

# Rushmoor Borough Council

## Standard terms and conditions of purchase

### 1 Definitions

The following words shall have the following meanings:

**"Conditions"**

means the terms and conditions of purchase set out in this document;

**"Contract"**

means the contract for the purchase of the Goods and/or the supply of the Services and/or the carrying out of Works comprising the Purchase Order and (subject to Condition 3) these Conditions, the Specification and any proposal or offer from the Contractor in relation to the Goods, Services and / or Works to the extent it does not conflict with, or in anyway limit, any documents issued by the Council;

**"Contractor"**

means the entity to whom the Purchase Order is addressed;

**"Controller", "Processor", "Data Subject", "Personal Data", "Personal Data Breach", "Data Protection Officer"**

have the same meaning as set out in the GDPR.

**"Council"**

means Rushmoor Borough Council;

**"Data Protection Legislation"**

means (i) the General Data Protection Regulation (Regulation (EC) 2016/679 (**GDPR**), the Law Enforcement Directive (Directive( EU) 2016/6900 (**LED**) and any national implementing laws, as amended from time to time, (ii) the Data Protection Act 2018 (**DPA 2018**) (subject to Royal Assent) to the extent that it relates to the processing of personal data and privacy (iii) all applicable law about the personal data and privacy, including in each of (i), (ii) and (iii) all relevant regulatory policy, mandatory guidance and codes of practice.

**"Data Loss Event"**

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

**"Data Subject Request"**

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

**"Data Protection Impact Assessment"**

means an assessment by the Contractor of the impact of the envisaged processing on the protection of Personal Data.

**"Deliverables"**

means any records, reports, documents, papers, drawings, designs, photos, graphics, logos, typographical arrangements, software, invention, development, improvement or innovation and all other materials in whatever form, including but not limited to hard copy and electronic form, prepared by the Contractor in the provision of the Works, Goods and/or Services;

**"Delivery Address"**

means the address stated as such in the Contract;

**"Goods"**

means the goods (including any instalment of the goods or any part of them) described in the Purchase Order;

**"Joint Controllers"**

where two or more Controllers jointly determine the purpose and means of processing

**"Price"**

means the price of the Goods, Services and/or the Works inclusive of all charges and duties excluding value added tax;

**"Protective Measures"**

means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the measures adopted by it.

**"Purchase Order"**

means the Council's purchase order;

**"Services"**

means the services (including any part of them) described in the Purchase Order;

**"Specification"**

includes any plans, drawings, data or other information provided by the Council relating to the Goods, Services and/or Works (including without limitation in relation to any data processing) ;

**"Sub-Processor"**

means any third party appointed to process Personal Data on behalf of the Contractor related to the Contract.

## **"Works"**

means the works (including any part of them) described in the Purchase Order.

## **2 Interpretation**

- 2.1 Any reference in these Conditions to legislation shall be construed as a reference to that legislation as amended, re-enacted, replaced or extended.
- 2.2 The headings in these Conditions are for convenience only and shall not affect their interpretation.

## **3 Conditions Applicable**

- 3.1 Except where the Council has provided a different set of terms and conditions in its request for quotation or invitation to tender these Conditions (subject to Condition 3.3) shall apply for the purchase of Goods/Services/Works from the Contractor to the exclusion of all other terms or conditions.
- 3.2 Dispatch or the commencement of performance of the Goods/Services/Works shall be deemed conclusive evidence of the Contractor's acceptance of these Conditions.
- 3.3 Any variation of these Conditions shall have no effect unless agreed in writing between the parties.

## **4 Specification**

- 4.1 The Contractor shall provide the Goods, Services and/or Works and any Deliverables related to them strictly in accordance with the Contract. If the Council has accepted in writing the Contractor's written quotation/proposal then that shall apply in addition to the extent it does not conflict with or in anyway limit the Council's requirements as described in the Purchase Order and / or any Specification.
- 4.2 The Contractor shall comply with all applicable legal requirements, standards and codes of practice concerning the production, packaging, and delivery of the Goods and/or performance of the Services and / or Works.
- 4.3 The Contractor shall not unreasonably refuse any request by the Council to inspect and/or test the Goods during production, processing and/or storage at the premises of the Contractor (or any third party) prior to dispatch, and the

Contractor shall provide the Council with all facilities reasonably required for inspection and/or testing

4.4 The Council shall not be bound to take delivery of any Goods which when inspected and/or tested as set out in Condition 4.3 are found to be defective.

