



**BROMSGROVE DISTRICT COUNCIL
STANDARD TERMS AND CONDITIONS
FOR THE SUPPLY OF GOODS AND SERVICES**

**BROMSGROVE DISTRICT COUNCIL
STANDARD TERMS AND CONDITIONS
FOR THE PURCHASE OF GOOD AND/OR SERVICES**

CONTENTS

Clause Heading

	PART A - OPERATIVE PROVISIONS.....	4
A1	DEFINITIONS	4
A2	HEADINGS	9
	PART B - PROVISION OF SERVICES	9
B1	CONTRACT PERIOD	9
	PART C - SERVICES	9
C1	SUPPLY OF SERVICES	9
	PART D - GOODS	10
D1	SUPPLY OF GOODS	10
D2	DELIVERY OF GOODS	11
D3	CONTRACT MANAGER.....	12
D4	ORDERING PROCESS	12
D5	CONTRACTOR'S STAFF	13
	PART E - PRICE AND PAYMENT	13
E1	PRICE AND PAYMENT	13
	PART F - TERMINATION AND CONSEQUENCES OF TERMINATION	14
F1	TERMINATION	14
F2	CONSEQUENCES OF TERMINATION.....	15
F3	OTHER REMEDIES.....	16
F4	DISPUTE RESOLUTION PROCEDURE.....	16
	PART G - INSURANCE AND LIABILITIES.....	17
G1	INSURANCE	17
G2	INDEMNITY AND LIABILITY	17
	PART H - PROTECTION OF INFORMATION	18
H1	INTELLECTUAL PROPERTY.....	18
H2	CONFIDENTIALITY AND PUBLICITY	19
H3	DATA PROTECTION	19
H4	FREEDOM OF INFORMATION	19
H5	RECORD KEEPING AND MONITORING.....	19
	PART I - STATUTORY OBLIGATIONS.....	20
I1	HEALTH AND SAFETY	20
I2	CORPORATE REQUIREMENTS	20
I3	LAW AND CHANGE IN LAW	21
	PART J - GENERAL PROVISIONS	21
J1	CONTRACT VARIATION.....	21
J2	THIRD PARTY RIGHTS	21
J3	NO WAIVER	22
J4	SEVERANCE	22

J5 ASSIGNMENT, SUB-CONTRACTING AND RESPONSIBILITY22

J6 FORCE MAJEURE.....22

J7 INDUCEMENTS23

J8 COSTS AND EXPENSES.....24

J9 NO AGENCY OR PARTNERSHIP24

J10 NON SOLICITATION AND OFFERS OF EMPLOYMENT24

J11 INSPECTION OF CONTRACTOR’S PREMISES24

J12 NOTICES24

J13 ENTIRE AGREEMENT25

J14 LAW AND JURISDICTION25

SCHEDULE 1 – DATA PROTECTION26

ANNEX 1 – DATA PROCESSING, PERSONAL DATA AND DATA SUBJECTS31

PART A - OPERATIVE PROVISIONS

A1. DEFINITIONS

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

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

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

“Control”	control as defined by section 416 of the Income and Corporation Taxes Act 1988.
“Council”	the Council named in the Contract Particulars and where the context so admits includes any person which takes over or assumes the statutory functions or administrative responsibilities of the Council (whether in part or totally) or which is controlled by or is under common control with the Council (and the expression “control” shall mean the power to direct or cause the direction of the general management and policies of the person in question but only for so long as such control exists).
“EIR”	The Environmental Information Regulations 2004.
“FOIA”	The Freedom of Information Act 2000.
“Force Majeure”	any cause materially affecting the performance by a party of its obligations under this Contract arising from any act beyond its reasonable control and affecting either party, including without limitation: acts of God, war, global pandemic, industrial disputes, protests, fire, flood, storm, tempest, epidemic, explosion, acts of terrorism and national emergencies.
“Good Industry Practice”	the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor engaged in the supply of services similar to the Services under the same or similar circumstances as those applicable to the Contract.
“Goods”	means the goods 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 goods.

“HRA”

The Human Rights Act 1998.

“Intellectual Property Rights”

patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“Invitation to Tender”

the Council’s invitation to tender for the Contract.

