

**First Choice Homes Oldham Limited**

**Terms & Conditions for Purchases of Low Value Goods and Services**

**Reference [FS112017]**

**Dated: 20 November 2017**

**1. Definitions and Interpretation**

1.1 In these conditions of contract (the “**Conditions**”):

“**ADR Notice**” has the meaning given to that term in Condition 27.3;

“**Business Day**” means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

“**Completion of Delivery**” means the receipt and written acceptance of the Goods by FCHO;

“**Completion of Performance**” means the written acceptance of FCHO indicating the satisfactory completion of the Services;

“**Confidential Information**” means all information obtained by the Contractor from FCHO relating to and connected with the Contract and the Goods and/or Services, including but not limited to the Contract itself and the provisions of the Contract;

“**Contract**” means the agreement concluded between FCHO and the Contractor for the supply of the Goods and/or the Services, comprising of these Conditions, the relevant Purchase Order and all specifications, plans, drawings and other documents which are incorporated into the agreement;

“**Contractor**” means the contractor stated in the Purchase Order;

“**Contractor Personnel**” means all employees, agents, consultants and contractors of the Contractor and/or of any authorised sub-contractor;

“**Data Protection Legislation**” means the DPA, the EU Data Protection Directive 95/46/EC, the General Data Protection Regulation (EU) 2016/679, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner and any additions, updates thereof;

“**Data Subject**” has the meaning given to it in the DPA;

“**Deliverables**” means all documents, products and materials developed by the Contractor or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);

“**Delivery Location**” has the meaning given to that term in Condition 5.2.2;

“**DPA**” means the Data Protection Act 1998;

**“EIR”** means the Environmental Information Regulations 2004 as amended, updated or replaced from time to time;

**“FCHO”** means First Choice Homes Oldham Limited (an industrial and provident society with charitable status number 31138R) of First Place, 22 Union St, Oldham, Greater Manchester OL1 1BE;

**“FCHO Materials”** has the meaning given to that term in Condition 6.1.11;

**“FCHO Policies”** means any policies, practices or procedures of FCHO that FCHO may notify the Contractor of from time to time;

**“Force Majeure Event”** has the meaning given to that term in Condition 17.1;

**“Freedom of Information Act”** means the Freedom of Information Act 2000 as amended, updated or replaced from time to time and **“FOIA”** shall be construed accordingly;

**“Good Industry Practice”** means adopting and/or complying with:

- (a) standards, practices, methods and procedures conforming to the law;
- (b) applicable and relevant standards; and
- (c) that degree of skill, care, diligence, prudence and foresight,

which would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances;

**“Goods”** means the goods to be supplied by the Contractor to FCHO as more particularly described in the Purchase Order;

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

**“Intellectual Property Rights”** means patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all existing and future rights capable of present assignment, applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

**“Personal Data”** has the meaning given to it in the relevant Data Protection Legislation;

**“Price”** means the price payable by FCHO to the Contractor for the supply of the Goods and/or Services, as more particularly set out in the Purchase Order;

**“Purchase Order”** means the purchase order for the supply of the Goods and/or Services issued by FCHO to the Contractor;

**“Regulatory Bodies”** means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate or influence the matters dealt with in the Contract or any other affairs of FCHO and Regulatory Body shall be construed accordingly;

**“Request for Information”** means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIR;

**“Services”** means the services to be supplied by the Contractor to FCHO as more particularly described in the Purchase Order.

1.2 The interpretation and construction of the Contract shall be subject to the following provisions:

- 1.2.1 A reference to any statute, enactment, order, regulation or similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as subsequently amended or re-enacted;
- 1.2.2 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 1.2.3 The headings in these Conditions are for ease of reference only and shall not affect the interpretation or construction of the Contract;
- 1.2.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.5 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns;
- 1.2.6 Reference to the singular includes the plural and vice versa and references to any gender includes both genders;
- 1.2.7 Any periods of time referred to in these Conditions and expressed in days shall refer to calendar days unless stated otherwise;
- 1.2.8 Any phrase introduced by the words **including, includes, in particular** or **for example**, or any similar phrase, shall be construed as illustrative and shall not limit the generality of the related general words; and
- 1.2.9 Unless stated otherwise reference to "**Parties**" in these Conditions are references to FCHO and the Contractor and "**Party**" shall be construed accordingly.

