

GENERAL CONDITIONS OF CONTRACT FOR THE SUPPLY OF SERVICES

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1 DEFINITIONS

1.1 The terms and expressions used in this Contract shall have the meanings set out below:

"Authorised Officer"	means 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;
"Commencement Date"	means the date stated in the Form of Quotation issued by the Council;
"Contract"	means the agreement reached between the Council and the Contractor upon the acceptance of the Quotation by the Council and incorporating the Quotation Documents;
"Contractor"	means the Contractor and where applicable shall include the Contractor's employees, sub-contractors and permitted assigns;
"Contract Period"	means the period stated in the Form of Quotation (including any extension period);
"Contract Standard"	means such standard as complies in each and every respect with all relevant provisions of the Contract. Where no criteria are stated in the Contract, the standard is to be to the entire satisfaction of the Council;
"Council"	means Gateshead Council 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);

“Data Controller”	has the meaning set out in the Data Protection Legislation.
“Data Loss Event”	any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract
“Data Processor”	has the meaning set out in the Data Protection Legislation.
“Data Processing Schedule”	the schedule from the Tender detailing the data processing requirements.
“Data Protection Impact Assessment”	An assessment by the controller of the impact of the envisaged processing on the protection of Personal Data.
“Data Protection Legislation”	Means (i) unless and until the GDPR is no longer directly applicable in the UK the GDPR, the LED and any applicable national implementing laws as amended from time to time and then (ii) the Data Protection Act 2018 [subject to Royal Assent] and / or any other successor legislation to the GDPR or the Data Protection Act 1998 and (iii) all applicable Law about the processing of personal data and privacy
“Data Sharing Agreement”	A formal agreement that documents what data is being shared and how the data can be used between the Parties.
“Data Sharing Code of Practice”	the code of practice issued by the Information Commissioner in respect to the sharing of personal data.
“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.
“Data Subject”	has the meaning set out in the Data Protection Legislation.
"Force Majeure"	means any cause materially affecting the

	performance by a party of its obligations under this Contract beyond its reasonable control affecting either party;
"Form of Quotation"	means the Council's invitation to quote for the Contract.
"Joint Data Controller"	has the meaning set out in the Data Protection Legislation.
"LED"	Law Enforcement Directive (<i>Regulation (EU) 2016/679</i>)
"Location"	means the location where the Service is provided as set out in the Specification;
"Order"	means any Order(s) placed by the Council with the Contractor following the Quotation;
"PCR 2015"	The Public Contracts Regulations 2015;
"Personal Data"	has the meaning set out in the Data Protection Legislation.
"Price"	means the rates or Prices contained within the Contractor's completed Form of Quotation;
"Prohibited Act"	means offering, giving or agreeing to give to any employee of the Council any gift or consideration of any kind as an inducement or reward: <ol style="list-style-type: none"> 1. for doing or not doing any act in relation to the obtaining or performance of this Contract or any other Contract with the Council; or 2. for showing favour or disfavour to any person in relation to this Contract or any other Contract with the Council and/or committing any offence; 3. under the Bribery Act 2010, Competition Act 1998 and the Enterprise Act 2002 or 4. under legislation creating offences in respect of fraudulent acts or 5. at common law in respect of fraudulent acts in relation to this Contract or any other Contract with

the Council or
6. defrauding or attempting to defraud or
conspiring to defraud the Council;

“Protective Measures”

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.

"Quotation"

means the Quotation submitted by the Contractor in response to the Council's invitation to quote;

"Quotation Documents"

means these General Conditions of Contract, the Form of Quotation, the Specification and any Special Conditions or schedules attached to the Form of Quotation and the Quotation;

"Service"

means the services described in the Specification to be supplied by the Contractor in accordance with the Contract together with all equipment required and any associated goods provided by the Contractor in relation to those services;

"Special Conditions"

means the additional terms and conditions identified as the Special Conditions which accompany the Form of Quotation;

"Specification"

means the Specification setting out the Council's detailed requirements in relation to the provision of the Service.

“Sub-processor”

any third Party appointed to process Personal Data on behalf of the Contractor related to this Contract

1.2 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.

