



## Call-Off Contract for Connectivity for Educational Establishments

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# 1 Interpretation

## 1.1 In these terms and conditions:

“Agreement”	means the contract between (i) the Customer and (ii) the Supplier constituted by the Customer’s issue of a Purchase Order on the basis of the Supplier’s submitted quote;
“Charges”	means the charges for the Goods and or Services as specified in the Supplier’s quote;
“Confidential Information”	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
“Customer”	means a “User” as defined in the Invitation to Tender;
“Data Controller”	shall have the meaning as defined in the Data Protection Legislation;
“Data Processor”	shall have the meaning as defined in the Data Protection Legislation;
“Data Protection Legislation”	means the UK General Data Protection Regulation (UKGDPR) and the Data Protection Act 2018 and any successor legislation to the UK GDPR or the Data Protection Act 2018;
“Data Subject”	shall have the meaning as defined in the Data Protection Legislation;
“Date of Delivery”	means that date by which the Goods must be Delivered to the Customer, as specified in the Request for Quotes;
“Deliver”	means hand over the Goods to the Customer at the address and on the date specified in the Request for Quotes which shall include unloading and any other specific arrangements agreed in accordance with Clause 7. Delivered and Delivery shall be construed accordingly;
“Expiry Date”	means the date for expiry of the Agreement as set out in 1.5;
“FOIA”	means the Freedom of Information Act 2000;

“Goods”	means the goods to be supplied by the Supplier to the Customer under the Agreement;
“Information”	has the meaning given under section 84 of the FOIA;
“Key Personnel”	means any persons specified as such in the quote or otherwise notified as such by the Customer to the Supplier in writing;
“Party”	means the Supplier or the Customer (as appropriate) and “Parties” shall mean both of them;
“Personal Data”	means personal data (as defined in the Data Protection Legislation) which is processed by the Supplier or any Staff on behalf of the Customer pursuant to or in connection with this Agreement;
“Purchase Order”	means the Customer’s official request to purchase the Goods and or Services from the Supplier;
“Purchase Order Number” or “PO Number”	means the Customer’s unique number relating to the supply of the Goods and or Services;
“Request for Information”	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply);
“Request for Quotes”	means the request issued to the Supplier for a quote for Goods and or Services by the Customer;
“Services”	means the services to be supplied by the Supplier to the Customer under the Agreement;
“Specification”	means the specification for the Goods and or Services (including as to quantity, description and quality) as specified in the Request for Quotes or Purchase Order, as applicable;
“Staff”	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement;
“Staff Vetting Procedures”	means vetting procedures that accord with good industry practice or, where requested by the Customer, the Customer’s procedures

for the vetting of personnel as provided to the Supplier from time to time;

“Supplier” means the person named as Supplier in the Purchase Order;

“Term” means the period from the start date of the Agreement set out in 1.5 to the Expiry Date as such period may be extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement;

“VAT” means value added tax in accordance with the provisions of the Value Added Tax Act 1994;

“Working Day” means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

1.2 In these terms and conditions, unless the context otherwise requires:

1.2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;

1.2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;

1.2.3 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;

1.2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and

1.2.5 the word ‘including’ shall be understood as meaning ‘including without limitation’.

1.3 The charges for the Goods and or Services shall be as set out in the Supplier’s response to the Request for Quotes.

1.4 The specification of the Goods to be Delivered or Services to be supplied is as set out in the Request for Quotes.

1.5 The Term shall commence on the date specified in the Purchase Order and the Expiry Date shall be as described in the Request for Quotes.

1.6 Services to be performed at particular premises shall be performed at the location specified in the Request for Quotes.

1.7 The Goods shall be Delivered in accordance with the instructions included in the Request for Quotes, associated Specification and any other written instructions issued in writing by the Customer.

1.8 The addresses for notices of the Parties are:

## **Customer**

As stated in Schedule 6 Order Form

## **Supplier**

As stated in Schedule 6 Order Form

1.9 The Customer may require the Supplier to ensure that any person employed in the provision of the Goods and or Services has undertaken a Disclosure and Barring Service check. The Supplier shall ensure that no person who discloses that they have a conviction that is relevant to the nature of the Agreement, relevant to the work of the Customer, or is of a type otherwise advised by the Customer (each such conviction a “Relevant Conviction”), or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the supply of the Goods and or Services.

