

# Standard Terms and Conditions

**THIS AGREEMENT** is made the \_\_\_\_\_ day of \_\_\_\_\_ Two thousand and twenty-six

**BETWEEN CYNGOR GWYNEDD** of Council Offices, Caernarfon, Gwynedd (“the Council”) and ..... (“the Contractor”) **WHEREAS** Gwynedd Council has agreed to appoint the Contractor to ..... in accordance with and subject to the terms of this agreement.

## DEFINITIONS

the “Council” means Gwynedd Council;

“Council’s Premises” means land or buildings owned or occupied by the Council;

“Confidential Information” means all information obtained by the Contractor from the Council or any other department or office of Her Majesty's Government relating to and connected with the Contract and the Services, including but not limited to the Contract itself and the provisions of the Contract;

the “Contract” means the agreement concluded between the Council and the Contractor for the supply of Services, including without limitation, the Conditions (to the extent that they are not expressly excluded or modified), all specifications, plans, drawings and other documents which are incorporated into the agreement;

the “Contractor” means the person who agrees to supply the Services and includes any person to whom all or part of the Contractor’s obligations are assigned pursuant to Condition 5;

“the Contract Price” means the price agreed in respect of the Services, excluding Value Added Tax;

"Council Property" means anything issued or otherwise furnished in connection with the Contract by or on behalf of the Council, including but not limited to documents, papers and other materials;

“Intellectual Property Rights” means patents, trade marks, service marks, design rights (whether registrable or not), applications for any of those rights, copyright, database rights, trade or business names and other similar rights or obligations, whether registrable or not, in any country, including but not limited to, the United Kingdom;

“Purchase Order” means the document so described by the Council to purchase the Services which makes reference to the Conditions:

the "Services" means the services to be supplied under the Contract as described in Schedule 1;

## INTERPRETATION

A reference to any statute, enactment, order, regulation or similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as subsequently amended or re-enacted;

The headings in these Conditions are for ease of reference only and shall not affect the interpretation or construction of the Contract;

References to “person”, where the context allows, includes a corporation or an unincorporated association.

## 2. Contract Period

From until subject to the provisions for earlier termination.

### **3. Acts by the Authority**

Any decision, act or thing which the Council is required to undertake or do, or authorised to do under the Contract, may be taken or done by any person authorised, either expressly or impliedly, by the Council to take or do that decision, act or thing.

#### **4. Service of Notices and Communications**

Any notice or other communication that either party gives under the Contract shall be made in writing and given either by hand, first class recorded postal delivery or email transmission. Notice given by hand or email shall be effective immediately, notice given by recorded postal delivery shall be effective two working days after the date of posting.

## 5. Assignment and Sub-contracting

- (1) The Contractor shall not give, bargain, sell, assign, sub-contract or otherwise dispose of the Contract or any part thereof without the previous agreement in writing of the Council.
- (2) The Contractor shall not use the services of self-employed individuals in connection with the Contract without the previous agreement in writing of the Council.
- (3) The Contractor shall be responsible for the acts and omissions of his sub-contractors as though they were his own.
- (4) The Council shall be entitled to assign any or all of its rights under the Contract to any Authority as defined in the Public Contracts Regulations 2015, provided that such assignment shall not materially increase the burden of the Contractor's obligations under the Contract.

## **6. Entire Agreement**

The Contract constitutes the entire agreement and understanding between the parties and supersedes all prior written and oral representations, agreements or understandings between them relating to the subject matter of the Contract provided that neither party excludes liability for fraudulent misrepresentations upon which the other party has relied.

## **7. Waiver**

- (1) The failure by either party to exercise any right or remedy shall not constitute a waiver of that right or remedy.
- (2) No waiver shall be effective unless it is communicated to the other party in writing.
- (3) A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

## **8. Severability**

If any Condition, clause or provision of the Contract not being of a fundamental nature is held to be unlawful, invalid or unenforceable by a court or tribunal in any proceedings relating to the Contract, the validity or enforceability of the remainder of the Contract shall not be affected. If the court finds invalid a provision so fundamental as to prevent the accomplishment of the purpose of the Contract, the parties shall immediately commence negotiations in good faith to remedy the invalidity.

