



# **DARLINGTON**

Borough Council

## **STANDARD TERMS AND CONDITIONS OF CONTRACT FOR THE PURCHASE OF GOODS**

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## **PART A - OPERATIVE PROVISIONS**

### **A1. DEFINITIONS**

The terms and expressions used in these Standard Terms and Conditions shall have the meanings set out below:

“Authorised Officer”	the person duly appointed by the Council and notified in writing to the Contractor to act as the representative of the Council for the purpose of the Contract in the Contract Particulars or as amended from time to time and in default of such notification the Council’s head of procurement or similar responsible officer.
“Business Day”	any day other than a Saturday or Sunday or a public or bank holiday in England.
“Change in Law”	the coming into effect or repeal (without re-enactment or consolidation) in England of any Law, or any amendment or variation to any Law, or any judgement of a relevant court of law which changes binding precedent in England in each case after the date of this Contract.
“Commencement Date”	the commencement date stated in the Contract Particulars.
“Confidential Information”	any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the Goods, the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either party, all personal data and sensitive personal data (within the meaning of the DPA) and commercial sensitive information.

“Contract”	the agreement in respect of the provision of the Goods consisting of the following listed documents which shall be read as one document. In the event of ambiguity, conflict or contradictions between these documents the conflict will be resolved according to the following order of priority:
	<ol style="list-style-type: none"><li>1. the Contract Particulars;</li><li>2. the Special Terms and Conditions;</li><li>3. the Standard Terms and Conditions;</li><li>4. the Tender except to the extent that any element of the Tender has been included in the Contract Particulars.</li></ol>
“Contractor”	the contractor and where applicable this shall include the contractor's Employees, sub-contractors, agents, representatives and permitted assigns and, if the contractor is a consortium or consortium leader, the consortium members.
“Contract Manager”	the person named in the Contract Particulars as the contract manager and any replacement from time to time in accordance with clause B3.2.
“Contract Particulars”	the document detailing the specific core terms agreed between the parties with regard to the Goods which shall include but not be limited to the Pricing Schedule, Delivery Instructions, Commencement Date, Authorised Officer, Contract Manager, Key Personnel, Contract Period and the Specification and relevant contract specific details of the Tender included in the document.
“Contract Period”	the period of the contract as stated in the Contract Particulars (and any extension in accordance with clause B1).
“Control”	control as defined by section 416 of the

	Income and Corporation Taxes Act 1988.
“Council”	the Council named in the Contract Particulars and where the context so admits includes any person which takes over or assumes the statutory functions or administrative responsibilities of the Council (whether in part or totally) or which is controlled by or is under common control with the Council (and the expression “control” shall mean the power to direct or cause the direction of the general management and policies of the person in question but only for so long as such control exists).
“DPA”	The Data Protection Act 1998.
“Delivery Instructions”	the instructions provided in the Contract Particulars and any other information that the Council considers appropriate to the provision of the Goods.
“Employee”	any person employed by the Contractor to perform the Contract which will also include the Contractor's servants, agents, voluntary and unpaid workers and subcontractors and representatives.
“EIR”	The Environmental Information Regulations 2004.
“FOIA”	The Freedom of Information Act 2000.
“Force Majeure”	any cause materially affecting the performance by a party of its obligations under this Contract arising from any act beyond its reasonable control and affecting either party, including without limitation: acts of God, war, industrial action (subject to clause H6.3), protests, fire, flood, storm, tempest, epidemic, explosion, acts of terrorism and national emergencies.
“Good Industry Practice”	the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and

	<p>experienced contractor engaged in the supply of goods similar to the Goods under the same or similar circumstances as those applicable to the Contract.</p>
“Goods”	<p>the goods described in the Specification to be supplied by the Contractor in accordance with the Contract and any associated services provided by the Contractor in relation to those goods.</p>
“HRA”	<p>The Human Rights Act 1998.</p>
“Intellectual Property Rights”	<p>patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.</p>
“Invitation to Tender”	<p>the Council’s invitation to tender for the Contract.</p>
“Law”	<p>any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Contractor is bound to comply.</p>
“Liabilities”	<p>all costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought.</p>
“Order”	<p>an order for Goods to be provided where the Contract is identified in the Contract</p>

	Particulars to be delivered by call off.
“Price”	the price of the Goods as set out in the Contract Particulars. Unless otherwise stated, any reference to Price shall be regarded as being exclusive of properly chargeable VAT which shall be separately accounted for.
“Pricing Schedule”	the schedule from the Tender detailing the pricing as detailed in the Contract Particulars.
“Special Terms and Conditions”	the additional terms and conditions attached which were set out in the Invitation to Tender.
“Specification”	the specification included in the Contract Particulars setting out the Council's detailed requirements in relation to the Goods.
“Standard Terms and Conditions”	the terms and conditions set out in this document.
“Tender”	the Contractor’s tender for the Goods in response to the Council’s Invitation to Tender.

A1.1 Any reference to a person shall include any natural person, partnership, joint venture, body corporate, incorporated association, government, governmental agency, persons having a joint or common interest, or any other legal or commercial entity or undertakings.

A1.2 A reference to any statute, order, regulation or similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

**A2. HEADINGS**

A2.1 The index and headings to the clauses and appendices to and schedules of this Contract are for convenience only and will not affect its construction or interpretation.