## **2. Due Diligence**

- 2.1 The Contractor acknowledges and agrees that it is responsible for obtaining, reviewing and investigating any information necessary for the performance of its obligations under the Contract.
- 2.2 The Contractor shall be deemed to have:
  - 2.2.1 satisfied itself as to the rights and the nature and extent of the risks assumed by it in relation to the subject matter of the Contract (including any risk or contingency that may affect the performance of its obligations under the Contract and which is not expressly referred to herein as being either the responsibility of FCHO or is otherwise a risk to be shared between the Parties); and
  - 2.2.2 gathered all information necessary to perform its obligations under the Contract,and the Contractor shall accept entire responsibility for all costs and consequences of, and any other implications arising in connection with, any risk, condition, contingency and circumstance (other than those expressly referred to herein as being either the responsibility of FCHO or otherwise being a risk to be shared between the Parties) that affects the performance of its obligations under the Contract.
- 2.3 The Contractor shall not in any way be relieved from any of its obligations under the Contract nor shall it be entitled to claim against FCHO on grounds that any information, whether obtained from FCHO or otherwise is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

## **3. Warranties**

- 3.1 The Contractor warrants, represents and undertakes to FCHO that:
  - 3.1.1 it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;

- 3.1.2 it has the power to enter into and to exercise its rights and perform its obligations under the Contract;
- 3.1.3 the execution, delivery and performance by it of the Contract does not contravene any provision of:
  - (a) any law either in force, or enacted but not yet in force binding on the Contractor;
  - (b) the Memorandum and Articles of Association of the Contractor;
  - (c) any order or decree of any court or arbitrator or adjudicator; or
  - (d) any obligation which is binding upon the Contractor or upon any of its assets or revenues;
- 3.1.4 no claim is presently being assessed in respect of the Contractor and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Contractor, pending or threatened against it or any of its assets which will or might have a material adverse effect on the ability of the Contractor to perform its obligations under the Contract;
- 3.1.5 there are no material facts or circumstances in relation to the financial position or operational constitution of the Contractor which have not been fully and fairly disclosed to FCHO and which if disclosed might reasonably have been expected to affect the decision of FCHO to enter into the Contract;
- 3.1.6 the Contractor shall not make any statement, orally or in writing, publicly or privately, or do any act or otherwise conduct itself in such a manner as will or may in the reasonable opinion of FCHO disparage FCHO, its clients or customers, its or their business, products or services;
- 3.1.7 FCHO's use of any third-party materials, including any materials supplied by the Contractor to FCHO, shall not cause FCHO to infringe the rights, including any Intellectual Property Rights, of any third party; and
- 3.1.8 all personnel and sub-contractors used by the Contractor in the performance of the Contract are adequately skilled and experienced for the activities they are required to perform

and FCHO relies upon such warranties, representations and undertakings.

#### **4. Supply of Goods**

- 4.1 The Contractor shall ensure that the Goods shall:
  - 4.1.1 correspond with their description and any applicable specification referred to in the Purchase Order;
  - 4.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Contractor or made known to the Contractor by FCHO expressly or by implication, and in this respect FCHO relies on the Contractor's skill and judgement;
  - 4.1.3 where they are manufactured products, be free from defects in design, material and workmanship and remain so for twelve (12) months after delivery; and
  - 4.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 4.2 The Contractor shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

- 4.3 FCHO may inspect and test the Goods at any time before delivery. The Contractor shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Contractor's obligations under the Contract.
- 4.4 If following such inspection or testing FCHO considers that the Goods do not comply or are unlikely to comply with the Contractor's undertakings at Condition 4.1, FCHO shall inform the Contractor and the Contractor shall immediately take such remedial action as is necessary to ensure compliance.
- 4.5 FCHO may conduct further inspections and tests after the Contractor has carried out its remedial actions.