“Key Personnel”

those persons named in the Contract Particulars as being key personnel and any replacement from time to time under clause B6.1.5.

“Law”

any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any regulatory body of which the Contractor is bound to comply.

“Liabilities”

all costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought.

“Order”

an order for Goods and/or Services to be provided where the Contract is identified in

the Contract Particulars to be delivered by call off.

“Price”

the price of the Goods and/or Services as set out in the Contract Particulars. Unless otherwise stated, any reference to Price shall be regarded as being exclusive of properly chargeable VAT which shall be separately accounted for.

“Pricing Schedule”

the schedule from the Tender detailing the pricing as detailed in the Contract Particulars.

“Services”

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 Terms and Conditions”

the additional terms and conditions attached which were set out in the Invitation to Tender.

“Specification”

the specification included in the Contract Particulars setting out the Council's detailed requirements in relation to the Goods and /or Services.

“Standard Terms and Conditions”

the terms and conditions set out in this document.

“Tender”

the Contractor’s tender for the Goods and /or Services in response to the Council’s Invitation to Tender.

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

A1.2 A reference to any statute, order, regulation or similar instrument shall be construed as a reference to the statute, order, regulation or instrument as

amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

A1.3 Where appropriate words denoting the singular only shall include the plural and vice versa.

A1.4 The masculine shall include the feminine and vice versa.

A2. **HEADINGS**

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

PART B - GENERAL

B1. **CONTRACT PERIOD**

B1.1 The Contract shall commence on the Commencement Date and subject to clause B1.2 shall remain in full force and effect for the Contract Period

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

PART C SERVICES

C1. SUPPLY OF SERVICES

C1.1 The Contractor shall supply the Services to the Council subject to and in accordance with the terms of the Contract.

C1.2 The Council retains the Contractor for the performance of the Services on a non exclusive basis.

C1.3 The time of the delivery of the Services is of essence to the Contract.

C1.4 In supplying the Services the Contractor will:

C1.4.1 co-operate with the Council in all matters relating to the Services and comply with the Council's instructions;

- C1.4.2 provide all other services reasonably required by the Council which are reasonably incidental to the Services in accordance with the terms of the Contract;
 - C1.4.3 perform the Services with all reasonable care, skill and diligence in accordance with Good Industry Practice;
 - C1.4.4 use staff who are suitably skilled and experienced to perform tasks that are assigned to them, and in sufficient number to ensure that the Contractor's obligations are fulfilled in accordance with the Contract;
 - C1.4.5 ensure that the Services conform with all descriptions and specifications set out in the Contract; and
 - C1.4.6 comply with all applicable Law.
- C1.5 The Council is entitled to observe the Contractor's performance of the Services.
- C1.6 If the Contractor at any time becomes aware of any material matter that could affect the performance of the Services in accordance with the Contract, the Contractor shall inform the Council immediately.
- C1.7 If the Contractor is unable to or fails to provide the Services it must inform the Council as soon as possible. The provision of information under this Clause does not in any way release or excuse the Contractor from any of its obligations under the Contract.
- C1.8 If the Contractor has a change in Control, the Contractor shall inform the Council as soon as reasonably practicable.

PART D -GOODS

D1. SUPPLY OF GOODS

- D1.1 The Contractor warrants and undertakes that the Goods shall:
- D1.1.1 correspond with their description and any applicable Specification;
 - D1.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Contractor or made known to the Contractor by the Council expressly or by implication, and in this respect the Council relies on the skill and judgement of the Contractor;
 - D1.1.3 be free from defects in design, material and workmanship and remain so for 12 months after delivery; and

- D1.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods and inform the Council of all information known or reasonably available to the Contractor as to any hazards believed to exist in connection with the transport, handling or use of the Goods.
- D1.2 The Contractor shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract. The Contractor warrants and undertakes to ensure that all staff employed to perform the Services under this Contract have the right to work in the United Kingdom.
- D1.3 The Contractor shall have the right to inspect and test the Goods at any time before delivery.
- D1.4 If following such inspection or testing the Council considers that the Goods do not conform or are unlikely to comply with the warranties and undertakings of the Contractor at clause D1.1, the Council shall inform the Contractor and the Contractor shall immediately take such remedial action as is necessary to ensure compliance.
- D1.5 Notwithstanding any such inspection or testing, the Contractor shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the obligations of the Contractor under the Contract, and the Council shall have the right to conduct further inspections and tests after the Contractor carried out its remedial action.

