



# **NEC4 CONTRACT DATA PART ONE - FRAMEWORK FOR “HIRE OF CONSTRUCTION-RELATED HEAVY-DUTY MOTOR VEHICLES, MACHINERY, EQUIPMENT AND PREFABRICATED BUILDINGS**

## **Strategic Procurement**

**DN608764**

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## **NEC SUPPLY CONTRACT 2017- CONTRACT DATA PART 1**

### **Data provided by the Purchaser**

#### **1 General**

The *conditions of contract* are the core clauses and the clauses for the following Options of the NEC4 Supply Contract June 2017 (with amendments October 2020)

Options X1, X2, X7, X11, X17, X20, X25, Y(UK)3 of the NEC4 Supply Contract June 2017 (with amendments October 2020), additional Z clauses Z1-Z21

The *goods (or Hire Goods as defined in the Framework)* are all the construction related:

- operated vehicles, machinery or equipment and
- self-operated vehicles, machinery, equipment
- prefabricated buildings.

included within each framework lot and listed in the Tender Response Part C - Pricing Evaluation.

The *services* are: the supply, provision and delivery by the *Supplier* to the *Purchaser* of the goods on hire for an agreed hire period with options for adjustments to the agreed hire period.

The *Purchaser* is:

Name:

**Bournemouth Christchurch and Poole Council (BCP)**

Address for communications:

**Town Hall**

**Bourne Avenue**

**Bournemouth**

**BH2 6DY**

Address for electronic communications:

[greg.kerr@bcpcouncil.gov.uk](mailto:greg.kerr@bcpcouncil.gov.uk)

The *Supply Managers* are:

Names: Greg Kerr/Paul Hastings

Address for communications:

**Neighbourhood Services  
Hatchpond Depot  
Hatchpond Road  
Poole  
Dorset  
BH17 7LQ**

Address for electronic communications:

[greg.kerr@bcpcouncil.gov.uk](mailto:greg.kerr@bcpcouncil.gov.uk)  
[paul.hastings@bcpcouncil.gov.uk](mailto:paul.hastings@bcpcouncil.gov.uk)

The *Scope* can be found in the Specification (Appendix 1)

The *language* of the contract is: **English**

The *law* of the contract is the law of: **England and Wales, subject to the jurisdiction of the Courts of England and Wales.**

The period for reply is: **one week.**

The following matters will be included in the Early Warning Register:

- Availability of *Suppliers'* operated and self – operated vehicles, machinery, equipment or prefabricated buildings
- Suitability of *Suppliers'* operated and self – operated vehicles, machinery, equipment or prefabricated buildings

**Early warning meetings are to be held at intervals no longer than: two weeks**

### 3 Time

The *starting* date is **1<sup>st</sup> August 2022**

The *Supplier* submits revised programmes at intervals no longer than **Not applicable**

The delivery date of the *goods* and *services* is **As set out in Purchase Orders**

*Goods and services*

*delivery date*

1	Hire of operated vehicles, machinery, equipment		As agreed in /Purchase Orders
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2	Hire of self-operated vehicles, machinery, equipment or prefabricated buildings		As agreed in Purchase Orders
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The period after the Contract Date within which the *Supplier* is to submit a first programme of acceptance is – **Not applicable**

The *Supplier* **may** bring the goods to the Delivery Place prior to agreed delivery date by *Purchaser* if requested by *Purchaser*

#### 4 Quality Management

The period after the Contract Date within which the *Supplier* is to submit a quality policy statement and quality plan is: **Not applicable**

The period between Delivery and the *defects* date is **Within 2 hours of Delivery**

The *defect correction period* for operated vehicles, machinery or equipment is **2 Hours**

The *defect correction period* for self-operated vehicles, machinery, equipment, or prefabricated buildings is **2 Hours**

The *defect access period* is **2 Hours**

- The *defect access period* for operated vehicles, machinery or equipment is **2 Hours**
- The *defect access period* for self-operated vehicles, machinery, equipment or prefabricated buildings is **2 Hours**

#### 5 Payment

The currency of this contract is the **pound sterling (GBP)**

The assessment interval is **Not applicable**

The interest rate is **2%** per annum above the Bank of England base lending rate.

The period within which payments are made is **30 days from date of Invoice**

#### 6 Compensation Events

The *value engineering percentage* is **Not applicable**

These are additional compensation events: **Not applicable**

## 8 Liabilities and insurance

These are additional **Purchaser's** liabilities in reference to self-operated vehicles, machinery, equipment or prefabricated buildings

1. Not applicable
2. Not applicable

These are additional **Purchaser's** liabilities in reference to operated vehicles, machinery or equipment

- 1 Not applicable
2. Not applicable

The minimum amount of cover for insurance against loss of or damage to property (except the *goods*) and liability for bodily injury to or death of a person (not an employee of the *Supplier*) arising from or in connection with the *Supplier* Providing the Goods and Services for any one event is **£15,000,000 (insurance Excess Sum should not be more than £5,000)**

The minimum amount of cover for insurance against death and or bodily injury to employees of the *Supplier* arising out of and in the course of their employment in connection with the contract for any one event is **£10,000,000**

## 9. Termination, resolving and avoiding disputes

The tribunal is: **arbitration**

The arbitration procedure is: the latest version of the Institution Of Civil Engineer's Arbitration Procedure in force when the Adjudicator is appointed

