**Purchase Order Standard Terms and Conditions**

**Supply of Goods and/or Services**

**1. Interpretation**

1.1 Definitions.

In these conditions, the following definitions apply:

* Business Day: a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.
* Commencement Date: has the meaning set out in clause 2.2.
* Conditions: these terms and conditions as amended from time to time in accordance with clause 19.8.
* Contract: the contract between the Council and the Supplier for the supply of goods and/or services in accordance with these terms and conditions.
* Contract Period: the period of the Contract as detailed in the Order.
* Council: The Council of the Borough of South Tyneside, any Body wholly owned or controlled by the Council or any organisation choosing to adopt these terms and conditions pursuant to their relationship with the Council.
* Council Materials: has the meaning set out in clause 5.3(9).
* 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 Supplier under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract.
* Data Processing Schedule: the schedule to be made available by the Council, as required, detailing any Personal Data being processed under the Contract.
* Data Processor: has the meaning set out in the Data Protection Legislation.
* Data Protection Impact Assessment: an assessment by the Data Controller of the impact of 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 and any other successor legislation to the GDPR or the Data Protection Act 2018 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.
* Deliverables: all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, (including drafts).
* Joint Data Controller: has the meaning set out in the Data Protection Legislation.
* Goods: the goods (or any part of them) set out in the Order.
* Goods Specification: any specification for the goods, including any related plans and drawings, that is agreed in writing by the Council and the Supplier.
* Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
* Order: the Council's order for the supply of goods and/or services, as set out in the Council's purchase order form.
* Personal Data: has the meaning set out in the Data Protection Legislation.
* 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 measures adopted by it.
* Services: the services, including without limitation any deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.
* Service Specification: the description or specification for Services agreed in writing by the Council and the Supplier.
* Sub-processor: any third party appointed to process Personal Data on behalf of the Supplier related to this Contract.
* Supplier: the person or firm from whom the Council purchases the goods and/or services.
* Supplier Personnel: means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor engaged in the performance of its obligations under the Contract.

1.2 Construction.

In these conditions, the following rules apply:

1. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
2. A reference to a party includes its personal representatives, successors or permitted assigns;
3. A reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted.
4. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
5. Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
6. A reference to writing or written includes faxes and scanned documents.

**2. Basis of Contract**

2.1 The Order constitutes an offer by the Council to purchase goods and/or services from the Supplier in accordance with these terms and conditions.

2.2 The Order shall be deemed to be accepted on the earlier of:

1. The Supplier issuing written acceptance of the Order; or
2. Any act by the Supplier consistent with fulfilling the Order, at which point, and on which date the Contract shall come into existence (Commencement Date).

2.3 These terms and conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. For the avoidance of doubt, no other terms or conditions which the Supplier has given to the Council, on any quotation or any other document, will apply to the provision of the Services and/or the supply of Goods under the Contract.

2.4 All of these terms and conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

**3. Supply of Goods**

3.1 The Supplier shall ensure that the Goods shall:

1. Correspond with their description and any applicable Goods Specification;
2. Be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Council by the Supplier, expressly or by implication, and in this respect the Council relies on the Supplier's skill and judgment;
3. Where applicable, be free from defects in design, materials and workmanship and remain so for 12 months after delivery; and
4. Comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

3.3 The Council shall have the right to inspect and test the Goods at any time before delivery.

3.4 If following such inspection or testing the Council considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1, the Council shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

3.5 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and the Council shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

**4. Delivery of Goods**

4.1 The Supplier shall ensure that:

1. The Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
2. Each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
3. If the Supplier requires the Council to return any packaging material for the Goods to the Supplier, that requirement shall be clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.
	1. The Supplier shall deliver the Goods:
4. On the date specified in the Order or, if no such date is specified, then within seven days of the date of the Order;
5. To the Council's premises at such address as is set out in the Order or as instructed by the Council before delivery (delivery location); and
6. During the Council's normal hours of business on a Business Day, or as instructed by the Council.

4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the delivery location.

4.4 If the Supplier:

1. Delivers less than 95 per cent of the quantity of Goods ordered, the Council may reject the Goods; or
2. Delivers more than 105 per cent of the quantity of Goods ordered, the Council may at its sole discretion reject the Goods or the excess Goods.

Any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and the Council accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.