## 5. **Delivery of Goods**

- 5.1 The Contractor shall ensure that:
  - 5.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
  - 5.1.2 each delivery of the Goods is accompanied by a delivery note which shows the date of the Purchase Order, the Purchase Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
  - 5.1.3 it states clearly on the delivery note any requirement for FCHO to return any packaging material for the Goods to the Contractor. Any such packaging material shall only be returned to the Contractor at the cost of the Contractor.
- 5.2 The Contractor shall deliver the Goods:
  - 5.2.1 on the date specified in the Purchase Order or as otherwise specified by FCHO;
  - 5.2.2 to the location specified in the Purchase Order or as otherwise specified by FCHO (the "**Delivery Location**"); and
  - 5.2.3 during FCHO's normal hours of business on a Business Day, or as instructed by FCHO.
- 5.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 5.4 The Contractor shall not deliver the Goods in instalments without FCHO's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Contractor to deliver any one instalment on time or at all or any defect in an instalment shall entitle FCHO to the remedies set out in Condition 8.1.
- 5.5 Title and risk in the Goods shall pass to FCHO on completion of delivery.

## 6. **Supply of Services**

- 6.1 The Contractor shall:
  - 6.1.1 co-operate with FCHO in all matters relating to the Services, and comply with all instructions of FCHO;
  - 6.1.2 perform the Services in accordance with Good Industry Practice;
  - 6.1.3 perform the Services in accordance with any timetable notified to the Contractor by FCHO in writing;
  - 6.1.4 in performing the Services, use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Contractor's obligations are fulfilled in accordance with the Contract;

- 6.1.5 ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Purchase Order, and that the Deliverables shall be fit for any purpose that FCHO expressly or impliedly makes known to the Contractor;
- 6.1.6 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- 6.1.7 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to FCHO, will be free from defects in workmanship, installation and design;
- 6.1.8 obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
- 6.1.9 comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services, and with FCHO Policies;
- 6.1.10 observe all health and safety rules and regulations and any other security requirements that apply at any of FCHO's premises;
- 6.1.11 hold all materials, equipment and tools, drawings, specifications and data supplied by FCHO to the Contractor (the "**FCHO Materials**") in safe custody at its own risk, maintain FCHO Materials in good condition until returned to FCHO, and not dispose or use FCHO Materials other than in accordance with FCHO's written instructions or authorisation;
- 6.1.12 not do or omit to do anything which may cause FCHO to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Contractor acknowledges that FCHO may rely or act on the Services; and
- 6.1.13 forthwith give notice to FCHO of any matter which is causing or is likely to cause delay in the completion of a Purchase Order beyond the date stated for its completion. For the avoidance of doubt, such notice shall not excuse or exempt the Contractor from its obligations under the Contract.

6.2 Any defects, deficiencies or other faults in the delivery of the Services which become apparent within twelve (12) months of the supply of the Services which are due to the erroneous execution of the Services shall be made good by the Contractor at no cost to FCHO.

## **7. Changes to FCHO's Requirements**

7.1 FCHO shall notify the Contractor of any material change to FCHO's requirements under a Purchase Order.

7.2 The Contractor shall use its best endeavours to accommodate any changes to the needs and requirements of FCHO including re-sequencing and re-programming the Goods and/or Services at no cost to FCHO. If the Contractor has used best endeavours to the satisfaction of FCHO but such re-sequencing and re-programming is not possible without the Contractor incurring additional material costs then the Contractor shall be entitled to payment for any such additional material costs incurred as a result of any such changes. The amount of such additional costs is to be agreed between FCHO and the Contractor in writing prior to the Contractor undertaking any changes.

## **8. FCHO's Remedies**

8.1 If the Goods and/or Services are not delivered on the date they are due as referred to in Condition 5.2.1 and/or Condition 6.1.3, or do not comply with the undertakings set out in Conditions 4.1 and/or 6.1, then, without limiting any of its other rights or remedies, FCHO shall have the right to any one or more of the following remedies, whether or not it has accepted the Goods and/or Services:

8.1.1 to terminate the Purchase Order with immediate effect by giving written notice to the Contractor;

