



## GENERAL TERMS AND CONDITIONS FOR THE PROCUREMENT OF WORKS, GOODS AND SERVICES

The Council will normally (in its invitation to tender or otherwise) specify the terms and conditions which would apply for a given procurement, whether these are a specific form of appointment produced by the Council, one or more of the NEC4 suite of contracts or otherwise. If the Council specifies that its standard general terms and conditions are to apply, or does not specify which terms and conditions are to apply, these Terms and Conditions will apply.

### 1. Definitions and interpretation

1. The definitions and rules of interpretation below apply in these Terms and Conditions:

#### 1.1. Definitions

**“Applicable Laws”** all applicable laws, statutes, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-laws, enforceable rights within the meaning of section 2 of the European Communities Act 1972, regulations, orders, regulatory policies, mandatory guidance or code of practice, judgments of a relevant court of law, or directives or requirements of any regulatory body from time to time.

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

**“Commencement Date”** means the date of commencement under clause 3.1 below.

**“Contract”** means any agreement entered into by the Council by reference to or contained within any Contract Documentation which specifies that these Terms and Conditions are to apply or does not specify which terms and conditions are to apply, and shall be construed accordingly.

**“Contract Documentation”** means: (i) the acceptance of a Tender by the Council in whole or in part and comprises the Tender as so accepted and the acceptance in writing by the Council, and any executed contract thereafter; (ii) these Terms and Conditions; (iii) any Specification, Drawings, Schedule(s); (iv) any special terms agreed to in writing by the Council; (v) any Orders placed by the Council for the procurement of any Works, Goods, or Services following any Council quotation; (vi) any Key Performance Indicators or Service Level Agreements required by the Council; and (vii) any other documents produced supplied or referred to by the Council as part of the Contract.

**“Confidential Information”** means: (a) all confidential information (however recorded or preserved) disclosed by either party to the other party concerning: (i) their business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities; and/or (ii) their operations, processes, product information, know-how, designs, trade secrets or software; (b) all information developed by either of

the parties under the Contract; and (c) any information described as confidential information in the Contract Documentation.

**“Contract Price”** means the Price for the Works, Goods and Services excluding VAT as set out in Clause 9 of these Terms and Conditions.

**“Controller”, “Processor”, “Data Subject”, “Personal Data”, “Personal Data Breach” and “Data Protection Officer”** take the meanings given in the Data Protection Legislation.

**“Council”** means East Suffolk Council, as specified in the Contract, and/or any successor body under clause 19 below.

**“Council Policies”** means the Council’s constitution, rules, policies and codes listed in Schedule 1 below, as amended and notified to the Supplier from time to time.

**“Data Loss Event”** means any event that results, or may result, in unauthorised access to Personal Data held by the Processor under the Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of the Contract, including any Personal Data Breach.

**“Data Protection Impact Assessment”** means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

**“Data Protection Legislation”** means: (i) the GDPR, the LED and all Applicable Laws implementing the same as amended from time to time; (ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; and (iii) all Applicable Laws about the processing of personal data and privacy.

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

**“Dispute”** means any dispute, controversy or claim arising out of or in connection with the Contract or its subject matter or formation, including non-contractual disputes and any question regarding its breach, existence, validity or termination or the legal relationships established by the Contract.

**“Due Delivery Date”** means the date specified by the Council when the Goods are to be delivered or the Services completed. This is the date set out in the Contract Documentation and or the Order. If no date is specified the Delivery Date is a date a reasonable period after the date of the Contract.

**“EIR”** means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**“FOIA”** means the Freedom of Information Act 2000, and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**“GDPR”** means the General Data Protection Regulation (Regulation (EU) 2016/679).

**“Goods”** any goods agreed in the Contract to be procured by the Council from the Supplier (including any part or parts of them), including goods and materials required to be delivered in performance of the Services.

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

**“Instructions”** means the written instructions of the Controller in the Order in respect of the

processing of Personal Data, which will set out the subject matter, nature and purpose of processing by the Supplier, the duration of the processing, the types of Personal Data and the categories of Data Subject. Such instructions may, but need not, use the template set out in Schedule 2 below.

**“Intellectual Property Rights”** means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, image rights, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), rights of privacy and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**“Key Performance Indicators”** means any specification of quality, frequency, standard or other obligation imposed by the Council on the Supplier.

**“LED”** means the Law Enforcement Directive (Directive (EU) 2016/680).

**“Order”** means any purchase order placed by the Council in relation to the Works, Goods or Services (which, for the purposes of this definition, includes electronic communications) and any instructions to the Supplier to supply the Works, Goods and/or Services.

**“Processor Personnel”** means all personnel of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under the Contract.

**“Prohibited Act”** – any of 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 to:
  - (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity;
- b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;
- c) committing any offence:
  - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
  - (ii) under legislation or common law concerning fraudulent acts;
  - (iii) under local government legislation, including the Local Government Act 1972; or
  - (iv) defrauding, attempting to defraud or conspiring to defraud the Council; or
- 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.

**“Protective Measures”** means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

**“Request for Information”** means a request for information or an apparent request under the FOIA or the EIRs.

**“Services”** means any works or services to be procured by the Council from the Supplier including as set out in the Tender or Specification, or to be rendered in connection with the delivery of the Goods to be delivered.

**“Service Level Agreement”** means an agreement to measure elements of the Service to be provided by the Supplier.

**“Specification”** means any specification for the Works, Goods or Services to be supplied to or by the Council, including any Works, Goods and Services referred to in the Tender or other documentation provided that the Specification has been approved by the Council.

**“Supplier”** means any person, firm or Company who supplies any Works, Goods, or Services to the Council.

**“Supplier’s Designated Representative”** means a person appointed by the Supplier in accordance with clauses 6 and 8, upon whom notice may be served pursuant to clause 21.

**“Sub-Processor”** means any third party appointed to process Personal Data on behalf of the Processor related to the Contract.

**“Tender”** means the tender or quotation submitted to the Council for the supply of the Works, Goods and/or Services.

**“Terms and Conditions”** means this document and Schedules 1 and 2 to it.

**“Works”** means the execution of and any activity in connection with, building and/or civil engineering, installation and building completion, design and planning, and any ancillary services.

- 1.2. Without prejudice to the restrictions in the Contract, a reference to **personnel** includes any subcontractors and all directors, officers, employees, staff, other workers, contractors, agents, advisers and consultants of the relevant party and of any permitted subcontractors of the relevant party from time to time.
- 1.3. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality). A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.5. The Contract shall be binding on, and enure to the benefit of, the parties to the Contract and their respective successors and permitted assigns, and references to any party shall include that party's successors and permitted assigns.
- 1.6. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.7. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.8. A reference to the Contract or to any other agreement or document referred to in the Contract is a

reference to the Contract or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of these Terms and Conditions) from time to time.

