



**GENERAL TERMS AND CONDITIONS  
FOR THE PROCUREMENT OF  
WORKS GOODS AND SERVICES**

**1. Definitions**

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

“**Business Days**” means any Monday to Friday (inclusive) but does not include a bank holiday.

“**The Contract**” means any agreement entered into by the Council by reference to or contained within any Contract Documentation which shall be expressly subject to these Terms and Conditions shall be construed accordingly.

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

“**Council**” means South Norfolk District Council.

“**Council Policies**” means any current written protocols for delivering the Council’s functions and responsibilities, including and without limitation, Freedom of Information, Safeguarding, Data Protection. Where published the policies will be available on the Council website [www.south-norfolk.gov.uk](http://www.south-norfolk.gov.uk) under the various service and sector headings and otherwise upon request.

“**Confidential Information**” means all confidential information (however recorded or preserved) disclosed by either to the other party concerning a) the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities; b) the operations, processes, product information, know-how, designs, trade secrets or software; c) any information developed by the parties under this Agreement and any information defined at ‘Confidential Information’ defined in the Contract Documentation.

“**Contract Price**” means the Price for the Works, Goods and Services excluding

VAT as set out in Clause 9 of these Terms and Conditions.

**“Data Processor”** as defined in the General Data Protection Regulation (Regulation (EC) 2016/679 which comes into force in the UK on 25 May 2018) (GDPR).

**“Data Protection Legislation”** means the General Data Protection Regulation (Regulation (EC) 2016/679 which came into force in the UK on 25 May 2018) (GDPR), the Data Protection Act 2018 and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then any successor legislation to the GDPR or the Data Protection Act 2018.

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

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

**“Intellectual Property Rights”** means any patent, copyright, trade mark, service mark or trade name, utility model, right in software, right in design, right in databases, image right, moral right, right in an invention, right relating to passing off, domain name, right in confidential information (including trade secrets) or right of privacy, and all similar or equivalent rights in each case whether registered or not and including all applications (or rights to apply) for, or renewal or extension of, such rights which exist now or which will exist in the future in the United Kingdom.

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

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

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

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

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

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

**“Supplier’s Designated Representative”** means a person appointed by the Supplier in accordance with clause 6 and 9 and upon whom notice may be served pursuant to clause 19.

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

“**Terms and Conditions**” means these terms and conditions set out in this document and any annexes thereto.

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

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

2.1 Subject to precedence in clause 2.2 below, these Terms and Conditions apply to all contracts for the purchase of Works, Goods or Services by the Council. These Terms and Conditions are the only conditions upon which the Council contracts with the

Supplier and they shall govern the Contract to the entire exclusion of all other terms or conditions.

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

- a) Order (but only for Price, quantity, place of delivery, dates and description and specification of the Works, Goods and Services)
- b) Tender as accepted by the Council (including any special terms agreed by the parties) and/or any executed Contract;
- c) These Terms and Conditions;
- d) Other Contract Documentation;
- e) Any other documents incorporated by the Council by reference.

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

2.4 No terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement or acceptance of an Order, specification or other document shall form part of the Contract and the Supplier waives any right which it otherwise might have, to rely on such terms and conditions.

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

## **3. Commencement Date and Duration**

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

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

#### **4. Obligations of the Supplier – Goods**

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

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

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

4.4 The Supplier shall ensure that the Goods conform precisely to the requirements of the Council specified in the Contract Documentation.

4.5 The Supplier shall ensure that the Goods are of the accurate weight, size and measurements required by the Council in the Contract Documentation.

4.6 The Supplier shall ensure that the Goods are free from defects and comply with the quality required by the Council and that they are fit for the purpose required by the Council.

4.7 The Supplier shall ensure that the Goods are supplied, manufactured, stored, tested and packed in accordance with all applicable legislation, including, without limitation, the Sale of Goods Act 1979, the Consumer Protection Act 1987 and all applicable European safety standards.

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

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

#### **5. Risk, Title, Acceptance**

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

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

the Goods.