4.5 The Supplier shall not deliver the Goods in instalments without the Council's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Council to the remedies set out in clause 6.1.

4.6 Subject to clauses 4.7-4.8 below, title and risk in the Goods shall pass to the Council on completion of delivery.

4.7 In the case of Goods which require installation by the Supplier, risk in the Goods shall pass when that installation process is complete.

4.8 Where the Council has paid the Supplier for the Goods before delivery, title of the whole of the Goods will pass to the Council once the Council has paid for the Goods concerned.

**5. Supply of Services**

5.1 The Supplier shall from the date set out in the Order and for the duration of this Contract provide the Services to the Council in accordance with the terms and conditions of the Contract.

5.2 The Supplier shall meet any performance dates for the Services specified in the Order or notified to the Supplier by the Council.

5.3 In providing the Services, the Supplier shall:

1. Co-operate with the Council in all matters relating to the Services, and comply with all instructions of the Council;
2. Perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
3. Use personnel who are suitably skilled, knowledgeable, trained and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
4. Ensure that the Services and deliverables will conform with all descriptions and specifications set out in the Order or Service Specification (whichever is applicable), and that the deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Council;
5. Provide all equipment, tools and vehicles and such other items as are required to provide the Services;
6. Use the best quality goods, materials, standards and techniques, and ensure that the deliverables, and all goods and materials supplied and used in the Services or transferred to the Council, will be free from defects in workmanship, installation and design;
7. Obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
8. Observe all health and safety rules and regulations and any other security requirements that apply at any of the Council's premises; and
9. Hold all materials, equipment and tools, drawings, specifications and data supplied by the Council to the Supplier (Council Materials) in safe custody at its own risk, and not dispose or use the Council Materials other than in accordance with the Council's written instructions or authorisation.

**6. Council Remedies**

6.1  If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, the Council shall, without limiting its other rights or remedies, have one or more of the following rights:

1. To terminate the Contract with immediate effect by giving written notice to the Supplier;
2. To refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
3. To recover from the Supplier any costs incurred by the Council in obtaining substitute Goods and/or Services from a third party;
4. Where the Council has paid in advance for Services that have not been provided by the Supplier and/or Goods which have not been delivered by the Supplier, to have such sums refunded by the Supplier; and
5. To claim damages for any additional costs, loss or expenses incurred by the Council which are in any way attributable to the Supplier's failure to meet such dates.

6.2  If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 3.1, then, without limiting its other rights or remedies, the Council shall have one or more of the following rights, whether or not it has accepted the Goods:

1. To reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
2. To terminate the Contract with immediate effect by giving written notice to the Supplier;
3. To require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
4. To refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
5. To recover from the Supplier any expenditure incurred by the Council in obtaining substitute Goods from a third party; and
6. To claim damages for any additional costs, loss or expenses incurred by the Council arising from the Supplier's failure to supply Goods in accordance with clause 3.1.

6.3 These Conditions shall extend to any substituted or remedial Services and/or repaired or replacement Goods supplied by the Supplier.

6.4 The Council's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

**7. Council's Obligations**

The Council shall:

1. Provide the Supplier with reasonable access at reasonable times to the Council's premises for the purpose of providing the Services and/or supplying the Goods; and
2. Provide such information as the Supplier may reasonably request and the Council considers reasonably necessary for the purpose of providing the Services and/or supplying the Goods.

**8. Charges and Payment**

8.1 The Council shall pay the price for the Goods and/or Services as set out in the Order to the Supplier.

8.2 The price for the Goods and or/Services shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services and or/deliveries of the Goods. Unless otherwise agreed in writing by the Council, the price shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services and or/deliveries of the Goods.

8.3 In respect of the provision of Services and/or Goods, the Supplier shall submit, in a timely manner, after the Goods and/or Services have been provided, a VAT invoice to the Council’s Invoice Management Team, detailing the Services and/or Goods provided during the relevant calendar month and the amount payable. In order to receive payment; the invoice must include such supporting information required by the Council to verify the accuracy of the invoice, including but not limited to the relevant Purchase Order number.

8.4 Where the Supplier submits an invoice to the Council’s Invoice Management Team , the Council will consider and verify that invoice in a timely fashion.

8.5 The Council shall pay the Supplier any sums due under such an invoice no later than a period of 30 days from the date on which the Council has determined that the invoice is valid and undisputed. The invoice payment date shall be the date on which the Council executes its payment run, not the date the Contractor receives the payment.

