

**THE LONDON BOROUGH OF**

**ADDITIONAL CONDITIONS OF CONTRACT**

**FOR CONSTRUCTION CONTRACTS**

## CONTENTS

### CLAUSE

1.	Definitions and Interpretation .....	1
2.	The Works and Coronavirus .....	5
3.	Compliance and change In Law .....	6
4.	Business continuity .....	7
5.	Equality and diversity .....	8
6.	Environmental policy.....	10
7.	Safeguarding children and vulnerable adults.....	10
8.	Whistleblowing, prevent and anti-slavery .....	11
9.	Freedom of information .....	13
10.	Data protection .....	14
11.	Data security.....	17
12.	Confidentiality .....	18
13.	Prevention of bribery.....	19

### SCHEDULE

Schedule 1 .....	<b>Error! Bookmark not defined.</b>
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## 1. Definitions and Interpretation

The definitions and rules of interpretation in this clause apply in the Contract.

**Bribery Act:** The Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

**Coronavirus:** the disease known as coronavirus disease (COVID-19) and the virus known as severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

**Coronavirus Event:** an event or delay caused by, or arising from or in relation to, a Coronavirus epidemic or pandemic that prevents or delays the performance of the Works or the performance of any obligations under the Contract, including (but not limited to):

- (a) absences or unavailability of the Contractor's Persons, and any loss of, or disruption to, any of their facilities;
- (b) any illness, quarantining, shielding or self-isolation (including, but not limited to, precautionary self-isolation) of the Contractor's Persons;
- (c) any recommended or mandatory measures introduced by the Government intended to prevent or delay the spread of Coronavirus;

**Confidential Information:** means all confidential information (however recorded or preserved) disclosed by a party or its representatives to the other party and that party's representatives in connection with the Contract, including but not limited to:

- (a) any information that would be regarded as confidential by a reasonable business person relating to:
  - (i) the business, affairs, customers, contractors or plans of the disclosing party; and
  - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;

- (b) any information developed by the Parties in the course of carrying out the Contract.

**Data Controller:** shall have the same meaning set out in the Data Protection Legislation.

**Data Processor:** shall have the same meaning set out in the Data Protection Legislation.

**Data Protection Legislation:** the Data Protection Act 2018, unless and until the GDPR is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 2018.

**Data Subject:** shall have the same meaning set out in the Data Protection Legislation.

**EIRs:** the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**FOIA:** The Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**Force Majeure Event:** any cause affecting the performance by a party of its obligations under the Contract arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding a Coronavirus Event or any industrial dispute relating to the Contractor, the Contractor's Person or any other failure in the Contractor's supply chain.

**General Change in Law:** a Change in Law where the change is of a general legislative nature, or which generally affects or relates to the supply of services which are the same as, or similar to, the Works.

**GDPR:** The General Data Protection Regulation ((EU) 2016/679).

**Information:** has the meaning given under section 84 of FOIA.

**Insolvency Event:** where:

- (a) the Contractor suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts;
- (b) the Contractor commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (c) a person becomes entitled to appoint a receiver over the assets of the Contractor or a receiver is appointed over the assets of the Contractor;
- (d) a creditor or encumbrancer of the Contractor attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within fourteen (14) days;
- (e) any event occurs, or proceeding is taken, with respect to the Contractor in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (d) (inclusive);
- (f) the Contractor suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

**Law:** any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Contractor is bound to comply;

**London Living Wage:** is the hourly rate of pay which is set by the Mayor of London and/or the Greater London Authority and/or another relevant person, body or agency (before tax, other deductions and any increase for overtime),  
**Personal Data:** shall have the same meaning as set out in the Data Protection Legislation.

**Prevent Guidance and Toolkit:** The Prevent Duty Guidance for England and Wales, available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/417943/Prevent\\_Duty\\_Guidance\\_England\\_Wales.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/417943/Prevent_Duty_Guidance_England_Wales.pdf)

as may be amended from time to time.

**Prevent Lead:** the officer of the Contractor responsible for implementation and dissemination of the Government Prevent Strategy, identified as such to the Employer.