- 5.3 The Council shall be entitled to order the Supplier to carry out at the Supplier's expense such tests as it considers necessary to ascertain the quality of the Goods and shall be entitled to require any relevant and applicable certification in relation to its requirements for the Goods.
- 5.4 The Council shall at all times have power to inspect the Goods both before and at all stages of the contract. The parties expressly acknowledge that the Council may reject the Goods at any time up to acceptance of the Goods. Acceptance is not deemed to have occurred until such time as final inspection and testing by the Council has taken place or until the expiry of 6 months from the Due Delivery Date (whichever is the latest). If the Council fails to reject Goods, this shall not constitute an acceptance of them nor prejudice the Council's rights under the Contract or at law.
- 5.5 Upon rejection, the Supplier shall immediately remove the rejected Goods and replace, re-supply, repair or re-work the Goods as required by the Council in order to comply with the requirements set out in the Contract Documentation. Delivery of the Goods shall not take place until replacement Goods have been delivered. The Council may hold any damaged Goods at the Supplier's risk or may return them at the Supplier's risk and expense. Where the Supplier has failed to collect the Goods within 4 weeks from the date of notification, the Council may dispose of the Goods at the expense of the Supplier.
- 5.6 Any costs and expenses incurred by the Council in the rejection, removal and disposal of Goods may, without prejudice to other remedies, be set-off against Contract Price in accordance with clause 9.6.

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

- 6.1 The Supplier shall perform all of the Services set out in the Contract Documentation and/or as reasonably required by the Council from the Commencement Date until the expiry of the Contract.
- 6.2 The Supplier shall perform Services in accordance with the Council's directions. The Services shall be supplied to the standards, frequency and quality indicated in the Contract Documentation and/or as required by the Council, including by reference to any Key Performance Indicators or Service Level Agreements.
- 6.3 The Supplier shall be solely responsible for the activities and omissions of its employees, agents, representatives and sub-contractors in fulfilling its obligations under the Contract.
- 6.4 The Supplier shall cooperate with Council by attending any meetings, site inspections or other activities which may from time to time be reasonably required for the fulfilment of the Supplier's obligations under the Contract.
- 6.5 Upon the Commencement Date, the Supplier shall appoint, a knowledgeable designated representative "Supplier's Designated Representative" for communicating with the representatives of the Council in relation to the performance and any problems or non-performance of the Services and shall provide full contact details to the Council of this person.
- 6.6 The Supplier acknowledges that the Council may inspect the Services throughout the

Contract. If, in the reasonable opinion of the Council, the Services fail to comply with the requirements of the Contract, including any Key Performance Indicators or Service Level Agreements, the Council may, in addition to all of its other remedies, require the Supplier to re-perform and otherwise rectify the Services and any Goods supplied at no further cost beyond the Contract Price. Completion of the Services shall not have taken place until re-inspection and/or approval by the Council of the remedial services.

## **7. Representations and Warranties**

- 7.1 The Supplier represents and warrants that:
  - 7.1.1 The Supplier, its employees, its agents, officers, sub-contractors and representatives has complied with and shall comply throughout the duration of the Contract with all applicable Council Policies;
  - 7.1.2 In submitting any bids or in performing the Contract, the Supplier has not breached Competition law and any other applicable Law or regulation.
  - 7.1.3 The individuals who sign the Contract Documentation have been duly authorised to represent and bind the Supplier.
- 7.2 The Supplier represents and warrants that the Works, Goods and the Services shall:
  - 7.2.1 Not be changed without the prior written consent of the Council;
  - 7.2.2 Be of the best available design, of the best quality and workmanship without fault or defect (including latent defect);
  - 7.2.3 In the case of the Services, be performed with reasonable care and skill, in accordance with generally recognized commercial practices and standards for similar services;
  - 7.2.4 Conform precisely to the Contract Documentation;
  - 7.2.5 In the case of the Goods, be complete, fully operational, fit for purpose and shall be delivered with all parts and tools and also those parts that are not specified in the Contract Documentation but which are required for proper operation and also including the usual safety devices, and special appliances;
  - 7.2.6 Be accompanied by all appropriate information, warnings, instructions and documentation in relation to the safe use, handling, storing, operation, consuming, transportation and disposal of any Goods or parts or materials, in particular in relation to hazardous materials which will be clearly identified to the Council;
  - 7.2.7 Comply with any applicable national and international quality assurance standards from time to time published under which the Supplier is approved; and/or as reasonably requested by the Council, including International Standard Specification, European National, or British Standard Code of Practices.
  - 7.2.8 Conform with all regulations, legislation, codes of practice and relevant guidance applicable to:
    - (a) such Works and Services including in relation to health, safety and environmental standards; or