- 1.3 References to time shall mean Greenwich Mean Time and references to month shall mean a calendar month.
- 1.4 Any ambiguity, discrepancy, error, omission or mis-statement shall not vitiate the agreement nor shall it release the Contractor from the completion of any part of the Contract.

2 QUOTATION DOCUMENT

- 2.1 No Quotation will be considered unless it is made on the Form of Quotation.
- 2.2 The Council does not bind itself to accept the lowest or any Quotation and reserves the right to accept part only of a Quotation.
- 2.3 In the event of any conflict or inconsistency between the General Conditions and the Special Conditions, the Special Conditions shall prevail.
- 2.4 All information supplied by the Council is supplied in good faith for general guidance in the preparation of the Quotation. Where a contract value is provided, it is an estimate only and the actual value of the contract may be higher or lower.
- 2.5 The Council reserves the right to request that the Contractor provides security for the performance of the Contract, by performance bond, parent company guarantee or otherwise before the Contractor commences the Contract.

3 CONTRACT TERM AND EXTENSION

- 3.1 The Contract shall commence on the Commencement Date and subject to clause 3.2 shall continue for the Contract Period.
- 3.2 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 prior to the commencement of the extension. If no such communication is received then the Contract shall terminate at the end of the initial Contract Period.
- 3.3 These General Conditions and any Special Conditions shall continue and apply during any extension period.

4 ORDERS

- 4.1 Orders shall be made in writing by the Council on an official purchase order form approved by an Authorised Officer.

5 PERFORMANCE

- 5.1 The quality, description and frequency of the Service shall be provided by the Contractor in accordance with the Specification.
- 5.2 The Contractor shall provide the Service in a proper, skilful and workmanlike manner to the Contract Standard and shall employ and maintain a sufficient and competent staff to ensure that the Service is provided to the Contract Standard.
- 5.3 The Contractor warrants to the Council that to the extent that any goods, equipment or consumables are provided as part of the Service they will:
 - 5.3.1 be free from defects in design, material and workmanship; and
 - 5.3.2 be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health.
- 5.4 The Contractor shall provide the Service within normal working hours on a business day unless otherwise specified.
- 5.5 Commercial vehicles shall not enter or leave school premises during morning, midday and afternoon breaks.
- 5.6 Commercial vehicles visiting the Council's premises shall be fitted with audible reversing alarms.
- 5.7 The Council shall be under no obligation to accept or pay for any Service provided earlier than as stated in the Specification, unless agreed by the Council in advance.
- 5.8 If the Council or the Location where the Service is to be provided is affected by circumstance of Force Majeure, the Council shall be entitled to totally or partially suspend the date or dates for provision of the Service until the circumstances of the Force Majeure have ceased. The suspension shall not give rise to any claim by the Contractor against the Council, or the Location where the Service is provided nor entitle the Contractor to terminate the Contract. 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.
- 5.9 In the event of industrial action by the Contractor's employees, it remains the Contractor's responsibility to meet the requirements of this Contract. The Contractor must inform the Council immediately of impending or actual disputes that may affect the Contractor's ability to provide the Service.
- 5.10 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 providing the Service in accordance with the Contract, the Contractor shall inform the Council immediately.

5.11 Without prejudice to any other remedy, if the Service is not provided in accordance with the Contract, the Council shall be entitled:

5.11.1 to require the Contractor to provide the Service in accordance with the Contract as soon as reasonably practicable and in any event within 14 working days; or

5.11.2 at the Council's sole option, and whether or not the Council has previously required the Contractor to provide the Service or to supply any replacement Service, to treat the Contract as discharged by the Contractor's breach and require the repayment of any part 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 other Services in replacement.

6 PASSING OF PROPERTY

6.1 Property in any goods provided in the course of the provision of the Service, shall pass to the Council upon use, installation or delivery.

7 PRICE

7.1 The Council shall pay the Price for the Services to the Contractor.

7.2 The Price shall be fixed as detailed in the Form of Quotation.

7.3 The Contractor shall submit a single VAT invoice to the Council no later than seven (7) days after the end of each calendar month detailing the Services provided during the calendar month and the amount payable. The Council will consider and verify all invoices in a timely fashion.

7.4 Payment of any invoice will be made no later than thirty (30) days from the date on which the Council has determined that the invoice is valid and undisputed.