- 1.9. Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## **2. Application of Terms and Conditions**

- 2.1. Subject to precedence in clause 2.2 below, these Terms and Conditions apply to all Contracts for the purchase of Works, Goods or Services by the Council. These Terms and Conditions are the only conditions upon which the Council contracts with the Supplier and they shall govern the Contract to the entire exclusion of all other terms or conditions which the Supplier might seek to impose or introduce, whether in their Tender or otherwise.

- 2.2. In the event of any conflict between these Terms and Conditions and the following documents, the descending order of precedence between them shall be as follows:

- 2.2.1. the Order (but only for Price, quantity, place of delivery, dates and description and specification of the Works, Goods and Services and the Instructions);
- 2.2.2. the Tender as accepted by the Council (including any special terms specifically agreed by the parties in writing) and/or any executed Contract;
- 2.2.3. these Terms and Conditions;
- 2.2.4. any other Contract Documentation;
- 2.2.5. any other documents incorporated by the Council by reference.

- 2.3. Each Order which the Council sends to the Supplier shall be deemed to be an offer by the Supplier to buy Works, Goods or Services subject to these Terms and Conditions and shall be accepted either expressly by the Supplier giving notice of acceptance, or impliedly by the Supplier commencing to fulfil the Order. Despatch or delivery of the Goods, or the commencement of the Services, will be deemed conclusive evidence of acceptance of these Terms and Conditions.

- 2.4. No terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement or acceptance of an Order, specification or other document shall form part of the Contract and the Supplier agrees not, and waives any right which it otherwise might have, to rely on such terms and conditions.

- 2.5. Subject to the following, the Terms and Conditions apply to Contracts for the supply of Works, Goods and Services; clauses 4 and 5 apply to Contracts for the supply of Goods including any Goods ancillary to the performance of Services, clause 6 applies to Contracts for the supply of Works and Services.

## **3. Commencement Date and duration**

- 3.1. This Contract shall enter into force on the date agreed by the Council and set out in the Contract Documentation. If no date has been specified, the Contract shall be deemed to have commenced upon the date of the Order or, failing which, upon the date that the Services began to be performed or the Good were first supplied.

3.2. The Contract shall remain in full force and effect for the period specified in the Contract during which the Works, Goods and Services are to be supplied unless and until terminated by the Council.

**4. Obligations of the Supplier - Goods**

4.1. The Goods shall be delivered at the delivery address specified in the Contract Documentation or to such other place of delivery as is agreed by the Council in writing prior to delivery of the Goods. The Supplier shall off-load and safely deposit the Goods at its own risk as directed by the Council. Unless otherwise stipulated by the Council, deliveries shall only be accepted by the Council in normal business hours on Business Days.

4.2. The Goods shall be delivered on, or before, the Due Delivery Date. In this respect, time is of the essence. The Goods shall be packaged by the Supplier so as to ensure that they will be in good condition upon arrival at their destination. Goods damaged or lost in transit shall be replaced by the Supplier at their own expense.

4.3. The Supplier shall deliver the quantity of the Goods specified in the Contract Documentation as amended from time to time upon reasonable notice from the Council.

4.4. The Supplier shall ensure that the Goods:

4.4.1. conform precisely to the requirements of the Council specified in the Contract Documentation;

4.4.2. are of the accurate weight, size and measurements required by the Council in the Contract Documentation;

4.4.3. are free from defects, are of the quality required by the Council and are fit for the purpose required by the Council; and

4.4.4. are supplied, manufactured, stored, tested and packed in accordance with all Applicable Laws and all applicable UK and European safety standards.

4.5. Where the Council agrees in writing to accept delivery by instalments, the Contract shall be construed as a single contract in respect of each instalment. Failure by the Supplier to deliver any one or more instalments shall entitle the Council at its discretion to treat the whole Contract or all or some of the Contracts as repudiated.

4.6. If the Goods are delivered to the Council in excess of the quantities ordered, the Council shall not be bound to pay for the excess; any excess shall be and shall remain at the Supplier's risk and shall be available for collection at the Supplier's expense within 3 months. Thereafter, the Council may dispose of such excess Goods at the Supplier's expense.

**5. Risk, title, acceptance**

5.1. The risk and title in the Goods will pass to the Council upon delivery.

5.2. The Supplier shall ensure that the Goods are clearly marked in a secure manner as being the property of the Council and stored separately from any other Goods. The Supplier acknowledges that any of the Council's representatives shall be entitled to have access to the Supplier's premises at any reasonable time to inspect or collect the Goods.

5.3. The Council shall be entitled to order the Supplier to carry out at the Supplier's expense such tests as

the Council reasonably considers necessary to ascertain the quality of the Goods and shall be entitled to require any relevant and applicable certification in relation to its requirements for the Goods.

- 5.4. The Council shall at all times have power to inspect the Goods both before and at all stages of the Contract. The parties expressly acknowledge that the Council may reject the Goods at any time up to acceptance of the Goods. Acceptance of the Goods is not deemed to have occurred until such time as final inspection and testing by the Council has taken place or until the expiry of six months from the date of delivery (whichever is the latest). If the Council fails to reject Goods, this shall not constitute an acceptance of them nor prejudice the Council's rights under the Contract or at law.
- 5.5. Upon rejection of any Goods by the Council, the Supplier shall immediately remove the rejected Goods and replace, re-supply, repair or re-work the Goods as required by the Council in order to comply with the requirements set out in the Contract Documentation. Delivery of the Goods shall be deemed not to take place until the replacement Goods have been delivered. The Council may hold any damaged Goods at the Supplier's risk or may return them at the Supplier's risk and expense. Where the Supplier has failed to collect the Goods within four weeks from the date of notification, the Council may dispose of the Goods at the expense of the Supplier.
- 5.6. Any costs and expenses incurred by the Council in the rejection, removal and disposal of Goods may, without prejudice to the Council's other remedies, be set off in accordance with clause 9.5 against any sums due to the Supplier.