### **1.10 Payment**

1.10.1 All invoices must be sent, quoting a valid Purchase Order Number, to [invoices@norfolk.gov.uk](mailto:invoices@norfolk.gov.uk). You must be in receipt of a valid PO Number before submitting an invoice.

1.10.2 To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, PO Number item number (if applicable) and the details (name and telephone number) of your Customer contact (i.e. Contract Manager). Non-compliant invoices will be sent back to you, which may lead to a delay in payment.

## **2 Basis of Agreement**

2.1 The Purchase Order constitutes an offer by the Customer to purchase the Goods and or Services subject to and in accordance with the terms and conditions of the Agreement.

2.2 The Customer’s offer comprised in the Purchase Order shall be deemed to be accepted by the Supplier unless rejected by the Supplier in writing within 7 days of the date of the Purchase Order.

## **3 Supply of Goods and or Services**

3.1 In consideration of the Customer’s agreement to pay the Charges, the Supplier shall supply the Goods and or Services to the Customer for the Term subject to and in accordance with the terms and conditions of the Agreement.

Services

3.2 In supplying the Services, the Supplier shall:

3.2.1 co-operate with the Customer in all matters relating to the Services and comply with all the Customer’s instructions;

- 3.2.2 perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Supplier's industry, profession or trade;
  - 3.2.3 use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Agreement;
  - 3.2.4 ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
  - 3.2.5 comply with all applicable laws; and
  - 3.2.6 provide all equipment, tools and vehicles and other items as are required to provide the Services.
- 3.3 The Customer may by written notice to the Supplier at any time request a variation to the scope of the Services. In the event that the Supplier agrees to any variation to the scope of the Services, the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Customer and the Supplier.

#### Goods

- 3.4 In supplying the Goods, the Supplier shall co-operate with the Customer in all matters relating to the supply of Goods and comply with all the Customer's instructions.
- 3.5 The Supplier shall supply the Goods in accordance with the Specification. The Supplier warrants, represents, undertakes and guarantees that the Goods supplied under the Agreement shall:
- 3.5.1 be free from defects (manifest or latent), in materials and workmanship and remain so for 12 months after Delivery;
  - 3.5.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and comply with any applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;
  - 3.5.3 conform with the specifications (including the Specification), drawings, descriptions given in quotations, estimates, brochures, sales, marketing and technical literature or material (in whatever format made available by the Supplier) supplied by, or on behalf of, the Supplier;
  - 3.5.4 be free from design defects;
  - 3.5.5 be fit for any purpose held out by the Supplier or made known to the Supplier by the Customer expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgement. The Supplier acknowledges and agrees that the approval by the Customer of any designs provided by the Supplier shall not relieve the Supplier of any of its obligations under this sub-clause; and
  - 3.5.6 the Supplier itself shall comply with all applicable laws.

#### **4 Term**

- 4.1 The Agreement shall take effect on the date specified in 1.5 and shall expire on the Expiry Date, unless it is otherwise extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement.
- 4.2 The Customer may extend the Agreement for a period of up to 6 months by giving not less than 10 Working Days' notice in writing to the Supplier prior to the Expiry Date, except where other notice and/or extension periods are agreed by the Customer at the outset of the contract. The terms and conditions of the Agreement shall apply throughout any such extended period.

#### **5 Charges, Payment and Recovery of Sums Due**

- 5.1 The Charges for the Goods and or Services shall be as set out in the Supplier's response to the Request for Quotes and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Goods and or Services.
- 5.2 Services
- 5.2.1 Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 5.3 Goods
- 5.3.1 Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the supply of the Goods, including but not limited to the costs of packaging, insurance, delivery, unloading, stacking and carriage.
- 5.4 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Customer shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Goods and or Services.
- 5.5 Following Delivery of the Goods or supply of the Services the Supplier shall invoice the Customer as specified in the Agreement. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Goods and or Services supplied in the invoice period.
- 5.6 In consideration of the supply of the Goods and or Services by the Supplier, the Customer shall pay the Supplier the invoiced amounts no later than 30 days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number. For Services the Customer may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.
- 5.7 If the Customer fails to consider and verify an invoice in a timely fashion the invoice shall be regarded as valid and undisputed for the purpose of paragraph 5.6 after a reasonable time has passed.
- 5.8 If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Supplier shall not suspend the supply of the Goods and or

Services unless the Supplier is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 19.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 22.