The place where arbitration is to be held is: **to be agreed**

The person or organisation who will choose an arbitrator if the Parties cannot agree a choice or if the *arbitration procedure* does not state who selects an arbitrator is: **Institution of Civil Engineers**

The Senior Representatives of the *Purchaser* are:

**Greg Kerr**

Bournemouth Christchurch and Poole Council (BCP)

Address for communications:

**Town Hall**

**Bourne Avenue  
Bournemouth  
BH2 6DY**

Address for electronic communications:

[greg.kerr@bcpcouncil.gov.uk](mailto:greg.kerr@bcpcouncil.gov.uk)

**Paul Hastings**

Bournemouth Christchurch and Poole Council (BCP)

Address for communications:

**Town Hall  
Bourne Avenue  
Bournemouth  
BH2 6DY**

Address for electronic communications:

[paul.hastings@bcpcouncil.gov.uk](mailto:paul.hastings@bcpcouncil.gov.uk)

The Adjudicator is:

To be appointed by the parties or the Institution of Civil Engineers under the terms of the NEC Dispute Resolution Service Contract (version DRSC4\_Jun17\_Jan19 attached to this Contract Data Part 1)

Address for communications: to be confirmed when Adjudicator is appointed.

The *Adjudicator* nominating body is the Institution of Civil Engineers

### **X1: Price adjustment for inflation**

The proportions used to calculate the Price Adjustment Factor are

1.0 linked to **Services Producer Price Index (SPPI)**

The base date for indices is the date 42 days prior to the date for the return of tenders;

The inflation adjustment dates are

1<sup>st</sup> April 2023

1<sup>st</sup> April 2024

1<sup>st</sup> April 2025

The indices are RICS Plant and Equipment Indices

**X2: Changes in the law**

A change in the law of **England and Wales, subject to the jurisdiction of the Courts of England and Wales.** is a compensation event if it occurs after the Contract Date

**X7: Delay Damages**

Delay damages for Delivery are

Operated vehicles, machinery, equipment	Based on BCP officer costs incurred by BCP of between £87.16 (1hr Gang of 2 BCP Staff) and £523.92 (4hrs Gang of 3 BCP Staff) inclusive.
Self-operated vehicles, machinery, equipment or prefabricated buildings	Cost of Day Rate of Item being Hired

**X11: Termination by the Purchaser**

The *Purchaser* may terminate the *Supplier's* obligation to Provide the Goods and Services for a reason not identified in the Termination Table by notifying the *Supply Manager* and the *Supplier*

If the Purchaser terminates for a reason not identified in the Termination Table the termination procedures followed are P3 and P4 and the amounts due on termination are A1, A2 and A4.

**X17 Low service damages**

The service level table is

<b>Incident</b>	<b>Damage</b>
<b>Failures in Customer Service</b>	

A complaint from a member of the public or failure by the <i>Supplier</i> to report a complaint from a member of the public about non-performance that later results in action or correspondence being taken by the <i>Purchaser</i> or <i>Senior Representatives of the Purchaser</i> to deal with a complaint from a member of the public or require corrective actions by the <i>Supplier</i> .	£100 per incident
<b>Failure in Health and Safety</b>	
The cost of dealing with a breach or alleged breach of contract relating to unsafe working practices by the <i>Supplier</i> that later results in action being taken by the <i>Purchaser</i> or <i>Senior Representatives of the Purchaser</i> to investigate or to rectify the breach	£100 per incident
<b>Failure of delivery of Plant to site</b>	
Failure to deliver ordered vehicle, machinery, equipment or prefabricated building that results in a remedial purchase order being raised by the <i>Service Manager</i>	£50 per Purchase Order issued

### **X20: Key Performance Indicators**

The incentive schedule for Key Performance Indicators is in the **Specification – Section 25 – Key Performance Indicators**

A report of performance against each Key Performance Indicator is provided at intervals of **Monthly and Quarterly**

### **Y(UK)3: The Contracts (Rights of third parties) Act 1999**

Term  
None

Beneficiary  
None

## **TABLE OF CORE CLAUSES THAT ARE NOT APPLICABLE**

<b>CORE CLAUSES</b>	
<b>11.2(1)</b>	Not applicable
<b>11.2(5)</b>	Not applicable
<b>11.2(11)</b>	Not applicable
<b>11.2(15)</b>	Not applicable

<b>CORE CLAUSES</b>	
<b>21.0 and 22.0</b>	Not applicable
<b>25.1</b>	Not applicable
<b>31, 32, 40,41, 42,43, 44,45 and 46</b>	Not applicable
<b>50,52,53,62,63,64, 70, 71, 72</b>	Not applicable

### **Option Z: additional conditions of contract**

Furthermore, the NEC4 Supply Contract, first published in June 2017 by the Institution of Civil Engineers, shall be amended by the incorporation of the following additional conditions of contract.

#### **18 Z Clause 1: Interpretation**

For the avoidance of doubt, wherever there is any conflict or inconsistency between the provisions of the NEC4 Supply Contract, first published in June 2017 by the Institution of Civil Engineers, and these *additional conditions of contract*, then the latter shall prevail.

## 19 Z Clause 2: Standards

- 19.2 The Supplier shall Provide the Goods and Services, or procure that they are provided, with reasonable skill and care and in accordance with all applicable law.
- 19.3 Where a British Standard Specification or British Standard Code of Practice or other recognised standard (e.g. a Eurocode) is laid down by a regulatory body for the industry concerned and applies to the *Supplier's* workmanship or to any goods and materials used, supplied or selected by the *Supplier*, the workmanship and the goods and materials used, supplied or selected shall be at minimum to such standard.
- 19.4 The *Supplier* shall provide independent and unbiased advice to the *Purchaser* in relation to the *goods* and *services*.