## **6. Obligations of the Supplier - Works and Services**

- 6.1. The Supplier shall perform all of the Services set out in the Contract Documentation and as reasonably required by the Council from the Commencement Date until the expiry of the Contract.
- 6.2. The Supplier shall perform Services in accordance with the Council's directions. The Services shall be supplied to the standards, frequency and quality indicated in the Contract Documentation and/or as required by the Council, including by reference to any Key Performance Indicators or Service Level Agreements.
- 6.3. The Supplier shall be solely responsible for the activities and omissions of its employees, agents, representatives and sub-contractors in fulfilling its obligations under the Contract.
- 6.4. The Supplier shall cooperate with Council by attending any meetings, site inspections or other activities which may from time to time be reasonably required for the fulfilment of the Supplier's obligations under the Contract.
- 6.5. Upon the Commencement Date, the Supplier shall appoint, a knowledgeable designated representative "Supplier's Designated Representative" for the purpose of communicating with the representatives of the Council in relation to the performance and any problems or non-performance of the Services and shall provide full contact details to the Council of this person.
- 6.6. The Supplier acknowledges that the Council may inspect the Services throughout the Contract. If, in the reasonable opinion of the Council, the Services fail to comply with the requirements of the Contract, including any Key Performance Indicators or Service Level Agreements, the Council may, in addition to all of its other remedies, require the Supplier to re-perform and otherwise rectify the Services and any Goods supplied at no further cost beyond the Contract Price. Completion of the Services shall not have taken place until re-inspection and/or approval by the Council of the remedial Services/Goods as appropriate.

## **7. Representations and warranties**

7.1. The Supplier represents and warrants that:

7.1.1 The Supplier, its employees, its agents, officers, sub-contractors and representatives have complied with and shall comply throughout the duration of the Contract with all Applicable Laws and all applicable Council Policies;

7.1.2 In submitting any bids or in performing the Contract, the Supplier has not breached competition law and any other Applicable Laws.

7.1.3 The individuals who sign the Contract Documentation have been duly authorised to represent and bind the Supplier.

7.2 The Supplier represents and warrants that the Works, Goods and the Services shall:

7.2.1 Not be changed without the prior written consent of the Council;

7.2.2 Be of the best available design, of the best quality and workmanship without fault or defect (including latent defect);

7.2.3 In the case of the Services, be performed with all reasonable care and skill, in accordance with generally recognized good commercial practices and standards for similar services;

7.2.4 Conform precisely to the Contract Documentation;

7.2.5 In the case of the Goods, be complete, fully operational, fit for purpose and shall be delivered with all parts and tools and also those parts that are not specified in the Contract Documentation but which are required for proper operation and also including the usual safety devices, and special appliances;

7.2.6 Be accompanied by all appropriate information, warnings, instructions and documentation in relation to the safe use, handling, storing, operation, consuming, transportation and disposal of any Goods or parts or materials, in particular in relation to hazardous materials which will be clearly identified to the Council;

7.2.7 Comply with any applicable national and international quality assurance standards from time to time published under which the Supplier is approved; and/or as reasonably requested by the Council, including any International Standard Specification, European National, or British Standard Code of Practices.

7.2.8 Conform with all regulations, legislation, codes of practice and relevant guidance applicable to:

(a) such Works and Services including in relation to health, safety and environmental standards;  
or

(b) such Goods as regards the design, manufacture, quality, packaging, transportation, delivery, labelling, health, safety and environmental standards and use of such Goods which are in force at the time of supply;

7.2.9 In the case of the Goods, when delivered, be accompanied by a delivery note which shows, amongst other things, the Order number and date or reference to the relevant Contract Documentation, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.

7.3 The Supplier acknowledges that the Council has relied upon any representations, statements or



warranties made by the Supplier or on its behalf by any of its personnel and/or sub-contractors, (whether orally or in writing or in any brochures, catalogues or advertisements) in connection with the Works, Goods and/or Services, as a condition of entering into the Contract.

**8. Other obligations: Health and Safety**

- 8.1. The Supplier undertakes that it and its sub-contractors shall at all times throughout the Contract and at their own expense:
- 8.1.1 Maintain all necessary licenses and consents and comply with all Applicable Laws in the performance of the Contract;
- 8.1.2 Perform its obligations under the Contract in accordance with all Applicable Laws 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 Supplier (the Council reserves the right to refuse any of the Supplier's personnel access to the Council's premises);
- 8.1.3 Without prejudice to the generality of the foregoing, adopt safe working practices and at the proper time supply and install within the original Contract Price such safety devices as may be necessary to comply with the provisions of all health and safety legislation and shall not in the performance of the Contract in any manner endanger the safety of or unlawfully interfere with the convenience of any other person, including employees and/or suppliers of the Council;
- 8.1.4 Notify the Council as soon as practicable of any health and safety incidents or material health and safety hazards at the Council's premises of which it becomes aware and which relate to or arise in connection with the performance of the Contract. The Supplier shall instruct the Supplier's personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards;
- 8.1.5 Ensure that, in performing its obligations under the Contract, it does not cause any disturbance or damage to the Council's operations and property at the relevant site/s;
- 8.1.6 Comply with the Council Policies and conditions in relation to any relevant site (including but not limited to health and safety conditions, safety management systems, safety cases, hygiene policies and security policies) and the Council's codes of conduct and ethics made available to the Supplier from time to time;
- 8.1.7 Comply with all Applicable Laws relating to health and safety, including the provisions of the Health and Safety at Work etc. Act, 1974, the Control of Asbestos Regulations 2012, and all relevant Codes of Practice in force;
- 8.1.8 Indicate whether a COSHH data sheet is required for the Goods supplied and shall comply with Section 6 of the Health and Safety at Work etc. Act 1974 and provide the Council with data sheets and relevant trade literature on any substances deemed to be hazardous to health and shall meet its obligations under the Control of Substances Hazardous to Health Regulations 2002;
- 8.1.9 Comply with all Applicable Laws relating to the classification, labelling and packaging of substances and mixtures, including compliance with Regulation (EC) No 1272/2008 (known as the CLP Regulation) and ensuring that those substances supplied bear labels which itemise the chemical constituents and indicate whether these constituents are toxic, irritant, corrosive etc and give instructions on the safe use of such substances;

- 8.1.10 Assist the Council (and any person nominated by the Council) in the investigation of any accident or incident or the resolution of any dispute, which assistance shall include, but not be limited to, making personnel available for interview, providing access to documents and records and providing information reasonably requested by the Council;
  - 8.1.11 Notify the Council as soon as it becomes aware of any breach of any Applicable Laws or any health and safety hazard or issue which arises in relation to the Goods, Works or Services (which notification shall not release the Supplier from any liability and/or obligations in respect of such breach, hazard or issue);
  - 8.1.12 Co-operate with the Council in all matters relating to the Contract;
  - 8.1.13 Upon the request of the Council, appoint or, at the request of the Council, replace without delay, the Supplier's Designated Representative, who shall have authority under the Contract contractually to bind the Supplier on all matters relating to the Contract;
  - 8.1.14 Immediately provide to the Council suitable certificates of competence from the Supplier for any person employed or engaged in connection with the Works, Goods or Services.
- 8.2 The Council has the right to treat any failure to comply with any part of clause 8 as a material breach of the Contract.