7.5 Where the Council fails to comply with clause 7.4 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purpose of clause 7.4 after a reasonable time has passed.

7.6 Where the Contractor enters into a Sub-Contract, the Contractor shall include in that Sub-Contract:

(a) Provisions having the same effect as clauses 7.3 – 7.5 above; 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 7.3 – 7.5 above.

- 7.7 In clause 7.6, “Sub-Contract” means a contract between two or more suppliers, at any stage of remoteness from the Council in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.
- 7.8 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 provide the Services at all or has provided the Services inadequately and any invoice relating to such Services will not be paid unless or until the Services have been performed to the Council’s satisfaction.
- 7.9 Any overdue sums will bear interest from the due date until payment is made at 4% per annum over the Bank of England base rate from time to time. The Contractor is not entitled to suspend provision of the Services as a result of any overdue sums.
- 7.10 Further details of payment, if any, are set out in the Form of Quotation.
- 7.11 The Contractor shall not be entitled to retain or set off any amount due to it from the Council. The Council may set off any amount due to it from the Contractor (including any applicable VAT payable) against any amount due to the Contractor under this Contract. The Council shall notify the Contractor as soon as reasonably practicable of any such retention or set off.

8 INDEPENDENT CONTRACTOR

- 8.1 The parties agree that the Contractor is an independent contractor and not an agent, employee or partner of the Council and therefore not eligible to participate in any benefit programmes of the Council.
- 8.1.1 subject to clause 8.1.3 below the Contractor will be responsible for payment of his or her own Income Tax and National Insurance Payments or similar contributions in respect of his or her fees and the Contractor by this indemnifies the Council against any claims that may be made against the Council for Income Tax or National Insurance or similar contributions relating to the provision of the Services by the Contractor.
- 8.1.2 subject to clause 8.1.3 below the Contractor shall be responsible for any loss of benefits paid under his previous contract of employment, or additional tax liability incurred, by reason of his accepting a contract with the Council as a consultant which commences immediately after the termination of his employment with the Council and the Contractor shall indemnify the Council in respect of any additional tax liability, loss or demand that the Council may incur because of that.
- 8.1.3 the Council reserves the right in relation to the Contractor to carry out H.M. Revenue and Customs’ (“HMRC”) PAYE status test and, in accordance with HMRC Guidance, to deduct from the Price and

pay to HMRC such sums in respect of tax and National Insurance as it may be required to deduct and pay in accordance with that guidance.

9 INDEMNITY

- 9.1 The Contractor shall indemnify the Council in full for all damage or injury to anyone or to any property and against all actions, claims, demands, costs, or expenses awarded against or incurred by the Council (including the costs of transport, labour, administration and legal expenses on an indemnity basis to the Council) arising from:
- 9.1.1 any defect or fault in the Service provided; or
 - 9.1.2 any act or omission of the Contractor in providing the Service.
- 9.2 Without prejudice to any other provision of the Contract, the Contractor shall fully indemnify the Council against any claims made against it as a result of any failure by the Contractor to comply with any statutory provision relevant to the Service.
- 9.3 Unless provided by Clause 9.4 the Council shall not under any circumstances be liable to the Contractor whether in Contract, tort or otherwise, for any loss, damage, or injury however caused, or in connection with the provision of the Services.
- 9.4 Clause 9.3 shall not apply in relation to:
- 9.4.1 any failure by the Council to make proper payment to the Contractor in accordance with the terms of the Contract; and
 - 9.4.2 any deliberate or negligent act or omission of the Council or any of its employees and in particular any negligent act or omission giving rise to death or personal injury.
- 9.5 The Council shall not in any event be liable to the Contractor for any indirect or consequential loss however caused.
- 9.6 The Contractor's liability to indemnify the Council arising under Clauses 9.1 and 9.2 above shall be without prejudice to any other right or remedy of the Council arising under this Contract.
- 9.7 The Contractor shall immediately notify the Council of any accident that occurs on the Council's premises.

10 INSURANCE

- 10.1 Without prejudice to the Contractor's liabilities under Clause 9, the Contractor shall maintain insurance necessary to cover any liability of the Contractor, in

respect of any loss of or damage to property and personal injury to, or death of, any person arising out of or in the course of or caused by the Contractor's carrying out or failing to carry out obligations under the Contract and against all actions, claims, demands, proceedings, damages, costs, charges and expenses in respect thereof.