4.5 All Goods, Services and / or Works supplied shall be in accordance with all representations, statements and/or warranties made by the Contractor, its servants and/or agents before the date of the Purchase Order (whether orally, in writing or in any of the Contractor's brochures, catalogues, advertisements or on its website) regarding the quality and fitness for purpose of the Goods/Services and/or Works.

## **5 Price and Payment**

5.1 The Price of the Goods, the Services and/or Works shall be as stated in the Purchase Order and shall be inclusive of all charges for packaging, shipping, carriage, insurance and delivery of the Goods to the Delivery Address, and any duties or levies other than value added tax.

5.2 No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in exchange rates or any other reason) without the prior written consent of the Council.

5.3 The Council shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Contractor.

5.4 If the Services or Works are anticipated to last longer than 30 days the Contractor may submit invoices for Services or Works provided on a monthly basis. Otherwise (unless the Council instructs differently) the Contractor shall send its invoice promptly to the Council after delivery of the Goods, Services and/or Works to the address indicated on front of the Purchase Order. Each invoice shall show:

- the Purchase Order number to which it relates;
- an invoice number;
- a full description of the Goods, Services and/or Works and/or the Services to which it relates;
- full details how the price has been calculated;
- any discount allowed;

- any VAT payable; and
- the contact details of the Council's authorised officer for the Contract (where known).

5.5 The Council shall consider and verify invoices in a timely manner and provided that the Goods, Services and / or (subject to Condition 11 below) Works have been provided to the Council's satisfaction the Council shall pay the Price within 30 days of receipt of a correct invoice.

5.6 The Council (subject to Condition 11 below) shall be entitled to set-off against any invoice, any amount due to the Council from the Contractor under the Purchase Order or any other contractual arrangement.

5.7 All invoices containing value added tax must conform to the requirements of HM Revenue and Customs.

## **6 Delivery**

6.1 The Goods shall be delivered to and/or the Services and/or the Works shall be performed at the Delivery Address on the date or within the period specified in the Purchase Order, and unless agreed otherwise in writing, during the Council's business hours.

6.2 Where the date of delivery of the Goods and/or performance of the Services and / or Works is to be determined after the date of the Purchase Order, the Contractor shall use all reasonable endeavours to agree the date, but in the event the parties cannot agree a date, the date specified by the Council acting reasonably shall be the date for delivery/performance.

6.3 A delivery note specifying the Purchase Order number shall accompany each delivery or consignment of the Goods, and must be displayed prominently. The Contractor shall ensure all containers of hazardous goods shall show prominent and adequate warnings and that all product data sheets required by legislation are provided.

6.4 If the Goods are to be delivered and/or the Services and/or the Works are to be performed by instalments, the Contract shall be treated as a single contract and shall not be severable.

6.5 The Council shall be entitled to reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any

Goods until the Council has had reasonable time to inspect them following delivery. The Contractor shall be liable to make good (whether by repair or replacement) any Goods which are damaged in transit and unless otherwise instructed shall promptly replace any Goods which fail to arrive.