## **9. Confidentiality**

- (1) The Contractor agrees not to disclose any Confidential Information to any third party without the prior written consent of the Council. To the extent that it is necessary for the Contractor to disclose Confidential Information to its staff, agents and sub-contractors, the Contractor shall ensure that such staff, agents and sub-contractors are subject to the same obligations as the Contractor in respect of all Confidential Information.
- (2) Condition 9(1) shall not apply to information which:
  - (a) is or becomes public knowledge (otherwise than by breach of these Conditions or a breach of an obligation of confidentiality);
  - (b) is in the possession of the Contractor, without restriction as to its disclosure, before receiving it from the Council;
  - (c) is required by law to be disclosed.

(3) The obligations contained in this Condition shall continue to apply after the expiry or termination of the Contract.

(4) The Contractor shall not communicate with representatives of the general or technical press, radio, television or other communications media, with regard to the Contract, unless previously agreed in writing with the Council.

(5) Except with the prior consent in writing of the Council, the Contractor shall not make use of the Contract or any Confidential Information otherwise than for the purposes of carrying out the Services.

(6) The Contractor acknowledge that the Council is subject to and bound by the provisions of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 consequently any provision or aspect of this agreement which imposes or purports to impose a requirement of confidentiality or which might be interpreted or is intended to create such a duty by implication or by operation of law shall be binding only in so far as it is consistent with the Council's obligations under the said legislation.

## **10. Amendments and Variations**

(1) No amendment or variation to the terms of the Contract shall be valid unless previously agreed in writing between the Council and the Contractor.

(2) If there is a variation between two versions of a document, for example, between a Welsh and English version, reference shall be made to the original version of the document in the case of any dispute or disagreement.

## **11. Invoices and Payment**

(1) The Contractor shall submit invoices at times or intervals agreed by the Council in the Contract or otherwise. The Contractor shall ensure that any invoice it submits sets out the Council's Purchase Order or contract number, the charges and, where not all of the Services have been completed, the relevant part of the charges with an appropriate breakdown of time worked, the part of the Services (if all the Services have not been completed) and period to which the invoice relates, and its confirmation that the Services (or relevant part of the Services referred to on the invoice) have been fully performed.

(2) In consideration of the provision of the Services by the Contractor, the Council shall pay the Charges after receiving a correctly submitted invoice as set out in Condition 11(1). Such payment shall normally be made within 30 days of receipt of the correctly submitted invoice.

(3) The Contractor shall not be entitled to charge for the provision of any services that are not part of the Services agreed within the Contract, unless the Contract has been properly varied in advance in accordance with Condition 10.

(4) The Council may reduce payment in respect of any Services that the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Council.

(5) For the purpose of calculating any statutory interest under the Late Payment of Commercial Debts (Interest) Act 1998, the relevant date for the payment of the debt shall be deemed to be the last day of a period of 30 days commencing on the day when the Council received the invoice, or, if the Contractor had not completed the Services (or the part of the Services to which the invoice relates) before submitting the invoice, the last day of a period of 30 days commencing on the day when the Contractor completed the Services, (or the part of the Services to which the invoice relates).

## **12. Accounts**

(1) The Contractor shall keep full and proper accounts, records and vouchers relating to all expenditure reimbursed by the Council and all payments made by the Council in respect of the Services.

(2) The Contractor shall permit the Council acting by its officers, servants and agents or independent auditor on request and at all reasonable times to examine all accounts, records and vouchers at the offices of the Contractor or at such other places as the Authority shall direct, and to take copies of such accounts, records and vouchers and the Contractor shall provide the Council or its independent auditor with such explanations relating to that expenditure as the Council may request.

(3) The Contractor shall ensure that the said accounts, records and vouchers are available for a period of six years after termination or expiry of the Contract.

## **13. Recovery of Sums Due**

(1) Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor, such sum may be deducted from any amount then due, or which at any time thereafter may become due, to the Contractor under this Contract or any other agreement or arrangement with the Council.

(2) Any over-payment by the Council to the Contractor whether in respect of the Charges or Value Added Tax shall be a sum of money recoverable from the Contractor pursuant to Condition 13(1) above or otherwise.

## **14. Value Added Tax**

(1) The Council shall pay to the Contractor, in addition to the Charges, a sum equal to the Value Added Tax chargeable on the value of the Services provided in accordance with the Contract.

(2) Any invoice or other request for payment of monies due to the Contractor under the Contract shall, if he is a taxable person, be in the same form and contain the same information as if the same were a tax invoice for the purposes of Regulations made under the Value Added Tax Act 1994.