- 10.2 The Contractor shall throughout the Contract Period maintain insurance necessary to cover any liability arising under Clauses 9 and 10.1. Such insurance cover shall have an indemnity limit of not less than 5 million pounds (£5, 000,000) in respect of any one incident.
- 10.3 The Contractor shall prior to the Commencement Date and on each anniversary of the Commencement Date and/or upon request, supply to the Council a copy of the policies affecting the insurances referred to in Clause 10.2 together with documentary evidence that such insurances are properly maintained.
- 10.4 If the Contractor does not maintain the necessary insurance as provided by Clause 10, the Council may insure against any risk in respect of the default and may charge the cost of such insurance together with an administration charge equal to 10% of the cost of the insurance to the Contractor.

11 TERMINATION

- 11.1 The Council may terminate the Contract with immediate effect by notice in writing to the Contractor on or at any time after the occurrence of any of the following events:
- 11.1.1 the passing by the Contractor of a resolution for its winding up or the making by a court of competent jurisdiction of an order winding up the Contractor or the dissolution of the Contractor.
 - 11.1.2 the making of an administration order in relation to the Contractor or the appointment of a receiver or administrative receiver over, or the taking of possession or sale by an encumbrancer of a material part of the Contractor's assets;
 - 11.1.3 the Contractor making an arrangement or composition with its creditors generally or making an application to a court of competent jurisdiction for protection from its creditors generally;
 - 11.1.4 the Contractor commits any Prohibited Act;
 - 11.1.5 a breach by the Contractor of its obligations to take out and maintain required insurances;
 - 11.1.6 a material and substantial breach by the Contractor of any of its obligations under this Contract.

- 11.1.7 the Contractor has knowingly given incorrect or misleading answers to questions when completing any equality and diversity questionnaire submitted by the Council.
- 11.1.8 any event resulting in the criminal prosecution of any person or persons working for or providing services to the Contractor (including a partner or director or manager or any agent or sub-contractor) that could bring the Council into disrepute if it continued to engage the services of the Contractor. For the avoidance of doubt disrepute in the context of this clause shall mean any act of dishonesty involving fraud or theft, or any threats to commit violence or actual act of violence on a person or damage to property including conspiracy to commit any of the said acts. The decision as to whether any such act or conspiracy to commit such act has or is likely to bring the Council into disrepute shall be the decision of the Council and its decision shall be final.
- 11.1.9 a county court judgment is made against the Contractor.
- 11.2 If the Council is made aware that the outcome of a criminal trial involving any person or persons working for or providing services to the Contractor (including a partner or director or manager or any agent or sub-contractor) is pending and if the person or persons subject to the criminal proceedings were later found guilty this could bring the Council into disrepute if it continued to receive the Services of the Contractor then in such circumstances the Council can suspend by written notice this Contract and is not thereafter obliged to receive or pay for any further Service subject to allowing the Contractor to complete any Service commenced prior to date when the notice from the Council to suspend the Service hereunder is deemed to have been received by the Contractor in accordance with clause 23.
- 11.3 In the event of the Council having the right to terminate under Clauses 11.1.1, 11.1.2 or 11.1.3, the Council may, give the receiver, liquidator or other person the option of carrying out the Contract subject to a guarantee acceptable to the Council.
- 11.4 The Council shall be entitled to deduct from any sum which would have been due to the Contractor or be entitled to recover from the Contractor as a debt, any loss or damage to the Council or arising out of the termination of the Contract. Such loss or damage shall include the reasonable cost to the Council of the time spent by its Officers in terminating the Contract with the Contractor and in making alternative arrangements for the provision of the Service.
- 11.5 The termination of this Contract shall not prejudice or affect any claim, right, action or remedy that shall have accrued or shall accrue to either party.

12 INTELLECTUAL PROPERTY

- 12.1 Any Specification supplied by the Council to the Contractor, or specifically produced by the Contractor for the Council, in connection with the Contract, together with the copyright, design rights or any other intellectual property rights in the Specification, shall be the exclusive property of the Council.
- 12.2 Copyright in all documents including the Contract documents provided by the Council shall at all times vest in the Council.
- 12.3 The Contractor shall indemnify and keep the Council indemnified against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever arising in respect of any breach by the Contractor of Clause 12.