- 6.6 The Contractor shall supply the Council in good time with any instructions or other information required to enable the Council to accept delivery of the Goods and/or performance of the Services and/or use the Works.
- 6.7 The Council shall not be required to return to the Contractor any packaging for the Goods, whether or not the Goods are accepted by the Council.
- 6.8 If the Goods are not delivered and/or the Services, and/or (subject to Condition 11) the Works are not performed by the due date then, without prejudice to any other remedy, the Council shall be entitled to deduct from the Price or, if the Council has already paid the Price, to claim from the Contractor an amount equal to the additional costs incurred by the Council as a result of the delay.
- 6.9 Risk of damage to or loss of the Goods shall pass to the Council upon delivery to the Council or on successful completion of any testing, whichever shall be the later. For the avoidance of doubt the Contractor shall remain liable for any latent defects which may appear in the Goods and/or the Works.
- 6.10 The property in the Goods shall pass to the Council upon delivery, unless payment for the Goods is made prior to delivery, in which case it shall pass to the Council once payment has been made. Where the Council pays for the Goods before delivery the Goods shall immediately become the absolute and unencumbered property of the Council on payment and the Contractor shall ensure that neither the Contractor nor any third party shall have any property in any part or all of the Goods. The Contractor shall mark such Goods so they are clearly identifiable as the property of the Council and shall store them separately from other goods.

## **7 Quality Assurance**

- 7.1 The Contractor shall operate a self-regulatory system of quality assurance in addition to any quality requirements in the Specification to ensure that the Goods, Services and/or Works are provided in accordance with the requirements of the Contract.

7.2 Without in anyway limiting the foregoing the Contractor shall ensure that any Deliverables are fit for the purpose for which the Council intends to use them.

## **8 Warranties**

8.1 The Contractor warrants and represents to the Council that the Goods (and where Works are being provided, items incorporated into the Works) supplied pursuant to the Contract shall:

- be of sound materials and first class workmanship;
- be equal in all respects to the samples, patterns, description or specification provided or given by either part
- if the purpose for which they are required is indicated in the Purchase Order or has otherwise been made known to the Contractor, whether expressly or by implication, be fit for that purpose
- be of satisfactory quality (within the meaning of the Sale of Goods Act 1979)
- be free from defects in design, material and workmanship; and
- comply with all statutory requirements and regulations relating to the sale of the Goods (or the supply of items being incorporated into Works)

8.2 The Contractor shall ensure that any Deliverables provided by the Contractor shall not infringe the intellectual property rights of any third party and shall not contain anything obscene, blasphemous, libellous or otherwise unlawful in the UK. The intellectual property rights in any Deliverables shall vest in the Council on creation. The Contractor shall ensure that any employees or third parties waive any moral rights they may have in relation to the Deliverables and the Contractor shall execute any documentation that the Council may reasonably require to ensure that the Council receives the benefit of this Condition.

8.3 The Contractor shall ensure that any Services and any Works shall be performed by appropriately trained and qualified personnel, with due care and diligence. The Contractor shall provide the Services and/or the Works to the standards which would reasonably be expected from a skilled and experienced contractor engaged in the provision of services similar to the

Services (or works similar to the Works (as the case may be)) under the same or similar circumstances.

8.4 Without prejudice to any other remedy, if any of the Goods and/or Services and/or Works are not supplied or performed in accordance with the Contract, then the Council shall be entitled:

- to require the Contractor to repair the Goods or to supply replacement Goods and/or Services and / or Works in compliance with the Contract within 7 days; and/or
- at the Council's sole option and whether or not the Council has previously required the Contractor to repair the Goods or to supply any replacement Goods and/or Services and/or Works, to treat the Contract as discharged by the Contractor's breach and require repayment of any part of the Price which has been paid.

## **9 Termination**

9.1 The Council shall be entitled to cancel the Contract in respect of all or part of the Goods, the Services and/or the Works by giving notice to the Contractor at any time prior to delivery or performance, in which event the Council's sole liability shall be to pay the Contractor the Price for the Goods and/or the Services and / or the Works in respect of which the Council has exercised its rights of cancellation, less the Contractor's net saving of cost arising from the cancellation.

9.2 The Council shall be entitled to terminate the Contract without liability to the Contractor by giving notice to the Contractor at any time if:

- the Contractor makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of a solvent amalgamation or reconstruction); or
- an encumbrancer takes possession of, or a receiver is appointed in relation to, any of the property or assets of the Contractor; or
- the Contractor ceases, or threatens to cease to carry on business; or



- the Contractor offers, gives, agrees to give to anyone any inducement or reward in relation to the Contract or any other contact with the Council (even if the Contractor does not know it has been done), the Contractor commits an offence under the Bribery Act 2010 or Section 117(2) Local Government Act 1972, or commits any fraud whether alone or in conjunction with others in connection with the Contract or any other contract with the Council; or
- the Council reasonably believes that any of the events mentioned above is about to occur in relation to Contractor and notifies the Contractor immediately; or
- the Contractor commits a breach of the Contract and fails to remedy the breach within 14 days of a written request to do so.