## 20 Z Clause 3: Compliance

### 20.2 Definitions

- 20.2.1 **Necessary Consents:** all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for Providing the Goods and Services.
- 20.2.2 **Supplier Personnel:** all employees, staff, other workers, agents and consultants of the *Supplier* and of any Subcontractors who are engaged in Providing the Goods and Services from time to time.
- 20.3 The *Supplier* shall ensure that all Necessary Consents are in place to Provide the Goods and Services and the *Purchaser* shall not (unless otherwise agreed in writing) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 20.4 Wherever there is any conflict or inconsistency between the provisions of this contract and the requirements of a Necessary Consent, then the latter shall prevail, provided that the *Supplier* has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the *goods* and *services* and the *Supplier* has notified the *Purchaser* in writing.
- 20.5 The *Supplier* shall (and shall procure that the Supplier Personnel shall) perform its obligations under this contract (including those in relation to the *goods* and *services*) in accordance with:
- 20.5.1 all applicable law regarding health and safety; and
- 20.5.2 the *Purchaser's* health and safety policies.
- 20.6 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards of which it becomes aware and which relate to or arise in connection with the performance of this contract. The *Supplier* shall instruct the Supplier Personnel to adopt any necessary

associated safety measures in order to manage any such material health and safety hazards.

20.7 Without limiting the general obligation set out in Z Clause 2 (*Standards*), the *Supplier* shall (and shall procure that the Supplier Personnel shall):

20.7.1 perform its obligations under this contract (including those in relation to the *goods* and *services*) in accordance with:

(a) all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);

(b) any other requirements and instructions which the *Purchaser* reasonably imposes in connection with any equality obligations imposed on the *Purchaser* at any time under applicable equality law;

20.7.2 take all necessary steps, and inform the *Purchaser* of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation); and

20.7.3 at all times comply with the provisions of the Human Rights Act 1998 in the performance of this contract. The *Supplier* shall also undertake, or refrain from undertaking, such acts as the *Purchaser* requests so as to enable the *Purchaser* to comply with its obligations under the Human Rights Act 1998.

20.8 In the performance of this contract the *Supplier* shall comply with the *Purchaser's* Financial Regulations and Procurement Rules. Where the *Supplier* purchases goods, works or services on behalf of the *Purchaser* in the course of Providing the Goods and Services under this contract, it shall comply with all applicable public procurement legislation, the Public Contracts Regulations 2015 and the *Purchaser's* policies and procedures as though it were an employee of the *Purchaser*. The *Supplier* shall ensure that the *Purchaser* receives the benefit of all guarantees and warranties provided by any such suppliers of goods, works or services, either directly or through a collateral warranty agreement (as applicable).

20.9 The *Supplier* shall make best efforts to secure compliance with the provisions in this clause by its employees, agents and Subcontractors employed in the execution of this contract.

## **21 Z Clause 4: Publication of Expenditure**

21.2 The *Supplier* is advised that local authorities are required by the Government to publish details of every item of expenditure that exceeds £500 and details of each invitation to tender (for contracts to provide goods or services) that exceeds £5,000.

21.3 The *Supplier* is advised that the *Purchaser* may therefore publish details (to the extent and in the manner required by the Government) of the tender process and any contract awarded.

21.4 The *Supplier* must comply with any reasonable request from the *Purchaser* in order to assist the *Purchaser* in complying with its obligations in respect of this requirement.

## **22 Z Clause 5: The *Purchaser* as a Local Authority**

Nothing in this contract shall prejudice, override, modify or in any other way affect the rights, powers, duties and obligations of the *Purchaser* in the exercise of its statutory powers as a local authority, local planning authority, highway authority, fire authority or statutory undertaker.

## **23 Z Clause 6: Provision of Certificates of Insurance**

Fourteen (14) days before the starting date and fourteen (14) days before each renewal of its insurance policies during the term of this contract, the *Supplier* shall provide the *Purchaser* with certificates from its insurer or broker stating that the insurances required by this contract are in force.

## **24 Z Clause 7: Subcontracting and Assignment**

24.2 The *Purchaser* may assign, transfer or in any other way deal in or dispose of the benefit or burden of the whole or any part of this contract if it has a requirement to do so and shall inform the *Supplier* of any such dealing.

24.3 The *Supplier* shall not subcontract, assign, transfer or in any other way deal in or dispose of the benefit or burden of the whole or any part of this contract without the *Purchaser's* prior written agreement.

24.4 Assigning or subcontracting the whole or any part of this contract shall not relieve the *Supplier* of any obligation or duty attributable to the *Supplier* under this contract and the *Supplier* shall be responsible for the acts omissions defaults and negligence of its assignees and Subcontractors as though they are its own.

24.5 Where the *Supplier* enters into a subcontract with a third party for the purpose of performing this contract, it shall include a term in such subcontract that the Subcontractor shall comply with the terms of this contract and a term that provides that payment shall be made by the *Supplier* to the Subcontractor of undisputed sums within a specified period not exceeding thirty (30) days from the receipt of a valid invoice (as defined in the terms of the subcontract). The *Supplier* shall not use the services of self-employed individuals without the *Purchaser's* prior written agreement.