**Prohibited Act:** the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Employer a financial or other advantage to:
  - (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;
- (c) committing any offence:
  - (i) under the Bribery Act;
  - (ii) under legislation or common law concerning fraudulent acts;

- (iii) defrauding, attempting to defraud or conspiring to defraud the Employer.
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above, if such activity, practice or conduct had been carried out in the UK.

**Request for Information:** a request for information or an apparent request for information under the Code of Practice on Access to Government Information, FOIA or the EIRs.

**Specific Change in Law:** a Change in Law which only affects or relates to the Employer and which would not affect the delivery of works that are identical or similar to the Works to other local authorities but excluding any Change in Law that would have been reasonably foreseeable at the Commencement Date by an experienced Contractor performing services similar to the Works.

## **2. The Works and Coronavirus**

- 2.1 The Contractor shall provide the Works, or procure that they are provided in compliance with The Health Protection (Coronavirus Restrictions) (England) Regulations 2020 as amended and applicable together with the Employer's policies or procedures for working during a Coronavirus epidemic or pandemic.
- 2.2 The Employer acknowledges that the Coronavirus pandemic has created uncertainty amongst Contractors, suppliers, contractors and local authorities alike. The Employer is also conversant with the government guidance in such circumstances and in particular the need to be flexible in both requiring the delivery of contracts and the manner in which the Contractors, suppliers and contractors should be paid.
- 2.3 The Contractor warrants and undertakes that as part of its delivery plan it has considered the ongoing implications of the Coronavirus pandemic on the performance of its obligations under the Contract and has (and shall continue to have) contingencies in place to address those in line with current Government Guidance.

- 2.4 If the Contractor considers that a Coronavirus Event or the development of the Coronavirus pandemic is likely to have an effect upon its ability to provide the Works which were not reasonably foreseeable at the time that the Contract was entered into and accordingly not included within its initial proposals or delivery plan, then the Contractor shall notify the Employer promptly, setting out why it considers that to be the case, the effect it would have on the provision of the Works and a proposal to mitigate the situation to secure continuity of service.
- 2.5 The Employer may within 5 Working Days of receiving the notice under clause 6.4, also put forward for consideration by the Contractor any proposals it considers are practicable and appropriate in the circumstances and meet with the Contractor within 5 Working Days to consider the proposals by the Contractor and the Employer's proposal (if any) with a view to agreeing a plan of action to mitigate the situation in line with the applicable Government Guidance at the time.
- 2.6 Any plan or actions agreed by the parties will be evidenced in writing signed by the parties and will form a part of the Contract for as long as the Coronavirus pandemic or the Coronavirus Event subsists.

### **3. Compliance and change In Law**

- 3.1 The Contractor shall give such reasonable co-operation and information in relation to the Works to such of the Employer's other contractors or agents or regulators or partners as the Employer may reasonably require for the purposes of enabling any such person to create and maintain any interfaces that the Employer may reasonably require.
- 3.2 The Contractor shall (at no additional cost to the Employer) at all times carry out and provide the Works in compliance with all applicable Laws. The Contractor shall maintain such records as are necessary pursuant to such applicable Laws and shall promptly on request make them available for inspection by any relevant authority that is entitled to inspect them and by the Employer (or its authorised representative).



- 3.3 The Contractor shall neither be relieved of its obligations to supply the Works in accordance with the terms of the Contract nor be entitled to an increase in the Charges as the result of:
- (a) a General Change in Law; or
  - (b) a Specific Change in Law.
- 3.4 Without prejudice to clause 3.3, the Contractor shall monitor and shall keep the Employer informed in writing of any changes in the applicable Laws which may impact the Works and shall provide the Employer with timely details of measures it proposes to take and changes it proposes to make to comply with any such changes.
- 3.5 The Contractor shall consult with the Employer (and wherever possible agree with the Employer) on the manner, form and timing of changes it proposes to make to meet any changes in applicable Laws where they would impact the Works. The Contractor shall not implement any change, without the Employer's prior written agreement, which would have an adverse effect on the Contractor's ability to provide the Works in accordance with the Contract.
- 3.6 Any change which impacts any part of the Works shall be agreed and documented in accordance with the change control procedure agreed by the Parties.
- 3.7 Without prejudice to the rest of this clause 3, the Contractor shall use all reasonable endeavours to minimise any disruption caused by any changes in applicable Laws introduced pursuant to this clause 3.