- (b) such Goods as regards the design, manufacture, quality, packaging, transportation, delivery, labelling, health, safety and environmental standards and use of such Goods which are in force at the time of supply;
- 7.2.9 In the case of the Goods, when delivered, be accompanied by a delivery note which shows, inter alia, the Order number and date or reference to the relevant Contract Documentation, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.
- 7.3 The Supplier acknowledges that the Council has expressly relied upon any representations, statements or warranties made by the Supplier or on its behalf by its sub-contractors, agents, employees or third parties (whether orally or in writing or in any brochures, catalogues or advertisements) in connection with the Goods and Services, as a condition of entering into the Contract.

## **8. Other Obligations: Health and Safety**

- 8.1 The Supplier undertakes that it and its sub-contractors shall at all times throughout the Contract and at their own expense:
  - 8.1.1 Maintain all necessary licenses and consents and comply with all applicable Laws in the performance of the Contract;
  - 8.1.2 Adopt safe working practices and at the proper time supply and install within the original contract price such safety devices as may be necessary to comply with the provisions of all health and safety legislation and shall not in the performance of the Contract in any manner endanger the safety of or unlawfully interfere with the convenience of any other person, including employees and/or Suppliers of the Council;
  - 8.1.3 Ensure that, in performing its obligations under the Contract, it does not cause any disturbance or damage to the Council's operations and property at the relevant site/s;
  - 8.1.4 Comply with the Council Policies and conditions in relation to any relevant site (including but not limited to health and safety conditions, safety management systems, safety cases, hygiene policies and security Policies) and the Council's codes of conduct and ethics made available to the Supplier from time to time;
  - 8.1.5 Comply with the provisions of the Health and Safety at Work Act, 1974, Control of Asbestos Regulations 2006, and all relevant Codes of Practice in force;
  - 8.1.6 Indicate whether a COSHH data sheet is required for the Goods supplied and shall comply with Section 6 of the Health and Safety at Work Act 1974 and provide the Council with data sheets and relevant trade literature on any substances deemed to be hazardous to health and shall meet its obligations under the Control of Substances Hazardous to Health Regulations 2002;
  - 8.1.7 Comply with the Chemicals (Hazard Information and Packaging) Regulations 2002 and those substances supplied bear labels which itemize the chemical constituents, and shall indicate whether these constituents are toxic, irritant, corrosive etc and give instructions on the safe use of such substances;
  - 8.1.8 Assist the Council (and any person nominated by the Council) in the investigation of any accident or incident or the resolution of any dispute, which assistance shall

include, but not be limited to, making personnel available for interview, providing access to documents and records and providing information reasonably requested by the Council;

- 8.1.9 Notify the Council as soon as it becomes aware of any breach of Laws or any health and safety hazard or issue which arises in relation to the Goods or Services (which notification shall not release the Supplier from any liability and/or obligations in respect of such breach, hazard or issue);
- 8.1.10 Co-operate with the Council in all matters relating to the Contract;
- 8.1.11 Upon the request of the Council, appoint or, at the request of the Council, replace without delay, the Supplier's Designated Representative, who shall have authority under the Contract contractually to bind the Supplier on all matters relating to the Contract;
- 8.1.12 Immediately provide to the Council suitable certificates of competence from the Supplier for any person employed or engaged in connection with the Works or Services.

## **9. Price and Payment**

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



- 9.7.1 Where the Supplier submits an invoice to the Council in accordance with this clause 9 the Council will consider and verify that invoice in a timely fashion.
- 9.7.2 The Council shall pay the Supplier any sums due under such invoice no later than a period of 30 days from the date on which the Council has determined that the invoice is valid and undisputed.
- 9.7.3 Where the Council fails to comply with paragraph 9.7.1 and there is an undue delay in considering and verifying the invoice the invoice shall be regarded as valid and undisputed for the purposes of paragraph 9.7.2 after 7 working days have passed.
- 9.7.4 Where the Supplier enters into a sub-contract, the Supplier shall include in any sub-contract:
- a) provisions having the same effect as clauses 9.7.1 to 9.7.3 (inclusive) of this Contract and
  - b) a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions 9.7.1 to 9.7.4 (inclusive) of this Contract.
  - c) in clause 9.7.4 “sub-contract” means a contract between two or more suppliers, at any stage of remoteness from the Council in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.