13 DISPUTE RESOLUTION PROCEDURE

- 13.1 If a dispute arises between the Council and the Contractor in connection with the Contract (including any dispute as to the construction or meaning of any words in these conditions), the parties shall each use reasonable endeavours to resolve such dispute by means of prompt, bona fide discussion at an appropriate managerial level.
- 13.2 If a dispute is not resolved within 14 days of it having been referred to a managerial level for discussion then either party may refer it to the Chief Executive or equivalent officer of each party for resolution who shall meet for discussion within 14 days or longer period as the parties may agree.
- 13.3 A dispute not resolved in accordance with Clauses 13.1 and 13.2, may 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.
- 13.4 The costs of any mediation shall be determined by the mediator.

14 VARIATIONS AND VALUATIONS

- 14.1 The Council shall be entitled to issue to the Contractor variation notices or instructions in writing or in case of urgency orally provided the Council confirms oral instructions in writing as soon as it is practicable:-
 - 14.1.1 Variation notices issued by the Council may require the addition, suspension, reduction or cessation of the Service and/or the provision of emergency Services; and
 - 14.1.2 Instructions issued by the Council may require the Service to be provided in such a manner as the Council reasonably requires or at additional Locations.

- 14.2 The valuation of variations shall be made by the Council using rates and Prices contained in the Contract. Where the variation is not of similar character to or is not undertaken under similar conditions to the Contract, a valuation shall be made at fair rates and Prices having regard to the rates and Prices contained in the Contract.

15 ASSIGNMENT AND SUB-CONTRACTING

- 15.1 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 Service. Where any sub-contracting is permitted, the Contractor shall remain responsible for the acts and omissions of its sub-contractors as though they were its own.
- 15.2 The Council shall be entitled to impose conditions in relation to any consent given including a requirement that a guarantee or other security be provided.
- 15.3 The Council shall be entitled to:
- 15.3.1 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 PCR 2015); or
 - 15.3.2 transfer, assign or novate its rights and obligations where required by law.

16 HEALTH AND SAFETY

- 16.1 The Contractor shall comply with all health and safety legislation in force and all health and safety policies of the Council.

17 CONFIDENTIALITY

- 17.1 All documents including Contract documents provided by the Council and information which the Contractor may acquire as a result of the Contract are confidential to the Council and shall not be disclosed disposed of or used for any purpose without written consent from the Council.
- 17.2 In order to comply with the Government's policy on transparency in the areas of contracts and procurement the Council is required to publish information on its website detailing any item of expenditure over £500 and any contract with a value that exceeds £5,000. The information published will include the Contractor's name and the Price to be paid. The parties acknowledge that this information is not confidential to either Party.
- 17.3 The parties acknowledge that, except for any information which is exempt from disclosures in accordance with the provisions of the Freedom of Information Act 2000 ("FOIA"), the content of this Contract is not confidential. The Council shall be responsible for determining at its absolute discretion

whether any of the content of the Contract is for disclosure in accordance with the FOIA. Notwithstanding any other term of this Contract, the Contractor hereby gives his consent for the Council to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the FOIA redacted) including from time to time agreed changes to the Contract, to the general public.

18 PUBLICITY

- 18.1 The Contractor shall not without the prior written consent of the Council advertise or publicly announce that it is undertaking work for the Council nor hold itself out in any way as an agent of the Council.

19 INDUCEMENTS

- 19.1 The Contractor shall not have engaged in the following practices when submitting a Quotation for the provision of the Service:
- 19.1.1 communicating to any third party the amount of any proposed Quotation, until after receiving notification from the Council that a Quotation for the Contract has been accepted.
 - 19.1.2 adjusting the amount of any proposed Quotation in accordance with any agreement or arrangement by the Contractor with any third party.
 - 19.1.3 entering into an agreement with any other person whereby that other person refrains from submitting a Quotation.
- 19.2 As soon as either party becomes aware of or suspects the commission of any Prohibited Act in respect of the provision of the Service or otherwise, it shall notify the other party.
- 19.3 The Council shall have the right to require that the Contractor suspend from any further work on this Contract any person reasonably suspected of fraudulent action or malpractice.
- 19.4 The Contractor shall not during the Contract Period solicit or receive orders or engage in private transactions with any servant or employee of the Council under this Contract.