- 5.9 If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.10 Where the Supplier enters into a sub-contract, the Supplier shall include in that sub-contract:
- 5.10.1 provisions having the same effects as clauses 5.5 to 5.9 of this Agreement; and
  - 5.10.2 a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effect as 5.5 to 5.10 of this Agreement.
  - 5.10.3 In this clause 5.10, "sub-contract" means a contract between two or more suppliers, at any stage of remoteness from the Customer in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.
- 5.11 If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with the Customer. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.

## **6 Cancellation of Goods**

- 6.1 The Customer shall have the right to cancel the order for the Goods, or any part of the Goods, which have not yet been Delivered to the Customer. The cancellation shall be made in writing. Without prejudice to the generality of the foregoing, the Customer shall pay such Charges or that part of the Charges for Goods which have been Delivered to the Customer or, on the deemed date of service of the notice of cancellation, are already in transit and the costs of materials which the Supplier has purchased to fulfil the order for the Goods and which cannot be used for other orders or be returned to the supplier of those materials for a refund. For the avoidance of doubt the Customer shall not be liable for any loss of anticipated profits or any consequential loss.

## **7 Delivery of Goods**

- 7.1 The Supplier shall Deliver the Goods to the Customer on or by the Date of Delivery. Unless otherwise agreed in writing by the Customer, Delivery shall be on the date and to the address specified in clause 1.7. Delivery of the Goods shall be completed once the completion of unloading the Goods from the transporting vehicle at the Delivery address has taken place and the Customer has signed for the Delivery.
- 7.2 Any access to the Customer's premises and any labour and equipment that may be provided by the Customer in connection with Delivery of the Goods shall be provided without acceptance by the Customer of any liability in respect of any actions, claims, costs and expenses incurred by third parties for any loss of damages to the extent that such loss or



damage is not attributable to the negligence or other wrongful act of the Customer or its servant or agent. The Supplier shall indemnify the Customer in respect of any actions, suits, claims, demands, losses, charges, costs and expenses, which the Customer may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of Delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Supplier or any of his sub-Suppliers.

- 7.3 Delivery of the Goods shall be accompanied by a delivery note which shows the Purchase Order Number and the type and quantity of the Goods and, in the case of part Delivery, the outstanding balance remaining to be Delivered.
- 7.4 Unless otherwise stipulated by the Customer in the Request for Quotes, Deliveries shall only be accepted by the Customer on Working Days and during normal business hours.
- 7.5 Where (i) the Supplier fails to Deliver the Goods or part of the Goods or (ii) the Goods or part of the Goods do not comply with the provisions of clause 3, then without limiting any of its other rights or remedies implied by statute or common law, the Customer shall be entitled:
  - 7.5.1 to terminate the Agreement;
  - 7.5.2 request the Supplier, free of charge, to deliver substitute Goods within the timescales specified by the Customer;
  - 7.5.3 to require the Supplier, free of charge, to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
  - 7.5.4 to reject the Goods (in whole or part) and return them to the Supplier at the Supplier's own risk and expense and the Customer shall be entitled to a full refund on those Goods or part of Goods duly returned;
  - 7.5.5 to buy the same or similar Goods from another supplier and
  - 7.5.6 to recover any expenses incurred in respect of buying the goods from another supplier which shall include but not be limited to administration costs, chargeable staff time and extra delivery costs.

## **8 Property and Guarantee of Title**

- 8.1 Without prejudice to any other rights or remedies of the Customer, title and risk in the Goods shall pass to the Customer when Delivery of the Goods is complete (including off-loading and stacking)
- 8.2 The Supplier warrants that:
  - 8.2.1 it has full clear and unencumbered title to all the Goods;
  - 8.2.2 at the date of Delivery of any of the Goods it shall have full and unrestricted right, power and authority to sell, transfer and deliver all of the Goods to the Customer. On Delivery the Customer shall acquire a valid and unencumbered title to the Goods.