9.3 For the avoidance of doubt, where the Council terminates the Contract in accordance with the provisions of Condition 9.2, the Contractor shall compensate the Council for losses suffered as a result of termination and any previous breach of contract.

## **10 Indemnity and Insurance**

10.1 Without prejudice to any rights or remedies of the Council, the Contractor shall indemnify the Council and keep the Council indemnified in full against any expense, liability, loss, claim, fine, cost or proceeding whatsoever incurred by or made against the Council arising directly or indirectly out of the wrongful act, omission, default, breach of contract or negligence of the Contractor, its subcontractors, employees and/or agents in the course of the provision of the Goods, Services and/or Works or otherwise in connection with the Contract.

10.2 The Contractor shall take out and maintain, with a reputable company, public and employers' liability and other insurances necessary to cover the risks contemplated by the Contract and shall at the request of the Council produce the relevant policy or policies together with evidence of payment of the latest premium due thereunder. Unless the Council specifies otherwise in writing the Contractor shall maintain the following insurance levels:

- Public liability cover of at least £10 million;
- Employers' liability cover of at least £5 million;

- Where the Services or Works provided pursuant to the Contract are or include professional or consultancy services, the Contractor shall maintain professional indemnity cover of at least £2 million during the period of the supply and for 6 years thereafter;
- Where the Contract is for or includes the provision of Goods the Contractor shall maintain product liability insurance of at least £2 million.

## **11 Construction Contacts**

- 11.1 This Condition 11 shall only apply where the contract is a construction contract as defined in the Housing Grants Construction and Regeneration Act 1996 (the "Act"). Where it does apply it shall take precedence over Condition 5.5.
- 11.2 The due date of payment of any monies payable pursuant to the Contract for Works shall be the date of receipt by the Council of the Contractor's proper invoice in the form described in Condition 5.4 and with such supporting documentation as the Council may reasonably require (the "Due Date").
- 11.3 Within 5 days of the due date the Council shall give the Contractor notice of the amount of any payment to be made to the Contractor and the basis on which that amount was calculated.
- 11.4 The final date for payment of any sum payable pursuant to the Contract shall be 30 days after the due date (the "Final Date for Payment").
- 11.5 Any notice of withholding payment shall be given by the Council no later than 7 days before the final date for payment and shall specify the amount proposed to be withheld and the ground for withholding and, if more than one ground, each ground the amount attributable to it.
- 11.6 Any adjudication under the Act shall be governed by the Construction Industry Council model adjudication procedure current at the date of the relevant notice of adjudication subject to the following amendment: at the same time as he gives any decision the adjudicator shall give reasons for the decision in writing.
- 11.7 For the purpose of this Condition 11 time shall be reckoned in accordance with section 116(1) of the Act.

## **12 General**

### **Alienation prohibited without consent**

12.1 The Contractor shall not assign, novate, charge, sub-contract or otherwise transfer the whole or any part of the Contract without the prior written consent of the Council. In the event the Council consents to the use of sub-contractors the Contractor shall ensure that sub-contractors (of whatever tier) are paid within 30 days of a correct and valid invoice and that all invoices submitted by sub-contractors (of whatever tier) are considered and verified in a timely manner by the payer.

### **Notices**

12.2 Any notice about the Contract shall be sent by hand or by first class ordinary or guaranteed next day delivery post or transmitted by facsimile transmission or email and if so sent or transmitted to the address of the party shown on the Purchase Order, or to such other address as the party has notified to the other, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would be first be received by the addressee during normal business hours.

### **Waiver**

12.3 No waiver by the Council of any breach of the Contract by the Contractor shall be considered as a waiver of any subsequent breach of the same or any other provision. Any waiver given by the Council shall only be valid if given in writing.