24.6 If a Subcontractor breaches any provision of a subcontract with the *Supplier*, the *Supplier* shall without prejudice to any of its obligations under this contract take action in accordance with the terms of the subcontract to exercise its rights against the Subcontractor. Failure by the *Supplier* to take action shall be grounds for the exercise by the *Purchaser* of its right to enter its premises and

expel the *Supplier*. When the *Supplier* exercises its rights against a Subcontractor in accordance with this clause it shall make no claim nor agree to any claim being made on its behalf against the *Purchaser* in respect of any consequential delays and extra costs arising from the contract.

24.7 The *Supplier* shall procure the execution by each Subcontractor listed below engaged by the *Supplier* and shall deliver to the *Purchaser* deeds of warranty in favour of the *Purchaser* and, if required, any funder, in the respective form set out in the Invitation to Tender:

24.7.1 Architect

24.7.2 Cost Consultant

24.8 The *Supplier* shall provide a certified copy of each Subcontractor's appointment to the *Purchaser*, together with a copy of the Subcontractor's up-to-date verification of professional indemnity insurance. The *Supplier* shall procure and deliver to the *Purchaser* respective deeds of warranty within fourteen (14) days of each Subcontractor's appointment.

## 25 Z Clause 8: Freedom of Information

### 25.2 Definitions

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

25.2.2 **FOIA:** the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

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

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

25.2.5 **Working Day:** Monday to Friday, excluding any public holidays in England and Wales.

25.3 The *Supplier* acknowledges that the *Purchaser* is subject to the requirements of the FOIA and the EIR. The *Supplier* shall:

25.3.1 provide all necessary assistance and cooperation as reasonably requested by the *Purchaser* to enable the *Purchaser* to comply with its obligations under the FOIA and EIR;

- 25.3.2 transfer to the *Purchaser* all Requests for Information relating to this contract that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
  - 25.3.3 provide the *Purchaser* with a copy of all Information belonging to the *Purchaser* requested in the Request For Information which is in its possession or control in the form that the *Purchaser* requires within five (5) Working Days (or such other period as the *Purchaser* may reasonably specify) of the *Purchaser's* request for such Information; and
  - 25.3.4 not respond directly to a Request For Information unless authorised in writing to do so by the *Purchaser*.
- 25.4 The *Supplier* acknowledges that the *Purchaser* may be required under the FOIA and EIR to disclose Information (including commercially sensitive information) without consulting or obtaining consent from the *Supplier*. The *Purchaser* shall take reasonable steps to notify the *Supplier* of a Request For Information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this contract) the *Purchaser* shall be responsible for determining in its absolute discretion whether any commercially sensitive information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIR.

## **26 Z Clause 9: Publicity**

- 26.2 The *Supplier* shall not give information concerning the *goods* and *services* for publication in the press or on radio, television, screen, social media, the Internet or any other medium without the written consent of the *Purchaser*.
- 26.3 The terms of this contract are confidential and the *Supplier* shall ensure that it does not disclose the terms of this contract to any third party save with the prior written express permission of the *Purchaser* or as required by operation of law.

## **27 Z Clause 10: Confidentiality**

### **27.2 Definition**

- 27.2.1 **Confidential Information:** all information, whether written or oral (however so recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; or (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential.
- 27.3 Subject to Z Clause 10.3, each Party shall:
- 27.3.1 treat all Confidential Information which 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

- 27.3.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under this contract.
- 27.4 Notwithstanding Z Clause 10.2, a Party may disclose Confidential Information which it receives from the other Party:
- 27.4.1 where disclosure is required by applicable law or by a court of competent jurisdiction;
- 27.4.2 to its auditors or for the purposes of regulatory requirements;
- 27.4.3 on a confidential basis, to its professional advisors;
- 27.4.4 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;
- 27.4.5 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 this contract provided that the *Supplier* shall procure that any staff to whom it discloses Confidential Information pursuant to this Z Clause 10.3.5 shall observe the *Supplier's* confidentiality obligations under this contract;
- 27.4.6 where the receiving Party is the *Purchaser*:
- (a) on a confidential basis to the employees, agents, consultants and contractors of the *Purchaser*;
- (b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the *Purchaser* transfers or proposes to transfer all or part of any business;
- (c) to the extent that the *Purchaser* (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
- (d) in accordance with Z Clause 8 (*Freedom of Information*).
- 27.5 The *Supplier* shall procure that its staff and approved Subcontractors comply with the provisions of this Z Clause 10 above.
- 27.6 The *Supplier* shall not, and shall procure that its staff and approved Subcontractors do not, make any press announcement or publicise this contract or any part of this contract in any way, except with the prior written consent of the *Purchaser*.

## **28 Z Clause 11: Intellectual Property**

### **28.2 Definitions**

- 28.2.1 **Supplier Personnel:** all employees, staff, other workers, agents and consultants of the *Supplier* and of any Subcontractors who are engaged in Providing the Goods and Services from time to time.
- 28.2.2 **Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- 28.3 In the absence of prior written agreement by the *Purchaser* to the contrary, all Intellectual Property Rights created by the *Consultant* or Supplier Personnel:
- 28.3.1 in the course of Providing the Goods and Services; or
- 28.3.2 exclusively for the purpose of Providing the Goods and Services,
- shall vest in the *Purchaser* on creation.
- 28.4 The *Supplier* shall indemnify the *Purchaser* against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the *goods* and *services*, except to the extent that they have been caused by or contributed to by the *Purchaser's* acts or omissions.