## **9 Premises and equipment for the supplying of Services**

- 9.1 If necessary, the Customer shall provide the Supplier with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Customer's premises by the Supplier or the Staff shall be at the Supplier's risk.
- 9.2 If the Supplier supplies all or any of the Services at or from the Customer's premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Supplier shall vacate the Customer's premises, remove the Supplier's plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Customer's premises in a clean, safe and tidy condition. The Supplier shall be solely responsible for making good any damage to the Customer's premises or any objects contained on the Customer's premises which is caused by the Supplier or any Staff, other than fair wear and tear.
- 9.3 If the Supplier supplies all or any of the Services at or from its premises or the premises of a third party, the Customer may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
- 9.4 The Customer shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Customer's premises the Supplier shall, and shall procure that all Staff shall, comply with all the Customer's security requirements.
- 9.5 Where all or any of the Services are supplied from the Supplier's premises, the Supplier shall, at its own cost, comply with all security requirements specified by the Customer in writing.
- 9.6 Without prejudice to clause 3.2.6, any equipment provided by the Customer for the purposes of the Agreement shall remain the property of the Customer and shall be used by the Supplier and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Customer on expiry or termination of the Agreement.
- 9.7 The Supplier shall reimburse the Customer for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Supplier or any Staff. Equipment supplied by the Customer shall be deemed to be in a good condition when received by the Supplier or relevant Staff unless the Customer is notified otherwise in writing within 5 Working Days.

## **10 Staff and Key Personnel**

- 10.1 If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:
- 10.1.1 refuse admission to the relevant person(s) to the Customer's premises;
  - 10.1.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s); and/or
  - 10.1.3 require that the Supplier replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Customer to the person removed is surrendered,

and the Supplier shall comply with any such notice.

10.2 The Supplier shall:

10.2.1 ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;

10.2.2 if requested, provide the Customer with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Customer's premises in connection with the Agreement; and

10.2.3 procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer; and

10.2.4 ensure that all Staff comply with Schedule 8, Safeguarding Policy and Code of Conduct.

10.3 Any Key Personnel shall not be released from supplying the Services without the agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.

10.4 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Customer (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

## 11 Assignment and sub-contracting

11.1 The Supplier shall not without the written consent of the Customer assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Customer may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.

11.2 Where the Customer has consented to the placing of sub-contracts, the Supplier shall, at the request of the Customer, send copies of each sub-contract, to the Customer as soon as is reasonably practicable.

11.3 The Customer may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under the Agreement.

## 12 Intellectual Property Rights

12.1 All intellectual property rights in any materials provided by the Customer to the Supplier for the purposes of this Agreement shall remain the property of the Customer but the Customer hereby grants the Supplier a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement for the sole purpose of enabling the Supplier to perform its obligations under the Agreement.

12.2 All intellectual property rights in any materials created or developed by the Supplier pursuant to the Agreement or arising as a result of the provision of the Goods and or Services shall vest in the Supplier. If, and to the extent, that any intellectual property rights in such materials vest in the Customer by operation of law, the Customer hereby assigns to the

Supplier by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such intellectual property rights all its intellectual property rights in such materials (with full title guarantee and free from all third party rights).

12.3 The Supplier hereby grants the Customer:

12.3.1 a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-license) to use all intellectual property rights in the materials created or developed pursuant to the Agreement and any intellectual property rights arising as a result of the provision of the Goods and or Services; and

12.3.2 a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-license) to use:

(a) any intellectual property rights vested in or licensed to the Supplier on the date of the Agreement; and

(b) any intellectual property rights created during the Term but which are neither created or developed pursuant to the Agreement nor arise as a result of the provision of the Goods and or Services,

including any modifications to or derivative versions of any such intellectual property rights, which the Customer reasonably requires in order to exercise its rights and take the benefit of the Agreement including the Goods and or Services provided.

12.4 The Supplier shall indemnify, and keep indemnified, the Customer in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Goods and or Services, to the extent that the claim is attributable to the acts or omission of the Supplier or any Staff.