D2. **DELIVERY OF GOODS**

- D2.1 The Contractor shall ensure that:
- D2.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- D2.1.2 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;
- D2.1.3 if the Contractor requires the Council to return any packaging material to the Contractor, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Contractor at the cost of the Contractor.

D2.2 The Contractor shall deliver the Goods:

D2.2.1 on the date specified in the Order, or, if no such date is specified, within 28 days of the date of the Order;

D2.2.2 to the premises of the Council at [] [] or such other location as is set out in the Order, or as instructed by the Council prior to delivery ("**Delivery Location**"); and

D2.2.3 during the normal business hours of the Council, or as instructed by the Council.

D2.3 Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location.

D2.4 The Contractor shall not deliver the Goods in instalments without the prior written consent of the Council. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately.

D2.5 Title and risk in the Goods shall pass to the Council on completion of delivery at the Delivery Location

D3. **CONTRACT MANAGER**

D3.1 The Contractor shall employ a competent and authorised Contract Manager empowered to act on behalf of the Contractor for all purposes connected with the Contract.

D3.2 The Contractor shall forthwith give notice in writing to the Council of any change in the identity, address and telephone numbers of the person appointed as Contract Manager. The Contractor shall give maximum possible notice to the Council before changing its Contract Manager.

D4. **ORDERING PROCESS**

D4.1 Where this Contract is identified as requiring Orders in the Contract Particulars the Contractor shall accept Orders made in writing by the Council under the provisions of this clause.

D4.2 Except where specified Orders are required to call off the Goods and/or Services the Council gives no guarantees whatsoever as to when any Order will be placed during the Contract Period or under the Contract.

D4.3 The Orders shall state the type of or part of the Goods and/or Services required including the Council's requirements with regard to timescale for delivery of those Goods and/or Services.

D5. CONTRACTOR'S STAFF

D5.1 The Council reserves the right under the Contract to refuse to admit to, or to withdraw permission to remain on, any premises occupied by or on behalf of the Council:

D5.1.1 any member of the Contractor's staff; or

D5.1.2 any person employed or engaged by a sub-contractor, agent or servant of the Contractor

whose admission or continued presence would be, in the reasonable opinion of the Council, undesirable.

D5.2 When directed by the Council, the Contractor shall provide a list of the names and addresses of all persons (if any) who it is expected may require admission in connection with the Contract to any premises occupied by or on behalf of the Council, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Council may reasonably desire.

D5.3 The Contractor's staff, engaged within the boundaries of any of the Council's premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at that establishment and when outside that establishment.

D5.4 The decision of the Council as to whether any person is to be refused access to any premises occupied by or on behalf of the Council shall be final and conclusive.

D5.5 The Contractor shall replace any of the Contractor's staff who the Council reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Contractor's staff for any reason, the Contractor shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

D5.6 The Contractor shall bear the cost of or costs arising from any notice, instruction or decision of the Council under this clause.

PART E - PRICE AND PAYMENT

E1. PRICE AND PAYMENT

E1.1 The Council shall pay the Price for the Goods and/or Services to the Contractor.

- E1.2 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 Goods and/or Services provided during the calendar month and the amount payable.
- E1.3 Payment of any undisputed invoice will be made no later than thirty (30) days following the date of receipt of the invoice by the Council.
- E1.4 The Council reserves the right to withhold payment of the relevant part of the Price without payment of interest where the Contractor has either failed to provide the Goods and/or Services at all or has provided the Goods and/or Services inadequately and any invoice relating to such Goods and/or Services will not be paid unless or until the Goods and/or Services have been performed to the Council's satisfaction.
- E1.5 Any overdue sums will bear interest from the due date until payment is made at 4% per annum over the Co-operative Bank plc base rate from time to time. The Contractor is not entitled to suspend provision of the Goods and/or Services as a result of any overdue sums.
- E1.6 The Council will be entitled but not obliged at any time or times without notice to the Contractor to set off any liability of the Council to the Contractor against any liability of the Contractor to the Council (in either case howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency) and may for such purpose convert or exchange any sums owing to the Contractor into any other currency or currencies in which the obligations of the Council are payable under this Contract. The Council's rights under this clause will be without prejudice to any other rights or remedies available to the Council under this Contract or otherwise.
- E1.7 Further details of payment, if any, are set out in the Pricing Schedule.