8.6 Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:

a) Provisions having the same effect as clauses 8.4 and 8.5 of this Contract;

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 8.4 and 8.5 of this Contract; and

c) In clause 8.6, 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.

8.7 The Council reserves the right to withhold payment of the relevant part of the price without payment of interest where the Supplier has either failed to provide the Services and/or deliver the Goods at all or has, provided the Services inadequately and/or delivered Goods which, in the reasonable opinion of the Council, are unsatisfactory. Any invoice relating to such Services and/or Goods will not be paid unless or until the Services have been performed and/or Goods have been delivered to the Council’s satisfaction.

8.8 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 Supplier is not entitled to suspend provision of the Services and/or supplying of the Goods, as a result of any overdue sums.

8.9 The Council will be entitled but not obliged at any time or times without notice to the Supplier to set off any liability of the Council to the Supplier against any liability of the Supplier to the Council (in either case however 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 Supplier 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.

8.10 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services and/or supplying the Goods, and the Supplier shall allow the Council to inspect such records at all reasonable times on request.

 **9.    Environmental**

9.1In delivering the contract the Supplier should take all reasonable measures to minimise the impact of performance of the Contract on the environment and should perform the Contract in a way which is sustainable and has regard to impact on the environment.

9.2 The Supplier will integrate practices that minimise environmental impacts through a clear sustainability policy and will where practicable adopt key delivery objectives that support and deliver sustainability and environmental improvement.

**10.** **Intellectual Property Rights**

10.1 In respect of the Goods and any goods that are transferred to the Council as part of the Services under this Contract, including without limitation the deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Council, it will have full and unrestricted rights to sell and transfer all such items to the Council.

10.2 The Supplier assigns to the Council, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the deliverables.

10.3 The Supplier shall, promptly at the Council's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Council may from time to time require for the purpose of securing for the Council the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Council in accordance with clause 10.2.

10.4 All Council Materials are the exclusive property of the Council.

**11. Insurance, Indemnity and Liability**

Insurance

11.1 The Supplier shall maintain with a reputable insurance company, the following insurances to cover any liability arising under the Contract; Employers Liability (minimum of £10 million), Public Liability (minimum of £5 million) and, where required by the Council, Professional Indemnity, to a limit specified by the Council. Where the Contract requires the supply of Goods; the Supplier shall also maintain with a reputable insurance company Product Liability insurance (minimum £5 million).

11.2 The Supplier shall prior to the Commencement Date and (where appropriate) on each anniversary of the Commencement Date and/or upon request, provide evidence that all premiums relating to such insurances have been paid.

11.3 If the Supplier 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 Supplier the cost of such insurance together with a reasonable administration charge.

Indemnity and liability

11.4 Neither party seeks to exclude or limit its liability for:

11.4.1 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);

11.4.2 Fraudulent misrepresentation; or

11.4.3 Any other matter in respect of which, as a matter of Law, liability cannot be excluded or limited.

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

11.6 Subject to clauses 11.4, 11.5, 11.8 and 11.9, the Supplier’s liability to the Council under the Contract whether in contract, tort (including negligence) or otherwise shall be limited to 125% of the proportion of the price, as stated in the Order, which is paid and payable at the time that the liability arises.

11.7 Subject to clauses 11.4 and 11.5, the Council’s liability to the Supplier under the Contract whether in contract, tort (including negligence) or otherwise shall be limited to 125% of the proportion of the price as stated in the Order, which is paid and payable at the time that the liability arises.

11.8 The Supplier 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 Supplier’s negligence, any defect or fault in the Services, any act or omission of the Supplier in delivering the Services and/or any defect or fault in the Goods or any act or omission of the Supplier in supplying, delivering and, where applicable installing the Goods.

11.9 For the avoidance of doubt the Supplier’s liability to the Council in relation to breaches of the Data Protection Legislation under this Contract, as detailed in clauses 13.3.8 and 13.4.13, shall not be limited to 125% of the proportion of the price as stated in the Order, which is paid and payable at the time that the liability arises.

11.10 This clause 11 shall survive termination of the Contract.

**12. Confidentiality**

12.1 Subject to Clauses 12.2 and 12.3, a party (receiving party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business or its products or its services which the receiving party may obtain. The receiving party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the receiving party. This clause 12 shall survive termination of the Contract.