### **13 Governance and Records**

13.1 The Supplier shall:

13.1.1 attend progress meetings with the Customer at the frequency and times specified by the Customer and shall ensure that its representatives are suitably qualified to attend such meetings; and

13.1.2 submit progress reports to the Customer at the times and in the format specified by the Customer.

13.2 The Supplier shall keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Goods and or Services supplied under it and all payments made by the Customer. The Supplier shall on request afford the Customer or the Customer's representatives such access to those records as may be reasonably requested by the Customer in connection with the Agreement.

### **14 Confidentiality, Transparency and Publicity**

14.1 Subject to clause 14.2, each Party shall:

- 14.1.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
  - 14.1.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.
- 14.2 Notwithstanding clause 14.1, a Party may disclose Confidential Information which it receives from the other Party:
- 14.2.1 where disclosure is required by applicable law or by a court of competent jurisdiction;
  - 14.2.2 to its auditors or for the purposes of regulatory requirements;
  - 14.2.3 on a confidential basis, to its professional advisers;
  - 14.2.4 to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
  - 14.2.5 where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier's obligations under the Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 14.2.5 shall observe the Supplier's confidentiality obligations under the Agreement; and
  - 14.2.6 where the receiving Party is the Customer:
    - (a) on a confidential basis to the employees, agents, consultants and contractors of the Customer;
    - (b) on a confidential basis to any other body to which the Customer transfers or proposes to transfer all or any part of its business;
    - (c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
    - (d) in accordance with clause 15.
- and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this clause 11.
- 14.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information and the Supplier hereby gives its consent for the Customer to publish this Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. The Customer may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether

any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.

- 14.4 The Supplier shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Customer.

## **15 Freedom of Information**

- 15.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:
- 15.1.1 provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;
  - 15.1.2 transfer to the Customer all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
  - 15.1.3 provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
  - 15.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Customer.
- 15.2 The Supplier acknowledges that the Customer may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Supplier or the Goods and or Services (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances the Customer shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 15.3 Notwithstanding any other provision in the Agreement, the Customer shall be responsible for determining in its absolute discretion whether any Information relating to the Supplier or the Goods and or Services is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

## **16 Protection of Personal Data and Security of Data**

- 16.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This clause 16 is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation.
- 16.2 Where Personal Data is being processed under this Agreement by the Supplier acting as Data Processor then sub-clauses 16.3 to 16.7 inclusive of this Clause 16 and Schedule 2 to this Agreement shall apply. Sub-clause 16.9 shall apply regardless of whether the Supplier is acting as Data Processor or Data Controller

- 16.3 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and the Supplier is the Data Processor. The specification and/or Schedule 2 of this Agreement set out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 16.4 Without prejudice to the generality of clause 16.1, the Customer will ensure that it has all necessary consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this Agreement.
- 16.5 Without prejudice to the generality of clause 16.1, the Supplier shall, in relation to any Personal Data processed under this Agreement:
- 16.5.1 process that Personal Data only on the written instructions of the Customer;
  - 16.5.2 ensure that it has in place appropriate technical and organisational measures, 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
  - 16.5.3 ensure that all Staff who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
  - 16.5.4 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
    - (a) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
    - (b) the Data Subject has enforceable rights and effective legal remedies;
    - (c) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
    - (d) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
  - 16.5.5 at its own expense, enable the Customer to respond to any request from a Data Subject and assist the Customer in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - 16.5.6 notify the Customer immediately on becoming aware of a Personal Data breach or infringement of the Data Protection Legislation or this clause 16. In particular, the Supplier shall:
    - (a) describe the incident, the nature of the breach and the circumstances in clear and plain language;
    - (b) communicate the name and contact details of the data protection officer or other contact point where more information can be obtained;