## **9. Price and Payment**

- 9.1. The Price shall be stated in the Order and/or as otherwise agreed by the Council in writing.
  - 9.2. Unless otherwise agreed in writing by the Council, the Price is exclusive of VAT but inclusive of all other charges, costs and expenses. The Price is inclusive of all of the Supplier's obligations under this contract including delivery and other fees. Once fixed, the Supplier shall not be entitled to re-negotiate the Price.
  - 9.3. Invoices are to be submitted to the Council on a monthly basis in arrears. Invoices shall not be submitted until completion of the supply of Goods or performance of the Works and Services as specified unless otherwise agreed by the Council.
  - 9.4. All invoices shall include full identification details of the Supplier, the VAT registration, the relevant Contract, Tender or Order reference and shall contain a detailed breakdown of the Contract Goods and Services supplied. The invoice shall comply with any reasonable instructions made by the Council to substantiate the performance of the Contract obligations.
  - 9.5. Without prejudice to any other right or remedy, the Council reserves the right to set-off any amount owing at any time (both liquidated and un-liquidated, present and future) from the Supplier to the Council against any amount payable by the Council to the Supplier.
  - 9.6. If any undisputed sum under the Contract is not paid when due then, without prejudice to the Supplier's other rights, including rights under the Late Payment Commercial Debts (Interest) Act 1998 and regulations thereto, the Supplier is not entitled to suspend deliveries of the Goods or performance of the Services as a result of any sums being outstanding.
- 9.7. **Prompt Payment**
- 9.7.1 Where the Supplier submits an invoice to the Council in accordance with this clause 9 the Council will consider and verify that invoice in a timely fashion.

9.7.2 The Council shall pay the Supplier any sums due under such invoice no later than a period of 30 days from the date on which the Council has determined that the invoice is valid and undisputed.

9.7.3 Where the Council fails to comply with paragraph 9.7.1 and there is an undue delay in considering and verifying the invoice the invoice shall be regarded as valid and undisputed for the purposes of paragraph 9.7.2 after 14 working days have passed

9.7.4 Where the Supplier enters into a sub-contract, the Supplier shall include in any sub-contract:

- a) provisions having the same effect as clauses 9.7.1 to 9.7.3 (inclusive) of this Contract; and
- b) a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effect as clauses 9.7.1 to 9.7.4 (inclusive) of this Contract,
- c) in clause 9.7.4 “sub-contract” means a contract between two or more suppliers, at any stage of remoteness from the Council in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.

## **10. Delays and Failures**

- 10.1. Where the Supplier is of the opinion that it will be unable to meet its obligations under the Contract or that it will only be able to meet its obligations in part, or too late, it shall promptly notify the Council accordingly in writing, specifying the conditions and circumstances causing such failure or delay.
- 10.2. In the case of any failure or delay, the Supplier shall use its best endeavours to comply with its obligations under the Contract and to mitigate the lateness and delay irrespective of its cause.
- 10.3. On request made by the Council, the Supplier shall prepare a schedule or a progress report, and send copies of the schedule or the report to the Council. These schedules or reports shall specify:
  - 10.3.1 In the case of the Goods, the progress and revised delivery date; and
  - 10.3.2 In the case of the Works and Services, the timetable and status of performance,
  - 10.3.3 In each case, such other information as the Council may request.
- 10.4 The Council reserves its rights to seek liquidated damages for any delays or failures in performance by the Supplier in accordance with clause 10.5 and/or the Contract Documentation including any relevant Key Performance Indicators and/or Service Level Agreements. The use and implementation of liquidated damages is in addition to the other rights and remedies of the Council for any losses, expenses and damages pursuant to the Contract and at law.
- 10.5 In the event of a delay (other than force majeure) or failure, the Council may, at its sole discretion, use the following basis to impose liquidated damages. The Supplier acknowledges that the amounts have been calculated upon the following basis according to the public service nature of the Contract obligations of the Supplier and the importance to the Council of immediately managing any delay or failure in the performance of the Contract;
  - 10.5.1 In the case of the supply of Works, Services and/or Goods, the late delivery of Works, Services and/or Goods or actions resulting in a default or Service failure, the Council shall be entitled to levy the following amounts (or part thereof) calculated on a daily basis as a percentage deducted from the net Contract Price as follows:
    - a) 1- 10 Business days late inclusive: 0.25% per day,

b) 11-20 Business days late: 0.5% per day; and

c) 21 Business days late and over: 1% per day

based upon the number of days of total or partial default beyond the Due Delivery Date.

10.5.2 In the case of Services or Goods supplied in default of any of the obligations and warranties of the Contract in relation to quality, fitness for purpose, description, certification, and safety that has resulted in a default or Service failure caused directly or indirectly by the Supplier, the amounts under this clause 10.5 shall be levied by reference to the market price of alternative supply of the Contract Goods, Works and Services (whether or not actually spent by the Council at the time of the levy);

## **11. Liability and Indemnity**

11.1. The Supplier shall be liable in full for the breach or default of any of its obligations under the Contract and shall be liable to the Council for the losses, damages, expenses, monies and costs incurred as a result, including without limitation;

11.1.1 The costs of other works, goods, services or materials, and the costs to make good the default;

11.1.2 The fees and expenses of services or materials remaining to be delivered;

11.1.3 The additional costs of procuring the Works, Goods, Services and any alternative materials from another supplier, together with any extra administrative/legal costs and expenses; and

11.1.4 Any payments made to other suppliers.

11.2 The Supplier shall keep the Council and any of its agents, contractors, customers or associated entities, indemnified in full and shall hold them harmless against all direct, indirect or consequential losses and/or liabilities including without limitation, loss of profit, loss of business, depletion of goodwill and like loss, increased cost, loss, damages, including costs of damage caused to any land, building, chattel, vehicle, plant or equipment of any kind whatsoever whether or not in the ownership, occupation or possession of the Council, injury (including injury to any person), claims, charges, demands, actions, costs and expenses (including legal and other professional fees and expenses) (together the "Losses") awarded against or incurred or paid by the Council and any of its agents, contractors, customers or associated entities as a result of or in connection with:

11.2.1 Default or breach of the Contract by the Supplier and any of its sub-contractors; and/or

11.2.2 The negligence and/or breach of statutory duty by the Supplier and any of its sub-contractors in connection with the Contract; and/or

11.2.3 Defective Works, Services or Goods; and/or

11.2.4 Any claim made against the Council in respect of any Losses sustained by the Council's service users, employees, agents, contractors or by any customer or third party to the extent that such Losses were caused by, relate to or arise from the Goods or the provision of the Services as a consequence of a direct or indirect breach of the terms of the Contract, or negligent performance or failure or delay in performance or as a result of a breach of any statutory duty by the Supplier or any its sub-contractors, employees or agents.

11.3 In the event that the Contract is terminated before expiry of the original duration of the Contract under clause 18, the Supplier shall be responsible for the handover to the successor, as well as the procurement costs incurred for selecting an alternative Supplier and any other consequential losses

incurred by the Council in the handover.