**A3. NOTICES**

A3.1 Any notice required by this Contract to be given by either party to the other shall be

in writing and shall be served personally, by fax or by sending it by registered post or recorded delivery to the appropriate address, fax number or email address notified to each other as set out in the Contract Particulars.

A3.2 Any notice served personally will be deemed to have been served on the day of delivery; any notice sent by post will be deemed to have been served 48 hours after it was posted; any notice sent by fax will be deemed to have been served 24 hours after it was despatched and any notice sent by email before 5 p.m. will be deemed to have been served on the day of despatch and otherwise on the following day save where the deemed date of service falls on a day other than a Business Day in which case the date of service will be the next Business Day.

**A4. ENTIRE AGREEMENT**

A4.1 The Contract constitutes the entire agreement between the parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause A4 shall not exclude liability in respect of any fraudulent misrepresentation.

**PART B - PROVISION OF GOODS**

**B1. CONTRACT PERIOD**

B1.1 The Contract shall commence on the Commencement Date and subject to clause B1.2 shall continue for the Contract Period.

B1.2 If the Contract Period includes an option to extend and the Council intends to take up the option, the Contractor shall be notified in writing within the period stated in the Contract Particulars prior to the commencement of the extension. If no such notification is issued the Contract shall automatically expire after the initial Contract Period.

**B2. DELIVERY**

B2.1 The Goods shall be delivered in accordance with any Delivery Instructions. If no time for delivery is stated in the Delivery Instructions Goods shall be delivered between 9a.m. and 5p.m. on a Business Day.

B2.2 The time of the delivery of the Goods is of essence to the Contract.

B2.3 Where the Goods are delivered by the Contractor, the point of delivery shall be when they are removed from the transporting vehicle and delivered in accordance with the Delivery Instructions. Where the Goods are collected by the Council from the Contractor, the point of delivery shall be when they are loaded onto the Council's vehicle.

B2.4 Except where otherwise provided in the Contract, delivery shall include the



uploading or stacking of the Goods by the Contractor at such places the Council may direct in the Contract.

- B2.5 The issue by the Council of a receipt note for the Goods shall not constitute any acknowledgement of the condition or nature of those Goods. The Council shall not be deemed to have accepted any Goods until it has had reasonable opportunity to inspect them following delivery or within a reasonable time after any latent defect in the Goods has become apparent.
- B2.6 All Goods must be properly packaged to survive transit without damage, clearly and legibly labelled and addressed. The Council will not be liable to pay for any pallets, packages or containers in which Goods are supplied.
- B2.7 Unless expressly agreed to the contrary, the Council shall not be obliged to accept delivery by instalments. If the Council does specify or agree to delivery by instalments, delivery of any one instalment not in accordance with the Delivery Instructions shall, without prejudice to any other rights or remedies of the Council, entitle the Council to terminate the whole of any unfulfilled part of the Contract without further liability to the Contractor.
- B2.8 Without prejudice to the Council's other remedies if the Goods or any portion of them are not delivered in accordance with the Delivery Instructions the Council shall be entitled to recover from the Contractor, as liquidated damages and not by way of penalty, the amount, if any, for the period during which such failure continues the amount, if any as set out in the Special Terms and Conditions.
- B2.9 If the Contractor at any time becomes aware of any act or omission, or proposed act or omission by the Council which prevents or hinders, or may prevent or hinder the Contractor from supplying the Goods in accordance with the Contract, the Contractor shall inform the Council.
- B2.10 If the Contractor has a change in Control, the Contractor shall inform the Council as soon as reasonably practicable.
- B2.11 The Council retains the Contractor for the supply of the Goods on a non exclusive basis.

### **B3. CONTRACT MANAGER**

- B3.1 The Contractor shall employ a competent and authorised Contract Manager empowered to act on behalf of the Contractor for all purposes connected with the Contract.
- B3.2 The Contractor shall forthwith give notice in writing to the Council of any change in the identity, address and telephone numbers of the person appointed as Contract Manager. The Contractor shall give maximum possible notice to the Council before changing its Contract Manager.

**B4. ORDERING PROCESS**

- B4.1 Where this Contract is identified as requiring Orders in the Contract Particulars the Contractor shall accept Orders made in writing by the Council under the provisions of this clause.
- B4.2 Except where specified Orders are required to call off the Goods, the Council gives no guarantees whatsoever as to when any Order will be placed during the Contract Period or under the Contract.
- B4.3 The Orders shall state the type of or part of the Goods required including the Council's requirements with regard to timescale for delivery of those Goods.

**B5. RISK IN AND TITLE TO GOODS**

- B5.1 Risk in the Goods shall pass to the Council upon delivery without prejudice to any rights of rejection which may accrue to the Council under the Contract or otherwise.
- B5.2 Title to the Goods shall pass to the Council upon delivery or earlier payment.