#### **4. Business continuity**

- 4.1 The Civil Contingencies Act 2004 requires the Employer to maintain plans to ensure that it can continue to perform all of its ordinary functions in the event of an emergency. The Contractor shall have in place prior to the Commencement Date, a robust business continuity plan that allows for the continued delivery of the Works following an emergency or disruptive occurrence. The business continuity plan shall set out the procedures and actions to be taken if a disruptive event occurs affecting the Works.

- 4.2 The Contractor shall make copies of its business continuity plan available to the Employer upon request.
- 4.3 The Contractor shall notify the Employer if an incident occurs which activates the business continuity plan, and details of how it managed any such incident and any subsequent amendments made to processes or systems.
- 4.4 The Contractor shall as a matter of course test its business continuity plan on a regular basis or when there has been any change to the mode or method in which the Works are provided or when there has been a change to any business processes or on the occurrence of any event which may increase the likelihood of the need to implement the business continuity arrangements. The Employer reserves the right to appoint a representative to attend any business continuity plan test undertaken by the Contractor.
- 4.5 The Contractor, on request by the Employer, shall provide evidence by way of a written report summarising the results of any business continuity plan test and shall promptly implement any actions or remedial measures which the Employer may consider to be appropriate as a result of such tests.
- 4.6 The Contractor shall undertake and be able to demonstrate to the Employer as required, a regular review process for its business continuity arrangements in relation to the performance of the Works.

## **5. Equality and diversity**

- 5.1 The Contractor shall at all times comply with the relevant requirements of equality legislation including the Equality Act 2010, and all relevant supporting codes of practice and any other relevant legal provisions pertaining to the equal opportunities of the Contractor's Persons, members of the public and others who may be affected by its performance of the Works. The Employer has legal obligations under equality legislation and these apply to and will be observed by the Contractor by virtue of it carrying out functions of a public nature.
- 5.2 The Contractor shall not unlawfully discriminate against, and will advance equality of opportunity and foster good relations between, people with protected characteristics on the basis of age, disability, gender reassignment,

marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation in recruitment and employment of employees or in carrying out the Works, procuring goods or delivering services or any function of a public nature.

- 5.3 The Contractor shall have regard to the Employer's Equality and Diversity Statement (as amended from time to time) and notified to the Contractor by the Employer.
- 5.4 The Contractor shall nominate a person responsible for equality and diversity matters to liaise as required with the Employer. The Contractor shall ensure that all the Contractor's Persons have an understanding of and comply with the requirements of the Employer's Equality and Diversity Statement and relevant equality legislation in performance of the Contract.
- 5.5 The Contract Administrator shall notify the Contractor in the event of non-compliance with equality and diversity matters which come to the Employer's attention and where appropriate shall allow the Contractor a reasonable period to rectify such failure. In the event of continued non-compliance with equality and diversity requirements the Contract Administrator shall be empowered to suspend the provision of the Works. The Contractor shall not resume provision of the Works until the Contract Administrator is satisfied that the non-compliance has been rectified.
- 5.6 If any court or tribunal, or the Equality and Human Rights Commission, should make any finding of unlawful discrimination against the Contractor or any of the Contractor's Persons, then the Contractor shall take all necessary steps to prevent recurrence of such unlawful discrimination. In such a case, the Employer will require the Contractor to provide full details and evidence of the steps taken to prevent such reoccurrence.
- 5.7 The Contractor's equality policy shall be set out in any instructions circulated to those members of the Contractor's Persons concerned with recruitment, training, and promotion; other employment issues and conduct in service delivery in relevant documentation available to its staff and others; and in its recruitment advertisements and other relevant literature. The Contractor may be required to provide to the Employer copies of such instructions, documents, advertisements and other literature.