(3) The Contractor shall, if so requested by the Council, furnish such information as may reasonably be required by the Council relating to the amount of Value Added Tax chargeable on the Services.

## **15. Provision of Services**

(1) The Contractor shall provide the Services in accordance with and as specified in the Contract to the satisfaction of the Council whose decision shall be final and conclusive. The Council shall have the power to inspect and examine the performance of the Services at the Council's Premises at any reasonable time or, provided that the Council gives reasonable notice to the Contractor, at any other premises where any part of the Services is being performed.

(2) The Contractor shall adhere to all obligations as referred to in Schedule 1.

(3) If the Council informs the Contractor that the Council considers any part of the Services to be inadequate or in any way differing from the Contract, and this is other than as a result of default or negligence on the part of the Council, the Contractor shall at his own expense re-schedule and perform the work correctly within such reasonable time as may be specified by the Council.

(4) The Council may at any time demand that the Contractor suspend the provision of the Services. If the Council exercises such right to suspend the provision of the Services or any part of them, or if the Contractor is delayed in proceeding with the provision of the Services by the Council (otherwise than as a consequence of a breach of the Contract, or a breach of duty or fault or negligence on the part of the Contractor), the Council shall be responsible for loss incurred by the Contractor as a result of such suspension or delay. Subject to the Contractor taking reasonable steps to mitigate its loss, the Contractor will be able to recover from the Council under this Condition only for those losses which:

(a) were reasonably foreseeable by the Council as arising as a direct result of the suspension or delay; and

(b) relate to the cost of any commitments entered into by the Contractor which cannot be met as a result of the suspension or delay and in respect of which the Contractor cannot obtain a refund (where the Contractor has already paid in relation to the commitment) or is obliged to pay (where the Contractor has not already paid in relation to the commitment).

The provisions of this Condition shall not apply where the reason for the suspension of the Services arises from circumstances beyond the control of the Council.

(5) If the performance of the Contract by the Contractor is delayed by reason of any act on the part of the Council or by industrial dispute (other than by an industrial dispute occurring within the Contractor's or its sub-contractor's organisation) or any other cause which the Contractor could

not have prevented then the Contractor shall be allowed a reasonable extension of time for completion. For the purposes of this Condition, the Contractor shall be deemed to have been able to prevent causes of delay that are within the reasonable control of the Contractor's staff, agents and sub-contractors.

(6) Timely provision of the Services shall be of the essence of the Contract, including in relation to commencing the provision of the Services within the time agreed or on a specified date.

(7) The Contractor warrants that it shall provide the Services with all due skill, care and diligence, and in accordance with good industry practice and legal requirements.

(8) Without prejudice to the provision of Condition 13(1), the Contractor shall reimburse the Council for all reasonable costs incurred by the Council which have arisen as a direct consequence of the Contractor's delay in the performance of the Contract which the Contractor had failed to remedy after being given reasonable notice by the Council.

## **16. Payment for Services**

In consideration for the services referred to under Condition 15 and Schedule 1, the Council shall pay the Contractor in accordance with Schedule 2.

## **17. Progress Report**

(1) Where formal progress reports are required by the Contract, the Contractor shall render such reports at such time and in such form as may be specified by the Council, or as otherwise agreed between the Contractor and the Council.

(2) The submission and acceptance of progress reports shall not prejudice any rights of the Council under the Contract.

## **18. Indemnities and Insurance**

(1) The Contractor shall hold harmless and indemnify the Council on demand from and against all claims, demands, proceedings, actions, damages, costs (including legal costs), expenses and any other liabilities arising from claims made by the Council's staff or agents, or by third parties, in respect of any death or personal injury, or loss or destruction of or damage to property, or any other loss, destruction or damage, including but not limited to financial losses which are caused, whether directly or indirectly, by the breach of contract or breach of duty (whether in negligence, tort, statute or otherwise) of the Contractor, its employees, agents or sub-contractors.

(2) The Contractor shall be liable to the Council for any loss, damage, destruction, injury or expense, whether direct or indirect, (and including but not limited to loss or destruction of or damage to the Council's property, which includes data) arising from the Contractor's breach of contract or duty (whether arising in negligence, tort, statute or otherwise).