- 8.1.2 to reject the Goods (in whole or in part) and return them to the Contractor at the Contractor's own risk and expense;
  - 8.1.3 to require the Contractor to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
  - 8.1.4 to refuse to accept any subsequent delivery of the Goods which the Contractor attempts to make;
  - 8.1.5 to require the Contractor to re-perform the Services, or to provide a full refund of the price of the rejected Services (if paid);
  - 8.1.6 to refuse to accept any subsequent performance of the Services which the Contractor attempts to make;
  - 8.1.7 to recover from the Contractor any costs incurred by FCHO in obtaining substitute goods or services from a third party;
  - 8.1.8 where FCHO has paid in advance for Goods and Services that have not been provided by the Contractor, to have such sums refunded by the Contractor; and/or
  - 8.1.9 to claim damages for any other costs, loss or expenses incurred by FCHO which are in any way attributable to the Contractor's failure to carry out its obligations under the Contract.
- 8.2 The provisions of this Condition 8 shall apply to any repaired or replacement goods supplied by the Contractor and to any substituted or remedial services provided by the Contractor.
- 8.3 FCHO's rights and remedies under the provisions of this Condition 8 are in addition to its rights and remedies implied by statute and common law.

## **9. Invoices and Payment**

- 9.1 The Price for the Goods shall be the price set out in the Purchase Order and shall be inclusive of packaging, insurance and carriage of the Goods, unless otherwise agreed in writing by FCHO.
- 9.2 The Price for the Services shall be the price set out in the Purchase Order and shall be the full and exclusive remuneration of the Contractor in respect of the performance of the Services. Unless otherwise agreed in writing by FCHO, the Price shall include every cost and expense of the Contractor directly or indirectly incurred in connection with the performance of the Services.
- 9.3 In respect of Goods, the Contractor shall invoice FCHO on or at any time after Completion of Delivery.
- 9.4 In respect of Services, the Contractor shall invoice FCHO on Completion of Performance of the Services, or if agreed in writing by FCHO, on a monthly basis in arrears.
- 9.5 Each invoice submitted pursuant to Condition 9.3 and 9.4 shall include such supporting information required by FCHO to verify the accuracy of the invoice, including but not limited to the relevant Purchase Order number.
- 9.6 In consideration of the supply of Goods and/or Services by the Contractor, FCHO shall pay the invoiced amounts within thirty (30) days of the date of a correctly rendered invoice to a bank account nominated in writing by the Contractor.
- 9.7 All amounts payable by FCHO are exclusive of amounts in respect of valued added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made by the Contractor to FCHO, FCHO shall, on receipt of a valid VAT invoice from the Contractor, pay to the Contractor such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 9.8 If FCHO fails to make a payment due to the Contractor under the Contract by the due date, then FCHO shall pay interest on the overdue sum from the due date until payment of the overdue sum,

whether before or after judgment. Interest under this Condition 9.8 will accrue each day at 2% a year above the Bank of England's base rate from time to time, but at 2% a year for any period when that base rate is below 0%. This Condition shall not apply to payments that FCHO disputes in good faith.

- 9.9 The Contractor shall maintain complete and accurate records of the time spent and materials used by the Contractor in providing the Services, and the Contractor shall allow FCHO to inspect such records at all reasonable times on request.
- 9.10 The Contractor shall not be entitled to assert any credit, set-off or counterclaim against FCHO in order to justify withholding payment of any such amount in whole or in part. FCHO may, without limiting any other rights or remedies it may have, set off any amount owed to it by the Contractor against any amounts payable by it to the Contractor.

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

- 10.1 The Contractor agrees not to disclose any Confidential Information to any third party without the prior written consent of FCHO. To the extent that it is necessary for the Contractor to disclose Confidential Information to its staff, agents and sub-contractors, the Contractor shall ensure that such staff, agents and sub-contractors are subject to the same obligations as the Contractor in respect of all Confidential Information.
- 10.2 Condition 10.1 shall not apply to information which:
- 10.2.1 Is or becomes public knowledge (otherwise than by breach of these Conditions or a breach of an obligation of confidentiality);
- 10.2.2 Is in the possession of the Contractor, without restriction as to its disclosure, before receiving it from FCHO or any other department or office of Her Majesty's Government; and/or
- 10.2.3 Is required by law to be disclosed.
- 10.3 The obligations contained in this Condition shall continue to apply after the expiry or termination of the Contract.
- 10.4 The Contractor shall not communicate with representatives of the general or technical press, radio, television or other communications media, with regard to the Contract, unless previously agreed in writing with FCHO.
- 10.5 Except with the prior consent in writing of FCHO, the Contractor shall not make use of the Contract or any Confidential Information otherwise than for the purposes of supplying the Goods and/or the Services.
- 10.6 Nothing in the Contract shall prevent FCHO from disclosing any Information which FCHO in its absolute discretion considers it is required to disclose in order to comply with the FOIA and/or the EIR and any other statutory requirements whether or not existing at the date of the Contract, and FCHO reserves the right to make such disclosure without reference to the Contractor.
- 10.7 If FCHO shall at any time notify the Contractor that it has received a Request for Information in respect of which FCHO requires the Contractor's assistance then:
- 10.7.1 the Contractor shall at its own cost provide and procure that its sub-contractors provide all necessary assistance required by FCHO in order to allow FCHO to comply with the request for Information within the period or periods when it is obliged to respond to the request for Information; and
- 10.7.2 without limitation to the foregoing the Contractor shall at its own cost within five (5) Business Days of request supply and procure that its sub-contractors supply to FCHO such Information and documents requested by FCHO in such form as reasonably prescribed by FCHO.
- 10.8 This Condition 10 shall survive the termination or expiry of the Contract.

