

PROTECTION OF INFORMATION

1. Definitions and Interpretation

1.1 In this Schedule unless the context otherwise requires the following terms shall have the meanings given to them below:

“Confidential Information” means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, services, developments, trade secrets, intellectual property rights, know-how, personnel, customers and suppliers of either party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998.

“Data Subject” means the living individuals who are the subject of the Personal Data.

“DPA” means the Data Protection Act 1998 and any subordinate legislation made under that Act.

“EIR” means the Environmental Information Regulations 2004.

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and/or Codes of Practice issued by the Information Commissioner in relation to such legislation.

“Information” has the meaning given under Section 84 of the Freedom of Information Act 2000.

“Personal Data” means Personal Data as defined by the DPA together with any guidance and/or Codes issued by the Information Commissioner in relation to such definition.

“Processing” means processing as defined by Section 1 of the Data Protection Act 1998.

“Request for Information” shall have the meaning set out in FOIA or any apparent request for information under the FOIA, the Environmental Information Regulations or the Code of Practice issued under Section 45 of the FOIA.

1.2 The expiry or earlier termination of the Agreement shall not affect the continuing rights and obligations of the Service Provider and the Council under these Protection of Information clauses.

2. Confidentiality

2.1 Each party:-

- (a) shall treat all Confidential Information belonging to the other party as confidential and safeguard it accordingly; and
- (b) shall not disclose any Confidential Information belonging to the other party to any other person without the prior written consent of the other party, except to such persons and to such extent as may be necessary for the performance of the Agreement or except where disclosure is otherwise expressly permitted by the provisions of the Agreement.

2.2 The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from the Council under or in connection with the Agreement:-

- (a) is given only to such of its staff and professional advisors or consultants engaged to advise it in connection with the Agreement as is strictly necessary for the performance of the Agreement and only to the extent necessary for the performance of the Agreement;
- (b) is treated as confidential and not disclosed (without prior approval) or used by such staff or professional advisors or consultants otherwise than for the purposes of the Agreement.

2.3 The provisions of Clauses 2.1 and 2.2 shall not apply to any Confidential Information received by one party from the other:-

- (a) which is or becomes public knowledge (otherwise than by breach of this Clause);
- (b) which was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party;
- (c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- (d) is independently developed without access to the Confidential Information; or
- (e) which must be disclosed pursuant to a statutory, legal or Parliamentary obligation placed upon the party making the disclosure, including but not limited to any requirements for disclosure under the FOIA or the EIR.

2.4 Nothing in this Clause shall prevent the Council:-

- (a) disclosing any Confidential Information for the purpose of:-
 - (i) the examination and certification of the Council's accounts; or
 - (ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness of which the Council has used its resources; or
- (b) disclosing any Confidential Information obtained from the Service Provider:-
 - (i) to any other public authority; or
 - (ii) to any person engaged in providing any services to the Council for any purpose relating to or ancillary to the Agreement;

provided that in disclosing information under sub-paragraph (b) (i) or (ii) the Council discloses only the information which is necessary for the purpose concerned and requires that the Information is treated in confidence and that a confidentiality undertaking is given where appropriate.

2.5 The Service Provider shall immediately notify the Council of any breach of security in relation to Confidential Information and all data obtained in the performance of the Agreement and will keep a record of such breaches. The Service Provider will use its best endeavours to recover such Confidential Information or data however it may be recorded. The Service Provider will co-operate with the Council in any investigation that the Council considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.

2.6 In the event that the Service Provider fails to comply with this Clause 2 the Council reserves the right to terminate the Agreement by notice in writing with immediate effect.

3. Freedom of Information

3.1 The Service Provider acknowledges that the Council is subject to the requirements of the FOIA and the EIR and shall assist and co-operate with the Council (at the Service Provider's expense) to enable the Council to comply with these information disclosure requirements.

3.2 The Service Provider shall and shall procure that its sub-contractors shall:-

- (a) transfer the Request for Information to the Council as soon as practicable after receipt and in any event within two working days of receiving a Request for Information;
- (b) provide the Council with a copy of all information in its possession or power in the form that the Council requires within five working days (or such other period as the Council may specify) of the Council requesting that information; and
- (c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in the FOIA or the EIR.