PART F - TERMINATION AND CONSEQUENCES OF TERMINATION

F1. TERMINATION

- F1.1 Subject to the provisions of clause J6 the Council may terminate the Contract with immediate effect by notice in writing to the Contractor on or at any time if:
- F1.1.1 the Contractor becomes bankrupt, insolvent, makes any composition with its creditors, has a receiver appointed under the Mental Health Act 1983 or dies;
 - F1.1.2 the Contractor is convicted of a criminal offence;
 - F1.1.3 the Contractor ceases or threatens to cease to carry on its business;

- F1.1.4 the Contractor has a change in Control which the Council believes will have a substantial impact on the performance of the Contract;
 - F1.1.5 there is a risk or a genuine belief that there is a risk that reputational damage to the Council will occur as a result of the Contract continuing;
 - F1.1.6 the Contractor is in breach of any of its obligations under this Contract that is capable of remedy and which has not been remedied to the satisfaction of the Council within 14 days, or such other reasonable period as may be specified by the Council after issue of a written notice specifying the breach and requesting it to be remedied;
 - F1.1.7 there is a material or substantial breach by the Contractor of any of its obligations under this Contract which is incapable of remedy; or
 - F1.1.8 the Contractor commits persistent minor breaches of this Contract whether remedied or not.
- F1.2 The Council reserves the right to terminate the Contract in part in the case of termination under clauses F1.1.6, F1.1.7, F1.1.8.
- F1.3 Where this Contract is subject to Orders as specified in the Contract Particulars the Council has the right to terminate any individual Order or Orders or the whole Contract under the provisions of this clause F1
- F1.4 The Council reserves the right to terminate the Contract at will, in whole or in part, at any time with or without notice except that it will give as much notice as possible in the circumstances

F2. **CONSEQUENCES OF TERMINATION**

- F2.1 If this Contract is terminated in whole or in part the Council shall:
- F2.1.1 only be liable to pay to the Contractor such elements of the Price, if any, that have properly accrued in accordance with the Contract or the affected part of the Contract up to the time of the termination; and/or
 - F2.1.2 except for termination under clause F1.4, be entitled to deduct from any sum or sums which would have been due from the Council to the Contractor under this Contract or any other contract and to recover the same from the Contractor as a debt any sum in respect of any loss or damage to the Council resulting from or arising out of the termination of this Contract. Such loss or damage shall include the reasonable cost to the Council of the time spent by its officers in terminating the Contract and in making alternative arrangements for the supply of the Goods and/or Services or any parts of them; and/or

F2.1.3 where termination arises under clause F1.4, pay to the Contractor any reasonable, direct and quantifiable costs reasonably incurred by the Contractor due to early termination subject to the maximum liability provision in ; and/or

F2.1.4 in the event that any sum of money owed by the Contractor to the Council (the Contractor's debt) exceeds any sum of money owed by the Council to the Contractor (the Council's debt) under this Contract then the Council shall, at its sole discretion, be entitled to deduct the Contractor's debt from any future Council's debt or to recover the Contractor's debt as a civil debt.

F2.2 Upon the termination of the Contract for any reason, subject as otherwise provided in this Contract and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under the Contract.

F3. **OTHER REMEDIES**

F3.1 Without prejudice to the Council's rights to terminate under clause F1 , if any of the Goods and/or Services supplied are not in accordance with the Contract, the Council shall be entitled to:

F3.1.1 require the Contractor to provide replacement Goods and/ or Services in accordance with the Contract as soon as reasonably practicable and in any event within fourteen (14) days of a request to do so; or

F3.1.2 subject to clause E2 require repayment of the proportion of the Price which has been paid in respect of such Goods and/or Services together with payment of any additional expenditure over and above the Price reasonably incurred by the Council in obtaining replacement Goods and/or Services.