**B6. WARRANTY**

- B6.1 The Contractor warrants to the Council that the Goods will be:
- B6.1.1 of satisfactory quality within the meaning of the Sale of Goods Act 1979 and fit for purpose as required by the Specification or held out by the Contractor; and
  - B6.1.2 free from defects in design, material and workmanship; and
  - B6.1.3 provided in accordance with the Contract, correspond with the Specification and any drawings, samples or descriptions provided by the Contractor; and
  - B6.1.4 so formulated, designed, constructed, finished and packaged as to be safe and without risk to health.
- B6.2 The Contractor warrants to the Council that to the extent that associated services are performed, be performed by appropriately qualified, trained and experienced personnel with a high standard of skill, care and diligence and in accordance with Good Industry Practice.
- B6.3 Without prejudice to the Council's right to terminate under clause 13 (Termination), if any of the Goods supplied are not in accordance with the Contract, the Council shall be entitled to:

- B6.3.1 require the Contractor to repair the Goods or to supply replacement Goods in accordance with the Contract as soon as reasonably practicable and in any event within fourteen (14) working days of a request to do so; or
- B6.3.2 subject to clause F1 (Indemnity and Liability), treat the Contract as discharged by the Contractor's breach and require the repayment of a proportion of the Price which has been paid together with payment of any additional expenditure over and above the Price reasonably incurred by the Council in obtaining replacement Goods.

## **B7. CONTRACTOR'S EMPLOYEES**

- B7.1 The Council reserves the right under the Contract to refuse to admit to, or to withdraw permission to remain on, any premises occupied by or on behalf of the Council:
  - B7.1.1 any member of the Contractor's Employees; and/or
  - B7.1.2 any person employed or engaged by a sub-contractor, agent or servant of the Contractor

whose admission or continued presence would be, in the reasonable opinion of the Council, undesirable.
- B7.2 When directed by the Council, the Contractor shall provide a list of the names and addresses of all persons (if any) who it is expected may require admission in connection with the Contract to any premises occupied by or on behalf of the Council, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Council may reasonably desire.
- B7.3 The Contractor's Employees, engaged within the boundaries of any of the Council's premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at that establishment and when outside that establishment.
- B7.4 The decision of the Council as to whether any person is to be refused access to any premises occupied by or on behalf of the Council shall be final and conclusive.
- B7.5 The Contractor shall bear the cost of or costs arising from any notice, instruction or decision of the Council under this clause.

## **PART C - PRICE AND PAYMENT**

### **C1. PRICE AND PAYMENT**

- C1.1 The Council shall pay the Price for the Goods to the Contractor.
- C1.2 The Contractor shall submit a single VAT invoice to the Council no later than seven days after the end of each calendar month detailing the Goods provided during the calendar month and the amount payable. The Contractor shall be responsible to ensure that only properly chargeable VAT is invoiced which shall be separately accounted for, and where it is subsequently shown that VAT has been charged incorrectly then the Contractor shall be responsible for reimbursing the Council.
- C1.3 Payment of any undisputed invoice will be made no later than thirty (30) days following the date of receipt of the invoice by the Council.
- C1.4 The Council reserves the right to withhold payment of the relevant part of the Price, without payment of interest, where the Contractor has either failed to deliver the Goods at all or has delivered Goods which, in the reasonable opinion of the Council, are unsatisfactory and any invoice relating to such Goods will not be paid unless or until the Goods have been delivered to the Council's satisfaction.
- C1.5 Any overdue sums will bear interest from the due date until payment is made at 4% per annum over the Co-operative Bank plc base rate from time to time. The Contractor is not entitled to suspend deliveries of the Goods as a result of any overdue sums.
- C1.6 The Council will be entitled but not obliged at any time or times without notice to the Contractor to set off any liability of the Council to the Contractor against any liability of the Contractor to the Council (in either case howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency) and may for such purpose convert or exchange any sums owing to the Contractor into any other currency or currencies in which the obligations of the Council are payable under this Contract. The Council's rights under this clause will be without prejudice to any other rights or remedies available to the Council under this Contract or otherwise.
- C1.7 Further details of payment, if any, are set out in the Pricing Schedule.

## **PART D - TERMINATION AND CONSEQUENCES OF TERMINATION**

### **D1. TERMINATION**

- D1.1 Subject to the provisions of clause H6 (Force Majeure) the Council may terminate the Contract with immediate effect by notice in writing to the Contractor on or at any time if:

- D1.1.1 the Contractor becomes bankrupt, insolvent, makes any composition with its creditors, has a deputy or equivalent appointed under the Mental Capacity Act 2005 or dies; or
  - D1.1.2 the Contractor is convicted of a criminal offence; or
  - D1.1.3 the Contractor ceases or threatens to cease to carry on its business; or
  - D1.1.4 the Contractor has a change in its Control which the Council believes will have a substantial impact on the performance of the Contract; or
  - D1.1.5 there is a risk or a genuine belief that there is a risk that reputational damage to the Council will occur as a result of the Contract continuing; or
  - D1.1.6 the Contractor is in breach of any of its obligations under this Contract that is capable of remedy and which has not been remedied to the satisfaction of the Council within 14 days, or such other reasonable period as may be specified by the Council after issue of a written notice specifying the breach and requesting it to be remedied; or
  - D1.1.7 there is a material or substantial breach by the Contractor of any of its obligations under this Contract which is incapable of remedy; or
  - D1.1.8 the Contractor commits persistent minor breaches of this Contract, whether remedied or not.
- D1.2 The Council reserves the right to terminate the Contract in part in the case of termination under clauses D1.1.6, D1.1.7, and D1.1.8.
- D1.3 Where this Contract is subject to Orders as specified in the Contract Particulars the Council has the right to terminate any individual Order or Orders or the whole Contract under the provisions of this clause D1.
- D1.4 The Council reserves the right to terminate the Contract at will, in whole or in part, at any time with or without notice except that it will give as much notice as possible in the circumstances.

