

Union regulation relating to privacy. Where necessary the Council may require the Provider to enter into a separate data processing agreement, in the form as may be supplied by the Council.

2.2 Where the Provider is in possession of information about the Council that is by its nature confidential, or is designated as such by the other (whether in writing or orally), including this Contract ("Confidential Information"), the Provider undertakes to:-

- (i) keep it confidential;
- (ii) use it only in connection with providing the Goods or Services; and
- (iii) not to disclose it to any other person without the Council's prior written consent.

2.3 The Provider will be entitled to disclose Confidential Information:-

- 2.3.1 that is reasonably required by persons engaged in the performance of its obligations under the Contract.
- 2.3.2 any Confidential Information which a Party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of Condition 2.2.
- 2.3.3 any disclosure to enable a determination to be made under the Condition 9 (Dispute Resolution);
- 2.3.4 any disclosure which is required by any Legislation (including any order of a court of competent jurisdiction), and Parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of law;
- 2.3.5 any disclosure of Confidential Information which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party;
- 2.3.6 any disclosure by the Council of Confidential Information relating to the provision of Goods or Services and such other information as may be reasonably required for the purpose of conducting a due diligence exercise for any proposed successor provider should the Council decide to re-tender the Contract;
- 2.3.7 any examination pursuant to the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Council has used its resources;
- 2.3.8 disclosure to a Party's professional advisers; or
- 2.3.9 any disclosure by the Council under the Freedom of Information Act 2000.

2.4 The Provider shall return to the Council any data and Confidential Information belonging to the Council in the Provider's possession, power or control, either in its then current format or in a format nominated by the Council (in which event the Council will reimburse the Provider's reasonable data conversion expenses), together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Council.

2.5 Access to Information Legislation

2.5.1 The Parties recognise and accept that the Council is a Public Authority for the purposes of Access to Information Legislation, including the provisions of the Freedom of Information Act 2000 and Environmental Information Regulations 1998, and is obliged to disclose information held by itself, or on its behalf, unless the information falls under one or more exemptions, and that the Council may be required to disclose the information where the public interest test lies in disclosure.

2.5.2 In the event that the Provider receives either:-

(i) a request under the Access to Information Legislation where the requests relate to information of Personal Data processed in the course of carrying out its obligations under this Contract, the Provider shall within 2 working days of the receipt of either request for either the information or a request for an internal review against a decision to withhold information requested under the Access to Information Legislation, notify the Council with details of the request.

2.5.3 In the event that the Council receives either:-

- (i) a request under the Access to Information Legislation; or
- (ii) a request for an internal review in respect of a decision not to disclose information requested under the Access to Information Legislation, where the information requested is deemed to be exempt from disclosure, where the req

Equality Act 2010 and Equality Policy

4.5 The Provider shall adopt a policy to comply with all statutory obligations under the Equality Act 2010 and with all regulations and Codes of Practice, made under the Equality Act 2010.

Living Wage

4.6 Where instructed by the Council, the Provider shall implement the Council's rate of pay ("the Living Wage") to all staff engaged in the provision of Goods or Services as per Appendix 1 to this Contract.

Business Charter

4.7 Where instructed by the Council, the Provider shall comply with the Council's policy relating to the improvement of the economical, social and environmental well-being of Birmingham ("the Business Charter") as per Appendix 1 to this Contract.

Goods

4.8 The Provider shall in the provision of Goods:

- 4.8.1 supply to the Council the quantities of Goods stated in the Order or as may be specified elsewhere in writing;
- 4.8.2 exercise all the skill, care and diligence in the discharge of the supply of the Goods to be expected of an appropriately qualified competent supplier experienced in carrying out the supply of the relevant nature, size, scope and complexity as described in the Order;
- 4.8.3 ensure that the Goods delivered maintain the standards set out in the Order;
- 4.8.4 deliver the Goods to the premises identified on the Order.
- 4.8.5 execute all Orders with reasonable dispatch, or by the time specified (if time is specified) in the Order.
- 4.8.6 Provide all necessary labour, materials and equipment required for the off loading and placing in position of any Goods.
- 4.8.7 shall supply a delivery note, quoting the Order number with all Goods supplied.
- 4.8.8 The Goods shall be transported and off loaded at the sole risk of the Provider.
- 4.8.9 The Goods shall be at the Providers risk until delivery in accordance with the terms and conditions of the contract.