F4. **DISPUTE RESOLUTION PROCEDURE**

F4.1 If a dispute arises between the Council and the Contractor in connection with the Contract, the parties shall each use reasonable endeavours to resolve such dispute by means of prompt discussion at an appropriate managerial level.

F4.2 If a dispute is not resolved within fourteen (14) days of referral under clause F4.1 then either party may refer it to the Chief Executive or appropriate nominated officer of each party for resolution who shall meet for discussion within 14 days or longer period as the parties may agree.

F4.3 Provided that both parties consent, a dispute not resolved in accordance with clauses F4.1 and F4.2, 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.

- F4.4 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.

PART G - INSURANCE AND LIABILITIES

G1. INSURANCE

- G1.1 The Contractor shall maintain insurance necessary to cover any liability arising under the Contract as set out in the Contract Particulars.
- G1.2 The Contractor shall prior to the Commencement Date and on each anniversary of the Commencement Date and/or upon request provide evidence that all premiums relating to such insurances have been paid.
- G1.3 If the Contractor does not maintain the necessary insurances under the Contract the Council may insure against any risk in respect of the default and may charge the Contractor the cost of such insurance together with a reasonable administration charge.

G2. INDEMNITY AND LIABILITY

- G2.1 Neither party seeks to exclude or limit its liability for:
- G2.1.1 death or personal injury caused by its negligence (but will not be liable for death or personal injury caused by the other party's negligence);
 - G2.1.2 fraudulent misrepresentation; or
 - G2.1.3 any other matter in respect of which, as a matter of Law, liability cannot be excluded or limited.
- G2.2 Except as specifically provided, neither party shall in any event be liable to the other for any indirect or consequential loss (including loss of profit and pure economic loss) however caused.
- G2.3 Subject to clauses G2.1 and G2.2, the Contractor'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 which is paid or payable at the time that the liability arises.
- G2.4 Subject to clauses G2.1 and G2.2, the Council's liability to the Contractor under the Contract whether in contract, tort (including negligence) or otherwise shall

be limited to 125% of the proportion of the Price which is paid or payable at the time that the liability arises.

- G2.5 The Contractor shall indemnify the Council in full without limit of liability for any direct loss of or damage to the real or personal property of the Council or any third party, including Intellectual Property Rights, or injury claimed by any third party and against all Liabilities awarded against or incurred by the Council (including legal expenses on an indemnity basis) arising from the Contractor's negligence, any defect or fault in the Goods and/or Services or any act or omission of the Contractor in delivering the Goods and/or Services.

PART H - PROTECTION OF INFORMATION

H1. INTELLECTUAL PROPERTY

- H1.1 All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:
- H1.1.1 provided to the Contractor by the Council shall remain the property of the Council;
 - H1.1.2 prepared by or for the Contractor specifically for the use, or intended use, in relation to the performance of the Contract shall belong to the Council subject to any exceptions set out in the Contract Particulars.
- H1.2 The Contractor shall obtain necessary approval before using any material, in relation to the performance of the Contract which is or may be subject to any third party Intellectual Property Rights. The Contractor shall procure that the owner of the Intellectual Property Rights grant to the Council a non-exclusive licence, or if the Contractor is itself a licensee of those rights, the Contractor shall grant to the Council an authorised sub-licence, to use, reproduce, and maintain the Intellectual Property Rights. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-license, transfer, novate or assign to other Councils, the replacement Contractor or to any other third party providing services to the Council, and shall be granted at no cost to the Council.
- H1.3 It is a condition of the Contract that the Goods and/or Services will not infringe any Intellectual Property Rights of any third party and the Contractor shall during and after the Contract Period on written demand indemnify and keep indemnified without limitation the Council against all Liabilities which the Council may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim relates to the act or omission of the Council.

H1.4 At the termination of the Contract the Contractor shall at the request of the Council immediately return to the Council all materials, work or records held in relation to the Goods and/or Services, including any back-up media.