## **10. Delays and Failures**

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

the importance to the Council of immediately managing any delay or failure in the performance of the Contract;

10.5.1 In the case of the supply of Works, Services and/or Goods, the late delivery of Works, Services and/or Goods or actions resulting in a default or Service failure, the Council shall be entitled to levy the following amounts (or part thereof) calculated on a daily basis as a percentage deducted from net Contract Price as follows:

- a) 1- 10 Business days late inclusive: 0.25%,
- b) 11-20 Business days late: 0.5% and
- c) 21 Business days late and over: 1%

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

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

## **11. Liability and Indemnity**

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

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

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

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

11.1.4 Any payments made to other suppliers;

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

11.2.1 Default or breach of the Contract by the Supplier and any of its sub-contractors in accordance with 11.1 above; and/or

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

11.2.3 Defective Works, Services or Goods; and/or

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

11.3 In the event that the Supplier terminates the Contract by 3 months written notice before expiry of the agreed duration of the Contract Term, it shall be responsible for the handover to the successor, as well as the procurement costs incurred for selecting an alternative Supplier and any other consequential losses incurred by the Council in the handover.

## **12. Insurance**

12.1 As condition precedent of entering into the Contract and as an express condition for the duration of the Contract Term and any additional period, the Supplier shall hold the following insurances to cover for each and every claim pursuant to clause 11 above and any other Contract Obligation:

12.1.1 A minimum of £10 million Public Liability insurance; and

12.1.2 A minimum of £10 million Employers Liability insurance; and

12.1.3 Unless otherwise specified by the Council a minimum of £1 million Professional Indemnity insurance.

12.2 The Supplier shall be required to submit evidence of its insurance certificates of the mandatory minimum amount for the entire Contract Term and any additional period at any time throughout the Contract.

## **13. Intellectual Property Rights**

13.1 The Council retains any and all Intellectual Property Rights in the ownership of the Council and grants a non-transferable, non-exclusive, royalty free license to the Supplier to use such Intellectual Property Rights only to the extent necessary to provide the Goods or perform the Services. Such license shall terminate immediately upon termination of the Contract or upon earlier return of the Council's property to the Council.

13.2 Pursuant to clause 13.1 to the extent that such Intellectual Property Rights do not automatically vest in the Council, the Supplier assigns to the Council all Intellectual Property Rights in the Works, Goods and Services which have been used, created or developed for the purposes of the Contract including, without limitation, any reports, drawings, designs and programmes.

13.3 Where, exceptionally and only by specific written agreement with an authorised representative of the Council, the Intellectual Property Rights in the Works, Goods

and Services, do not vest or are not assigned to the Council the Supplier grants to the Council a transferable, exclusive, royalty free license (with the right to sublicense) of such Intellectual Property Rights to enable the Council to use and enjoy the Works, Goods or the Services including without limitation, to allow the Council freely to utilize the delivered Goods and enjoy the benefit of the Services, to allow the Goods to perform those functions which they are designed for and to repair the delivered Goods (or to have those Goods repaired) and manufacture (or have manufactured) spare parts and replacements. The Contract price includes the full license fee.

- 13.4 The Supplier declares that the manufacture, delivery, use and/or repair of the Works, Goods and Services to be supplied and the application of the associated functions and the performance of the Services, do not infringe any industrial and Intellectual Property Rights held by third parties and the Supplier shall indemnify the Council against any loss without limit arising out of claims, liabilities, and expenses (including loss of profits) resulting from any claim or action made by third parties against the Council alleging infringement of this clause 13.4.
- 13.5 Where the Council is notified by a third party of an alleged infringement it shall inform the Supplier forthwith of such notification. The Supplier shall promptly take such steps as may be necessary to secure to the Council the rights granted in clause 13.2 and 13.3 above. If the Supplier fails to take such steps within a reasonable period of time (and not more than one month after notification) the Council shall have the right to take such action itself whereupon the Supplier shall indemnify the Council without limit against any costs or liability incurred by the Council in so doing. Such action shall include litigation arrangements or compromises with any rightful claimants and making changes in the delivered Works, Goods and Services without impairing the good quality and usability of the Goods, as will cause them to become non-infringing.
- 13.6 The Council shall be entitled to apply for and hold such patent or other registered protection for any Council's Works, Goods and Services as the Council thinks fit.
- 13.7 The Supplier shall fully indemnify the Council for any claim or action that may be brought against it regarding infringement of copyright, patent or similar protected rights in respect of any items supplied under the Contract.
- 13.8 All payments and royalties which may be payable shall be included by the Supplier in the Contract Price and shall be paid promptly to the relevant persons by the Supplier.