## D2. **CONSEQUENCES OF TERMINATION**

- D2.1 If this Contract is terminated in whole or in part the Council shall:
- D2.1.1 be liable to pay to the Contractor only such elements of the Price, if any, that have properly accrued in accordance with the Contract or the affected part of the Contract up to the time of the termination; and/or
  - D2.1.2 except for termination under clause D1.4, be entitled to deduct from any sum or sums which would have been due from the Council to the

Contractor under this Contract or any other contract and to recover the same from the Contractor as a debt any sum in respect of any loss or damage to the Council resulting from or arising out of the termination of this Contract. Such loss or damage shall include the reasonable cost to the Council of the time spent by its officers in terminating the Contract and in making alternative arrangements for the supply of the Goods or any parts of them; and/or

D2.1.3 where termination arises under clause D1.4, pay to the Contractor any reasonable, direct and quantifiable costs reasonably incurred by the Contractor due to early termination subject to the maximum liability provision in clause E2.4; and/or

D2.1.4 in the event that any sum of money owed by the Contractor to the Council (the Contractor's debt) exceeds any sum of money owed by the Council to the Contractor (the Council's debt) under this Contract then the Council shall, at its sole discretion, be entitled to deduct the Contractor's debt from any future Council's debt or to recover the Contractor's debt as a civil debt.

D2.2 Upon the termination of the Contract for any reason, subject as otherwise provided in this Contract and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under the Contract.

### D3. **DISPUTE RESOLUTION PROCEDURE**

D3.1 If a dispute arises between the Council and the Contractor in connection with the Contract, the parties shall each use reasonable endeavours to resolve such dispute by means of prompt discussion at an appropriate managerial level.

D3.2 If a dispute is not resolved within fourteen (14) days of referral under clause D3.1 then either party may refer it to the Chief Executive or appropriate nominated officer of each party for resolution who shall meet for discussion within 14 days or longer period as the parties may agree.

D3.3 Provided that both parties consent, a dispute not resolved in accordance with clauses D3.1 and D3.2, shall next be referred at the request of either party to a mediator appointed by agreement between the parties within 14 days of one party requesting mediation with the costs of mediation determined by the mediator.

D3.4 Nothing in this clause shall preclude either party from applying at any time to the English courts for such interim or conservatory measures as may be considered appropriate.

**D4. SURVIVAL**

D4.1 The following clauses will survive termination or expiry of the Contract: Clause B5 (Risk in and Title to the Goods), Clause D2 (Consequences of Termination), Clause F1 (Intellectual Property), Clause F2 (Confidentiality and Publicity), Clause F3 (Data Protection), Clause F4 (Freedom of Information), Clause F5 (Record Keeping and Monitoring), Clause H4 (Severance), Clause H10 (Non Solicitation and Offers of Employment) and Clause H12 (Law and Jurisdiction).

**PART E - INSURANCE AND LIABILITIES**

**E1. INSURANCE**

E1.1 The Contractor shall maintain insurance necessary to cover any liability arising under the Contract as set out in the Contract Particulars.

E1.2 The Contractor shall prior to the Commencement Date and on each anniversary of the Commencement Date and/or upon request provide evidence that all premiums relating to such insurances have been paid.

E1.3 If the Contractor does not maintain the necessary insurances under the Contract, the Council may insure against any risk in respect of the default and may charge the Contractor the cost of such insurance together with a reasonable administration charge.

**E2. INDEMNITY AND LIABILITY**

E2.1 Neither party seeks to exclude or limit its liability for:

E2.1.1 death or personal injury caused by its negligence (but will not be liable for death or personal injury caused by the other party's negligence); or

E2.1.2 fraudulent misrepresentation; or

E2.1.3 any other matter in respect of which, as a matter of Law, liability cannot be excluded or limited.

E2.2 E2.2 Except as specifically provided, neither party shall in any event be liable to the other for any indirect or consequential loss (including loss of profit, loss of business opportunity, loss of business, loss of goodwill, loss of production and pure economic loss) however caused.

E2.3 E2.3 Subject to clause E2.2 the Contractor shall indemnify the Council in full without limit of liability for any direct loss of or damage to the real or personal property of the Council or any third party, including Intellectual Property Rights, or injury claimed by any third party and against all Liabilities awarded against or incurred by the Council (including legal expenses on an indemnity basis) arising

from the Contractor's negligence, any defect or fault in the Goods or any act or omission of the Contractor in supplying, delivering and, where applicable installing the Goods.

- E2.4 E2.4 Subject to clauses E2.1 and E2.2, the Council's liability to the Contractor under the Contract whether in contract, tort (including negligence) or otherwise shall be limited to 125% of the proportion of the Price which is paid and payable at the time that the liability arises.