H2. CONFIDENTIALITY AND PUBLICITY

H2.1 Any documents provided by the Council and information which the Contractor may acquire as a result of the Contract shall to the extent that they are not in the public domain or required to be disclosed by operation of Law remain confidential to the Council and shall not be disclosed disposed of or used for any purpose without prior written consent from the Council.

H2.2 All Confidential Information provided by the Council to the Contractor shall be returned to the Council at the end of the Contract.

H2.3 Without prejudice to the Council's obligations under the FOIA or EIR, neither party shall make any press announcements or publicise the Contract or any part thereof in any way, except with the written consent of the other party (such consent not to be unreasonably withheld or delayed).

H2.4 Both parties shall take all reasonable steps to ensure the observance of the provisions of this clause by all of their servants, employees, sub-contractors, agents, professional advisors and consultants.

H3. DATA PROTECTION

H3.1 If this Contract involves the processing of Personal Data the provisions of Schedule 1 shall apply and the version of Annex 1 agreed between the Council and the Contractor shall be incorporated into this Contract.

H4. FREEDOM OF INFORMATION

H4.1 The Council is subject to the FOIA and the EIR ("the Acts"). As part of the Council's duties under the Acts, it may be required to disclose information forming part of the Contract to anyone who makes a reasonable request. The Council has absolute discretion to apply or not to apply any exemptions under the Acts.

H4.2 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.

H5. RECORD KEEPING AND MONITORING

H5.1 In order to assist the Council in its record keeping and monitoring requirements including auditing and National Audit Office requirements, the Contractor shall

keep and maintain for six (6) years (or such longer time period required in accordance with any specific legislation) after the Contract has been completed, full and accurate records of the Contract including the Goods and/or Services supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Contractor shall on request allow the Council or the Council's representatives such access to (and copies of) those records as may be required by the Council in connection with the Contract.

H5.2 The Contractor will at its own cost, provide any information that may be required by the Council to comply with the Council's procedures for monitoring of the Contract.

PART I - STATUTORY OBLIGATIONS

I1. HEALTH AND SAFETY

I1.1 The Contractor shall comply with all health and safety legislation in force and all health and safety policies of the Council.

I2. CORPORATE REQUIREMENTS

I2.1 The Contractor shall comply with all obligations under the HRA.

I2.2 The Contractor shall comply with all Council policies and rules, such as, but not limited to:

I2.2.1 equality and diversity policies;

I2.2.2 sustainability;

I2.2.3 information security rules;

I2.2.4 whistleblowing and/or confidential reporting policies; and

I2.2.5 all site rules relevant to the fulfilment of the Contractor's obligations in the performance of the Services and/or the delivery of Goods.

I2.3 The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether age, race, gender, religion, disability, sexual orientation or otherwise) in employment.

I2.4 The Contractor shall comply with all relevant legislation relating to its staff however employed including (but not limited to) the compliance in law of the ability of the staff to work in the United Kingdom.

I2.5 If the Contractor has a finding against it relating to its obligations under clause I2.4 it will provide the Council with:

I2.5.1 details of the finding; and

I2.5.2 the steps the Contractor has taken to remedy the situation.

I3. LAW AND CHANGE IN LAW

I3.1 The Contractor shall comply at all times with the Law in its performance of the Contract.

I3.2 On the occurrence of a Change in Law which has a direct effect upon the Price the parties shall meet within fourteen (14) days of the Contractor notifying the Council of the Change in Law to consult and seek to agree the effect of the Change in Law and any change in the Price as a result following the principle that this clause is not intended to create an artificial cushion from market forces for the Contractor. If the parties, within fourteen (14) days of this meeting, have not agreed the occurrence or the impact of the Change in Law, either party may refer the matter to dispute resolution in accordance with clause F4.

I3.3 Any agreed additional sums payable as a result of the operation of clause G3.2 shall be included in the Price. For the avoidance of doubt nothing in this Contract is intended to allow the Contractor double recovery of any increase in costs.

PART J - GENERAL PROVISIONS

J1. CONTRACT VARIATION

J1.1 The Council may by written notice to the Contractor at any time request a variation to the scope of the Goods and/or Services..