## 29 Z Clause 12: Prevention of Corruption

### 29.2 Definitions

- 29.2.1 **Bribery Act:** the Bribery Act 2010 together with any guidance or codes of practice issued by the relevant government department concerning the legislation.
- 29.2.2 **Supplier Personnel:** all employees, staff, other workers, agents and consultants of the *Supplier* and of any Subcontractors who are engaged in Providing the Goods and Services from time to time.
- 29.2.3 **Prohibited Act:** the following constitute Prohibited Acts:
- (a) to directly or indirectly offer, promise or give any person working for or engaged by the *Purchaser* a financial or other advantage as an inducement or reward for any improper performance of a relevant function of activity;

- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this contract;
- (c) committing any offence: (i) under the Bribery Act; (ii) under legislation or common law concerning fraudulent acts; or (iii) of defrauding, attempting to defraud or conspiring to defraud the *Purchaser*;
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above, if such activity, practice or conduct had been carried out in the UK.

29.2.4 **Relevant Requirements:** all applicable law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

29.3 The *Supplier* represents and warrants that neither it nor any Supplier Personnel:

29.3.1 has committed a Prohibited Act;

29.3.2 to the best of its knowledge has been or is subject to an investigation, inquiry or enforcement proceedings by a governmental, administrative or regulatory body regarding any Prohibited Act or alleged Prohibited Act; or

29.3.3 has been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

29.4 The *Supplier* shall promptly notify the *Purchaser* if, at any time during the term of the contract, its circumstances, knowledge or awareness change such that it would not be able to repeat the warranties set out in Z Clause 12.2 at the relevant time.

29.5 The *Supplier* shall (and shall procure that its Supplier Personnel shall) during the term of the contract:

29.5.1 not commit a Prohibited Act;

29.5.2 not do or omit to do anything that would cause the *Purchaser* or any of the *Purchaser's* employees, consultants, contractors, Subcontractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements;

29.5.3 not give any fee or reward the receipt of which is an offence under section 117(2) of the Local Government Act 1972;

- 29.5.4 have and maintain in place its own policies and procedures to ensure compliance with the Relevant Requirements and prevent occurrence of a Prohibited Act – if it does not any such policies, it shall comply with the *Purchaser's* anti-bribery and anti-corruption policies;
- 29.5.5 notify the *Purchaser* (in writing) if it becomes aware of any breach of Z Clause 12.4.1, Z Clause 12.4.2 or Z Clause 12.4.3, or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage in connection with performance of this contract.
- 29.6 The *Supplier* shall maintain appropriate and up to date records showing all payments made by the *Supplier* in connection with this contract and the steps taken to comply with its obligations under Z Clause 12.4.
- 29.7 The *Supplier* shall allow the *Purchaser* and its third party representatives to audit any of the *Supplier's* records and any other relevant documentation.
- 29.8 If the *Supplier* is in default under this Z Clause 12 the *Purchaser* may by notice:
  - 29.8.1 require the *Supplier* to remove from performance of this contract any Supplier Personnel whose acts or omissions have caused the default; or
  - 29.8.2 immediately terminate this contract.
- 29.9 Any termination under Z Clause 12.7 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the *Purchaser*.
- 29.10 Any notice served by the *Purchaser* under Z Clause 12.7 shall specify the nature of the Prohibited Act, the identity of the Party who the *Purchaser* believes has committed the Prohibited Act and the action that the *Purchaser* has elected to take (including, where relevant, the date on which this contract shall terminate).
- 29.11 Any dispute relating to the interpretation of this Z Clause 12 or to the amount or value of any gift, consideration or commission shall be determined by the *Purchaser* and its decision shall be final and conclusive.

### **30 Z Clause 13: Right to Purchase Elsewhere**

- 30.2 If the *Supplier* fails to Provide the Goods and Services or any part thereof within the time or times specified in this contract, the *Purchaser* may, without prejudice to any other remedy for breach of contract, reserve the right to either:
  - 30.2.1 terminate this contract either wholly or in respect of that part of the contract for which the *Supplier* is in default; and/or
  - 30.2.2 purchase the relevant *goods* and *services* of the same or similar description to make good the default; or in the event of the contract being wholly determined to procure the *goods* and *services* required

from any third party without any obligation to the *Supplier* in respect of the contract.

**31 Z Clause 14: Waiver**

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**32 Z Clause 15: Termination**

32.2 On termination of this contract, the *Supplier* shall not be entitled to recover from the *Purchaser* payments in addition to those (if any) provided for by this contract.

32.3 In addition to the costs and expenses recoverable by the *Purchaser* as provided for in section 9 of this contract, the *Purchaser* shall be entitled to recover from the *Supplier* any other costs or losses incurred by the *Purchaser* consequent on termination under Clause Z12 and to receive from the *Supplier* such sum as in the opinion of the *Purchaser* represents the amount or value of any gift consideration paid or agreed to be paid in breach of Clause Z12.

**33 Z Clause 16: Purchaser's Access to Supplier's Sites**

The *Supplier* shall permit appropriate and properly authorised and trained representatives of the *Purchaser* to enter on a construction site and/or site of operation for the *goods* and *services* at any reasonable time and have free and unfettered access to each and every part of such sites affected or covered by the contract.