20 FREEDOM OF INFORMATION

- 20.1 The Council is subject to the FOIA and the Environmental Information Regulations 2004 ("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.

- 20.2 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.
- 20.3 If the Contractor considers that any of the information provided by the Contractor under the Contract or as part of the procurement process is commercially sensitive (meaning it could reasonably cause prejudice to the organisation if disclosed to a third party) then it shall notify the Council and provide valid reasons in support of the information being exempt from disclosure under the Acts.
- 20.4 The Council will have regard to any such notification and reasons given by the Contractor before it releases any information to a third party under the Acts. However the Council shall be entitled to determine in its absolute discretion whether any information is exempt from the Acts, or is to be disclosed in response to a request of information. The Council must make its decision on disclosure in accordance with the provisions of the Acts and can only withhold information if it is covered by an exemption from disclosure under the Acts.
- 20.5 The Council will not be held liable for any loss or prejudice caused by the disclosure of information that:
- 20.5.1 has not been notified to the Council as being commercially sensitive with supporting reasons (referring to the relevant category of exemption under the Acts where possible); or
 - 20.5.2 does not fall into a category of information that is exempt from disclosure under the Acts (for example, a trade secret or would be likely to prejudice the commercial interests of any person); or
 - 20.5.3 in cases where there is no absolute statutory duty to withhold information, then notwithstanding the previous clauses, in circumstances where it is in the public interest to disclose any such information.

20A CORPORATE REQUIREMENTS

- 20A.1 The Contractor represents and warrants that it is compliant with its obligations under the Modern Slavery Act 2015 and that neither the Contractor nor any of its officers, employees or other persons associated with it:
- 20A.1.1 has been convicted of any offence involving slavery and human trafficking;
 - 20A.1.2 has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

- 20A.2 The Contractor shall implement due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.
- 20A.3 The Contractor shall use all reasonable endeavours to adhere to the principles of the 'Prevent' strategy under the Counter-Terrorism and Security Act 2015.
- 20A.4 The Contractor shall ensure that its employees, agents and subcontractors are familiar with and have a good understanding of the 'Prevent' strategy, are trained to recognise vulnerability to be drawn into terrorism and are aware of the available programmes to deal with this issue.
- 20A.5 The Council has a statutory duty to make sure that it does all that it reasonably can to prevent crime and disorder in its area under the Crime and Disorder Act 1998. The Contractor shall at no additional cost to the Council provide the Services in a manner consistent with the Council's Statutory Duty to prevent crime and disorder and in such a way as to facilitate the prevention of crime and disorder.

21 DATA PROTECTION

- 21.1 The Contractor shall (and shall procure that any of its Employees involved in the provision of the Services) comply with any requirements under the Data Protection Legislation.
- 21.2 In particular and without prejudice to the generality of clause 21.1 above, if the Contractor is acting as Data Controller for any data provided to the Contractor by the Council or vice versa under this Contract then the following provisions shall apply:
- 21.2.1 The Contractor and the Council shall comply with the Data Sharing Code of Practice and as amended from time to time
- 21.2.2 In accordance with good practice, either Party may at any time require the other to enter into a Data Sharing Agreement. In considering a proposed Data Sharing Agreement, either Party cannot unreasonably and without good reason refuse to enter into a Data Sharing Agreement.
- 21.3 In particular and without prejudice to the generality of clause 21.1 above, if the Contractor and the Council are acting as Joint Data Controllers within the meaning of the Data Protection Legislation for any data collected by or provided to either Party under this Contract then the following provisions shall apply:
- 21.3.1 The Parties shall designate between them a contact point for Data Subjects in relation to any Personal Data under the joint control of the Parties.

21.3.2 Each Party shall provide all reasonable assistance to the other in relation to any complaint, communication or request made under the Data Protection Legislation and the preparation of any Data Protection Impact Assessment.