Additional Conditions of Contract (Local Authority) for Construction Contracts

5.8 The Contractor shall with all relevant employment legislation including ensuring access to employee representation.

5.9 The Contractor shall at all times comply with the provisions of the Human Rights Act 1998 in the performance of the Contract. The Contractor shall also undertake, or refrain from undertaking, such acts as the Employer requests so as to enable the Employer to comply with its obligations under the Human Rights Act 1998.

## **6. Environmental policy**

6.1 The Contractor shall at all times at its own cost comply with the relevant requirements of the Environmental Protection Act 1990 and or any statutory amendment or re-enactment, Regulations, Statutory Instruments or Orders pertaining to the protection of the environment, water protection and disposal of waste.

6.2 The Contractor shall at all times at its own cost comply with the relevant requirements of the Climate Change Act 2008, and where appropriate have regard to the Energy Act 2008 and 2010 and or any statutory amendment or re-enactment, Regulations, Statutory Instruments or Orders pertaining to tackling climate change and addressing the national energy issues.

6.3 The Contract Administrator shall notify the Contractor in the event of non-compliance with environmental protection and climate change matters which come to the attention of the Employer, and where appropriate shall allow the Contractor a reasonable period to rectify such non-compliance. In the event of continued non-compliance the Contract Administrator shall be empowered to suspend the provision of the Works. The Contractor shall not resume provision of the Works until the Contract Administrator is satisfied that the non-compliance has been rectified.

## **7. Safeguarding children and vulnerable adults**

7.1 The Contractor shall:

- (a) ensure that all individuals engaged in delivering the Works are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service (DBS);

Additional Conditions of Contract (Local Authority) for Construction Contracts

- (b) monitor the level and validity of the checks under this clause 7.1 for each member of staff;
- (c) not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out regulated activity or who may otherwise present a risk to children and vulnerable adults.

7.2 The Contractor warrants that at all times for the purposes of the Contract it has no reason to believe that any person who is or will be employed or engaged by the Contractor in the provision of the Works is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

7.3 The Contractor shall immediately notify the Employer of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 7 have been met.

7.4 The Contractor shall refer information about any person involved in carrying out the Works to the DBS where it removes permission for such person to carry out the Works (or would have, if such person had not otherwise ceased to carry out the Works) because, in its opinion, such person has harmed or poses a risk of harm to the service users or children or vulnerable adults.

## **8. Whistleblowing, prevent and anti-slavery**

8.1 The Contractor will adopt and promote the Employer's Whistleblowing Policy notified to the Contractor from time to time.

8.2 The Contractor will inform the Contractor's Person that anyone of them who may have a concern about wrongdoing at work (i.e. activities that harm or may harm the Contractor's Person, service users, clients of the Employer, colleagues working for the Employer or the Employer itself), should report such concerns to the named persons within the Employer's Whistleblowing Policy. (Wrongdoing covers issues such as criminal offence, a failure to comply with a legal obligation, a miscarriage of justice endangering the health

or safety of an individual, damages to the environment or the deliberate concealment of information tending to show one of these matters).

- 8.3 The Contractor will comply with the Public Interest Disclosure Act 1988 and shall have a policy in place to encourage workers to raise concerns about wrongdoing within the Contractor's organisation and to protect them from victimisation or discrimination.
- 8.4 The Contractor shall include in its policies and procedures and comply with the principles contained in:
- (a) the Government Prevent Strategy; and
  - (b) the Prevent Guidance and Toolkit.
- 8.5 The Contractor shall include in its policies and procedures a requirement for staff to complete appropriate training programmes in order to comply with the Government Prevent Strategy.
- 8.6 The Contractor shall appoint and must maintain a Prevent Lead. The Contractor must ensure that at all times the Prevent Lead is appropriately authorised and resourced to procure the full and effective performance of the Contractor's obligations under clause 8.4 and clause 8.5.
- 8.7 The Contractor shall notify the Contract Administrator in writing of any change to the identity of the Prevent Lead as soon as practicable, and in any event no later than ten (10) Working Days after the change.
- 8.8 In performing its obligations under the Contract, the Contractor shall:
- (i) 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;
  - (ii) comply with the Employer's Anti-Slavery Policy notified to it from time to time;
  - (iii) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and

- (iv) include in its contracts with its direct Sub-Contractors and contractors anti-slavery and human trafficking provisions that are at least as onerous as those set out in the Contract.