**34 Z Clause 17: TUPE**

**34.2 Definition**

34.2.1 **TUPE:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246)

34.3 The *Supplier* shall, and shall procure that each Subcontractor shall, promptly provide to the *Purchaser* in writing such information as is necessary to enable the *Purchaser* to carry out its duties under TUPE and the Pensions Act 2004 (each as amended or superseded from time to time (the "**Employment Information**")).

34.4 The *Supplier* agrees that the Employment Information may be shared with potential alternative contractors in situations where TUPE might apply. The *Supplier* undertakes to accept all liability for and to indemnify the *Purchaser* and/or any alternative contractor to whom the *Supplier's* employees may be transferred, in respect of all actions, claims, costs (including legal costs), expenses and liabilities howsoever arising in respect of the said employees up

to and including the date of any transfer to another contractor or to the *Purchaser* as applicable.

## 35 Z Clause 18: Data Processing

### 35.2 Definitions

- 35.2.1 **Supplier Personnel:** all directors, officers, employees, agents, consultants and contractors of the *Supplier* and/or of any Subcontractor of the *Supplier* who are engaged in Providing the Goods and Services from time to time.
- 35.2.2 **Controller, Processor, Process, Processing, Data Subject, Personal Data, Personal Data Breach and Data Protection Officer:** take the meanings given to them in the Data Protection Legislation and their cognate terms shall be construed accordingly.
- 35.2.3 **Data Loss Event:** any event that results, or may result, in unauthorised access to Personal Data held by the *Supplier* under this contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this contract, including any Personal Data Breach.
- 35.2.4 **Data Protection Impact Assessment:** an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data.
- 35.2.5 **Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the United Kingdom including the UK GDPR, the DPA 2018 (and regulations made thereunder), the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a Party.
- 35.2.6 **Data Subject Access Request:** 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.
- 35.2.7 **DPA 2018:** the Data Protection Act 2018.
- 35.2.8 **Law:** the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the *goods* and *services* or with which the Parties are bound to comply.
- 35.2.9 **Protective Measures:** appropriate technical and organisational measures which may include: pseudonym-ising 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.

- 35.2.10 **Sub-processor:** any person appointed to Process Personal Data on behalf of the *Supplier* related to this contract.
- 35.2.11 **UK GDPR:** takes the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA 2018.
- 35.3 The Parties acknowledge that for the purposes of the Data Protection Legislation, the *Purchaser* is the Controller and the *Supplier* is the Processor. The only Processing that the *Supplier* is authorised to do is listed in Annex 1 by the *Purchaser* and may not be determined by the *Supplier*.
- 35.4 Both Parties shall comply with all applicable requirements of the Data Protection Legislation.
- 35.5 This Z Clause 18 is in addition to, and does not relieve, remove or replace a Party's obligations under the Data Protection Legislation.
- 35.6 Annex 1 sets 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.
- 35.7 The *Supplier* shall notify the *Purchaser* immediately if it considers that any of the *Purchaser's* instructions infringe the Data Protection Legislation and shall not knowingly or negligently do or omit to do anything which places the *Purchaser* in breach of the *Purchaser's* obligations under the Data Protection Legislation.
- 35.8 The *Supplier* shall provide all reasonable assistance to the *Purchaser* in the preparation of any Data Protection Impact Assessment prior to commencing any Processing or at any time. Such assistance may, at the discretion of the *Purchaser*, include:
- 35.8.1 a systematic description of the envisaged Processing operations and the purpose of the Processing;
  - 35.8.2 an assessment of the necessity and proportionality of the Processing operations in relation to Providing the Goods and Services;
  - 35.8.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 35.8.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 35.9 The *Supplier* shall, in relation to any Personal Data Processed in connection with its obligations under this contract:
- 35.9.1 Process that Personal Data only in accordance with Annex 1, unless the *Supplier* is required to do otherwise by Law. If it is so required, the *Supplier* shall promptly notify the *Purchaser* before Processing the Personal Data unless prohibited by Law;

- 35.9.2 ensure that it has in place Protective Measures to ensure a level of security appropriate to the risks, including, as appropriate, the measures referred to in Article 32(1) of the UK GDPR, which have been reviewed and approved by the *Purchaser* as appropriate to protect against a Data Loss Event having taken account of:
- (a) the nature and scope as well as context and purposes of the Personal Data to be protected;
  - (b) the harm that might result from a Data Loss Event;
  - (c) the state of technological development; and
  - (d) the cost of implementing any measures;
- 35.9.3 ensure that:
- (a) the Supplier Personnel do not Process Personal Data except in accordance with this contract (and in particular Annex 1);
  - (b) it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that they:
    - (i) are aware of and comply with the *Supplier's* duties under this clause;
    - (ii) are subject to appropriate confidentiality undertakings with the *Supplier* or any Sub-processor;
    - (iii) 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 *Purchaser* or as otherwise permitted by this contract; and
    - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- 35.9.4 not transfer Personal Data outside of the United Kingdom unless the prior written consent of the *Purchaser* has been obtained and the following conditions are fulfilled:
- (a) the *Purchaser* or the *Supplier* has provided appropriate safeguards in relation to the transfer in accordance with the Data Protection Legislation as determined by the *Purchaser*;
  - (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 (or, if it is not so bound, uses its best endeavours to assist the *Purchaser* in meeting its obligations); and

- (d) the *Supplier* complies with any reasonable instructions notified to it in advance by the *Purchaser* with respect to the Processing of the Personal Data;

35.9.5 at the written direction of the *Purchaser*, delete or return Personal Data (and any copies of it) to the *Purchaser* on termination of this contract unless the *Supplier* is required by Law to retain the Personal Data.