12.2 The Council is subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and as such may be required to disclose information forming part of the Contract to anyone who makes a legitimate request. The Council has absolute discretion to determine how to respond to such a request, including the application of any potential exemptions.

12.3 The Supplier shall assist and cooperate with the Council (at the Supplier's expense) to enable the Council to comply with any information disclosure requirements, and in so doing will observe any timescales notified to it by the Council.

**13. Data Protection**

13.1 The Supplier shall (and shall procure that any of the Supplier personnel involved in the provision of the Services) comply with any requirements under the Data Protection Legislation.

13.2 In particular and without prejudice to the generality of clause 13.1 above, if the Supplier is acting as Data Controller within the meaning of the Data Protection Legislation for any data provided to the Supplier by the Council or vice versa under this Contract then the following provisions shall apply:

1. The Supplier and the Council shall comply with the Data Sharing Code of Practice and as amended from time to time.
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 unreasonable and without good reason refuse to enter into a Data Sharing Agreement.

13.3 In particular and without prejudice to the generality of clause 13.1 above, if the Supplier 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:

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.
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
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;
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 and have undergone adequate training in the use, care, protection and handling of Personal Data; and
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.

1. Each party shall designate a data protection officer if required by the Data Protection Legislation.
2. The parties agree to take account of any guidance issued by the Information Commissioner's Office.
3. 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.

13.4 In particular and without prejudice to the generality of clause 13.1 above, if the Supplier 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:

1. The Data Processing Schedule shall apply and the only processing that the Supplier is authorised to do is listed in the Data Processing Schedule as detailed in Appendix 1 (as may be amended by the Council) and may not be determined by the Supplier.
2. The Supplier shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.
3. The Supplier 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.

4. The Supplier 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 Supplier is required to do otherwise by law. If it is so required, the Supplier 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) cost of implementing any measures;

(c) ensure that the Supplier personnel do not process personal data except in accordance with this Contract (and in particular the Data Processing Schedule);

(d) it takes all reasonable steps to ensure the reliability and integrity of any Supplier personnel who have access to the personal data and ensure that they:

(i) are aware of and comply with the Supplier's duties under this clause;

(ii) are subject to appropriate confidentiality undertakings with the Supplier 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 Contract; and

(iv) have undergone adequate training in the use, care, protection and handling of personal data;

(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 Supplier 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 Supplier 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 Supplier complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the personal data.

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 Supplier is required by Law to retain the personal data.

6. The Supplier 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.

 7. The Supplier's obligation to notify under clause 13.4.6 shall include the provision of further information to the Council in phases as details become available.

 8. Taking into account the nature of the processing, the Supplier 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.

 9. The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 13.4.

 10. The Supplier shall allow for audits of its data processing activity by the Council or the Council's designated auditor.

 11. The Supplier shall designate a data protection officer if required by the Data Protection Legislation.

12. Before allowing any sub-processor to process any personal data related to this Contract, the Supplier 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 13.4 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.

 13. The Supplier shall remain fully liable for all acts or omissions of any sub-processor.

 14. The Council may, at any time on not less than 30 working days' notice, revise any part of this clause 13.4 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).

 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 Supplier amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

**14. Health and Safety**

14.1The Supplier shall comply with all health and safety legislation in force from time to time.

**15. Dispute Resolution**

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

15.2 If a dispute is not resolved within fourteen (14) days of referral under clause 15.1 then either party may refer it to an appropriate nominated officer of each party for resolution who shall meet for discussion within 14 days or longer period as the parties may agree.

15.3 Provided that both parties consent, a dispute not resolved in accordance with clauses 15.1 and 15.2, 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.

15.4 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.

**16. Termination**

16.1 Without limiting its other rights or remedies, the Council may terminate the Contract with immediate effect by giving written notice to the Supplier if:

1. The Supplier commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within seven days of receipt of notice in writing of the breach;
2. The Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing;
3. A petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
4. The Supplier (being an individual) is the subject of a bankruptcy petition order;
5. The Supplier, either by advising the Council or the Council becomes aware by conducting its own investigations, suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business;
6. The Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation; or
7. The Supplier has been convicted of committing an offence or offences under the Modern Slavery Act 2015.
8. The Supplier (being an individual) is convicted of a criminal offence.