## **11. Intellectual Property Rights**

- 11.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any FCHO Materials) shall be owned by the Contractor.
- 11.2 The Contractor grants to FCHO, or shall procure the direct grant to FCHO of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding FCHO Materials) for the purpose of receiving and using the Services and the Deliverables.
- 11.3 All FCHO Materials are the exclusive property of FCHO.

## **12. Data Protection**

- 12.1 The Contractor shall in all respects:
  - 12.1.1 process the Personal Data only in accordance with written instructions from FCHO (which may be specific instructions or instructions of a general nature as set out in the Contract as otherwise notified by FCHO to the Contractor);
  - 12.1.2 process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services and/or the Goods or as is required by law or any Regulatory Body;
  - 12.1.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
  - 12.1.4 take reasonable steps to ensure the reliability of any Contractor Personnel who have access to the Personal Data;
  - 12.1.5 obtain prior written consent from FCHO in order to transfer the Personal Data to any authorised sub-contractors or affiliates for the provision of the Services and/or the Goods;
  - 12.1.6 only engage with an authorised sub-contractor or sub-processor which may or will involve processing of Personal Data where:
    - (a) the Contractor has obtained the prior written consent of FCHO;
    - (b) there is a written contract between the Contractor and the authorised sub-contractor or sub-processor;
  - 12.1.7 ensure that all Contractor Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Condition 12;
  - 12.1.8 ensure that none of the Contractor Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by FCHO;
  - 12.1.9 notify FCHO (within five (5) Business Days) if it receives:
    - (a) a request from a Data Subject to have access to that person's Personal Data; or
    - (b) a complaint or request relating to FCHO's obligations under the Data Protection Legislation;
  - 12.1.10 provide FCHO with full cooperation and assistance in relation to any complaint or request made, including by:
    - (a) providing FCHO with full details of the complaint or request;

- (b) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with FCHO's instructions;
  - (c) providing FCHO with any Personal Data it holds in relation to a Data Subject (within the timescales required by FCHO); and
  - (d) providing any information requested by FCHO;
- 12.1.11 provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data (within the timescales required by FCHO);
- 12.1.12 at FCHO's request or on termination of the Contract, whichever is sooner, return the Personal Data to FCHO free of charge and securely destroy any copies of such Personal Data; and
- 12.1.13 not process or otherwise transfer any Personal Data outside the UK. If, after the date of the Contract, the Contractor (or any sub-contractor) wishes to process and/or transfer any Personal Data outside the UK, the following provisions shall apply:
- (a) the Contractor shall submit a variation request to FCHO which shall be dealt with in accordance with this Condition 12.1.13
  - (b) the Contractor shall set out in its change request details of the following:
    - (i) the Personal Data which will be processed and/or transferred outside the UK;
    - (ii) the country or countries in which the Personal Data will be processed and/or to which the Personal Data will be transferred outside the UK;
    - (iii) any sub-contractors or other third parties who will be processing and/or transferring Personal Data outside the UK; and
    - (iv) how the Contractor will ensure an adequate level of protection and adequate safeguards (in accordance with the Data Protection Legislation and in particular so as to ensure FCHO's compliance with the Data Protection Legislation) in respect of the Personal Data that will be processed and/or transferred outside the UK;
  - (c) in providing and evaluating the variation request, the Parties shall ensure that they have regard to and comply with then-current Government and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the processing and/or transfers of Personal Data outside the UK and/or overseas generally;
  - (d) the Contractor shall comply with such other instructions and shall carry out such other actions as FCHO may notify in writing, including:
    - (i) incorporating standard and/or model clauses (which are approved by the European Commission and / or the Information Commissioner Office as offering adequate safeguards under the Data Protection Legislation) in the Contract or a separate data processing agreement between the Parties; and
    - (ii) procuring that any sub-contractor or other third party who will be processing and/or transferring the Personal Data outside the UK enters into a direct data processing agreement with FCHO on such terms as may be required by FCHO, which the Contractor acknowledges may include the incorporation of standard and/or model clauses (which are approved by the European Commission and/ or Information Commissioner Office as offering adequate safeguards under the Data Protection Legislation).