35.10 Subject to Z Clause 18.7, the *Supplier* shall notify the *Purchaser* immediately if it:

35.10.1 receives a Data Subject Access Request (or purported Data Subject Access Request);

35.10.2 receives a request to rectify, block or erase any Personal Data;

35.10.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

35.10.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under this contract;

35.10.5 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; or

35.10.6 becomes aware of a Data Loss Event.

35.11 The *Supplier's* obligation to notify under Z Clause 18.6 shall include the provision of further information to the *Purchaser* in phases, as details become available.

35.12 Taking into account the nature of the Processing, the *Supplier* shall provide the *Purchaser* with full assistance in relation to either Party's obligations under the Data Protection Legislation and any complaint, communication or request made under Z Clause 18.9 (and insofar as possible within the timescales reasonably required by the *Purchaser*) including by promptly providing:

35.12.1 the *Purchaser* with full details and copies of the complaint, communication or request;

35.12.2 such assistance as is reasonably requested by the *Purchaser* to enable the *Purchaser* to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

- 35.12.3 the *Purchaser*, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 35.12.4 assistance as requested by the *Purchaser* following any Data Loss Event;
  - 35.12.5 assistance as requested by the *Purchaser* with respect to any request from the Information Commissioner's Office, or any consultation by the *Purchaser* with the Information Commissioner's Office.
- 35.13 The *Supplier* shall maintain complete and accurate records and information to demonstrate its compliance with this clause under the obligation in Articles 28(3)(h) and 30(2) of the UK GDPR. This requirement does not apply where the *Supplier* employs fewer than 250 staff, unless:
- 35.13.1 the *Purchaser* determines that the Processing is not occasional;
  - 35.13.2 the *Purchaser* determines (or the *Supplier* is aware that) the Processing includes special categories of Personal Data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; and/or
  - 35.13.3 the *Purchaser* determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 35.14 The *Supplier* shall allow for audits of its Data Processing activity by the *Purchaser* or the *Purchaser's* designated auditor.
- 35.15 The *Supplier* shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 35.16 Before allowing any Sub-processor to Process any Personal Data related to this contract, the *Supplier* must:
- 35.16.1 notify the *Purchaser* in writing of the intended Sub-processor and Processing;
  - 35.16.2 obtain the written consent of the *Purchaser*;
  - 35.16.3 enter into a written agreement with the Sub-processor which gives effect to the terms set out in this Z Clause 18.15 such that they apply to the Sub-processor; and
  - 35.16.4 provide the *Purchaser* with such information regarding the Sub-processor as the *Purchaser* may reasonably require.
- 35.17 The *Supplier* shall remain fully liable for all acts and omissions of any Sub-processor.
- 35.18 The *Purchaser* may, at any time on not less than thirty (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) per Articles 28(6), 28(7) and 28(8) of the UK GDPR.

- 35.19 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The *Purchaser* may on notice to the *Supplier* amend this contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 35.20 The *Supplier* shall fully indemnify the *Purchaser* in respect of all losses, liabilities, claims, actions, proceedings, demands, costs, charges or expenses arising out of or in connection with any civil claim made in respect of information subject to the Data Protection Legislation, which claims would not have arisen but for some act, omission or negligence in breach of this condition on the part of the *Supplier*, its employees, agents or any subcontractor or anyone acting on its or their behalf.
- 35.21 The Parties agree that on the termination of this contract, the Processor and any Sub-Processor shall, at the choice of the Controller, return all Personal Data and copies thereof to the *Purchaser* or shall destroy all the Personal Data and certify to the *Purchaser* that it has done so, unless legislation imposed on the data importer prevents it from returning or destroying all or part of the Personal Data transferred. In that case, the data importer warrants that it shall guarantee the confidentiality of the Personal Data transferred and shall not actively Process the Personal Data transferred anymore.
- 35.22 The *Supplier* shall take reasonable steps to ensure the reliability of any employee, agent or contractor of any Processor who may have access to Personal Data, ensuring in each case that access is strictly limited to those individuals who need to know or access the relevant Personal Data, as strictly necessary for the purposes of this contract, and to comply with the Data Protection Legislation in the context of that individual's duties to the Processor, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

### **Obligations after the termination of this contract**

- 35.23 The Parties agree that on the termination of this contract, the Data Processor and any Sub-processor shall, at the choice of the Data Controller, return all the Personal Data transferred and the copies thereof to the Data Controller or shall destroy all the Personal Data and certify to the Data Controller that it has done so, unless legislation imposed on the Data Processor prevents it from returning or destroying all or part of the Personal Data transferred. In that case, the Data Processor warrants that it shall guarantee the confidentiality of the Personal Data transferred and shall not actively Process the Personal Data transferred anymore.
- 35.24 The provisions of Z Clause 18.23 shall apply during the continuance of this contract and indefinitely after its termination or expiry.

## **36 Z Clause 19: Special Requirements in Relation to Statutory Bodies**

The *Supplier* shall comply with any special requirements in relation to statutory bodies as set out in the Scope. Compliance with the special requirements shall not relieve the *Supplier* of any of its other obligations and liabilities under the contract and fulfilment of such other obligations and liabilities shall not relieve it of its responsibility to comply with the said special requirements.