(3) The Contractor shall effect with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor in respect of the indemnities provided under the Contract, which in any event shall not be less than £1,000,000, and shall at the request of the Council produce the relevant policy or policies together with receipt or other evidence of payment of the latest premium due there under.

(4) Nothing in these Conditions nor in any part of the Contract shall impose any liability on any member of the staff of the Council or its representatives in their personal capacity.

(5) The Contractor shall indemnify the Council against all proceedings, actions, claims, demands, costs (including legal costs), charges, expenses and any other liabilities arising from or incurred by reason of any infringement or alleged infringement of any third party's Intellectual Property Rights used by or on behalf of the Contractor for the purpose of the Contract, providing that any such infringement or alleged infringement is not knowingly caused by, or contributed to, by any act of the Council.

(6) The Council shall indemnify the Contractor against all proceedings, actions, claims, demands, costs (including legal costs), charges, expenses and any other liabilities arising from or incurred by reason of any infringement or alleged infringement of any third party's Intellectual Property Rights used at the request of the Council by the Contractor in the course of providing the Services, providing that any such infringement or alleged infringement is not knowingly caused by, or contributed to by, any act of the Contractor.

## **19. Termination for Insolvency or Change of Control**

(1) The Contractor shall notify the Council in writing immediately upon the occurrence of any of the following events:

a) where the Contractor is an individual, if a petition is presented for his bankruptcy, or he makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage his affairs; or

b) where the Contractor is not an individual but is a firm or a number of persons acting together, if any event in Condition 19(1) (a) or (c) occurs in respect of any partner in the firm or any of those persons, or if a petition is presented for the Contractor to be wound up as an unregistered company; or

c) where the Contractor is a company or limited liability partnership, if the company or limited liability partnership enters administration or passes a resolution to wind up or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge; or

d) the Contractor undergoes a change of control, where "control" has the meaning given in Sections 450 and 451 of the Corporation Tax Act 2010.

(2) After receipt of the notice under paragraph (1) above or earlier discovery by the Council of the occurrence of any of the events described in that paragraph, the Council may, by notice in writing to the Contractor, terminate the Contract with immediate effect without compensation to the Contractor and without prejudice to any right or action or remedy which may accrue to the Council thereafter. The Council's right to terminate the Contract under Condition 20(1)(d) will exist until the end of a period of three months starting from receipt of the notice provided by the Contractor pursuant to Condition 20(1), or such other period as is agreed by the parties.

## **20. Termination for Breach of Contract**

If either party commits a material breach of the Contract which is either not capable of remedy, or, if it is capable of remedy, he fails to remedy such breach within 28 days of being notified by the other party in writing to do so, that other party shall be entitled to terminate the Contract with immediate effect by notice in writing to the party that committed the material breach and without prejudice to any other rights or remedies of either party in respect of the breach concerned or any other breach of the Contract.

## **21. Cancellation**

The Council shall be entitled to terminate the Contract, or to terminate the provision of any part of the Services, by giving to the Contractor not less than 28 days' notice in writing to that effect without prejudice to any rights or remedies of the Contractor for breach of contract. Once it has given such notice, the Council may extend the period of notice at any time before it expires, subject to agreement on the level of Services to be provided by the Contractor during the period of extension.

## **22. Dispute Resolution**

(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 Contract.

(2) If the parties cannot resolve the dispute pursuant to paragraph (1) of this Condition, the dispute may, by agreement between the parties, be referred to mediation pursuant to paragraph (4) of this Condition.

(3) The performance of the Services shall not cease or be delayed by the reference of a dispute to mediation pursuant to paragraph (2) of this Condition.

(4) If the parties agree to refer the dispute to mediation:

- (a) in order to determine the person who shall mediate the dispute (the “Mediator”) the parties shall by agreement choose a neutral adviser or mediator from one of the dispute resolution providers listed by the Crown Commercial Service on its website or in its printed guidance on dispute resolution within 30 days after agreeing to refer the dispute to mediation;
- (b) the parties shall within 14 days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held;
- (c) unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings;
- (d) if the parties reach agreement on the resolution of the dispute within 60 days of the Mediator being appointed, or such longer period as may be agreed between the parties, the agreement shall be reduced to writing and shall be binding on the parties once it is signed by both the Council and the Contractor;
- (e) failing agreement within 60 days of the Mediator being appointed, or such longer period as may be agreed between the parties, either of the parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both parties.