3.3 The Council shall be responsible for determining at its absolute discretion whether any information (including information which is provided by the Service Provider to the Council in confidence):-

- (a) is exempt from disclosure under the FOIA or the EIR;
- (b) is to be disclosed in response to a Request for Information; and

in no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.

3.4 The Service Provider acknowledges that the Council may, acting in accordance with the FOIA or the EIR, be obliged to disclose information:-

- (a) without consulting with the Service Provider, or
- (b) following consultation with the Service Provider and having taken its views into account.

3.5 The Service Provider shall ensure that information produced in the course of the Agreement or relating to the Agreement is retained for disclosure for six years after expiry or earlier termination of the Agreement and shall permit the Council to inspect such records as requested from time to time.

4. Data Protection

4.1 The Service Provider acknowledges that in the course of providing the Services it may be required to process Personal Data on behalf of the Council. In such cases and unless otherwise agreed between the parties, the Service Provider is acting as a data processor within the meaning of the DPA on behalf of the Council and the Council is acting as the data controller within the meaning of the DPA.

4.2 The Service Provider shall process the Personal Data only in accordance with the provisions of this Agreement and in accordance with instructions from the Council.

- 4.3 The Service Provider shall process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or is required by law.
- 4.4 The Service Provider shall take appropriate technical and organisational measures to protect the Personal Data from unauthorised or unlawful processing and accidental loss, destruction, damage or disclosure. Such measures shall ensure a level of security appropriate to the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction, damage, alteration or disclosure to the Personal Data and having regard to the nature of the Personal Data which is to be protected.
- 4.5 Without prejudice to Clause 2.5, the Service Provider shall notify the Council of any breach of the security measures required by clause 4.4 as soon as it becomes aware of the breach and will co-operate with the Council in any investigation that the Council considers necessary to undertake as a result.
- 4.6 The Service Provider shall furnish the Council at any time and from time to time upon seven clear days written notice with details of the measures it has taken in order to comply with the DPA and clause 4.4 and will, at its own cost, implement any further steps that are necessary for compliance with the same.
- 4.7 The Service Provider shall permit the Council at any time and from time to time upon seven days written notice to have escorted access to that part of the Service Provider's premises, systems, equipment, materials and facilities to enable the Council to inspect the same for the purposes of ensuring compliance with the DPA and clause 4.4. Such inspection shall not relieve the Service Provider of any of its obligations under this Agreement.
- 4.8 Where a Data Subject exercises his or her rights under the DPA in respect of Personal Data processed on behalf of the Council by the Service Provider or where the Council is required to deal with or comply with an assessment, enquiry, legal notice or investigation by the Office of the Information Commissioner, the Service Provider will co-operate as requested by the Council to enable the Council to comply with all obligations arising as a result of the exercise of such rights or as a result of such assessment, enquiry, legal notice or investigation.
- 4.9 Where the Service Provider receives a notice of the exercise of any legal rights under the DPA or a complaint relating to the exercise of any of the Council's obligations under the DPA, the Service Provider will notify the Council of that fact and provide all relevant details to the Council as soon as is practicable and in any event within 5 working days.
- 4.10 The Service Provider shall not process Personal Data outside the European Economic Area without the prior written consent of the Council and without first satisfying the Council that such processing would not breach the DPA.
- 4.11 The Service Provider shall not perform its obligations under this Agreement in such a way as to cause the Council to breach any of its applicable obligations under the DPA.
- 4.12 The Service Provider shall not sub-contract to any third party any of its obligations to process Personal Data on behalf of the Council unless all of the following provisions of this clause have first been complied with:
- (a) the Service Provider has supplied to the Council such information as the Council may require to ascertain that such sub-contractor has the ability to comply with the provisions of the Seventh Principle of the DPA and clause 4.4 of this Agreement; and
 - (b) the Service Provider has obtained the prior written consent of the Council; and
 - (c) the proposed sub-contractor has entered into a contract with the Council substantially upon the terms of clauses 1, 2, 3 and 4 of this Schedule.
- 4.13 Upon termination of the Agreement the Service Provider shall:

- (a) cease processing Personal Data on behalf of the Council; and
- (b) at the Council's option, either forthwith return to the Council all copies of the Personal Data which it is processing or has processed on behalf of the Council, or destroy the same within 14 days of being requested to do so by the Council.

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