## 37 Z Clause 20: Coronavirus

### 37.2 Definitions

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

#### 37.2.2 **Coronavirus Event:**

- (a) the introduction by the United Kingdom Government or any Local or Public Authority of a recommended or mandatory measure intended to prevent or delay the spread of Coronavirus; and/or
- (b) any change caused by the Coronavirus pandemic to the business or economic environment in which the *Supplier* operates, which is outside the reasonable control of the *Supplier*,

if either or both of which causes a substantial adverse impact on the *Supplier's* ability to Provide the Goods and Services in accordance with the terms of the contract and the Law.

37.2.3 **Law:** the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the *goods* and *services* or with which the Parties are bound to comply.

#### *Option 1: Time (but not money)*

37.3 There shall be added a new Clause 60.1(19) to the NEC4 Supply Contract: "A Coronavirus Event."

37.4 There shall be added a new Clause 61.8 to the NEC4 Supply Contract: "Notwithstanding any other provision in this contract, there shall be no change to the Prices where and to the extent that a compensation event is an event of the type referred to in Clause 60.1(19)."

## 38 Z Clause 21: Brexit

### 38.2 Definitions

38.2.1 **Brexit:** The United Kingdom ceasing to be a member state of the European Union.

#### 38.2.2 **Brexit Event:**

- (a) a change in Law caused by Brexit; a new requirement to comply with any existing Law because of Brexit; or an existing Law ceasing to apply because of Brexit; and/or
- (b) any change caused by Brexit to the business or economic environment in which the *Supplier* operates, which is outside the reasonable control of the *Supplier*,

if the change or new requirement under paragraph (a) and/or the change under paragraph (b) causes a substantial adverse impact on the *Supplier's* ability to Provide the Goods and Services in accordance with the terms of the contract and the Law.

- 38.2.3 **Law:** the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the *goods* and *services* or with which the Parties are bound to comply.

*Option 1: Time (but not money)*

- 38.3 There shall be added a new Clause 60.1(20) to the NEC4 Supply Contract: "A Brexit Event."
- 38.4 There shall be added a new Clause 61.9 to the NEC4 Supply Contract: "Notwithstanding any other provision in this contract, there shall be no change to the Prices where and to the extent that a compensation event is an event of the type referred to in Clause 60.1(20)."

## ANNEX 1

### ANNEX OF DATA PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. The *Supplier* shall comply with any written instructions with respect to Processing by the *Purchaser*.
2. Any such further instructions shall be incorporated into this Annex 1.

#### Processing by the *Supplier*

##### A. Scope Description Details

###### Subject matter of the Processing.

As a supplier contracted to supply goods and services to Bournemouth, Christchurch and Poole Council, the *Supplier* may Process Personal Data in order to Provide the Goods and Services. The Personal Data shall comprise the names and contact information of *Purchaser* staff members.

##### B. Duration of the Processing

The period of the Processing shall be the length of this contract.

##### C. Nature and purposes of the Processing

The names and contact information of *Purchaser* staff members may be Processed. This could involve collecting, recording, organising, structuring, storing, adapting or altering, retrieving, consulting, using, disclosing by transmission, disseminating or otherwise making available, aligning or combining, restricting, erasing or destroying the Personal Data (whether or not by automated means). The purpose of the Processing shall be to Provide the Goods and Services pursuant to this contract as required.

##### D. Type(s) of Personal Data

- Title
- First and middle names
- Surname
- Email address
- Telephone numbers
- Full office address

##### E. Categories of Data Subject

Staff of the *Purchaser*.

## **F. Termination Provision**

The *Supplier* shall destroy and return to the *Purchaser* the Personal Data and copies thereof once the Processing is complete UNLESS there is a requirement under the Law or a written direction of the *Purchaser* that the *Supplier* stores the Personal Data.

The *Supplier* shall keep the Personal Data for no longer than is necessary for the purposes for which the Personal Data is Processed.

Appendix 1

## **GDPR – The General Data Protection Regulation**

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

- (a) The *Supplier* shall comply with any written instructions with respect to Processing by the *Purchaser*.
- (b) Any such further instructions shall be incorporated into this Appendix 1.

## **PROCESSING BY THE SUPPLIER**

### **A. Scope Description Details**

Subject matter of the Processing.

The *Supplier* may Process Personal Data in order to Provide the Works. The Personal Data shall comprise the names and contact information of *Purchasers* staff members.

### **B. Duration of the Processing**

The *Supplier* may Process Personal Data for the duration of the contract.

### **C. Nature and purposes of the Processing**

The names and contact information of *Purchaser* staff members may be Processed. This could involve collecting, recording, organising, structuring, storing, adapting or altering, retrieving, consulting, using, disclosing by

transmission, disseminating or otherwise making available, aligning or combining, restricting, erasing or destroying the Personal Data (whether or not by automated means). The purpose of the Processing will be to Provide the Works pursuant to the contract.

#### **D. Type(s) of Personal Data**

- Title
- First and middle names
- Surname
- Email address
- Telephone numbers
- Full office address

#### **E. Categories of Data Subject**

Staff of the *Purchaser*.

#### **F. Termination Provision**

The *Supplier* shall destroy and return to the *Purchaser* the Personal Data and copies thereof once the Processing is complete UNLESS there is a requirement under United Kingdom or Applicable Law or a written direction of the *Purchaser* that the *Supplier* stores the Personal Data.

The *Supplier* shall keep the Personal Data for no longer than is necessary for the purposes for which the Personal Data are processed.