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

- 14.1 The Supplier acknowledges that the contents of the Contract including the Contract Price may be disclosed to the public whether in whole or in part in response to a request for disclosure from the public or a unilateral decision by the Council to disclose provided that no such disclosure shall be permissible should it fall in to any of the categories of exempt information defined as such within the Freedom of Information Act 2000 and the Environmental Information Regulations.
- 14.2 The Supplier shall seek approval from the Council in determining whether any information contained within the Contract falls within any of the categories of exempt information defined as such within the Freedom of Information Act 2000 and in consequence thereof ought not to be disclosed.
- 14.3 The Supplier acknowledges that the Council shall be entitled to publish to the public

at large or any part thereof any information within this Contract whether in whole or in part including any variation or modification to the Contract Documentation and any documents incorporated by reference herein

- 14.4 In addition to, the obligations in Clause 14.1-14.3 the Supplier shall keep in strict confidence all Confidential Information and all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier or by the Council or its agents or sub-contractors and shall not disclose to any person any Confidential information.
- 14.5 In addition to, the obligations in Clause 14.1-14.3 the Supplier shall only use such Confidential Information for the purposes of performing its obligations under this Contract.
- 14.6 In addition to the obligations in Clause 14.1-14.3, the Supplier shall restrict disclosure of such Confidential Information to such of its employees, agents or sub- contractors as need to know the same for the purpose of discharging the Supplier's obligations to the Council and shall ensure that such employees, agents or sub- contractors are subject to like obligations of confidentiality.
- 14.7 Clause 14.4-14.6 shall not apply to any information that:
  - 14.7.1 Is or becomes generally available to the public;
  - 14.7.2 Was available or known to the Supplier on a non-confidential basis prior to disclosure by the Council; or
  - 14.7.3 Is developed by or for the Supplier independently of this Contract.
- 14.8 In addition to the rights of the Council in Clause 14.1-14.3 above, either party may disclose Confidential Information if disclosure is required by law, court order or any governmental or regulatory body.

## **15. Compliance with Council Policies and Legislation**

- 15.1 The Supplier acknowledges the importance of the reputation, standing and responsibilities of the Council. The Supplier shall ensure that the Supplier, its employees, officers, agents, sub-contractors and representatives shall comply with all relevant and applicable legislation, regulations, codes of practice (“**Legislation**”) and Council Policies to the fullest extent throughout the duration of the Contract.
- 15.2 The Supplier accepts full responsibility to obtain complete details of all applicable legislation Council Policies, which are relevant to the Contract by reviewing the Council website and upon request to an authorised representative of the Council;
- 15.3 In order to ensure that the best possible workforce relations shall be associated with the Contract, the Supplier shall in respect of all persons employed or engaged by it in the provision of the Services pay rates of wages and observe hours and conditions of employment in accordance with the relevant national employment legislation and codes of practice, and shall comply including, without limitation, the requirements of Employment Rights Act 1996, the Sex Discrimination Act, 1975, the Equal Pay Act, 1970 (as amended), the Race Relations (Amendment) Act 2000, and the Disability Discrimination Act, 2005, the Equality Act 2010, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Age) Regulations 2006; the

Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000, the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 and the National Minimum Wage Act 1998.

15.4 The Supplier shall ensure that it fulfils and continues to fulfil all of its obligations as a 'Contractor to a Public Authority' for the defined purpose of Section 71 of the Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000 and Section 6 of the Human Rights Act 1998;

15.5 The Supplier shall be responsible for complying with any law (whether applicable in the United Kingdom or elsewhere and whether now in force or coming into force hereafter).