- 11.4 The parties acknowledge and agree that the Contract is not a contract of employment. The Supplier shall at all times indemnify the Council and keep the Council indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Council is alleged or determined to have assumed or been imposed with the liability or responsibility for the Supplier's personnel (or any of them) as an employer of those personnel and/or any liability or responsibility to HM Revenue or Customs as an employer of the Supplier's personnel whether on the Commencement Date, during the term of the Contract or arising from termination or expiry of the Contract.
- 11.5 Without limiting clause 11.4, if the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) (as amended) applies to transfer the employment of any person employed by the Supplier to the Council or another party chosen by the Council to take over the provision of all or part of the Works, Goods or Services ("**New Supplier**") then, if the Council or such New Supplier shall serve a notice terminating the employment of such person before the end of six months after the date of such transfer (or, if later, after the date they became aware of such transfer), the Supplier shall indemnify the Council (for itself and a New Supplier) in respect of any statutory or contractual redundancy payment payable in respect of such person, and any compensation or damages which the Council is obliged to pay to such person for unfair and/or wrongful dismissal or as a reasonable settlement of a claim for such compensation or damages.

## **12. Insurance**

- 12.1. As condition precedent of entering into the Contract and as an express condition for the duration of the Contract and any additional period, the Supplier shall hold the following insurances to cover for each and every claim pursuant to clause 11 above and any other liability:
- 12.1.1 A minimum of £10 million public liability insurance cover; and
- 12.1.2 A minimum of £10 million employers liability insurance cover; and
- 12.1.3 Unless otherwise specified by the Council, a minimum of £5 million professional indemnity insurance cover.
- 12.2 The Supplier shall be required to submit evidence of its insurance certificates of the mandatory minimum amount for the duration of the Contract and any additional period at any time throughout the Contract.

## **13. Intellectual Property Rights**

- 13.1. The Council retains any and all Intellectual Property Rights in the ownership of the Council and grants a non-transferable, non-exclusive, royalty free licence to the Supplier to use such Intellectual Property Rights only to the extent necessary to provide the Goods or perform the Services. Such licence shall terminate immediately upon termination of the Contract or upon earlier return of the Council's property to the Council.
- 13.2. Pursuant to clause 13.1 to the extent that such Intellectual Property Rights do not automatically vest in the Council, the Supplier assigns to the Council all Intellectual Property Rights in the Works, Goods and Services which have been used, created or developed for the purposes of the Contract including, without limitation, any reports, drawings, designs and programmes.

- 13.3. Where, exceptionally and only by specific written agreement with an authorised representative of the Council, the Intellectual Property Rights in the Works, Goods and Services, do not vest or are not assigned to the Council the Supplier grants to the Council a permanent, non-terminable, transferable, exclusive, royalty free licence (with the right to sub-license) of such Intellectual Property Rights to enable the Council to use and enjoy the Works, Goods or the Services for all purposes including without limitation, to allow the Council freely to utilise the delivered Goods and enjoy the benefit of the Services, to allow the Goods to perform those functions which they are designed for and to repair the delivered Goods (or to have those Goods repaired) and manufacture (or have manufactured) spare parts and replacements. The Contract Price includes the full licence fee.
- 13.4. The Supplier declares that the manufacture, delivery, use and/or repair of the Works, Goods and Services to be supplied and the application of the associated functions and the performance of the Services, do not infringe any industrial or Intellectual Property Rights held by third parties and the Supplier shall indemnify the Council against any loss without limit arising out of claims, liabilities, and expenses (including loss of profits) resulting from any claim or action made by third parties against the Council alleging infringement of any such rights.
- 13.5. Where the Council is notified by a third party of an alleged infringement it shall inform the Supplier of such notification. The Supplier shall promptly take such steps as may be necessary to secure to the Council the rights required to be granted under clause 13.2 and 13.3 above. If the Supplier fails to take such steps within a reasonable period of time (and not more than one month after notification) the Council shall have the right to take such action itself whereupon the Supplier shall indemnify the Council without limit against any costs or liability incurred by the Council in so doing. Such action shall include litigation arrangements or compromises with any rightful claimants and making changes in the delivered Works, Goods and Services without impairing the good quality and usability of the Goods, as will cause them to become non-infringing.
- 13.6. The Council shall be entitled to apply for and hold such patent or other registered protection for any Council's Works, Goods and Services as the Council thinks fit.
- 13.7. The Supplier shall fully indemnify the Council for any claim or action that may be brought against it regarding infringement of copyright, patent or similar protected rights in respect of any services, documents or items supplied under the Contract.
- 13.8. All payments and royalties which may be payable shall be included by the Supplier in the Contract Price and shall be paid promptly to the relevant persons by the Supplier.

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

- 14.1. The Supplier acknowledges that the Council shall be entitled to publish to the public at large or any part thereof any information within this Contract whether in whole or in part including any variation or modification to the Contract Documentation and any documents incorporated by reference herein.
- 14.2. The Supplier acknowledges that the Council is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
  - 14.2.1. provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and EIRs;
  - 14.2.2. transfer to the Council all Requests for Information relating to this agreement or its subject matter that it receives as soon as practicable and in any event within 2 Business Days of receipt;

- 14.2.3. provide the Council with a copy of all Information belonging to the Council requested in the Request for Information which is in its possession or control in the form that the Council requires within 5 Business Days (or such other period as the Council may reasonably specify) of the Council's request for such Information; and
- 14.2.4. not respond directly to a Request for Information unless authorised in writing to do so by the Council.
- 14.3. The Supplier acknowledges that the Council may be required under the FOIA and EIRs to disclose Information (including commercially sensitive information) without consulting or obtaining consent from the Supplier. The Council shall take reasonable steps to notify the Supplier of a relevant Request for Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in the Contract) the Council shall be responsible for determining in its absolute discretion whether any commercially sensitive information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.
- 14.4. The Supplier shall keep in strict confidence all Confidential Information and all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier or by the Council or its agents or sub-contractors and shall not disclose to any person any Confidential information.
- 14.5. The Supplier shall only use such Confidential Information for the purposes of performing its obligations under this Contract.
- 14.6. The Supplier shall restrict disclosure of such Confidential Information to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Supplier's obligations to the Council and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality.
- 14.7. Clause 14.4-14.6 shall not apply to any information that:
  - 14.7.1 Is or becomes generally available to the public other than as a result of disclosure in breach of the Contract;
  - 14.7.2 Was available or known to the Supplier on a non-confidential basis prior to disclosure by the Council; or
  - 14.7.3 Is developed by or for the Supplier independently of this Contract.
- 14.8. In addition to the rights of the Council in clauses 14.1 to 14.3 above, either party may disclose Confidential Information if disclosure is required by any Applicable Laws, court order or any governmental or regulatory body.