### **Severance**

12.4 If any provision of these Conditions is held to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.

### **Freedom of Information**

12.5 The Contractor acknowledges that the Council is subject to the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR"). The Contractor consents to the Council disclosing, providing or publishing information provided by the Contractor in order for the Council to discharge its obligations under the FOIA and the EIR.

12.6 Notwithstanding any other provision of the Contract, the Contractor acknowledges and agrees that except for any information which is exempt

from disclosure in accordance with the provisions of the FOIA or the EIR the content of the Contract is not confidential information.

- 12.7 The Contractor acknowledges that the Council may be subject to governmental codes of practice or guidance relating to a transparency agenda, including the policy of publishing contracts and all other documents relating to public procurement activity, for example "The Local Government Transparency Code 2014". Accordingly and notwithstanding any other provision of the Contract, the Contractor consents to the Council publishing the Contract in whole or in part (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA or EIR redacted), including any variation to it and to publish amounts paid to the Contractor on its website. The Contractor shall assist and cooperate with the Council to enable the Council to publish the Contract in accordance with the transparency agenda.

#### **Confidentiality and Data Protection**

- 12.8 The Contractor shall not issue any press release or make any public statement concerning the Contract, the Council, its employees, agents, councillors, the Goods and/or Services and/or the Works without the prior written consent of the Council.
- 12.9 Where as part of the provision of the Goods, Works and/or Services the Contractor has access to information about people, it shall ensure that it complies with all applicable Data Protection Legislation.

#### **Whistleblowing policy and the prevention of fraud**

- 12.10 The Contractor shall ensure that its employees and/or agents are made aware of the Council's whistleblowing policy and that the details of this policy are fully explained to them, and the Contractor shall provide the Council with evidence of doing so upon request.
- 12.11 The Contractor shall ensure that it, its employees, subcontractors and/or agents report to the Council any genuine suspicions of fraud and corruption by anyone acting on behalf of the Council or who does business with the Council.
- 12.12 The Council is under a duty to protect the public funds it administers and consequently may use information about the Contractor for the prevention and detection of fraud. The Council may share (for such purposes) all such information with other bodies responsible for auditing or administering public

funds, including as part of the National Fraud Initiative (or any such initiative as may from time to time replace the same). Further information can be obtained from the Council's Audit Manager (01252 398399).

### **Human Rights**

12.13 The Contractor shall, and shall use reasonable endeavours to ensure that its employees, agents and subcontractors shall, at all times, act in a way which is compatible with the Convention Rights within the meaning of Section 1 of the Human Rights Act 1998.

### **Equal Opportunities**

12.14 The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010 and the Employment Equality (Age) Regulations 2007. The Contractor shall take all reasonable steps to secure the observance of these provisions by all its employees, sub-contractors and/ or agents involved in the provision of the Goods, Services and / or Works.

12.15 If either the Council's internal or external auditors or if the Local Government Ombudsman wishes to investigate any part of the Contract, the Contractor shall provide all such information, access and cooperation as those persons may reasonably require.

### **Entire Understanding**

12.16 The Contract constitutes the entire understanding between the parties relating to the subject matter of the Contract and, save as may be expressly referred to or referenced in the Contract, supersedes all prior representations, writings, negotiations or understandings, except in respect of any fraudulent misrepresentation made by either party

### **Third Party Rights**

12.17 No person shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the terms of the Contract.

### **Health and Safety**

12.18 Without prejudice to Condition 4.2 the Contractor shall comply with all applicable health and safety legislation and shall have in place appropriate health and safety policies. Whilst on Council premises the Contractor shall comply with the Council's health and safety policy. The policy is available for inspection however the Contractor shall be deemed to be aware of the requirements of the policy irrespective of whether it has inspected the policy.

12.19 During the provision of any Works the Contractor shall keep the site in an orderly state and shall provide and maintain at its own cost all lights, guards, fencing and warning signs necessary for the protection of the site and the safety and convenience of the public and others.

