged in performing the Contract are vetted in accordance with the Staff Vetting Procedures and shall have satisfactorily completed the Baseline Personnel Security Standard ("BPSS") which requires verification of:

- (a) Identity

- (b) Right to work
- (c) Employment history; and
- (d) Criminal record (unspent convictions)

If the Contractor is a sole trader, the Contractor will cooperate with the Council in providing the verification information which the Council may require to ensure that the Contractor meets the BPSS.

11.4 The Contractor shall ensure that no person who discloses that they have a conviction that is relevant to the nature of the Contract or; relevant to the work of the Council or; is of a type otherwise advised by the Council (each such conviction a “**Relevant Conviction**”); or is found by the Contractor to have a Relevant Conviction (whether as a result of a police check, a disclosure and barring service check or otherwise) or; whose previous conduct or records indicate that they would not be suitable or who may present a risk to service users, is employed or engaged in the provision of any part of the Deliverables.

11.5 Where the Council decides one of the Contractor Staff is not suitable to work on the Contract, the Contractor must replace them with a suitably qualified alternative. The Council reserves the right to refuse to admit to or withdraw permission to remain on any premises owned or occupied by the Council, including (where applicable) access to the Council’s electronic communications network remotely to any member of the Contractor Staff whose admission or continued presence or continued remote access would be, in the opinion of the Council, undesirable. Any such decision by the Council shall be final and conclusive.

11.6 The Contractor acknowledges the importance of the reputation, standing and responsibilities of the Council. The Contractor shall ensure that the Contractor and Contractor Staff shall comply with all applicable Law and Council Policies to the fullest extent throughout the duration of the Contract.

**Equality & Human Rights**

11.7 Without limiting the general obligation set out in Clause 11.6, the Contractor shall perform its obligations under this Contract in accordance with:

- (a) All applicable Law relating to equality (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
- (b) The Council’s equality and diversity policy (see Schedule 1); and

- (c) Any other requirements and instructions which the Council reasonably imposes in connection with any equality obligations imposed on the Council at any time under the Equality Acts and applicable Law relating to equality.

11.8 The Contractor shall take all necessary steps and inform the Council of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation).

11.9 The Contractor shall at all times comply with the Human Rights Act 1998 in the performance of this Contract. The Contractor shall also undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998.

**Modern Slavery**

11.10 The Contractor represents and warrants that neither the Contractor nor any of its officers, Contractor Staff or sub-contractors:

- (a) have been convicted of any offence involving slavery or human trafficking anywhere in the world; or
- (b) to the best of the Contractor’s knowledge, have been or is the subject of any investigation, enquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence or in connection with slavery or human trafficking.

11.11 The Contractor shall implement due diligence procedures for its Sub-Contractors or any part of its supply chain performing obligations under this Contract to ensure that there is no slavery or human trafficking taking place.

11.12 The Contractor undertakes not to knowingly purchase any resource or raw materials livestock or products from a country or territory that has been sourced from producers or farmers or manufacturers using forced labour or child labour in its operations or farming practices.

11.13 The Contractor shall maintain a complete set of records to trace the supply chain of all Deliverables provided to the Council in connection with this Contract.

**12. General**

12.1 The Contractor shall be prohibited from transferring, assigning or sub-contracting, either directly or indirectly, to any person or persons whatever, the whole or

- any portion of this Contract without the written permission of the Council.
- 12.2 No waiver by the Council of any breach of the Contract by the Contractor shall be considered as a waiver of any subsequent breach of the same or any other Condition.
- 12.3 The Contractor shall not give, nor offer to give anyone employed by the Council an inducement of any kind, or any gift that could be perceived by others to be a bribe. Any such action will constitute a breach which is considered incapable of remedy.
- 12.4 The Contractor must take action to ensure that neither the Contractor nor the Contractor Staff are placed in a position of an actual, potential or perceived Conflict of Interest. The Contractor must promptly notify and provide details to the Council if an actual, potential or perceived Conflict of Interest happens or is expected to happen. The Council will consider whether there are any appropriate measures that can be put in place to remedy an actual, perceived or potential Conflict of Interest. If, in the reasonable opinion of the Council, such measures do not or will not resolve an actual or potential Conflict of Interest, the Council may terminate the Contract immediately in accordance with Condition 8.1 above.
- 12.5 The Contractor shall not issue any press release or make any public statement concerning the Council, its employees, agents, commissioners or the Deliverables without the prior written consent of the Council, nor shall the Contractor, without the prior written consent of the Council, advertise or disclose to third parties that it is providing the Deliverables to the Council.
- 12.6 If any provision of these Conditions is held to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in questions shall not be affected.
- 12.7 Acceptance of this Purchase Order will be deemed to bind the Contractor to these Conditions and no Deliverables shall be supplied or performed by the Contractor, its Staff or representatives except in accordance with them.
- 12.8 This Contract constitutes the entire understanding between the Parties relating to the subject matter of the Contract and, save as may be expressly referred to or referenced within them, supersede all prior representations, writings, negotiations or understandings in respect of the Deliverables, except in respect of any fraudulent misrepresentation made by either Party.
- 12.9 Save for the Parties, no person shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the terms of this Purchase Order and/or these Conditions and Contract.
- 12.10 The Contractor shall effect and maintain comprehensive insurance cover in respect of all risks that may be incurred by them in the performance of this Contract including Public Liability Insurance, Employers Liability Insurance to comply with statutory requirements and Professional Indemnity Insurance and Product Liability Insurance where applicable.
- 12.11 Notices under this Contract shall be given in writing and shall be served (i) by delivery to the receiving Party, effecting service at the time the notice is left at the proper address, (ii) by pre-paid first-class post or other next working day delivery service, effecting service at 9:00am on the second Working Day after posting; (iii) if sent by email, effecting service either after three (3) hours if sent during Business Hours or otherwise, on the following Working Day.
- 12.12 The Parties agree to submit to the jurisdiction of the English Courts and agree that the Contract is to be governed and construed according to English Law.
- 12.13 Nothing in this Contract shall be construed as creating a partnership, contract of employment or a relationship of principal and agent between the Council and the Contractor.
- 12.14 Any provision of these Conditions that expressly or by implication is intended to come into or continue in force on or after the termination or expiry of this Contract, including but not limited to Conditions 1, 7, 9, 10 and 11, shall continue in full force and effect.
- 12.15 Where required, the Council will apply the provisions of IR35 if it is determined that they apply. This will result in the Contractor invoice having the required statutory deductions made from the final payment. The Council's decision on whether IR35 applies will be final.

#### **Schedule 1: Council Policies**

- The Council's Constitution, including the contract procedure rules and the financial procedure rules as published by the Council from time to time on its website (Link: [Gedling constitution - Gedling Borough Council](#))
- The Council policies and codes as amended from time to time and available on its website (Link: [Policies - Gedling Borough Council](#)), including but not limited to:
  - Health and Safety Policy
  - Unacceptable Behaviour Policy

- Equal Opportunities Policy
- Privacy Policies
- Whistleblowing Policy
- The Council is committed to equality of opportunity. As part of this commitment all suppliers of goods and services to the Council are encouraged to observe the same principles and where relevant, are required to support the Council in delivering its statutory responsibilities for addressing race, disability and gender equality. The Council's Equal Opportunities Policy and Equality Schemes can be found on the Council's website [www.gedling.gov.uk](http://www.gedling.gov.uk)

If you have any queries, or require this document in an alternative format then please contact the Council on 0115 9013901 and we will endeavour to make alternative arrangements.