(5) If the parties do not agree to refer the dispute to mediation, or if the parties fail to reach agreement as to who shall mediate the dispute pursuant to Condition 22(4)(a) or if they fail to reach agreement in the structured negotiations within 60 days of the Mediator being appointed or such longer period as may be agreed by the parties, then any dispute or difference between them may be referred to the courts.

## **23. Corrupt Gifts and Payments of Commission**

- (1) The Contractor shall not:
  - a) offer or give, or agree to give, to any person employed by or on behalf of the Council any gift or consideration of any kind as an inducement or reward for doing, or having done, or not doing, any act in relation to the obtaining or execution of this Contract or any other contract with the Council, or for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Council;
  - b) enter into the Contract or any other contract with the Council in connection with which commission has been paid, or agreed to be paid by him or on his behalf, or to his knowledge, unless, before the Contract is made, particulars of any such commission and the terms and conditions of any agreement for the payment thereof, have been disclosed in writing to any person duly authorised by the Council to act as its representative for the purpose of this Condition.

Nothing contained in this Condition shall prevent the Contractor paying such commission or bonuses to his own staff in accordance with their agreed contracts of employment.

(2) Any breach of this Condition by the Contractor, or by anyone employed by him or acting on his behalf (whether with or without his knowledge), or the commission of any offence by the Contractor or by anyone employed by him or acting on his behalf under the Bribery Act 2010, in relation to this Contract or any other contract with the Council, shall entitle the Council to terminate the Contract with immediate effect and recover from the Contractor the amount of any loss resulting from such termination and the amount of the value of any such gift, consideration or commission as the Council shall think fit.

(3) Where the Contract has been terminated under paragraph (2) of this Condition, there shall be deemed to be a failure to commence the provision of the Services, enabling the Council to terminate the Contract with immediate effect and the Council will not be obliged to pay the charges.

(4) In any dispute, difference or question arising in respect of:

- a) the interpretation of this Condition (except so far as the same may relate to the amount recoverable from the Contractor under paragraph (2) of this Condition in respect of any loss resulting from such determination of the Contract); or
- b) the right of the Council to determine the Contract; or
- c) the amount or value of any gift, consideration or commission, the decision of the Council shall be final and conclusive.

## **24. Special Provisions**

In the case of any conflict or inconsistency between these general Conditions and any specific terms of the Contract, the latter shall prevail.

## **25. Conflict of Interest**

(1) The Contractor shall ensure that there is no conflict of interest as to be likely to prejudice his independence and objectivity in performing the Contract and undertakes that upon becoming aware of any such conflict of interest during the performance of the Contract (whether the conflict existed before the award of the Contract or arises during its performance) he shall immediately notify the Council in writing of the same, giving particulars of its nature and the circumstances in which it exists or arises and shall furnish such further information as the Council may reasonably require.

(2) Where the Council is of the opinion that the conflict of interest notified to it under paragraph (1) above is capable of being avoided or removed, the Council may require the Contractor to take such steps as will, in its opinion, avoid, or as the case may be, remove the conflict and:

- a) if the Contractor fails to comply with the Council's requirements in this respect; or
- b) if, in the opinion of the Council, it is not possible to remove the conflict,

the Council may terminate the Contract immediately and recover from the Contractor the amount of any loss resulting from such termination.

(3) Notwithstanding Condition 25(2), where the Council is of the opinion that the conflict of interest which existed at the time of the award of the Contract could have been discovered with the application by the Contractor of due diligence and ought to have been disclosed as required by the tender documents pertaining to it, the Council may terminate the Contract immediately for breach of a fundamental condition and, without prejudice to any other rights, recover from the Contractor the amount of any loss resulting from such termination.

## **26. Rights of Third Parties**

It is not intended that the Contract, either expressly or by implication, shall confer any benefit on any person who is not a party to the Contract and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply.

## **27. Council Property**

(1) All Council Property shall remain the property of the Council and shall be used in the execution of the Contract and for no other purpose whatsoever except with the prior agreement in writing of the Council.

(2) All Council Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless he notifies the Council to the contrary within 14 days or such other time as is specified in the Contract.

(3) The Contractor undertakes to return any and all Council Property on completion of the Contract or on any earlier request by the Council.