**15A Clauses – whereby the Supplier is the Data Processor:**

15A.1 Both parties shall comply with all applicable requirements of the Data Protection Legislation. This clause 15A is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

15A.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Data Controller and the Supplier is the Data Processor (where "Data Controller" and "Data Processor" have the meanings as defined in the Data Protection Legislation). Schedule 1 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data and categories of data subject (each "Personal Data" and "Data Subject" as defined in the Data Protection Legislation).

15A.3 Without prejudice to the generality of clause 15A.1, the Council will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this Contract.

15A.4 Without prejudice to the generality of clause 15A.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this Contract:

(a) process that Personal Data only on the written instructions of the Council unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier to process Personal Data ("Applicable Laws"). Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify the Council of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Council;

(b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Council, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its 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 technical and organisational measures adopted by it);

- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (d) not transfer any Personal Data outside of the European Economic Area 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;
  - (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; and
  - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
- (e) For the purposes of Clause 15A (d) the EEA shall be taken to include the United Kingdom in the event of any withdrawal from the European Union
- (f) assist the Council, at the Council's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (g) notify the Council immediately on becoming aware of a Personal Data breach in compliance with the Council Breach Notification Procedure;
- (h) at the written direction of the Council, delete or return Personal Data and copies thereof to the Council on termination of the Contract unless required by Applicable Law to store the Personal Data; and
- (i) maintain complete and accurate records and information to demonstrate its compliance with this clause 15A and allow for audits by the Council, the Council's designated auditor and regulatory bodies.

15A.5 The Supplier shall seek the prior written consent of the Council where it wishes to appoint any third-party processor of Personal Data under this Contract. The Supplier confirms that where it is granted consent it will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 15A. As between the Council and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 15A.5.

15A.6 Either party may, at any time on not less than 30 days' notice, revise this clause 15A 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 replaced by attachment to this Contract).

15A.7 Where the Council is required to put remedial or other actions or safeguards into place as a result of a supervisory authority's or regulator's direction or decision, the Supplier shall assist and cooperate with the Council at no further expense to make any changes, modifications or to take any action as may be directed (including within any timescale provided) from time to time.

15.6 In accordance with the obligations of the Protection of Children Act 1999 and the Care Standards Act 2001 and the Council's obligations and Policy of Safeguarding, the Supplier shall ensure that their employees, officers, agents, sub-contractors and representatives who may have direct contact with children and vulnerable persons during any part of the Contract shall be of suitable standing and good character and also that they shall take direct instructions from the Council with regard any actual and potential interaction with children and vulnerable persons. It is the responsibility of the Supplier to ensure that all necessary Disclosure Baring Service (DBS) checks

have been carried out and to ensure and regularly monitor that all documentation is updated and made available to the Council upon request.

- 15.7 The Supplier shall ensure that all persons engaged in any way in the performance of the Contract shall have undergone carried out and will have available visible personal and company identification badges, for inspection by the Council. The Council reserves the right to refuse entry to any properties or premises where such identification is not provided.
- 15.8 The Supplier shall be bound by the obligations of the Bribery Act 2010 in relation to anti-corruption and shall ensure that the following obligations are incorporated into all of its contracts with employees, officers, agents, sub-contractors and representatives to the fullest extent. The Supplier shall ensure that it complies with its obligations under the Bribery Act and that maintains adequate documentary audit evidence of compliance which may be made available to the Council for the purposes of inspection. The Supplier, its employees, its agents, officers, sub-contractors and representatives shall be expressly prohibited from;
- 15.8.1 Offering or paying a bribe;
- 15.8.2 Requesting or receiving a bribe;
- 15.8.3 Bribing a foreign public official;
- 15.8.4 Failing to prevent bribery being undertaken on behalf of the Supplier.
- 15.9 The Supplier shall allow the Council's Director of Business Development or his/her nominated representative, access to such of records as he may reasonably require for audit purposes as stated in the Council's Constitution: -
- "Right of Access" – The Internal Audit Team shall have the authority to access all records, documents and correspondence relating to any financial or other transactions of the Council, to require and receive any such explanations as are necessary in respect of any matter under investigation.*
- 15.10 If at any time Supplier, its employees, its agents, officers, sub-contractors and representative's breach, fail to comply or act in default of a Council Policy, it shall immediately notify an authorised representative of the Council. The Council reserves its rights to deem that any failure to comply with clause 15 shall be deemed to be a material breach of the Contract.
- 15.11 The Council has whistleblowing and Anti-fraud and Corruption policies which are available on the Council's website [[www.south-norfolk.gov.uk](http://www.south-norfolk.gov.uk)] and Suppliers are expected to comply by those policies.
- 15.12 The Supplier shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015 [and maintain throughout the term of this agreement its own policies and procedures to ensure its compliance].
- 15.13 The Supplier shall implement due diligence procedures for its subcontractors and suppliers [and other participants in its supply chains], to ensure that there is no slavery or human trafficking in its supply chains and include in its contracts with its direct subcontractors and suppliers anti-slavery and human trafficking provisions that are at