## **PART F - PROTECTION OF INFORMATION**

### **F1. INTELLECTUAL PROPERTY**

- F1.1 All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:
- F1.1.1 provided to the Contractor by the Council shall remain the property of the Council;
  - F1.1.2 prepared by or for the Contractor specifically for the use, or intended use, in relation to the performance of the Contract shall belong to the Council subject to any exceptions set out in the Contract Particulars.
- F1.2 The Contractor shall obtain necessary approval before using any material, in relation to the performance of the Contract which is or may be subject to any third party Intellectual Property Rights. The Contractor shall procure that the owner of the Intellectual Property Rights grant to the Council a non-exclusive licence, or if the Contractor is itself a licensee of those rights, the Contractor shall grant to the Council an authorised sub-licence, to use, reproduce, and maintain the Intellectual Property Rights. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-licence, transfer, novate or assign to other Councils, the replacement Contractor or to any other third party providing Goods to the Council, and shall be granted at no cost to the Council.
- F1.3 It is a condition of the Contract that the Goods will not infringe any Intellectual Property Rights of any third party and the Contractor shall during and after the Contract Period on written demand indemnify and keep indemnified without limitation the Council against all Liabilities which the Council may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim relates to the act or omission of the Council.
- F1.4 At the termination of the Contract the Contractor shall at the request of the Council immediately return to the Council all materials, work or records held in relation to the Goods, including any back-up media.



**F2. CONFIDENTIALITY AND PUBLICITY**

- F2.1 Any documents provided by the Council and information which the Contractor may acquire as a result of the Contract shall to the extent that they are not in the public domain or required to be disclosed by operation of Law remain confidential to the Council and shall not be disclosed disposed of or used for any purpose without prior written consent from the Council.
- F2.2 All Confidential Information provided by the Council to the Contractor shall be returned to the Council at the end of the Contract.
- F2.3 Without prejudice to the Council's obligations under the FOIA or EIR, neither party shall make any press announcements or publicise the Contract or any part thereof in any way, except with the written consent of the other party (such consent not to be unreasonably withheld or delayed).
- F2.4 Both parties shall take all reasonable steps to ensure the observance of the provisions of this clause by all of their servants, Employees, sub-contractors, agents, professional advisors and consultants.

**F3. DATA PROTECTION**

- F3.1 The Contractor shall (and shall procure that any of its Employees involved in the provision of the Goods) comply with any requirements under the DPA.

**F4. FREEDOM OF INFORMATION**

- F4.1 The Council is subject to the FOIA and the EIR ("the Acts"). As part of the Council's duties under the Acts, it may be required to disclose information forming part of the Contract to anyone who makes a reasonable request. The Council has absolute discretion to apply or not to apply any exemptions under the Acts.
- F4.2 The Contractor shall assist and cooperate with the Council (at the Contractor's expense) to enable the Council to comply with the information disclosure requirements under the Acts and in so doing will comply with any timescale notified to it by the Council.

**F5. RECORD KEEPING AND MONITORING**

- F5.1 In order to assist the Council in its record keeping and monitoring requirements including auditing and National Audit Office requirements, the Contractor shall keep and maintain for six (6) years (or such longer time period required in accordance with any specific legislation) after the Contract has been completed, full and accurate records of the Contract including the Goods supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Contractor shall on request allow the Council or the Council's representatives such access to (and copies of) those records as may be required by the Council in

connection with the Contract.

- F5.2 The Contractor will at its own cost, provide any information that may be required by the Council to comply with the Council's procedures for monitoring of the Contract.

## **PART G - STATUTORY OBLIGATIONS**

### **G1. HEALTH AND SAFETY**

- G1.1 The Contractor shall comply with all health and safety legislation in force and all health and safety policies of the Council.
- G1.2 The Contractor shall provide, within 14 days of receipt, copies of any communication concerning the health, safety, welfare, environmental or fire safety standards of the Goods, received from any statutory body.
- G1.3 The Contractor shall ensure the Goods are labelled with details of any hazards they represent and shall, before delivery, provide to the Council a written list of harmful or potentially harmful properties or ingredients in the Goods supplied together with details of any specialist training required to enable the Goods to be used safely. The Council will rely on the supply of such information from the Contractor in order to satisfy its own obligations under all Health and Safety legislation.

### **G2. CORPORATE REQUIREMENTS**

- G2.1 The Contractor shall comply with all obligations under the HRA.
- G2.2 The Contractor shall comply with all Council policies and rules, such as, but not limited to:
- G2.2.1 equality and diversity policies;
  - G2.2.2 sustainability;
  - G2.2.3 information security rules;
  - G2.2.4 whistleblowing and/or confidential reporting policies; and
  - G2.2.5 all site rules relevant to the fulfilment of the Contractor's obligations.
- G2.3 The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether age, race, gender, religion, disability, sexual orientation or otherwise) in employment.
- G2.4 The Contractor shall comply with all relevant legislation relating to its Employees however employed including (but not limited to) the compliance in law of the ability of the Employees to work in the United Kingdom.

G2.5 If the Contractor has a finding against it relating to its obligations under clause G2.4 it will provide the Council with:

G2.5.1 details of the finding; and

G2.5.2 the steps the Contractor has taken to remedy the situation.

### **G3. LAW AND CHANGE IN LAW**

G3.1 The Contractor shall comply at all times with the Law in its performance of the Contract.