21.3.3 Each Party shall ensure that it has in place Protective Measures as appropriate to protect the Personal Data having taken account of the:

- a) nature of the data to be protected;
- b) harm that might result from a Data Loss Event;
- c) state of technological development; and
- d) cost of implementing any measures;

21.3.4 Each Party shall take all reasonable steps to ensure the reliability and integrity of any Employee or staff who have access to the Personal Data and ensure that they are aware of and comply with the Party's data protection obligations have undergone adequate training in the use, care, protection and handling of Personal Data; and

21.3.5 Each Party shall notify the other immediately if it:

- a) receives a Data Subject Access Request (or purported Data Subject Access Request) in relation to any data under the joint control of the Parties;
- b) receives a request to rectify, block or erase any Personal Data in relation to any data under the joint control of the Parties;
- c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation in relation to any data under the joint control of the Parties;
- d) receives any communication from the Information Commissioner or any other regulatory authority in relation to any data under the joint control of the Parties;
- e) receives a request from any third Party for disclosure of Personal Data under the joint control of the Parties where compliance with such request is required or purported to be required by Law; or

f) Becomes aware of a Data Loss Event in relation to any data under the joint control of the Parties;

21.3.6 Each Party shall designate a data protection officer if required by the Data Protection Legislation

21.3.7 The Parties agree to take account of any guidance issued by the Information Commissioner's Office.

21.3.8 Each Party shall fully indemnify the other against any costs, claims, actions or otherwise brought against the other party arising as a result of the indemnifying party's breach of any of its data protection obligations.

21.4 In particular and without prejudice to the generality of clause 21.1 above, if the Contractor is acting as Data Processor on behalf of the Council within the meaning of the Data Protection Legislation for any data provided to it by the Council under this Contract then the following provisions shall apply:

21.4.1 The Data Processing Schedule shall apply and the only processing that the Contractor is authorised to do is listed in the Data Processing Schedule (as may be amended by the Council) and may not be determined by the Contractor.

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

21.4.3 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:

- a) a systematic description of the envisaged processing operations and the purpose of the processing;
- b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

21.4.4

The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

- a) process that Personal Data only in accordance with the Data Processing Schedule, 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;
- b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Council may reasonably reject (but failure to reject shall not amount to approval by the Council of the adequacy of the Protective Measures), 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) the cost of implementing any measures;
- c) ensure that the Contractor Personnel do not process Personal Data except in accordance with this Agreement (and in particular the Data Processing Schedule);
- d) it takes all reasonable steps to ensure the reliability and integrity of any Employees who have access to the Personal Data and ensure that they:
 - i) are aware of and comply with the Contractor's duties under this clause;
 - ii) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 - iii) 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
- iv) have undergone adequate training in the use, care, protection and handling of Personal Data; and
 - e) not transfer Personal Data outside of the EU 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 GDPR Article 46 or LED Article 37) 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;

21.4.5 At the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the Contract unless the Contractor is required by Law to retain the Personal Data.

21.4.6 The Contractor shall notify the Council immediately if it:

- a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- b) receives a request to rectify, block or erase any Personal Data;
- c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

- d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract
- e) 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
- f) becomes aware of a Data Loss Event.

21.4.7 The Contractor's obligation to notify under clause 21.4.6 shall include the provision of further information to the Council in phases as details become available.

21.4.8 Taking into account the nature of the processing, the Contractor shall 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 such legislation (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:

- a) the Council with full details and copies of the complaint, communication or request;
- b) 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;
- c) the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
- d) assistance as requested by the Council following any Data Loss Event;
- e) 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.

21.4.9 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause 21.4.

- 21.4.10 The Contractor shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor.
- 21.4.11 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 21.4.12 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:
- a) notify the Council in writing of the intended Sub-processor and processing;
 - b) obtain the written consent of the Council;
 - c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 21.4 such that they apply to the Sub-processor; and
 - d) provide the Council with such information regarding the Sub-processor as the Council may reasonably require.
- 21.4.13 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 21.4.14 The Council may, at any time on not less than 30 Working Days' notice, revise any part of this clause 21.4 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 Contract).
- 21.4.15 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 Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

22 NO WAIVER

- 22.1 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:
- 22.1.1 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

22.1.2 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.

22.2 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 24.

23 SEVERANCE

23.1 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.

24 NOTICES

24.1 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 or fax number notified to each other.

24.2 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 and any notice sent by fax will be deemed to have been served 24 hours after it was despatched.

25 LAW AND JURISDICTION

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