least as onerous as those set out in clause 15.12.

## **16. Termination**

16.1 The Council may terminate the Contract immediately where:

16.1.1 The Supplier commits a material breach of any of the obligations of the Contract, and, fails to remedy it within 10 Business days after being given written notice of the breach and requiring it to be remedied;

16.1.2 The Supplier commits a material breach of any of the obligations of the Contract which is not capable of remedy

16.1.3 The Supplier is in persistent breach of any of the obligations of the Contract including any Key Performance Indicators and Service Level Agreements;

16.2 The Council may terminate the contract by notice in writing having immediate effect if:

16.2.1 The Supplier is dissolved, ceases to conduct substantially all of its business or becomes unable to pay its debts as they fall due;

16.2.2 Where the Supplier is a company, a receiver is appointed, of any of the property or assets of that Supplier;

16.2.3 The Supplier makes a composition or any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);

16.2.4 The Supplier, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation;

16.2.5 There is a change of control of the Supplier (within the meaning of section 1124 of the Corporation Tax Act 2010);

16.2.6 Has a winding-up order made (except for the purposes of amalgamation or reconstruction).

16.2.7 Has a provisional liquidator receiver or manager of its business of undertaking duly appointed.

16.2.8 The Supplier, being an individual, dies or as a result of illness or incapacity becomes incapable of managing his or her own affairs.

16.3 The Council may also terminate the Contract immediately where the Supplier is found to be in breach of its material obligations in clause 15.

16.4 The right of the Council to terminate the Contract is without prejudice to any other rights it may exercise to claim losses, expenses and damages and other remedies under the Contract.

## **17. Assignment and Sub-Contracting**

17.1 The Supplier shall not be entitled to assign the whole or any part of the Contract including sub-letting to a sub-contractor, without the written consent of the Council

and such consent if given, shall not relieve the Supplier from any liability or obligation under the Contract.

- 17.2 The appointment of sub-contractors or the performance of the Supplier's obligations by or through any person or entity other than the Supplier shall be subject to the prior approval of the Council.
- 17.3 The Council's approval shall not discharge the Supplier in any respect of its duty to properly and punctually to meet any obligations under the Contract and the Supplier shall remain fully responsible and liable to the Council for any performance or non-performance of such obligations, whether by the Supplier or any sub-contractor or agent.
- 17.4 The Supplier shall promptly and fully inform each other sub-contractor as to the provisions contained in the Contract (including these Terms and Conditions). The Supplier shall ensure that each sub-contract with its sub-contractors and other arrangements include each of the obligations of the Contract upon the Supplier and all other necessary changes, so that such sub-contractors and agents are bound to all obligations of the Contract, by incorporation of the same obligations in their sub-contract.

## **18. Force Majeure**

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

## **19. Notices**

- 19.1 All notices pursuant to clause 16 (Termination) shall be in writing to the address or fax number notified by each party and shall be delivered personally, sent by fax or sent by pre-paid, first-class post or recorded delivery.
- 19.2 With the exception of notices pursuant to clause 19.1 above, all notices may be served by email to the email address of the Supplier's Designated Representative and to the email address as the Council may notify to the Supplier. All notices shall refer to the relevant Order number and/or Contract Documentation.
- 19.3 A notice is deemed to have been received:
  - 19.3.1 In the case of fax, at the time of transmission provided a successful transmission report is received;
  - 19.3.2 In the case of pre-paid first-class post or recorded delivery, 48 hours from the date of posting provided the envelope containing the notice was correctly addressed and posted;
  - 19.3.3 In the case of email, when sent, provided a delivery receipt is obtained; and

19.3.4 If deemed receipt under this condition is not within business hours (meaning 9.00 am to 5.00 pm Monday to Friday on a day that is a Business day), at 9.00 am on the first business day following delivery.