### **Proper Law of Contract**

12.20 The Contract shall be governed by and construed in accordance with English law. The Contractor and the Council submit to the exclusive jurisdiction of the English courts.

### **13 Data Processing**

13.1 This Condition only applies where the Contractor is processing Personal Data on behalf of the Council as part of, or ancillary to, the supply of Goods, Services and / or Works. For the purposes of the Data Protection Legislation, the Council is the Controller and the Contractor is the Processor.

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

13.3 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:

13.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;

13.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;

13.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and

13.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

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

13.4.1 process that Personal Data only in accordance with the Specification, 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;

13.4.2 which are appropriate to protect against a Data Loss Event which the Council may reasonably reject (but failure to reject shall not amount to the approval by the Council of the adequacy of the Protective Measures),:

13.4.2.1.1 nature of the data to be protected;

13.4.2.1.2 harm that might result from a Data Loss Event;

13.4.2.1.3 state of technological development; and

13.4.2.1.4 cost of implementing any measures;

13.4.3 ensure that :

- 13.4.3.1.1 the Contractor's staff and other workers do not process Personal Data except in accordance with the Contract (and in particular the Specification);
- 13.4.3.1.2 it takes all reasonable steps to ensure the reliability and integrity of the Contractor's staff and other workers who have access to the Personal Data and ensure that they:
  - 13.4.3.1.2.1 are aware of and comply with the Contractor's duties under this Condition;
  - 13.4.3.1.2.2 are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
  - 13.4.3.1.2.3 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 the Contract; and
  - 13.4.3.1.2.4 have undergone adequate training in the use, care, protection and handling of Personal Data;
- 13.4.4 not transfer Personal Data outside of the EU unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
  - 13.4.4.1.1 the Council or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Council;
  - 13.4.4.1.2 the Data Subject has enforceable rights and effective legal remedies;
  - 13.4.4.1.3 the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Council in meeting its obligations); and
  - 13.4.4.1.4 the Contractor complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
- 13.4.5 at the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.
- 13.5 Subject to Condition 13.6, the Contractor shall notify the Council immediately if it:
  - 13.5.1 receives a Data Subject Request (or purported Data Subject Request);
  - 13.5.2 receives a request to rectify, block or erase any Personal Data;
  - 13.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - 13.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under the Contract;
  - 13.5.5 receives a request from any third Party for disclosure of Personal Data



where compliance with such request is required or purported to be required by Law; or

- 13.5.6 becomes aware of a Data Loss Event.
- 13.6 The Contractor's obligation to notify under Condition 13.5 shall include the provision of further information to the Council in phases, as details become available.
- 13.7 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 Condition 13.5 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:
  - 13.7.1 the Council with full details and copies of the complaint, communication or request;
  - 13.7.2 such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - 13.7.3 the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 13.7.4 assistance as requested by the Council following any Data Loss Event;
  - 13.7.5 assistance as requested by the Council with respect to any request from the Information Commissioner's Office, or any consultation by the Council with the Information Commissioner's Office.
- 13.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this Condition. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
  - 13.8.1 the Council determines that the processing is not occasional;
  - 13.8.2 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
  - 13.8.3 the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 13.9 The Contractor shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor.
- 13.10 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 13.11 Before allowing any Sub-processor to process any Personal Data related to the Contract, the Contractor must:
  - 13.11.1 notify the Council in writing of the intended Sub-processor and processing;
  - 13.11.2 obtain the written consent of the Council;
  - 13.11.3 enter into a written agreement with the Sub-Processor which give effect to the terms set out in this Condition 13 such that they apply to the Sub-processor; and
  - 13.11.4 provide the Council with such information regarding the Sub-processor as the Council may reasonably require.
- 13.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 13.13 The Contractor may, at any time on not less than 42 days' notice, revise this



Condition by replacing it with any applicable controller to processor standard Conditions or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the Contract).

- 13.14 The parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than 42 days' notice to the Contractor amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 13.15 Where the parties include two or more Joint Controllers as identified by the Council the parties shall enter into a Joint Controller agreement

June 2018