(4) The Contractor shall, except as otherwise provided for in the Contract, repair or replace or, at the option of the Council, pay compensation for all loss, destruction or damage occurring to any Council Property caused or sustained by the Contractor, or by his servants, agents or sub-contractors, whether or not arising from his or their performance of the Contract and wherever occurring, provided that if the loss, destruction or damage occurs at the Council's Premises, this Condition shall not apply to the extent that the Contractor is able to show that any such loss, destruction or damage was not caused or contributed to by his negligence or default or the neglect or default of his servants, agents, or sub-contractors.

## **28. Data Protection**

### **DEFINITIONS:**

“Data Loss Event” shall mean any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract.

“Data Protection Legislation” shall mean (i) the Data Protection Act 2018 (“DPA”), (ii) the General Data Protection Regulation ((EU) 2016/679) (“GDPR”) and any national implementing laws, regulations and secondary legislation, for so long as the GDPR is effective in the UK, and (iii) any successor legislation to the DPA and the GDPR.

“Data Protection Impact Assessment” shall mean an assessment by the Controller of the impact envisaged processing on the protection of Personal Data.

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

“Joint Controllers” shall mean where two or more controllers jointly determine the purposes and means of processing.

“LED” shall mean Law Enforcement Directive (Directive (EU) 2016/680)

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

“Sub-processor” shall mean any third party appointed to process Personal Data on behalf of that Processor related to this Contract.

“Contractor’s Personnel” shall mean all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-processor engaged in the performance of its obligations under this Contract.

“Working Day” shall mean Monday to Friday, excluding any public holidays in England and Wales.

Words and expressions defined in the Data Protection Legislation and used in this Agreement shall have the meaning set out in the Data Protection Legislation including, for the avoidance of doubt, “Controller”, “Processor”, “Data Subject” and “Personal Data”.

## **DATA PROTECTION**

### **The Contractor's Obligations**

(1) The Council and the Contractor acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in Schedule 3 to this Contract by the Council and may not be determined by the Contractor.

(2) The Contractor shall notify the Council immediately if it considers that any of the Council's instructions infringe or are otherwise in contravention of the Data Protection Legislation.

(3) The Contractor shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:

- i.) a systematic description of the envisaged processing operations and the purpose of the processing;
- ii.) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- iii.) an assessment of the risks to the rights and freedoms of Data Subjects;
- iv.) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

(4) The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

i.) process that Personal Data only in accordance with Schedule 3 to this Contract unless the Contractor is required to do otherwise by law. If it is so required the Contractor shall promptly notify the Council before processing the Personal Data unless prohibited by law;

ii.) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:

- a. Nature of the data to be protected;
- b. Harm that might result from a Data Loss Event;
- c. State of technological development; and
- d. Cost of implementing any measures;

iii.) ensure that:

iv.) the Contractor's Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 3);

- a. It takes all reasonable steps to ensure the reliability and integrity of any of the Contractor's Personnel who have access to the Personal Data and ensure that they:
- b. Are aware of and comply with the Contractor's duties under this clause;
- c. Are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
- d. Are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council or as otherwise permitted by this Contract; and
- e. Have undergone adequate training in the use, care, protection and handling of Personal Data; and

v.) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions have been fulfilled:

- a. the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
- b. the Data Subject has enforceable rights and effective legal remedies;
- c. the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
- d. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data.

vi.) at the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the Contract unless the Contractor is required by law to retain the Personal Data;

vii.) in respect of any Personal Data it gathers from Data Subjects, ensure that it has all necessary notices and consents in place to enable lawful transfer of the data to the Council.

(5) Subject to clause (6), the Contractor shall notify the Council immediately if it:

- i.) receives a Data Subject Access Request (or purported Data Subject Access Request);
- ii.) receives 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;
- iv.) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
- v.) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by law;
- vi.) becomes aware of a Data Loss Event; or

vii.) becomes aware of any breach of the Data Protection Legislation.

(6) The Contractor's obligation to notify under clause (5) shall include the provision of further information to the Council in phases, as details become available.

(7) Taking into account the nature of the processing, the Contractor shall provide the Council with full assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under clause (5) (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:

- i.) the Council with full details and copies of the complaint, communication or request;
- ii.) such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- iii.) the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
- iv.) assistance as requested by the Council following any Data Loss Event or other breach of the Data Protection Legislation;
- v.) assistance as requested by the Council with respect to any request from the Information Commissioner's Office, or any consultation by the Council with the Information Commissioner's Office.