G3.2 On the occurrence of a Change in Law which has a direct effect upon the Price the parties shall meet within fourteen (14) days of the Contractor notifying the Council of the Change in Law to consult and seek to agree the effect of the Change in Law and any change in the Price as a result following the principle that this clause is not intended to create an artificial cushion from market forces for the Contractor. If the parties, within fourteen (14) days of this meeting, have not agreed the occurrence or the impact of the Change in Law, either party may refer the matter to dispute resolution in accordance with clause D3.

G3.3 Any agreed additional sums payable as a result of the operation of clause G3.2 shall be included in the Price. For the avoidance of doubt nothing in this Contract is intended to allow the Contractor double recovery of any increase in costs.

## **PART H - GENERAL PROVISIONS**

### **H1. CONTRACT VARIATION**

H1.1 Subject to clause H1.2, no variation or modification to the Contract is valid unless it is in writing and signed by the Council and the Contractor.

H1.2 The Council shall be entitled to issue to the Contractor in writing or, in case of urgency orally (provided the Council confirms oral instructions in writing as soon as it is practicable), variation orders requiring the addition, suspension, reduction or cessation of provision of any Services and/or the provision of emergency Services in accordance with revised Delivery Instructions. The Contractor shall charge for the impact of the variation order in accordance with the rates and prices used to calculate the Price in the Tender.

### **H2. THIRD PARTY RIGHTS**

H2.1 This Contract is enforceable by the original parties to it, by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Contract pursuant to The Contracts (Rights of Third Parties) Act 1999 are excluded.

**H3. NO WAIVER**

H3.1 Failure by either party at any time to enforce any one or more of the provisions of this Contract or to require performance by the other party of any of the provisions shall not constitute or be construed as a waiver of the provision or of the right at any time subsequently to enforce all terms and conditions of this Contract nor affect the validity of the Contract or any part of it or the right of the parties to enforce any provision in accordance with its terms.

H3.2 No waiver of any of the provisions of this Contract shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with clause A3 (Notices).

**H4. SEVERANCE**

H4.1 If any provision of the Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity shall not impair or affect any other provision all of which shall remain in full force and effect.

**H5. ASSIGNMENT, SUB-CONTRACTING AND RESPONSIBILITY**

H5.1 Subject to any express provision of this Contract, the Contractor shall not without the prior written consent of the Council, assign all or any benefit, right or interest under this Contract or sub-contract the provision of the Services.

H5.2 The Council shall be entitled to:

H5.2.1 assign, novate or dispose of its rights and obligations under this Contract either in whole or part to any contracting authority (as defined in The Public Contracts Regulations 2015); or

H5.2.2 transfer, assign or novate its rights and obligations where required by Law.

H5.3 The Contractor shall remain responsible and liable for the acts and omissions of any other members of a consortium arrangement, sub-contractors, servants, agents and Employees as though they were its own.

**H6. FORCE MAJEURE**

H6.1 Neither party shall be liable for failure to perform its obligations under the Contract if such failure results from Force Majeure.

H6.2 If the Council or the delivery location is affected by circumstance of Force Majeure, the Council shall be entitled to, totally or partially, suspend the date or dates for delivery of the Services until the circumstances of the Force Majeure have ceased.

The suspension shall not give rise to any claim by the Contractor against the Council nor entitle the Contractor to terminate the Contract.

- H6.3 Industrial action by, or illness or shortage of the Contractor's Employees, agents or subcontractors, failure or delay by any of the Contractor's suppliers to supply goods, components, services or materials and breach of the Contractor's warranties under clause B6 shall not be regarded as an event of Force Majeure.
- H6.4 If the event of Force Majeure continues for more than two (2) months either party may give written notice to the other to terminate the Contract immediately or on a set termination date.
- H6.5 If the Contract is terminated in accordance with clause H6.4 neither party will have any liability to the other except that any rights and liabilities which accrued prior to termination will continue to exist.

#### H7. **INDUCEMENTS**

- H7.1 The Contractor shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Council any gift or consideration of any kind as an inducement or reward for doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Council, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract. The attention of the Contractor is drawn to the criminal offences under the Bribery Act 2010.
- H7.2 The Contractor warrants that it has not paid commission nor agreed to pay any commission to any Employee or representative of the Council by the Contractor or on the Contractor's behalf.
- H7.3 Where the Contractor engages in conduct prohibited by clauses H7.1 and H7.2 in relation to this or any other contract with the Council, the Council has the right to:
  - H7.3.1 terminate the Contract and recover from the Contractor the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the provision of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period; or
  - H7.3.2 recover in full from the Contractor any other loss sustained by the Council in consequence of any breach of this clause whether or not the Contract has been terminated.

**H8. COSTS AND EXPENSES**

H8.1 Each of the parties will pay their own costs and expenses incurred in connection with the negotiation, preparation, execution, completion and implementation of this Contract.

**H9. NO AGENCY OR PARTNERSHIP**

H9.1 Nothing contained in this Contract, and no action taken by the parties pursuant to this Contract, will be deemed to constitute a relationship between the parties of partnership, joint venture, principal and agent or employer and employee. Neither party has, nor may it represent that it has, any authority to act or make any commitments on the other party's behalf.