8.9 The Contractor shall indemnify the Employer against any losses incurred by, or awarded against, the Employer as a result of any breach of the Anti-slavery Policy or the Modern Slavery Act 2015.

8.10 The Employer may terminate the Contract with immediate effect by giving written notice to the Contractor if the Contractor commits a breach of the Employer's Anti-Slavery Policy or the Modern Slavery Act 2015.

## **9. Freedom of information**

9.1 The Contractor acknowledges that the Employer is subject to the requirements of the FOIA and the EIRs. The Contractor shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Employer to enable the Employer to comply with its obligations under the FOIA and EIRs;
- (b) transfer to the Employer all Requests for Information relating to the Contract that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
- (c) provide the Employer with a copy of all Information belonging to the Employer requested in the Request For Information which is in its possession or control in the form that the Employer requires within five (5) Working Days (or such other period as the Employer may reasonably specify) of the Employer's request for such Information; and
- (d) not respond directly to a Request For Information unless authorised in writing to do so by the Employer.

9.2 The Contractor acknowledges that the Employer may be required under the FOIA and EIRs to disclose Information without consulting or obtaining consent from the Contractor. The Employer shall take reasonable steps to notify the Contractor of a Request For Information (in accordance with section 45 of the Secretary of State's Code of Practice on the Discharge of the Functions of

Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in the Contract) the Employer shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

## **10. Data protection**

- 10.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 10 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 10.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Employer is the data controller and the Contractor is the data processor. Schedule 1 (Data Processing Instructions) sets out the scope, nature and purpose of processing by the Contractor, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 10.3 Without prejudice to the generality of clause 10.1, the Employer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Contractor for the duration and purposes of the Contract.
- 10.4 Without prejudice to the generality of clause 10.1, the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under the Contract:
- (a) process that Personal Data only on the written instructions of the Employer (as set out in Schedule 1), unless the Contractor is required by the laws of any member of the European Union or by the laws of the European Union (**Applicable Laws**) applicable to the Contractor to otherwise process the Personal Data. Where the Contractor is so required, it shall promptly notify the Employer before processing the Personal Data, unless prohibited by the Applicable Laws;
  - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Employer, 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) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Employer has been obtained and the following conditions are fulfilled:
  - (i) the Employer or the Contractor has provided appropriate safeguards in relation to the transfer;
  - (ii) the Data Subject has enforceable rights and effective remedies;
  - (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - (iv) the Contractor complies with the reasonable instructions notified to it in advance by the Employer with respect to the processing of the Personal Data;
- (d) notify the Employer immediately if it receives:
  - (i) a request from a Data Subject to have access to that person's Personal Data;
  - (ii) a request to rectify, block or erase any Personal Data;
  - (iii) receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation

(including any communication from the Information Commissioner);

- (e) assist the Employer in responding to any request from a Data Subject and in ensuring compliance with the Employer's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Employer immediately and in any event within 24 hours on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of the Contract;
- (g) at the written direction of the Employer, delete or return Personal Data and copies thereof to the Employer on termination or expiry of the Contract unless required by the Applicable Laws to store the Personal Data;
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 10 and allow for audits by the Employer or the Employer's designated auditor;
- (i) indemnify the Employer against any loss or damage suffered by the Employer of its obligations under this clause 10.

10.5 Where the Contractor intends to engage a Sub-Contractor and intends for that Sub-Contractor to process any Personal Data relating to the Contract, it shall:

- (a) notify the Employer in writing of the intended processing by the Sub-Contractor;
- (b) obtain prior written consent to the processing;
- (c) ensure that any Sub-Contract imposes obligations on the Sub-Contractor to give effect to the terms set out in this clause 10.