- (e) for the avoidance of doubt FCHO is under no obligation to agree to any proposal in any variation request made under this Condition 12.1.13.

### **13. Health and Safety**

- 13.1 Contractor shall immediately notify FCHO of any health and safety hazards, which may arise in connection with use or handling of the Goods and / or the performance of the Services and / or in the event of any incident occurring in the performance of Services where that incident causes any personal injury or damage to property that could give rise to personal injury.
- 13.2 The Contractor shall comply with any health and safety measures implemented by FCHO in any way connected with the provision of the Services or the use of the Goods.
- 13.3 The Contractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to any persons in the performance of the Services or the use or delivery of the Goods.
- 13.4 The Contractor shall ensure that the following documents relevant to the Goods and / or Services are made available to FCHO on request:
- 13.4.1 health and safety policy, together with codes of practice, operational guidelines, provisions and procedures; and
- 13.4.2 health and safety plan, method statements, risk assessments, COSHH assessments, accident books and prohibition notices.

### **14. Indemnities and Insurance**

- 14.1 The Contractor shall keep FCHO indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by FCHO arising out of or in connection with:
- 14.1.1 any claim made against FCHO for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the supply or use of the Goods and/or Services;
- 14.1.2 any negligence of or breach of the Contract by the Contractor or any of its employees or agents; and/or
- 14.1.3 any defects in the Goods.
- 14.2 The Contractor shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on FCHO's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

### **15. Termination**

- 15.1 Without prejudice to any other provision of the Contract, FCHO may terminate the Purchase Order and the Contract in whole or in part at any time before delivery of the Goods or full and complete performance of the Services with immediate effect by giving the Contractor written notice, whereupon the Contractor shall discontinue all work in relation to the Purchase Order and the Contract.
- 15.2 Without affecting any other right or remedy available to it, either Party may terminate the Contract with immediate effect by giving written notice to the other Party if:

- 15.2.1 the other Party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of twenty (20) days after being notified in writing to do so;
- 15.2.2 the other Party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
- 15.2.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

## **16. Consequences of Termination**

- 16.1 On termination of the Contract for any reason:
  - 16.1.1 FCHO shall not be liable to the Contractor for any loss of profits, loss of contracts or other costs, losses and/or expenses incurred by the Contractor as a result of or in connection with such termination;
  - 16.1.2 the Contractor shall immediately deliver to FCHO all Deliverables whether or not then complete, and return all FCHO Materials. If the Contractor fails to do so, then FCHO may enter the Contractor's premises and take possession of them. Until they have been returned or delivered, the Contractor shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract;
  - 16.1.2 the Contractor shall, at no cost to FCHO, promptly provide such assistance and comply with such timetable as FCHO may reasonably require for the purpose of ensuring an orderly transfer of responsibility to any new contractor appointed by FCHO;
  - 16.1.3 the accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and
  - 16.1.4 Conditions which expressly or by implication have effect after termination shall continue in full force and effect.

## **17. Force Majeure**

- 17.1 Neither Party shall have any liability to the other under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes, act of God, war, riot, civil commotion, compliance with any law or regulation, fire, flood or storm (each a **"Force Majeure Event"**)
- 17.2 Each of the Parties hereto agrees to give notice forthwith to the other upon becoming aware of a Force Majeure Event such notice to contain details of the circumstances giving rise to the Force Majeure Event.

