

Information Governance Support

Essex County Council



Approved by	The Governing Board
Date Approved	21 st November 2022
Version	1
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CONTRACT SCHEDULE

A standard set of contractual terms covering Information Handling issues for inclusion within a standard contract

Information Handling

1. Definitions and Interpretation

1.1 In this Schedule (insert number), the following terms shall have the meaning set out below:

“School Data”

means any ‘information’ provided by, obtained or created on behalf of Fingringhoe Primary School in delivering the services specified in this contract; and in the case of Personal Data, any data processed on behalf of the School where it is the Data Controller.

“Data Protection Act 2018 (DPA)”

means the Data Protection Act 2018 (DPA) which applies the General Data Protection Regulation (GDPR) 2016

“Data Protection Officer”

means the role as defined under Chapter IV, Section 4 of GDPR

“Environmental Information Regulations 2004 (EIR)”

means the Environmental Information Regulations 2004 (EIR) as amended or re-enacted from time to time and any Act substantially replacing the same.

“Freedom of Information Act 2000 (FOIA)”

means the Freedom of Information Act 2000 (FOIA) as amended or re-enacted from time to time and any Act substantially replacing the same.

“Good Industry Practice”

means the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor engaged in the same type of undertaking under the same or similar circumstances as are contemplated by this Agreement;

“General Data Protection Regulation (GDPR)”

means the General Data Protection Regulation (2016), Regulation (EU) 2016/679, as amended or re-enacted from time to time and any United Kingdom Act or European Union Regulation recognised in UK law substantially replacing the same.

“Information”

has the meaning given under Section 84 of the Freedom of Information Act 2000 (FOIA), which shall include (but is not limited to) information in any form whether relating to the past, present or future and may in particular consist of data, documentation, programs, (including the source code of any programs which the School has the right to use), computer output, voice transmissions, correspondence, calculations, plans, reports, graphs, charts, statistics, records, projections, maps, drawings, vouchers, receipts and accounting records and may consist of or be stored in any form including paper, microfilm, microfiche, photographic negative, computer software and any electronic medium and references herein to Information shall include reference to the medium in which it is stored.

“Information Legislation”

means the DPA, FOIA, GDPR and the EIR.

“Information Policy Requirements”

means the documented set of additional information governance requirements which the School applies within itself and requires of its Contractors and of which it has furnished a copy to the Contractor.

“Legislation”

for the avoidance of doubt includes all Law in particular the Information Legislation.

“Personal Data”

means personal data as defined in Section 1 (1) of the DPA and Article 4 (2) of the GDPR, which is supplied to the Contractor by the School or obtained by the Contractor in the course of performing the Services.

“Subject Access Request”

means a request for Personal Data falling within the provisions of Article 15 of the GDPR as applied by the DPA 2018

2. Resolution of Inconsistency



- 2.1 The Contractor shall immediately upon becoming aware of the same notify the School of any inconsistency between its practices and the provisions of Information Legislation, including related regulation, standards, guidance and policies applicable under this Schedule and compliance statements made by the Contractor during the contract procurement process
- 2.2 Where notified or it otherwise becomes aware of inconsistency the School, as soon as practicable, shall advise the Contractor which provision the Contractor shall be required to comply with (but not so as to place the Contractor in breach of any Legislation) by means of an Action Plan which:
 - 2.2.1 specifies the inconsistency and articulates the resulting risks posed to the School's compliance with legislation
 - 2.2.2 explains how the requirement to resolve the inconsistency meets the contractual requirements and the statements of compliance made during the tender process
 - 2.2.3 specifies the time period which in the School's opinion is reasonable in which to resolve the inconsistency
 - 2.2.4 explains the means by which the School intends to satisfy itself that the inconsistency is resolved and specifies the steps the Contractor is required to take to facilitate any assessment
 - 2.2.5 takes into account the opinion of the Contractor on the level of resource required to resolve the inconsistency
- 2.3 Where inconsistencies are not resolved within the expectations set out in paragraph 2.2, the School may use the dispute resolution provisions of this contract

3. Protection of Information

- 3.1 The Contractor acknowledges that the confidentiality, integrity and availability of Information and on the security provided in relation to Information is a material element of this Agreement.
- 3.2 The Contractor shall and shall at all times provide a level of security which:
 - 3.2.1 is in accordance with Legislation and this Contract
 - 3.2.2 is in accordance with compliance regimes representing Good Industry Practice which the School may specify
 - 3.2.3 complies with the School's Information Policy Requirements; and
 - 3.2.3 meets any specific security threats identified from time to time by the School