**15. Compliance with Council Policies and Applicable Laws**

- 15.1. The Supplier acknowledges the importance of the reputation, standing and responsibilities of the Council. The Supplier shall ensure that the Supplier and its personnel shall comply with all Applicable Laws and Council Policies to the fullest extent throughout the duration of the Contract.
- 15.2. The Supplier accepts full responsibility to obtain complete details of all Applicable Laws and copies of

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

- 15.3. In order to ensure that the best possible workforce relations shall be associated with the Contract, the Supplier shall in respect of all persons employed or engaged by it in the provision of the Services pay rates of wages and observe hours and conditions of employment in accordance with the relevant national employment legislation and codes of practice, and shall comply with all relevant Applicable Laws including, without limitation, the requirements of Employment Rights Act 1996, the Sex Discrimination Act, 1975, the Equal Pay Act, 1970 (as amended), the Race Relations (Amendment) Act 2000, and the Disability Discrimination Act, 2005, the Equality Act 2010, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Age) Regulations 2006; the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000, the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 and the National Minimum Wage Act 1998.
- 15.4. The Supplier shall ensure that it fulfils and continues to fulfil all of its obligations as a 'Contractor to a Public Authority' for the defined purpose of Section 71 of the Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000 and Section 6 of the Human Rights Act 1998.
- 15.5. In accordance with the obligations of the Protection of Children Act 1999 and the Care Standards Act 2001 and the Council's obligations and Policy of Safeguarding, the Supplier shall ensure that their employees, officers, agents, sub-contractors and representatives who may have any communication or other interaction with children and vulnerable persons during any part of the Contract shall be of suitable standing and good character and also that they shall take direct instructions from the Council with regard any actual and potential communication or other interaction with children and vulnerable persons. It is the responsibility of the Supplier to ensure that all necessary DBS checks have been carried out and to ensure and regularly monitor that all documentation is updated and made available to the Council upon request.
- 15.6. The Supplier shall ensure that all persons engaged in any way in the performance of the Contract shall have undergone appropriate checks, carried out appropriate training and will have available visible personal and company identification badges, for inspection by the Council. The Council reserves the right to refuse entry to any properties or premises where such identification is not provided.
- 15.7. The Supplier:
  - 15.7.1. represents and warrants that neither it, nor any personnel of the Supplier, have at any time:
    - 15.7.1.1. committed a Prohibited Act or been formally notified that it is or they are subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
    - 15.7.1.2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act;
  - 15.7.2. shall not commit a Prohibited Act or do or suffer anything to be done which would cause the Council or any of the Council's personnel to contravene the Bribery Act 2010 or otherwise incur any liability in relation to the Bribery Act 2010;
  - 15.7.3. shall comply with all Applicable Laws, regulations, codes and sanctions relating to anti-bribery



and anti-corruption including but not limited to the Bribery Act 2010 and the Local Government Act 1972;

- 15.7.4. shall not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 or section 117 of the Local Government Act 1972 if such activity, practice or conduct had been carried out in the UK;
  - 15.7.5. shall comply with the Council's anti-bribery policies, as identified in Schedule 1 or otherwise provided to the Supplier, in each case as the Council may update them from time to time;
  - 15.7.6. shall establish, maintain and enforce policies and procedures which are adequate to ensure compliance with the Bribery Act 2010 and prevent the occurrence of a Prohibited Act and keep appropriate records of its compliance with this obligation and make such records available to the Council on request;
  - 15.7.7. shall ensure that all persons associated with the Supplier or other persons who are performing services or providing goods in connection with the Contract comply with this clause 15.7;
  - 15.7.8. shall immediately notify the Council in writing if it becomes aware of any breach of this clause 15.7 or has reason to believe that the Supplier or any personnel of the Supplier has:
    - 15.7.8.1. been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
    - 15.7.8.2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
    - 15.7.8.3. received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Contract or otherwise suspects that any person or party directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act;
  - 15.7.9. shall respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit any books, records and/or any other relevant documentation in accordance with clause 17 (audit); and
  - 15.7.10. shall, on request from the Council to do so, certify to the Council in writing that the Supplier has complied with this clause 15.7 and provide such supporting evidence of compliance as the Council may reasonably request.
- 15.8. If at any time Supplier, or any of its personnel, breach, fail to comply or act in default of a Council Policy, it shall immediately notify an authorised representative of the Council. The Council has the right to treat any failure to comply with any part of clause 15 as a material breach of the Contract.

## **16. Data protection**

- 16.1. The Parties acknowledge that, for the purposes of the Data Protection Legislation, the Council is the Controller and the Supplier is the Processor, unless otherwise specified in writing in the Order. The only processing that the Processor is authorised to do is set out in the Instructions and may not be determined by the Processor. The Processor will comply with those Instructions and all applicable

requirements of the Data Protection Legislation; this clause 16 does not relieve, remove or replace the Processor's obligations to comply with the Data Protection Legislation. The contact details of the Controller's Data Protection Officer are set out in Schedule 1.

- 16.2. The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 16.3. The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
  - 16.3.1. a systematic description of the envisaged processing operations and the purpose of the processing;
  - 16.3.2. an assessment of the necessity and proportionality of the processing operations in relation to the relevant Works, Goods or Services;
  - 16.3.3. an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 16.3.4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 16.4. The Processor shall, in relation to any Personal Data processed in connection with its obligations under the Contract:
  - 16.4.1. process that Personal Data only in accordance with the Instructions, unless the Processor is required to do otherwise by any Applicable Laws. If it is so required, the Processor shall promptly notify the Controller before processing the Personal Data unless such notification is prohibited by any Applicable Laws;
  - 16.4.2. ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event (which the Controller may reasonably reject, but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
    - 16.4.2.1. nature of the data to be protected;
    - 16.4.2.2. harm that might result from a Data Loss Event;
    - 16.4.2.3. state of technological development; and
    - 16.4.2.4. cost of implementing any measures;
  - 16.4.3. ensure that:
    - 16.4.3.1. the Processor Personnel do not process Personal Data except in accordance with the Contract (and in particular the Instructions);
    - 16.4.3.2. it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:

- 16.4.3.2.1. are aware of and comply with the Processor's duties under this clause 16;
  - 16.4.3.2.2. are subject to appropriate confidentiality undertakings with the Processor or any Sub-Processor;
  - 16.4.3.2.3. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by the Contract; and
  - 16.4.3.2.4. have undergone adequate training in the use, care, protection and handling of Personal Data; and
- 16.4.4. not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
- 16.4.4.1. the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37), as determined by the Controller;
  - 16.4.4.2. the Data Subject has enforceable rights and effective legal remedies;
  - 16.4.4.3. the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
  - 16.4.4.4. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data; and
- 16.4.5. at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by any Applicable Laws to retain the Personal Data.
- 16.5. Subject to clause 16.6, the Processor shall notify the Controller immediately if it:
- 16.5.1. receives a Data Subject Request (or purported Data Subject Request);
  - 16.5.2. receives a request to rectify, block or erase any Personal Data;
  - 16.5.3. receives any other request, complaint or communication relating to any party's obligations under the Data Protection Legislation;
  - 16.5.4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under the Contract;
  - 16.5.5. receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by any Applicable Laws; or
  - 16.5.6. becomes aware of a Data Loss Event.
- 16.6. The Processor's obligation to notify under clause 16.5 shall include the provision of further information to the Controller in phases, as details become available.