4.16 The Provider shall give to the Council, if so requested, full particulars of all persons who are or may be at any time engaged in the performance of this Contract.

4.17 The Provider shall be entirely responsible for the employment and conditions of service of the staff engaged for the purpose of this Contract.

4.18 When instructed by the Council The Provider shall ensure:-

- (a) that when, subject to Data Protection Legislation, all individuals involved in the provision of the Goods or Services, are subject to a valid [enhanced] disclosure check undertaken through the Disclosure and Barring Service established under the Protection of Freedoms Act 2012, including a check against the adults' barred and the children's barred list, as appropriate; and
- (b) that the level and validity of checks is monitored for each individual.

5. NOTICE

5.1 Any notice given under this Contract shall be in writing and signed by or on behalf of the Party giving it and shall be served by delivering it personally or sending it by pre-paid recorded delivery or registered post to the relevant Party at the address identified by the respective Parties or by sending it by fax to the fax number notified by the relevant Party.

5.2 Any such notice shall be deemed to have been received:-

- (a) if delivered personally, at the time of delivery;
- (b) in the case of pre-paid recorded delivery or registered post, [48] hours from the date of posting, or
- (c) in the case of fax, at the time of transmission]
- (d) [in the case of electronic mail, [at the time of transmission

5.3 In providing such service it shall be sufficient to prove that the envelope containing such notice was addressed to the address of the relevant Party and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery or registered post (or that the notice was transmitted by fax to the fax number of the relevant Party).

5.4 Either Party may change its address for service by serving a notice in accordance with this Condition

5.5 For the purposes of Condition 5.1 the address of the Parties shall be that contained in the Order.

Ownership and intellectual property

5.6 The copyright and all other intellectual property and proprietary rights whatsoever ("Intellectual Property Rights") in any document, material, idea, data or other information (including systems and methodologies, reports, preparatory works, drafts, working papers, correspondence and advice, patents, trademarks, designs, design rights, copyright, inventions, trade secrets, know-how and confidential information)) developed by the Provider in connection with the performance of the provision of Goods or Services shall vest in the Council upon the date of such production or provision. Where such IPR rights cannot be transferred, the Provider shall ensure that the Council has a royalty free licence to permit it to utilise such information. The Provider shall do all things reasonably necessary at the Council's request to perfect such vesting, both during and after the expiry of this Contract.

5.7 Condition 5.6 shall not apply to intellectual property rights not created by the Provider at the request of the Council or specifically for the purpose of performing the provision of Goods or Services and shall not, subject to Conditions 2.2, 2.3, 2.4 and 2.6 operate to prevent the Provider from making use of the principles and ideas created or produced by the Provider in any document, material, idea, data or other information, (including systems and methodologies, reports, preparatory works, drafts, working papers, correspondence and advice), except those created or supplied by the Council, in future assignments or in relation to potential future assignments.

5.8 Where pre-existing deliverables are incorporated into the provision of Goods or Services, the Council has a non-exclusive irrevocable worldwide royalty free licence to use, modify and distribute such pre-existing works, for the purposes of this Contract

Date:

- with or without the Provider's knowledge); or
 - e) If in relation to any contract with the Council the Provider or any person employed by the Provider or associated with the Provider shall have:
 - (i) committed an offence or offences under the Bribery Act 2010; or
 - (ii) given any fee or reward to an officer of the Council the acceptance of which is an offence under Section 117(2) Local Government Act 1972.
- 8.6 Such termination shall not affect the continuing application of any provisions of the Contract, which are expressed as or are capable of having effect after the termination of the Contract.