16.2 Without limiting its other rights or remedies, the Council may terminate the Contract:

1. In respect of the supply of Services, by giving the Supplier 14 days written notice;
2. In respect of the supply of Goods, with immediate effect by giving written notice to the Supplier, in which case the Council shall pay the Supplier fair and reasonable compensation for any work in progress on any other Goods at the date of termination but such compensation shall not include loss of anticipated profits or any consequential loss; or
3. In any of the circumstances in these conditions in which the Council may terminate the Contract, where both Goods and Services are supplied, the Council may instead terminate part of the Contract in respect of the Goods, or in respect of the Services, and the Contract shall continue in respect of the remaining supply.

**17. Consequences of termination**

On termination of the Contract or any part of it for any reason:

1. Where the Services are terminated, the Supplier shall immediately deliver to the Council all deliverables, whether or not then complete, and return all Council Materials.
2. The accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination;
3. Clauses which expressly or by implication have effect after termination shall continue in full force and effect.

**18. Force Majeure**

18.1 For the purposes of this Clause 18 "Force Majeure" means acts of God, war, hostilities, riot, fire, explosion, accident, flood, sabotage, lack of adequate fuel, power, transportation or labour, strike, lock-out, injunction (provided that neither Party shall be required to settle a labour dispute against its own best judgement), compliance with governmental laws, regulations or orders, breakage or failure of machinery or apparatus or I.T. systems, Government intervention, pandemic (excluding COVID – 19) or any other cause which affects performance of this Contract arising from or attributable to acts, events, non-happenings, omissions or accidents beyond the reasonable control of the Party affected.

18.2 If either Party is prevented or delayed from or in performing any of its obligations under this Contract by Force Majeure, then that Party's obligations under this Contract shall be suspended for so long as the Force Majeure continues and to the extent that that Party is so prevented, hindered or delayed.

18.3 As soon as reasonably practicable and in any event within three (3) Business Days after commencement, or after the affected Party became aware, of the Force Majeure, whichever is later, the affected Party shall provide the other Party with details of the Force Majeure, including its date of commencement, or the date that the Party became aware of such event, and its effects on this Contract and the means proposed to remedy or abate it. The affected Party shall use all reasonable efforts to mitigate the effects of the Force Majeure and the Parties agree to co-operate with a view to such mitigation. The Supplier shall, when such circumstances arise from time to time and at its own cost, implement its business continuity plan or the like for the purposes of minimising disruption to the provision of Services and/or the supply of Goods. When Force Majeure ceases, the affected Party shall inform the other Party as soon as reasonably practicable and shall resume performance of its obligations under this Contract.

18.4 If Force Majeure prevents the Supplier from supplying the Goods and/or Services for more than six weeks, the Council shall have the right, without limiting its other rights or remedies, to terminate this Contract with immediate effect by giving written notice to the Supplier.

**19. General**

19.1 Status of Supplier: The Supplier will be responsible for the payment of any income tax, insurance contribution other pensions, taxes, revenues or duties arising as a result of the performance of the Services or otherwise under this Contract. For the avoidance of doubt neither the Supplier nor any person engaged by it in the performance of the Contract will be an employee or worker for the Council.

19.2 Assignment and subcontracting:

1. The Supplier shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Council.
2. The Council may at any time assign, transfer, charge, subcontract, or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

19.3 Notices:

1. Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
2. Any notice or communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded delivery, at 9am on the business day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next business day after transmission.
3. This clause 19.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

19.4 Waiver and cumulative remedies:

1. A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
2. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

19.5 Severance:

1. If a court or any other competent authority finds that any provision (or part of any provision) of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
2. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

19.6 No partnership: Nothing in the Contract intendeds to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

19.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.

19.8 Variation: Any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Council.

**Appendix 1**

Data Processing Schedule

1. The Supplier shall comply with any further written instructions, with respect to processing, by the Council.

2. Any such further instructions shall be incorporated into this Schedule.

|  |  |
| --- | --- |
| **Description** | **Details** |
| Subject Matter of the processing |  |
| Duration of the processing |  |
| Nature and purposes of the processing |  |
| Type of Personal Data |  |
| Special Categories of Personal Data to be processed [delete if no Special Categories are being processed] |  |
| Categories of Data Subject |  |
| Plan for return and destruction of the data once the process is complete UNLESS requirement under union or member state law to preserve that type of data. |  |