## **20. General**

- 20.1 Each right or remedy of the Council under the Contract is without prejudice to any other right or remedy of the Council whether under the Contract or not and is in addition to any conditions implied in favour of the Council by Law.
- 20.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect. Failure or delay by the Council in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 20.3 Any waiver by the Council of any breach of, or any default under, any provision of the Contract by the Supplier shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 20.4 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 20.5 Nothing in this Contract grants exclusivity to the Supplier. The Council shall be entitled to Contract with any person or persons other than the Supplier for supply and delivery of similar services or materials during the Contract period.
- 20.6 The Supplier shall not without the previous written consent of the Council advertise or, except for the performance of the Contract, make known to third parties the fact that the Supplier supplies Goods or Services to the Council.
- 20.7 Nothing in the Contract is intended to, or shall operate to, create a partnership between the parties, or to authorize either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 20.8 The Contract constitutes the entire Contract between the Supplier and the Council relating to the sale and purchase of the Goods and/or Services.
- 20.9 No amendment or variation of the Contract shall be effective unless it is expressly agreed by an authorised representative of the Council in writing.
- 20.10 In the event that the Council in whole or in part is to become a unitary authority or merged with another authority by Implemental Order under the Local Government and Involvement in Public Health Bill 2007 or otherwise either party to this contract shall be entitled to serve notice terminating this contract on twelve months written notice.

## **21. Disputes and Jurisdiction**

- 21.1 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law.
- 21.2 If a dispute arises under the Contract, the parties shall meet to attempt in good faith to resolve such dispute. If they cannot resolve such dispute within 10 Business Days (or such other period as they agree) from the date of receipt of notice of a dispute by the receiving party, the dispute shall be referred to the senior management of the Supplier and the Council, who shall meet to negotiate or otherwise attempt to resolve such dispute within 10 Business Days of the date of receipt of notice of the meeting by the receiving party.
- 21.3 If after 28 days from the date of first notification to the receiving party of the dispute, the parties have not resolved the dispute or have failed to comply with the clause 21.1, the parties may if both agree or either party may, refer the matter to an Adjudicator.
- 21.4 The Adjudicator nominated to consider a dispute referred to him shall be selected by agreement between the parties and in the absence of agreement within 10 Business Days of the notification of any dispute by one party to the other the Adjudicator shall be appointed by the President for the time being of the Law Society (or in the event of his incapacity by his deputy).
- 21.5 Within 5 Working Days of appointment in relation to a particular dispute, the Adjudicator shall require the parties to submit in writing their respective arguments. The Adjudicator shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the dispute.
- 21.6 In any event, the Adjudicator shall provide to both parties his written decision on the dispute, within 20 Business Days of appointment (or such other period as the parties may agree after the reference or 42 days from the date of reference if the party which referred the dispute agrees).
- 21.7 Unless and until revised, cancelled or varied by the Adjudicator, the Adjudicator's decision shall after 10 Business Days of it being provided become binding on both parties who shall forthwith give effect to the decision.

## Schedule 1

### Data Protection Processor Particulars

| Description                           | Details   |
|---------------------------------------|---|
| Subject matter of the processing      | <i>This should be a brief description of what the processing is about ie what it covers]</i>  |
| Duration of the processing            | <i>[Clearly set out the duration of the processing including start/end dates]</i>   |
| Nature and purposes of the processing | <i>[Please be as specific as possible ensuring you cover all intended purposes.<br/>The nature of the processing means any operation such as collection, recording,</i> |

|   |  |
|---|--|
|   | <i>storing,, adapting, altering, retrieving, consulting, using, disclosing, disseminating, restricting, erasing, destroying or otherwise processing.]</i>                                    |
| Type of Personal Data   | <i>[Examples include: name, address, date of birth, emergency contact, NI number, telephone number, salary, health, religion, ethnicity, 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, website users etc]</i> |
| Plan for return and destruction of the data once the processing is complete UNLESS requirement under relevant law to preserve that type of data | <i>[Describe how long the data will be retained for, and how it will be returned or destroyed</i>  |

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