10.6 Either party may, at any time on not less than thirty (30) Working Days' written notice to the other party, revise this clause 10 by replacing it with any

applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the Contract).

- 10.7 The provisions of this clause 10 shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

## **11. Data security**

- 11.1 The Contractor shall comply with the Employer's security regulations notified to the Contractor from time to time, including any made for the purpose of the Data Protection Legislation. In particular, but without prejudice to the generality of the foregoing, the Contractor shall instruct the Contractor's Person and all its visitors not to read any documents however produced or the information displayed on any screen, or listen to the contents of any tape or electronically produced recording relating to the Works unless necessary in connection with the provision of the Works.
- 11.2 The Contractor will be required to abide by the current data security policies of the Employer (regarding control of access, update and back-up data) supplied to the Contractor from time to time.
- 11.3 The Contractor will not provide the Employer's data or information to another party or destroy or delete data unless otherwise instructed by the Contract Administrator in writing.
- 11.4 The Contractor shall maintain an audit log and a clear procedure for access control for all employees accessing information which relates to Personal Information of the Employer's employees, rate-payers or service users. The log shall include the purpose, dates and time of accessing information and shall be made available to the Employer for inspection upon request.
- 11.5 Where any of the Contractor's Person have been removed from the list of those having access to Personal Data, when their need to access the information no longer exists, the Contractor shall record this in a log which it shall make available to the Employer upon request.

## **12. Confidentiality**

12.1 Subject to clause 12.2, the parties shall keep confidential all matters relating to the Contract and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to any person of any matters relating hereto.

12.2 Clause 12.1 shall not apply to any disclosure of information:

- (a) required by any applicable law, provided that clause 9.2 shall apply to any disclosures required under the FOIA or the EIRs;
- (b) that is reasonably required by persons engaged by a party in the performance of such party's obligations under the Contract;
- (c) where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 12.1;
- (d) by the Employer of any document to which it is a party and which the parties to the Contract have agreed contains no Commercially Sensitive Information;
- (e) to enable a determination to be made under the dispute resolution procedure set out in the Contract);
- (f) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- (g) by the Employer to any other department, office or agency of the Government; and
- (h) by the Employer relating to the Contract and in respect of which the Contractor has given its prior written consent to disclosure.

12.3 On or before the Termination Date the Contractor shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the Employer's employees, rate-payers or service users, are delivered up to the Employer in a secure, agreed format or securely destroyed upon request by the Employer. The Contractor shall

provide the Employer with disposal logs (or certificates) within five (5) Working Days of the Employer instructing the Contractor to destroy the data.

### **13. Prevention of bribery**

13.1 The Contractor represents and warrants that neither it, nor to the best of its knowledge any Contractor's Person, have at any time prior to the Commencement Date:

- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

13.2 The Contractor shall not during the Term:

- (a) commit a Prohibited Act; and/or
- (b) do or suffer anything to be done which would cause the Employer or any of the Employer's employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.

13.3 The Contractor shall during the term of the Contract:

- (a) establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and
- (b) keep appropriate records of its compliance with its obligations under clause 13.3(a) and make such records available to the Employer on request.

- 13.4 The Contractor shall immediately notify the Employer in writing if it becomes aware of any breach of clause 13.1 and/or clause 13.2, or has reason to believe that it has or any of the Contractor's Person have:
- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
  - (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Contract or otherwise suspects that any person or party directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act.
- 13.5 If the Contractor makes a notification to the Employer pursuant to clause 13.4, the Contractor shall respond promptly to the Employer's enquiries, co-operate with any investigation, and allow the Employer to audit any books, records and/or any other relevant documentation.
- 13.6 If the Contractor is in Default under clause 13.1 and/or clause 13.2, the Employer may by notice:
- (a) require the Contractor to remove from performance of the Contract any Contractor's Person whose acts or omissions have caused the Default; or
  - (b) immediately terminate the Contract.
- 13.7 Any notice served by the Employer under clause 13.6 shall specify the nature of the Prohibited Act, the identity of the party who the Employer believes has committed the Prohibited Act and the action that the Employer has elected to take (including, where relevant, the date on which the Contract shall terminate).