Consequences Of Termination

- 8.7 If this Contract is terminated in whole or in part the Council shall:
- a) only be liable to pay to the Provider for such elements of the Price, if any, that have properly accrued in accordance with the Contract or the affected part of the Contract up to the time of the termination; and/or
 - b) except for termination under Condition 8.1 (d), be entitled to deduct from any sum or sums which would have been due from the Council to the Provider under this Contract or any other contract and to recover the same from the Provider as a debt any sum in respect of any loss or damage to the Council resulting from or arising out of the termination of this Contract. Such loss or damage shall include the reasonable cost to the Council of the time spent by its officers in terminating the Contract and in making alternative arrangements for the supply of the provision of Goods or Services or any parts of them; and/or
 - c) where termination arises under Condition 8.1 (d), pay the Provider for any reasonable, direct and quantifiable costs reasonably incurred by the Provider due to early termination subject to the maximum liability provision in Condition 6.5 and/or
 - d) in the event that any sum of money owed by the Provider to the Council (the Provider's debt) exceeds any sum of money owed by the Council to the Provider (the Council's debt) under this Contract then the Council shall, at its sole discretion, be entitled to deduct the Provider's debt from any future Council's debt or to recover the Provider's debt as a civil debt.

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

Termination by the Provider

8.9

PLEASE CONSIDER APPLICATION OF THIS APPENDIX AND ADVISE THE PROVIDER AS TO ITS REQUIREMENTS TO COMPLY WITH CONDITIONS 4.6 & 4.7

APPENDIX 1

Date: December 2019

with all supporting documents in the possession or under the control of the Provider as may

Make accessible all sub-contracting opportunities to a diverse supply base including the third sector and local suppliers and provide mentoring and support to assist these organisations to tender for and deliver these supply opportunities where necessary.

Good Employer

Charter signatories will support staff development and welfare and adopt the Real Living Wage within their own organisation and within their supply chain.

Mandatory for all

Ensure that employees are given a fair reward for their labours and help foster a loyal and motivated workforce by paying the Real Living Wage.

Recognise employees' rights of freedom of association and collective bargaining, including not using blacklists in recruitment processes.

Provide a safe and hygienic working environment.

Comply with working hour's legislation and industry standards.

Not discriminate in respect of recruitment, compensation, access to training, promotion, termination of employment or retirement based upon race, caste, national origin, religion, age, disability (including learning disability), mental health issues, gender, marital status, sexual orientation, union membership or political affiliation.

Comply with employment and social security legislation;

Not employ harassment or intimidation.

Have and comply with a whistle blowing policy.

Green and Sustainable

Charter signatories will commit to protecting the environment, minimising waste and energy consumption and using other resources efficiently. These commitments will also apply to their supply chain.

Mandatory for all

Eliminate unnecessary waste by adopting the "reduce, reuse, recycle" philosophy.

Be a good neighbour, minimise negative local impacts (noise, air quality), improve green areas (e.g. biodiversity, visual attractiveness).

Reduce Carbon footprint – be aware of main impacts on carbon emissions including the indirect carbon used in manufacturing processes and the direct impact of operations and logistics.

Mandatory for above Threshold, and Voluntary Below Threshold

Measure carbon emissions and ensure a plan is being implemented using carbon measurement tools. Specific targets to be included in major contracts.

Protect the environment and minimise adverse impacts and instil this approach throughout suppliers' supply chains.

Ethical Procurement

Charter signatories will commit to employing the highest ethical standards in their own operations and those within their supply chain.

Mandatory for all

Work to the highest standards of business integrity and ethical conduct.

Pay their fair share of taxes

Ensure the well-being and protection of work forces which must be supported by robust systems and procedures.

Support the principles of the Universal Declaration of Human Rights;

Support the Fundamental International Labour Organisation Conventions;

Not engage in or support the use of child labour.

Adopt best practice when procuring goods and services e.g. procure low energy products and avoid the use of rainforest timber from unmanaged sources.

Pay suppliers no later than the terms stated in the primary contract.