## **18. Audit**

- 18.1 The Contractor shall allow FCHO and any person, firm or organisation authorised by FCHO to have access to and to audit and inspect all records maintained by the Contractor in relation to the performance by the Contractor of its obligations under the Contract. The Contractor shall assist FCHO or any party authorised by FCHO (as the case may be) in the conduct of the audit and/or inspection.

## **19. Waiver**

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

## **20. Severance**

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

## **21. Entire Agreement**

21.1 The Contract constitutes the entire agreement between the Parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to its subject matter.

## **22. Assignment and Subcontracting**

22.1 The Contractor shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract without the prior written consent of FCHO.

22.2 If the Contractor assigns or subcontracts any of its obligations under the Contract to any third party, the Contractor shall be fully responsible to FCHO for the proper performance of those obligations and for any act or omission of the third party in relation thereto.

22.3 FCHO may at any time assign, transfer, mortgage, charge or deal in any other manner with any or all of its rights and obligations under the Contract, provided that FCHO gives prior written notice to the Contractor.

22.4 Notwithstanding Condition 10, a Party assigning any or all of its rights under the Contract may disclose to a proposed assignee any information in its possession that relates to the Contract or its subject matter, the negotiations relating to it and the other party which it is reasonably necessary to disclose for the purposes of the proposed assignment, provided that no disclosure pursuant to this Condition 22.4 shall be made until notice of the identity of the proposed assignee has been given to the other Party.

## **23. No Partnership or Agency**

23.1 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another party, nor authorise any Party to make or enter into any commitments for or on behalf of any other party.

## **24. Third-Party Rights**

24.1 A person who is not a party to the Contract shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.

24.2 The right of the Parties to terminate, rescind or agree any variation, waiver or settlement under the Contract is not subject to the consent of any person that is not a Party to the Contract.

## **25. Rights and Remedies**

25.1 Except as expressly provided in the Contract, the rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

## **26. Notices**

26.1 Any notice, request, instruction or other documentation to be given under the Contract shall be delivered or sent by first class post or by fax or electronic mail to the address of the other Party set out in the Purchase Order (or such other address as the other may have notified the first Party for this purpose) and any such notice or other document shall be deemed to have been served, (if delivered) at the time of delivery or (if sent by post) upon the expiration of 48 hours after posting and (if sent by fax or electronic mail) upon transmission unless a notice of non-delivery is received within 2 hours after transmission.

## **27. Dispute Resolution**

27.1 If there is a dispute between the Parties concerning any matter arising from or in connection with the Contract, the Parties will use reasonable endeavours to settle the matter in accordance with the dispute resolution procedure set out below.

27.2 Any dispute which has not been resolved between the Parties within fourteen (14) days of the matter being raised by one to the attention of the other, may be escalated by either Party to a member of the senior management team of the other Party, by notice in writing.

27.3 If the dispute has not been resolved within fourteen (14) days of a notice under Condition 27.2, the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator will be nominated by CEDR. To initiate the mediation a Party must give notice in writing (“**ADR Notice**”) to the other Party to the dispute requesting a mediation. A copy of the request should be sent to CEDR. The mediation will start not later than twenty (20) days after the date of the ADR Notice.

27.4 Escalation of a dispute or the commencement of a mediation will not prevent the Parties commencing or continuing court proceedings at any stage.

## **28. Governing Law and Jurisdiction**

28.1 The Contract 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 the law of England and Wales.

28.2 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

## **29. Amendments and Variations**

No amendment or variation to the terms of the Contract shall be valid unless previously agreed in writing between FCHO and the Contractor.

## **30. Non-discrimination**

The Contractor shall not unlawfully discriminate within the meaning and scope of the anti-discrimination legislation within the UK in relation to the supply of the Goods and/or the Services or otherwise and shall take all reasonable steps to ensure that all servants, employees or agents of the Contractor and all sub-contractors employed in the execution of the Contract do not unlawfully discriminate.

## **31. Conflict of Interest**

The Contractor shall ensure that there is no conflict of interest as to be likely to prejudice his independence and objectivity in performing the Contract and undertakes that upon becoming aware of any such conflict of interest during the performance of the Contract (whether the conflict existed before the award of the Contract or arises during its performance) he shall immediately notify FCHO in writing of the same, giving particulars of its nature and the circumstances in which it exists or arises and shall furnish such further information as FCHO may reasonably require.