**14. LONDON**

**14.1 The Contractor shall:**

- (a) pay all the Contractor's personnel, a wage which is equal to or exceeds the London Living Wage;
- (b) ensure that all staff employed or engaged by its Sub-Contractors (if any) are paid a wage which is equal to or exceeds the London Living Wage;
- (c) where the Contractor's personnel are paid the London Living Wage and not a salary higher than the London Living Wage, the Contractor shall increase the amount which it pays such personnel by the same amount as any increase to the London Living Wage within twelve (12) months of the date on which any increase in the London Living Wage is announced by the Greater London Authority;
- (d) provide the Employer such information concerning the London Living Wage rate as the Employer or its nominees may reasonably require from time to time, such information to be provided as part of the contract management requirements to include evidence that the Contractor is complying with the provisions of this clause 6.12;
- (e) co-operate with the Employer and provide all reasonable assistance to the Employer in monitoring the effect of the London Living Wage.

**14.2** Unless otherwise stated in this Agreement, if the London Living Wage increases during the term of this Agreement, the Contractor shall not be entitled to adjust the Charges and the parties agree and acknowledge that any increases in the London Living Wage anticipated during the term of this Agreement have been factored into the Charges.

**14.3**

## SCHEDULE 1

### 1. Data processing instructions

The Contractor shall comply with any further written instructions with respect of processing received from the Employer. Any such further instructions shall be incorporated into this Schedule and will form part of the Contract.

### 2. Processing by the Contractor

#### 2.1 Scope

Processing data as part of the [insert title of services] and related services delivered under the Contract as more particularly described in Schedule 1.

Commented [JM1]: For completion

#### 2.2 Nature

Collecting, recording, organising, structuring, storing, adapting or altering, retrieving, consulting on, using, disclosing by transmission, disseminating or otherwise making available, aligning or combining, restricting, erasing or destroying data.

#### 2.3 Purpose of processing

DN: Please be as specific as possible, but make sure that you cover all intended purposes. The purpose might include: employment processing, statutory obligation, recruitment assessment etc.

Please note the GDPR requirements relating to the legal basis and legitimate purposes for processing Personal Data:

- Necessary to deliver the Works.
- Compliance with a legal obligation which the Data Controller is bound to comply with.
- Protection of the vital interests of the Data Subject or another natural person.
- Consent.



## **2.4 Duration of processing**

DN: Clearly set out the duration of the processing including dates.

## **2.5 Types of Personal Data<sup>1</sup>**

- Name.
- Previous Name (if any).
- Commonly used name (if any).
- Address.
- Previous Address (if any).
- Forwarding Address (if any).
- Date of Birth.
- Signature.
- Nationality (\*).
- [National Insurance Number.]
- Telephone Number.
- Email Address.
- Employment status.
- Gender.
- Ethnic Origin.
- [Bank Details].

## **2.6 Categories of Data Subject<sup>2</sup>**

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<sup>1</sup> DN: Set out categories of personal data to be processed. Personal data is any information relating an identified or identifiable natural person. Examples here include: ID number, location data, on-line identifier, name, address, date of birth, email address, NI number, telephone number, pay, images, biometric data etc. Please note the GDPR requirements relating to processing special categories of data.

Additional Conditions of Contract (Local Authority) for Construction Contracts

- Contractor's Persons (including volunteers, agents, and temporary workers).
- Customers/ clients/service users.
- Members of the public.
- Employees/agents and contractors of the Employer.
- Children.
- Vulnerable adults/Young people.

## 2.7 Data retention

Describe how long the data will be retained for, how it will be returned or destroyed. Please check the Council's Data Retention Policy for guidance.

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<sup>2</sup> DN: Set out the categories of persons whose data you will be collecting. Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, Contractors, patients, students / pupils, members of the public, service users etc