**H10. NON SOLICITATION AND OFFERS OF EMPLOYMENT**

H10.1 The Contractor agrees that it will not, without the prior written consent of the Council, whether directly or indirectly, and whether alone or in conjunction with, or on behalf of, any other person and whether as a principal, shareholder, director, Employee, agent, consultant, partner or otherwise during the Contract Period or for a period of 12 months following termination of this Contract:

H10.1.1 solicit or entice, or endeavour to solicit or entice, away from the Council, any person directly related to the Services employed in a senior capacity in a managerial, supervisory, technical, sales or administrative capacity by, or who is or was a consultant to, the Council at the date of the termination of this Contract or at any time during the period of one month immediately preceding the date of termination; or

H10.1.2 attempt, or knowingly assist or procure any other person to do the above.

**H11. INSPECTION OF CONTRACTOR'S PREMISES**

H11.1 The Contractor shall permit the Council to make any inspections or tests which may reasonably be required in respect of the Contractor's premises in relation to the Contract.

**H12. LAW AND JURISDICTION**

H12.1 This Contract shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the English courts.

### H13. DATA PROTECTION AND UK GDPR

H13.1 The Contractor shall (and shall procure that any of its Employees involved in the provision of the Services) comply with any requirements under Data Protection Legislation.

H13.2 The following additional definitions shall apply to clauses H13 – H15;

**Party:** a Party to this Agreement

**Agreement:** this contract;

**Contractor Personnel:** means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement

**Data Protection Legislation:** (i) UK GDPR as established by the European Union Act 2018 (ii) The Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019; ; (iii) the DPA 2018 (iv) all applicable Law about the processing of personal data and privacy.

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

**Controller , Processor , Processing , Data Subject , Personal Data , Special Categories of Personal Data , Personal Data Breach , Data Protection Officer:** take the meaning given in the UK GDPR.

**Data Loss Event :** any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

**Data Subject Access Request:** 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.

**DPA 2018:** Data Protection Act 2018

**UK GDPR:** the UK General Data Protection Regulation as established by the European Union Act 2018

**Law Enforcement Processing:** processing defined in Part 3 of the Data Protection Act 2018 brought the EU Law Enforcement Directive EU2016/680 into UK law.

**Protective Measures** : appropriate technical and organisational measures which may include: pseudonymising anonymising 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 as further specified in the Agreement (including the Contract Particulars)

**Sub-processor** : any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement

H13.3 The Parties acknowledge that for the purposes of the Data Protection Legislation, this clause applies where the Contractor is Processing Personal Data on behalf of the Council and shall be of no effect where the Contractor is acting as a Data Controller (including as a Joint Controller) under Data Protection Legislation Where the Contractor is Processing Personal Data on behalf of the Council the only Processing that the Contractor is authorised to do is listed in the Contract Particulars and the Agreement by the Council and may not be determined by the Contractor.

H13.4 The Contractor shall process the Personal Data only to the extent, and in such a manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body; including that it shall;

H13.4.1 Implement measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure as 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;

H13.4.2 Take every reasonable precaution to ensure that Personal Data is divulged only to Contractor Personnel where necessary for the provision of the Service and only to the extent essential to each Employee's role in the provision of the Service;

H13.4.3 Take reasonable steps to ensure the reliability of any Contractor Personnel who have access to the Personal Data, including but not limited to appropriate employment checks;

H13.5 The Contractor shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.

H13.6 The Contractor shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:



- H13.6.1 a systematic description of the envisaged processing operations and the purpose of the processing;
  - H13.6.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - H13.6.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
  - H13.6.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- H13.7 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- H13.7.1 process that Personal Data only in accordance with this Agreement (including the Contract Particulars) unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Council before processing the Personal Data unless prohibited by Law;
  - H13.7.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Council as appropriate to protect against a Data Loss Event having taken account of the: (i) nature of the data to be protected; (ii) harm that might result from a Data Loss Event;(iii) state of technological development; and (iv) cost of implementing any measures;
  - H13.7.3 ensure that : (i) the Contractor Personnel do not process Personal Data except in accordance with this Agreement (and in particular the Contract Particulars); (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they; (A) are aware of and comply with the Contractor’s duties under this clause; (B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor; (C) 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 Council or as otherwise permitted by this Agreement; and (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
  - H13.7.4 not transfer Personal Data outside of the European Economic Area (EEA) unless the prior written consent of the Council has been obtained and the following conditions are fulfilled: (i) the Council or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or Section 73 Part 3 of the Data Protection Act 2018) as determined by the Council; (ii) the Data Subject has enforceable rights and effective legal remedies; (iii) the Contractor 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 Council in meeting its obligations); and (iv) the Contractor complies with