- 16.7. Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request as described in clause 16.5 (and, insofar as possible, within the timescales reasonably required by the Controller) including by promptly providing:
  - 16.7.1. the Controller with full details and copies of the complaint, communication or request;
  - 16.7.2. such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - 16.7.3. the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 16.7.4. assistance as requested by the Controller following any Data Loss Event; and
  - 16.7.5. assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 16.8. The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause 16.
- 16.9. The Processor shall allow for audits of its Personal Data processing activity by the Controller or the Controller's designated auditor.
- 16.10. Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 16.11. Before allowing any Sub-Processor to process any Personal Data related to any of the Contracts, the Processor must:
  - 16.11.1. carry out full due diligence in relation to the proposed Sub-Processor to ensure that it has the resources to, and will, comply with the Data Protection Legislation;
  - 16.11.2. notify the Controller in writing of the intended Sub-Processor and processing;
  - 16.11.3. obtain the written consent of the Controller;
  - 16.11.4. enter into a written agreement with the Sub-Processor which gives effect to the terms set out in this clause 16 such that they apply to the Sub-Processor; and
  - 16.11.5. provide the Controller with such information regarding the Sub-Processor as the Controller may reasonably require.
- 16.12. The Processor shall remain fully liable for all acts and all omissions of any of its Sub-Processors.
- 16.13. The Controller may, at any time on not less than 30 days' notice to the Processor, revise this clause 16 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme.
- 16.14. The parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 days' notice to the Processor amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## **17. Audit**

- 17.1. The Supplier shall, during and after the term of the Contract, allow the Council (or its professional advisers or auditors) to access the Supplier's premises, personnel, systems and relevant records to:
- 17.1.1. verify compliance by the Supplier with the Contract, the Applicable Laws and the Council Policies;
  - 17.1.2. verify that the Price and any other sums charged to the Council under the Contract are accurate;
  - 17.1.3. identify or investigate actual or suspected fraud, impropriety or accounting mistakes, any breach or threatened breach of security or any circumstances which may impact upon the financial stability of the Supplier or their ability to perform the Contract;
  - 17.1.4. carry out the Council's internal and statutory audits or in connection with the Council's annual or interim reports and accounts;
  - 17.1.5. obtain such information as is necessary to fulfil the Council's obligations to supply information for parliamentary, ministerial, regulatory, judicial or administrative purposes including the supply of information to the local government ombudsman or any auditor or audit authority; and/or
  - 17.1.6. enable the National Audit Office, the local government ombudsman and any other auditor, authority or regulator to carry out any relevant inspection or examination.
- 17.2. The Supplier shall provide the Council (and its professional advisers) with all reasonable co-operation, access and assistance in relation to each audit.
- 17.3. The Council shall provide at least 5 Business Days' notice of its intention to conduct an audit, unless earlier access is required by any order, auditor, authority or regulator.
- 17.4. The Council and its professional advisers shall have the right to take copies of any records which they reasonably require and remove such copies and the Supplier shall provide the necessary facilities to assist in copying free of charge.

## **18. Termination**

- 18.1. The Council may terminate the Contract immediately where:
- 18.1.1. The Supplier commits a material breach of any of the obligations of the Contract, and fails to remedy it within 10 Business days after being given written notice of the breach requiring it to be remedied;
  - 18.1.2. The Supplier commits a material breach of any of the obligations of the Contract which is not capable of remedy; or
  - 18.1.3. The Supplier is in persistent breach of any of the obligations of the Contract including any Key Performance Indicators and Service Level Agreements;
- 18.2. The Council may terminate the contract by notice in writing having immediate effect if:
- 18.2.1. The Supplier is dissolved, ceases to conduct substantially all of its business or becomes unable

to pay its debts as they fall due;

- 18.2.2. Where the Supplier is a company, a receiver is appointed, of any of the property or assets of that Supplier;
  - 18.2.3. The Supplier makes a composition or any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
  - 18.2.4. The Supplier, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation;
  - 18.2.5. There is a change of control of the Supplier (within the meaning of section 1124 of the Corporation Tax Act 2010);
  - 18.2.6. The Supplier has a winding-up order made (except for the purposes of amalgamation or reconstruction);
  - 18.2.7. The Supplier has a provisional liquidator receiver or manager of its business of undertaking duly appointed; and/or
  - 18.2.8. The Supplier, being an individual, dies or as a result of illness or incapacity becomes incapable of managing his or her own affairs.
- 16.1 The Council may also terminate the Contract immediately where the Supplier is found to be in breach of any of its obligations in clause 9 and/or 15 and/or 16.
  - 16.2 The right of the Council to terminate the Contract is without prejudice to any other rights it may exercise to claim losses, expenses and damages and other remedies under the Contract.

**19. Assignment and Sub-Contracting**

- 19.1. The Supplier shall not assign, transfer, mortgage, charge, subcontract, licence, declare a trust over, dispose of or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Council.
- 19.2. The consent of the Council shall not discharge the Supplier in any respect from its duty to properly and punctually meet any obligations under the Contract and the Supplier shall remain fully responsible and liable to the Council for any performance or non-performance of such obligations, whether by the Supplier or any sub-contractor or agent, and shall be liable for the acts and omissions of its sub-contractors and agents. The Supplier shall promptly and fully inform each sub-contractor as to the provisions contained in the Contract (including these Terms and Conditions). The Supplier shall ensure that each sub-contract with its sub-contractors and other arrangements include each of the obligations of the Contract upon the Supplier mutatis mutandis, so that such sub-contractors and agents are bound to all obligations of the Contract, by incorporation of the same obligations in their sub-contract.
- 19.3. The Council may at any time assign, transfer, novate, mortgage, charge, subcontract, licence, declare a trust over, dispose of or deal in any other manner with any or all of its rights and/or obligations under the Contract, or any part thereof to:

- 19.3.1. any other body established by the Crown or under statute or statutory instrument in order substantially to perform any of the functions that had previously been performed by the Council (whether or not that body also performs other functions); or
- 19.3.2. any private sector or other body which substantially performs any of the functions of the Council (whether or not that body also performs other functions).
- 19.4. The Supplier acknowledges that the rights and obligations of the Council under the Contract may be novated to any such other body by operation of law (such as the making of a statutory instrument to that effect) or, if any further notice is required to effect such novation in law, on publication (on the [www.eastsuffolk.gov.uk](http://www.eastsuffolk.gov.uk) website or otherwise) of notice of the transfer of the rights and obligations of the Council to the relevant body. Nonetheless, the Supplier shall, at the Council's request, enter into a novation agreement in such form as the Council shall reasonably specify in order to enable the Council to exercise, perfect or obtain further assurance of its rights pursuant to this clause 19.
- 19.5. A change in the legal status of the Council shall not affect the validity of the Contract and the Contract shall be binding on any successor body to the Council.