(8) The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:

- i.) the Council determines that the processing is not occasional;
- ii.) the Council determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- iii.) the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

(9) The Contractor shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor.

(10) The Contractor shall designate a data protection officer if required by the Data Protection Legislation.

(11) Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:

- i.) notify the Council in writing of the proposed Sub-processor and processing;
- ii.) obtain the written consent of the Council;

iii.) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 28 such that they apply to the Sub-processor; and

iv.) provide the Council with such information regarding the Sub-processor as the Council may reasonably require.

(12) The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.

### **Joint Obligations**

(13) The Council may, at any time on not less than 30 Working Days' notice, revise this clause 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 this Contract).

(14) The Council and the Contractor agree to take into account of any guidance issued by the Information Commissioner's Office. The Council may on not less than 30 Working Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

(15) The provisions of this clause shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

(16) In the event that the Council and the Contractor treat data so that each one becomes Controllers (and are not Joint Controllers) then the following clauses shall apply:

The Contractor shall at all times:

16.1 comply with its obligations under the Data Protection Legislation.

16.2 maintain an up to date registration with the Information Commissioner's Office, if required.

16.3 not transfer any Personal Data obtained pursuant to the Contractor's provision of the Services outside of the European Economic Area without the prior written consent of the Council.

16.4 maintain appropriate technical and organisational security measures in order to comply with its obligations under Article 32 of the GDPR, as applicable, and

16.5 fully indemnify the Council for any loss incurred to the Council caused by the Contractor being in breach of provisions 16.1 and 16.2 above.

(17) In the event of the Council and the Contractor acting as Joint Controllers then the following provisions shall apply:

17.1 Both the Council and the Contractor are to jointly make decisions for the purpose and the means by which data are processed. For the purpose of this Contract each party will be a Joint Controller.

17.2 Data Subjects are entitled to enforce their rights against each or all of the Joint Controllers. Each Joint Controller is liable for the entirety of the damage, and Article 82 (1) of the Regulations reads:

*“Any person who has suffered material or non-material damage as a result of an infringement of this Regulation shall have the right to receive compensation from the controller or processor for the damage suffered.”*

17.3 As per Recital 79 and Article 26 of the Regulations the Council and the Contractor will need to apportion data protection compliance responsibilities between themselves. In particular, each party shall adhere to the following principles:

- Providing information to Data Subjects under Article 13 and 14 of the GDPR.
- Responding to Data Subject Requests under Articles 15-22 of the GDPR.
- Notifying the Information Commissioner (and Data Subjects) where necessary about data breaches.
- Maintaining records of processing under Article 30 of the GDPR.
- Carrying out any required Data Protection Impact Assessment.
- The agreement must include a statement as to who is the point of contact for Data Subjects.

17.4 Each Controller may be exempt from liability in whole or in part, if it proves that it/he/she is not responsible for the event giving rise to the damage. It may be a defence to prove that liability arose in full or in part from force majeure. If one Joint Controller has paid full compensation it may bring proceedings against the other Joint Controller to recover their portion of the damage.

17.5 As a Controller the Contractor shall fulfil its obligations to the Information Commissioner’s Office by registering itself with the Information Commissioner’s Office as a Controller, if required, and paying the relevant fee to the Information Commissioner’s Office.

## **29. Non-discrimination**

The Contractor shall not unlawfully discriminate within the meaning and scope of the anti-discrimination legislation within the UK in relation to the provision of the Services or otherwise and shall take all reasonable steps to ensure that all servants, employees or agents of the Contractor and all sub-contractors employed in the execution of the Agreement do not unlawfully discriminate.

## **30. Welsh Requirements**

Depending on the subject matter of the Contract, the Council shall set language requirements that reflect the principles of the Council's Welsh Language Policy, the requirements of the Welsh Language (Wales) Measure 2011 and the Welsh Language Standards imposed on the Council as part of that Measure.

### **31. Modern Slavery Act 2015**

The Contractor must comply with the provisions of the Modern Slavery Act 2015. The Council may terminate the Contract by notice with immediate effect if the Contractor is the subject of formal investigation for or is the subject of prosecution for any offence under the Modern Slavery Act 2015.