J1.2 In the event that the Contractor agrees to the variation, the Price shall be subject to fair and reasonable adjustment to be agreed in writing between the parties.

J1.3 The Council shall be entitled to issue to the Contractor in writing or, in case of urgency orally (provided the Council confirms oral instructions in writing as soon as it is practicable), variation orders requiring the addition, suspension, reduction or cessation of provision of any Goods and/or Services and/or the provision of emergency Services.. The Contractor shall charge for the impact of the variation order in accordance with the rates and prices used to calculate the Price in the Tender.

J2. THIRD PARTY RIGHTS

J2.1 This Contract is enforceable by the original parties to it, by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Contract pursuant to The Contracts (Rights of Third Parties) Act 1999 are excluded.

J3. NO WAIVER

J3.1 Failure by either party at any time to enforce any one or more of the provisions of this Contract or to require performance by the other party of any of the provisions shall not constitute or be construed as a waiver of the provision or of the right at any time subsequently to enforce all terms and conditions of this Contract nor affect the validity of the Contract or any part of it or the right of the parties to enforce any provision in accordance with its terms.

J3.2 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 J12.

J4. SEVERANCE

J4.1 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.

J5. ASSIGNMENT, SUB-CONTRACTING AND RESPONSIBILITY

J5.1 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 supply of the Goods and/or Services.

J5.2 The Council shall be entitled to:

J5.2.1 assign, novate or dispose of its rights and obligations under this Contract either in whole or part to any contracting authority (as defined in The Public Contracts Regulations 2006); or

J5.2.2 transfer, assign or novate its rights and obligations where required by Law.

J5.3 The Contractor shall remain responsible and liable for the acts and omissions of any other members of a consortium arrangement, sub-contractors, servant, agent and employee as though they were its own.

J6. FORCE MAJEURE

J6.1 Neither party shall be liable for failure to perform its obligations under the Contract if such failure results from Force Majeure.

J6.2 If the Council or the delivery location is affected by circumstance of Force Majeure, the Council shall be entitled to, totally or partially, suspend the date or

dates for delivery of the Services until the circumstances of the Force Majeure have ceased. The suspension shall not give rise to any claim by the Contractor against the Council nor entitle the Contractor to terminate the Contract.

J6.3 Industrial action by, or illness or shortage of the Contractor's staff, agents or subcontractors, failure or delay by any of the Contractor's suppliers to supply goods, components, services or materials and breach of the Contractor's warranties under clause B6 shall not be regarded as an event of Force Majeure.

J6.4 If the event of Force Majeure continues for more than two (2) months either party may give written notice to the other to terminate the Contract immediately or on a set termination date.

J6.5 If the Contract is terminated in accordance with clause J6.4 neither party will have any liability to the other except that any rights and liabilities which accrued prior to termination will continue to exist.

J7. **INDUCEMENTS**

J7.1 The Contractor shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Council any gift or consideration of any kind as an inducement or reward for doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Council, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract. The attention of the Contractor is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916.

J7.2 The Contractor warrants that it has not paid commission nor agreed to pay any commission to any employee or representative of the Council by the Contractor or on the Contractor's behalf.

J7.3 Where the Contractor engages in conduct prohibited by clauses J7.1 and/or J7.2 in relation to this or any other contract with the Council, the Council has the right to:

J7.3.1 terminate the Contract and recover from the Contractor the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the provision of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period; or

J7.3.2 recover in full from the Contractor any other loss sustained by the Council in consequence of any breach of this clause whether or not the Contract has been terminated.

J8. COSTS AND EXPENSES

J8.1 Each of the parties will pay their own costs and expenses incurred in connection with the negotiation, preparation, execution, completion and implementation of this Contract.

J9. NO AGENCY OR PARTNERSHIP

J9.1 Nothing contained in this Contract, and no action taken by the parties pursuant to this Contract, will be deemed to constitute a relationship between the parties of partnership, joint venture, principal and agent or employer and employee. Neither party has, nor may it represent that it has, any authority to act or make any commitments on the other party's behalf.