**20. Force Majeure**

- 20.1. A party to this Contract will not be liable for any failure or delay in performing its obligations where such failure or delay results from any cause that is beyond the reasonable control of that party. In these circumstances, the affected party must notify the party or parties not affected as soon as reasonably practicable who may suspend the obligations of the Contract.
- 20.2. If the period of delay or non-performance continues for 3 weeks, the party or parties not affected may terminate this Contract by giving 14 days' written notice to the other party.

**21. Notices**

- 21.1. All notices shall be in writing to the address or fax number notified by each party and shall be delivered personally, sent by fax or sent by pre-paid, first-class post or recorded delivery.
- 21.2. With the exception of notices pursuant to clause 18 (Termination) above, all notices may be served by email to the email address of the Supplier's Designated Representative and to the email address as the Council may notify to the Supplier. All notices shall refer to the relevant Order number and/or Contract Documentation.
- 21.3. A notice is deemed to have been received:
  - 19.3.1 In the case of fax, at the time of transmission provided a successful transmission report is received;
  - 19.3.2 In the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting provided the envelope containing the notice was correctly addressed and posted;
  - 19.3.3 In the case of email, when sent, provided a delivery receipt is obtained; and
  - 19.3.4 If deemed receipt under this condition is not within business hours (meaning 9.00 am to 5.00 pm Monday to Friday on a day that is a Business day), at 9.00 am on the first business day following delivery.

**22. General**

- 22.1. Each right or remedy of the Council under the Contract is without prejudice to any other right or remedy of the Council whether under the Contract or not and is in addition to any conditions implied in favour

of the Council by Law.

- 22.2. If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect. Failure or delay by the Council in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 22.3. Any waiver by the Council of any breach of, or any default under, any provision of the Contract by the Supplier shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 22.4. The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 22.5. Nothing in this Contract grants exclusivity to the Supplier. The Council shall be entitled to contract with any person or persons other than the Supplier for supply and delivery of similar services or materials during the Contract period.
- 22.6. The Supplier shall not without the previous written consent of the Council advertise or, except as necessary for the performance of the Contract, make known to third parties the fact that the Supplier supplies Works, Goods or Services to the Council.
- 22.7. Nothing in the Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 22.8. The Contract constitutes the entire agreement between the Supplier and the Council relating to the sale and purchase of the Works, Goods and/or Services.
- 22.9. No amendment or variation of the Contract shall be effective unless it is expressly agreed by an authorised representative of the Council in writing.

**23. Disputes, governing law and jurisdiction**

- 23.1. The parties shall use their reasonable endeavours to resolve any Dispute between them through negotiation or mediation. The commencement of any mediation shall not prevent the parties commencing or continuing proceedings in relation to the Dispute under clause 23.2.
- 23.2. The Contract and any Dispute shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute.



## SCHEDULE 1

### Council Policies

- The Council’s constitution and appendices, including the contract procedure rules and the financial procedure rules, as published by the Council from time to time on its website (current link: <https://www.eastsuffolk.gov.uk/yourcouncil/how-your-council-works/constitution/>)
- Health and Safety policies and guidance as published by the Council from time to time on its website (current link: <https://www.eastsuffolk.gov.uk/assets/Your-Council/Procurement/Health-and-Safety-Policy.pdf>)
- Safeguarding policy as published by the Council from time to time on its website (current link: <http://www.eastsuffolk.gov.uk/assets/Community/Safeguarding-Children-Young-People-and-Adults-at-Risk-of-Abuse-Policy.pdf>)
- Equality policies and scheme as published by the Council from time to time on its website (current link: <http://www.eastsuffolk.gov.uk/assets/Community/equality-and-diversity/EqualityScheme201214.pdf>)
- Modern slavery policy as published by the Council from time to time on its website (current link: <http://www.eastsuffolk.gov.uk/assets/Community/community-safety/Modern-Slavery-and-Human-Trafficking-Statement.pdf>)
- Site management policy as published by the Council from time to time on its website (current link: <http://www.eastsuffolk.gov.uk/assets/Your-Council/Procurement/Site-Management-Policy.pdf>)
- Whistleblowing policy as published by the Council from time to time on its website.
- Anti-bribery policy as published by the Council from time to time on its website.
- Data protection and information security policies as published by the Council from time to time on its website. The contact details of the Council’s Data Protection Officer are: Siobhan Martin, Head of Internal Audit and Data Protection Officer, East Suffolk Council, care of the postal address specified for the Council in the Contract or by e-mail: [dataprotection@eastsuffolk.gov.uk](mailto:dataprotection@eastsuffolk.gov.uk).
- Any relevant local government association or other applicable charter standards or recommendations.

## SCHEDULE 2

### Template for Instructions for processing of Personal Data

<p>1. The Supplier shall comply with any further written instructions of the Council in respect of processing Personal Data. Any such further instructions shall be incorporated into the relevant Instructions as defined in the Contract.</p> <p>2. Processing of Personal Data by the Supplier:</p>	
<p>Subject matter of the processing</p>	<p><i>[Please insert a high level, short description of what the processing is about – e.g. The processing is necessary to ensure that the Supplier can deliver the contract to provide a [type of] service to [ ].]</i></p>

Duration of the processing	<i>[Please set out clearly, including dates.]</i>
Nature and purposes of the processing	<p><i>[Please be as specific as possible about the nature of the processing – e.g. collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means)]</i></p> <p><i>[Please ensure that you cover all intended purposes – e.g. employment processing, statutory obligations, recruitment assessment]</i></p>
Types of Personal Data being processed	<i>[e.g. Names, office addresses, date of birth, e-mail addresses, land line and mobile telephone numbers, pay, images.]</i>
Categories of Data Subject	<i>[e.g. Service users, Council’s personnel (including volunteers, agents and temporary workers), Supplier’s personnel]</i>
Plan for return or destruction of the data once the processing is complete UNLESS required by applicable law to preserve that type of data	<i>[Describe how long the data will be retained for and how it will be returned or destroyed]</i>