- any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
- H13.7.5 at the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.
- H13.7.6 Where the Contractor is required to transfer Personal Data to the Council, any such transfer of Personal Data shall be done in the following manner:
- H13.7.7 Information containing Personal Data, howsoever conveyed, shall be clearly marked 'OFFICIAL'. Information containing Special Categories of Personal Data, howsoever conveyed, shall be clearly marked 'OFFICIAL-SENSITIVE'.
- H13.7.8 When supplied by paper documents, the Personal Data shall be held in a secure environment prior to transfer. Personal Data shall be either:
- H13.7.9 Hand-delivered to the Nominated Officer. It shall not be sufficient to leave the Personal Data with any person other than Nominated Officer who will be asked to check the content of the paper documents and acknowledge receipt of the paper documents by written signature; or
- H13.7.10 Sent by post by recorded/special delivery or by a trusted courier to the Nominated Officer at the Council. The Contractor must ensure that documents containing Personal Data or Special Categories of Personal Data, howsoever conveyed, shall be clearly marked in accordance with clause H13.7.7 are sent in a sealed envelope/package which is correctly addressed to the Nominated Officer. It shall not be sufficient to send the Personal Data to the Council without the name of the Nominated Officer being clearly displayed.
- H13.7.11 When supplied by electronic media (including but not limited to compact disks, memory sticks, floppy disks, digital video disks), the Personal Data shall be encrypted in accordance with Good Industry Practice.
- H13.7.12 When supplied by electronic mail, the Personal Data will be transferred to the Nominated Officer and shall be either:
- H13.7.13 Encrypted in accordance with Good Industry Practice; or
- H13.7.14 Sent in an attachment protected by a secure password. Passwords will be communicated by telephone directly to the Nominated Officer.
- H13.7.15 No Personal Data will be sent unsecured in the title field or body of an e-mail.
- H13.7.16 No Personal Data will be sent by facsimile unless the Contractor has written authorisation from the Council to do so and arrangements are in place to ensure safe transmission and receipt of the Personal Data.
- H13.7.17 The Contractor shall take responsibility for preserving the integrity of Personal Data and preventing the corruption or loss of Personal Data whilst in its possession.
- H13.7.18 The Contractor shall ensure that any system on which the Contractor holds any Personal Data, including back-up data, is a secure system that complies with Good Industry Practice.
- H13.7.19 If the Personal Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Council may:

13.7.19.1 Require the Contractor (at the Contractor's expense) to restore or procure the restoration of Personal Data if achievable and the Contractor shall do so within a reasonable timescale specified by the Council; and/or

13.7.19.2 Itself restore or procure the restoration of Authority Data, and shall be entitled to recover from the Contractor any reasonable expenses incurred in doing so.

H13.7.20 If at any time the Contractor suspects or discovers that Authority Data has or may have become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Council immediately and inform the Council of the remedial action the Contractor proposes to take. Before any remedial action is commenced by the Contractor, the Contractor must seek written authorisation from the Council.

H13.8 Subject to clause H13.9, the Contractor shall notify the Council immediately (and within no more than 12 hours) if it;

H13.8.1 receives a Data Subject Access Request (or purported Data Subject Access Request);

H13.8.2 receives a request from a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation including but not limited to the right of access, rectification, restriction of processing, and erasure of Personal Data.

H13.8.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

H13.8.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;

H13.8.5 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 Law; or becomes aware of a Data Loss Event.

H13.9 The Contractor's obligation to notify under clause H13.8 shall include the provision of further information to the Council in phases, as details become available.

H13.10 Taking into account the nature of the processing, the Contractor shall at its own cost provide the Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause H13.8 to the Contractor (or to the Council as the case may be) (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:

H13.10.1 the Council with full details and copies of the complaint, communication or request;

- H13.10.2 such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - H13.10.3 the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
  - H13.10.4 assistance as requested by the Council following any Data Loss Event;
  - H13.10.5 assistance as requested by the Council with respect to any request from the Information Commissioner's Office, or any consultation by the Council with the Information Commissioner's Office.
- H13.11 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause H13.
- H13.12 The Contractor shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor.
- H13.13 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- H13.14 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:
- H13.14.1 notify the Council in writing of the intended Sub-processor and processing;
  - H13.14.2 obtain the written consent of the Council;
  - H13.14.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause H13 such that they apply to the Sub-processor; and
  - H13.14.4 provide the Council with such information regarding the Sub-processor as the Council may reasonably require.
- H13.15 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- H13.16 The Contractor may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

H13.17 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than 30 Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

**H14. PAYMENT CARD INDUSTRY DATA SECURITY STANDARD**

H14.1 In addition to the requirements set out in clauses H13 where the Contractor is processing and handling Personal Card Data, the Contractor shall be validated to level 1 of the standard set out by the PCI Security Standards Council as amended from time to time irrespective of the level of transactions processed by the Contractor.

**H15. LIABILITY DATA PROTECTION**

H15.1 Without prejudice to the general indemnity in clause E2, the Contractor shall indemnify the Council in full without limit of liability against all Liabilities awarded against or incurred by the Council (including legal expenses on an indemnity basis) arising from the Contractor's negligence, or any act or omission of the Contractor in delivering the Services and handling Personal Data in accordance with Data Protection Legislation and compliance with the provisions of clauses H13 – H15.

**H16. COUNTER TERROISM**

H16.1 The Contractor recognises the duty of the Council under the Counter-Terrorism and Security Act 2015 to have due regard to the need to prevent people from being drawn into terrorism and shall assist the Council in the discharge of that duty through the performance of this Contract. The Contractor shall ensure that its Employees are familiar with and have an understanding of the prevent strategy and are suitably trained to recognise vulnerability of persons who could be drawn into terrorism and will engage in programmes to conform to this duty.