- (c) describe the likely consequences of the personal data breach;
  - (d) describe the measures taken or proposed to be taken to address the personal data breach, including, where appropriate, measures to mitigate its possible adverse effects;
  - (e) if it is aware that detail described in clauses 16.5.6 (a) – 16.5.6 (d) is or is likely to be known in phases, it shall inform the Customer and give a timescale for each stage;
  - (f) not consider the matter reported unless the Supplier receives an acknowledgement from the Customer;
  - (g) provide such other information and assistance (including in any containment and investigation), and in such timescales, as the Customer may require or direct from time to time;
- 16.5.7 at the written direction of the Customer, delete Personal Data and copies thereof or return them to the Customer on termination of the Agreement unless required by law to store the Personal Data; and
- 16.5.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 16 and allow for audits by the Customer or the Customer's auditor;
- 16.5.9 tell the Customer immediately if it is asked to do something infringing Data Protection Legislation or other data protection law of the EU or a member state;
- 16.5.10 assist the Customer with its obligations as Data Controller as directed from time to time.
- 16.6 The Customer does not consent to the Supplier appointing any third-party processor of Personal Data under this Agreement without its express written consent. The Supplier confirms that it has entered or (as the case may be) will enter into a written agreement with the third-party processor incorporating terms which are substantially similar to those set out in this clause as between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 16.6.
- 16.7 The Parties may, at any time on not less than 30 days' notice, revise this clause 16 by replacing it with any applicable Controller to Processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).
- 16.8 Where the Customer is required to put remedial or other actions or safeguards into place as a result of a supervisory authority's or regulator's direction or decision, the Supplier shall assist and cooperate with the Customer at no further expense to make any changes, modifications or to take any action as may be directed (including within any timescale provided) from time to time.
- 16.9 The Supplier shall indemnify the Customer in respect of any actions, suits, claims, demands, losses, charges, costs and expenses, which the Customer may suffer or incur as a result of or in connection with any loss of data or any breach of this clause 16 occurring in the course



of the performance of the Service to the extent that any such loss is attributable to any act or omission of the Supplier or any of his sub-Suppliers.

## **17 Liability**

17.1 The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Agreement.

17.2 Subject always to clauses 17.3 and 17.4:

17.2.1 The aggregate liability of the Supplier in respect of damage to the Customer's property shall be limited to £2,000,000.00 (two million pounds)

17.2.2 the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Goods and or Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to the greater of [150%] of the Charges paid or payable to the Supplier or the sum of [£500,000] (five hundred thousand pounds); and

17.2.3 except in the case of claims arising under clauses 12.4, 16.9 and 21.3, in no event shall the Supplier be liable to the Customer for any:

- (a) loss of profits;
- (b) loss of business;
- (c) loss of revenue;
- (d) loss of or damage to goodwill;
- (e) loss of savings (whether anticipated or otherwise); and/or
- (f) any indirect, special or consequential loss or damage.

17.3 Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:

17.3.1 death or personal injury caused by its negligence or that of its Staff;

17.3.2 fraud or fraudulent misrepresentation by it or that of its Staff; or

17.3.3 any other matter which, by law, may not be excluded or limited.

17.4 The Supplier's liability under the indemnity in clause 12.4, 16.9 and 21.3 shall be unlimited.

## **18 Force Majeure**

18.1 Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more

than two months, either Party may terminate the Agreement by written notice to the other Party.

## **19 Termination**

- 19.1 The Customer may terminate the Agreement at any time by notice in writing to the Supplier to take effect on any date falling at least 1 month later than the date of service of the relevant notice.
- 19.2 Without prejudice to any other right or remedy it might have, the Customer may terminate the Agreement by written notice to the Supplier with immediate effect if the Supplier:
- 19.2.1 (without prejudice to clause 19.2.5), is in material breach of any obligation under the Agreement which is not capable of remedy;
  - 19.2.2 repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;
  - 19.2.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;
  - 19.2.4 undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;
  - 19.2.5 breaches any of the provisions of clauses 10.2, 14, 15, 16 and 20;
  - 19.2.6 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 19.2.6) in consequence of debt in any jurisdiction; or
  - 19.2.7 fails to comply with legal obligations in the fields of environmental, social or labour law.
- 19.3 The Supplier shall notify the Customer as soon as practicable of any change of control as referred to in clause 19.2.4 or any potential such change of control.
- 19.4 The Supplier may terminate the Agreement by written notice to the Customer if the Customer has not paid any undisputed amounts within 90 days of them falling due.
- 19.5 Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 2, 3.2, 9.1, 9.2, 9.6, 9.7, 10, 12, 13.2, 14, 15, 16, 17, 19.6, 20.4, 21.3, 22 and 23.7 or any other provision of the Agreement that either expressly or by implication has effect after termination.
- 19.6 Upon termination or expiry of the Agreement, the Supplier shall:

- 19.6.1 give all reasonable assistance to the Customer and any incoming supplier of the Goods and or Services; and
- 19.6.2 return all requested documents, information and data (including Personal Data) to the Customer as soon as reasonably practicable and in such a format requested by the Customer.