J10. NON SOLICITATION AND OFFERS OF EMPLOYMENT

J10.1 The Contractor agrees that it will not, without the prior written consent of the Council, whether directly or indirectly, and whether alone or in conjunction with, or on behalf of, any other person and whether as a principal, shareholder, director, employee, agent, consultant, partner or otherwise during the Contract Period or for a period of 12 months following termination of this Contract:

J10.1.1 solicit or entice, or endeavour to solicit or entice, away from the Council, any person directly related to the Services employed in a senior capacity in a managerial, supervisory, technical, sales or administrative capacity by, or who is or was a consultant to, the Council at the date of the termination of this Contract or at any time during the period of one month immediately preceding the date of termination;

J10.1.2 attempt, or knowingly assist or procure any other person to do the above.

J11. INSPECTION OF CONTRACTOR'S PREMISES

J11.1 The Contractor shall permit the Council to make any inspections or tests which may reasonably be required in respect of the Contractor's premises in relation to the Contract.

J12. NOTICES

J12.1 Any notice required by this Contract to be given by either party to the other shall be in writing and shall be deemed to be sufficiently if served personally on the addressee, or by sending it by registered post or recorded delivery to the appropriate address, or email address notified to each other as set out in the Contract Particulars.

J12.2 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 email before 5 p.m. will be deemed to have been served on the day of despatch and otherwise on the following day save where the deemed date of service falls on a day other than a Business Day in which case the date of service will be the following Business Day.

J13. **ENTIRE AGREEMENT**

J13.1 The Contract constitutes the entire agreement between the parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether oral or in writing, except that nothing in this shall not exclude liability in respect of any fraudulent misrepresentation.

J14. **LAW AND JURISDICTION**

J14.1 This Contract shall in all respects be construed and interpreted by the laws of England and Wales and shall be subject to the exclusive jurisdiction of the English courts.

SCHEDULE 1 – DATA PROTECTION

In this Schedule 1 the following terms and expressions shall have the meanings set out below:

Agreement: this contract;

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

Data Protection Legislation: (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

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

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer take the meaning given in the GDPR.

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

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

DPA 2018: Data Protection Act 2018

GDPR: the General Data Protection Regulation (Regulation (EU) 2016/679)

LED: Law Enforcement Directive (Directive (EU) 2016/680)
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.

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

1. DATA PROTECTION

- 1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in Annex 1 by the Council and may not be determined by the Contractor.
- 1.2 The Contractor shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.
- 1.3 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 Goods and/or 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.
- 1.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
 - (a) process that Personal Data only in accordance with Annex 1, 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 have been reviewed and approved by the Council as appropriate to protect against a Data Loss Event having taken account of the:
 - i. nature of the data to be protected;
 - ii. harm that might result from a Data Loss Event;
 - iii. state of technological development; and
 - iv. cost of implementing any measures;
 - (c) ensure that:

- i. the Contractor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Annex 1);
 - ii. it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
 - A. are aware of and comply with the Contractor's duties under this clause;
 - B. are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 - C. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Council or as otherwise permitted by this Agreement; and
 - D. have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU
- (e) at the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.

1.5 Subject to clause 1.6, 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 Agreement;

(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.

1.6 The Contractor's obligation to notify under clause 1.5 shall include the provision of further information to the Council in phases, as details become available.

1.7 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 clause 1.5 (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.

1.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:

- (a) the Council determines that the processing is not occasional;
- (b) the Council determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and

- (c) the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

1.9 The Contractor shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor.

1.10 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.

1.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, 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 Schedule 1 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.

1.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.

1.13 The Council may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

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

ANNEX 1 – DATA PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. The Contractor shall comply with any further written instructions with respect to processing by the Council.
2. Any such further instructions shall be incorporated into this Annex.

Description	Details
Subject matter of the processing	<i>[This should be a high level, short description of what the processing is about, i.e. its subject matter]</i>
Duration of the processing	<i>[Clearly set out the duration of the processing including dates]</i>
Nature and purposes of the processing	<i>[Please be as specific as possible, but make sure that you cover all intended purposes. The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc. The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i>
Type of Personal Data	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i>
Categories of Data Subject	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/clients, suppliers, patients, students/pupils, members of the public, users of a particular website etc.]</i>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<i>[Describe how long the data will be retained for, how it will be returned or destroyed]</i>