### **32. Other Legislation**

The Contractor shall procure that its sub-contractors, agents and personnel, comply with all applicable law.

### **33. Ethical employment**

- (i) In performing the Contract the Contractor shall comply with all applicable statutory obligations for the time being in force including (without limitation) those relating to health, safety and welfare, environment, modern slavery, employment rights and relations, working rights, human rights, data protection and equality.
- (ii) The Contractor shall not operate its business in a manner which may in the opinion of the Council bring the Council into disrepute.
- (iii) The Contractor shall provide such information as the Council may from time to time request on the Contractor's supply chain for the goods/services provided.
- (iv) The Contractor shall provide such information as the Council may from time to time request in respect of any recruitment/ employment agencies used by the Contractor in order to provide the services including without limitation information on the recruitment/employment practices and procedures used by those agencies.
- (v) The Council shall be entitled to inspect and examine the Contractor's premises from which the services/goods are supplied/stored/provided on request and to speak directly to the Contractor's employees.
- (vi) The Council may terminate the Contract by notice with immediate effect if the Contractor is the subject of formal investigation, or the subject of a claim arising, in connection with its statutory obligations relating to employment rights, employment relations, working rights or equality.

### **34. Contractor Status**

Nothing in the Contract shall create or be construed as creating a partnership, joint venture, a contract of employment or relationship of employer and employee, or a relationship of principal and agent between the Council and the Contractor.

### **35. Transfer of Services**

(1) Where the Council intends to continue with services equivalent to any or all of the Services after termination or expiry of the Contract, either by performing them itself or by the appointment of a replacement contractor, the Contractor shall use all reasonable endeavours to ensure that the transition is undertaken with the minimum of disruption to the Council.

(2) The contractor shall co-operate fully during the transition period and provide full access to all data, documents, manuals, working instructions, reports and any information, whether held in electronic or written form, which the Council considers necessary.

### **36. Law and Jurisdiction**

The Contract shall be governed by and construed in accordance with English and Welsh law as applied in Wales and shall be subject to the exclusive jurisdiction of the courts of England and Wales.

## **SCHEDULE 1**

### **The Contractor's Obligations**

## **SCHEDULE 2**

### **Payment**

The Council shall pay the Contractor the sum of.....on the.....

## **SCHEDULE 3**

### **INSTANCES WHERE THE CONTRACTOR IS AUTHORISED TO PROCESS DATA**

#### **Processing, Personal Data and Data Subjects**

1. The Contractor shall comply with any further written instructions with respect to processing by the Council.
2. Any such further instructions shall be incorporated into this Schedule.

<b>DESCRIPTION</b>	<b>DETAILS</b>
Subject matter of the processing	The purpose of the Contract is to apply and implement retention labels within SharePoint Online (E3 license) to ensure that it complies with Cyngor Gwynedd's retention Schedule
Duration of the processing	The duration of the processing shall be for the duration of the Contract Period. During this time, Cyngor Gwynedd may conduct or be subject to an audit to review the Contractor's compliance with the GDPR, in accordance with clause 28 (Data Protection) and any other legislation applicable to the Services.
Nature and purposes of the processing	<p>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</p> <p>The processing will involve the disclosure and recording of personal data by electronic means</p>
Type of Personal Data	<p>The GDPR applies to “personal data” meaning any information relating to an identifiable person who can be directly or indirectly identified in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.</p> <p>The type of personal data covered by this agreement shall include (but shall not be limited to):</p> <ul style="list-style-type: none"><li>• Name</li><li>• Address</li><li>• Email address</li><li>• National Insurance Number</li></ul>

	<ul style="list-style-type: none"> <li>• Date of Birth</li> <li>• Pay Number</li> <li>• Employment details</li> <li>• Client details</li> <li>• Financial details</li> <li>• Pupil's details</li> </ul>
Categories of Data Subject	The Data Subjects covered by this agreement shall include: Gwynedd Council Staff Public / children
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	Read only access envisaged but if there is any sharing of data eg screenshots or via any other means, these to be deleted at the end of the agreement

IN WITNESS WHEREOF the Parties have executed this Agreement the day and year first before written

Signed for and on behalf of **Gwynedd Council** : -

.....

Authorised Signatory

Signed for and on behalf of :-

.....

Authorised Signatory

Signed by

.....

**DATED :** \_\_\_\_\_.

**BETWEEN**