## **20 Compliance**

- 20.1 The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the Supplier in the performance of its obligations under the Agreement.
- 20.2 The Supplier shall:
  - 20.2.1 comply with all the Customer's health and safety measures while on the Customer's premises; and
  - 20.2.2 notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Customer's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 20.3 The Supplier shall:
  - 20.3.1 perform its obligations under the Agreement in accordance with all applicable equality Law and the Customer's equality and diversity policy as provided to the Supplier from time to time; and
  - 20.3.2 take all reasonable steps to secure the observance of clause 20.3.1 by all Staff.
- 20.4 The Supplier shall supply the Goods and or Services in accordance with the Customer's environmental policy as provided to the Supplier from time to time.
- 20.5 The Supplier shall comply with, and shall ensure that its Staff shall comply with, the provisions of section 182 of the Finance Act 1989.

## **21 Prevention of Fraud and Corruption**

- 21.1 The Supplier shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.
- 21.2 The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 21.3 If the Supplier or the Staff engages in conduct prohibited by clause 21.1 or commits fraud in relation to the Agreement or any other contract with the Customer the Customer may:

- 21.3.1 terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Goods and or Services and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or
- 21.3.2 recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this clause.

## **22 Dispute Resolution**

- 22.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.
- 22.2 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 22.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the "Mediator") chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
- 22.3 If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.

## **23 General**

- 23.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 23.2 A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 23.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 23.4 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 23.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- 23.6 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship

expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

- 23.7 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 23.8 If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

## **24 Notices**

- 24.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 24.3, e-mail to the address of the relevant Party set out in clause 1, or such other address as that Party may from time to time notify to the other Party in accordance with this clause.
- 24.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.
- 24.3 Notices under clauses 18 (Force Majeure) and 19 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 24.1.

## **25 Governing Law and Jurisdiction**

- 25.1 The validity, construction and performance of the Agreement, and all contractual and non-contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

## Annex 1 – Data Processing Schedule

1. Where Data Processing is involved in the Agreement then this Annex 1 shall have effect.
2. Where there is a data breach the Supplier will:
  - 2.1 notify the Norfolk County Council by phone (if the breach occurs during office hours) by contacting the Information Compliance Duty phone on 01603 222661 by speaking to the Team Compliance Manager or, in their absence, a Compliance Manger
  - 2.2 if out of office hours, notify Norfolk County Council by email immediately at [information.management@norfolk.gov.uk](mailto:information.management@norfolk.gov.uk) and by phone on 01603 222661 as soon as possible on the next working day by speaking to the Team Compliance Manager or, in their absence, a Compliance Manger
3. The Supplier shall comply with the below instructions and any further written instructions with respect to processing by the Customer.
4. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	Information about people, including personal information where relevant in order to provide the commissioned service as may be more specifically set out in the specification (if one issued).
Duration of the processing	For the term of the service for each individual or the term of the contract or agreement as appropriate plus any additional retention period required by the Customer.
Nature and purposes of the processing	<p>Collecting and recording information in order to provide the service, including any accessibility requirements to access the service.</p> <p>Collection and recording of information: storage in secure files either in locked cabinets, or password secured and encrypted computer storage. Disclosure must be between vetted staff only or with council employees and may be made using a secure transfer system as determined by the Customer. Data retrieval must be undertaken by authorised personnel only.</p> <p>Data must be retained for 6 years from the end of the contract unless otherwise agreed with the Customer. If the Customer so instructs the data should be securely destroyed using good industry practice at the end of this period.</p> <p>Information processed may be used for reporting of use of the service.</p>
Type of Personal Data	Name, preferred name, place of employment, gender, phone number, email address, , location data

Categories of Data Subject	staff, volunteers, customers.
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	In the event that the contract or agreement is ended, all data must be returned securely to the Data Controller within one calendar month by a method agreed at the time with the commissioner.