- 3.3 The Contractor shall ensure that it provides comparable technical and policy coverage of security to Information as if it were being processed directly by the School. This shall include but not limited to the following:
- 3.3.1 All mobile storage systems and hardware shall be encrypted to at least industry standards.
 - 3.3.2 All employees shall be appropriately vetted before use in the services which are the subject of this Agreement.
 - 3.3.3 All employees shall receive adequate information governance training which shall be annually refreshed.
 - 3.3.4 All buildings and physical environments shall be subject to appropriate physical security and protection.
 - 3.3.6 The Contractor shall permit access to Information by employees of the School only as may be specifically designated by the School.
 - 3.3.7 The Contractor shall securely destroy all Information provided or created under this Agreement and no longer required to be retained in accordance with this Agreement.
- 3.4 The Contractor will have in place fully tested and effective disaster recovery and business continuity plans.
- 3.5 The Contractor shall observe the following principles when handling personal data for the purpose of carrying out the Contractor's obligations under this Agreement.
- 3.5.1 Every proposed processing of Personal Data within or outside the contractor's organisation should be clearly defined and regularly risk assessed and approved by an appropriate information governance role holder.
 - 3.5.2. Personal Data must not be processed unless it is absolutely necessary. Personal Data should not be used unless there is no alternative.
 - 3.5.3 The minimum necessary Personal Data is to be used. Where use of Personal Data is considered necessary, each individual item of information should be justified with the aim of reducing the need for processing personally identifiable information.
 - 3.5.4 Access to Personal Data should be on a strict need to know basis. Employees should only have access to the data that they need to see, and should only receive the access and functionality permissions required to undertake their roles
 - 3.5.5 The Contractor must ensure that its employees are aware of their responsibility to comply with the common law duty of confidentiality.

- 3.5.6 All persons handling Personal Data must understand and comply with the DPA. All processing of Personal Data must be lawful.
- 3.6 Any Information received by the Contractor from the School under this Agreement or generated by the Contractor pursuant to this Agreement shall remain at all times the property of the School. It shall be identified, clearly marked and recorded as such by the Contractor on all media and in all documentation.
- 3.7 The Contractor shall not, save as required by this Agreement, without the prior written consent of the School disclose to any other person any Information provided by the School under this Agreement.
- 3.8 The Contractor shall advise the School of any intention to procure the services of any other agent or subcontractor in connection with this Agreement and shall pay due regard to any representations by the School in response, or obtain the express consent of the School for arrangements where Personal Data may be processed.
- 3.10 The Contractor shall take all necessary precautions to ensure that all Information obtained from the School under or in connection with this Agreement, is given only to such of the Contractor's employees and professional advisors or consultants engaged to advise the Contractor in connection with this Agreement as is strictly necessary for the performance of this Agreement, and is treated as confidential and not disclosed (without prior written approval) or used by any such employees or such professional advisors or consultants otherwise than for the purposes of this Agreement.
- 3.11 The Contractor shall not use any Information it receives from the School otherwise than for the purposes of this Agreement.
- 3.12 With regard to School Data:
- 3.12.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the School Data.
- 3.12.2 The Contractor shall not store, copy, disclose, or use the School Data except as necessary for the performance by the Contractor of its obligations under this Agreement or as otherwise expressly authorised in writing by the School.
- 3.12.3 To the extent that School Data is held and/or processed by the Contractor, the Contractor shall supply that School Data to the School as requested by the School in the format specified in the Information Assets Register as set out in Schedule 2 (Goods and/or Services Specification).
- 3.12.4 The Contractor shall take responsibility for preserving the integrity of School Data and preventing the corruption or loss of School Data
- 3.12.5 The Contractor shall perform secure back-ups of all School Data and shall ensure that up-to-date back-ups are stored off-site in accordance

with the Business Continuity and Disaster Recovery Plan. The Contractor shall ensure that such back-ups are available to the School at all times upon request and are delivered to the School at no less than monthly intervals.

- 3.12.6 The Contractor shall ensure that any system on which the Contractor holds any School Data, including back-up data, is a secure system that complies with the School's Information Policy Requirements
- 3.12.7 If the School Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the School may:
- 3.12.7.1 require the Contractor (at the Contractor's expense) to restore or procure the restoration of School Data in full and in not later than three Days (subject to any agreed business continuity and disaster recovery plan); and/or
 - 3.12.7.2 in default thereof itself restore or procure the restoration of School Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so.
- 3.12.8 If at any time the Contractor suspects or has reason to believe that School Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the School immediately and inform the School of the remedial action the Contractor proposes to take.

4. Data Protection

- 4.1 The School is and will remain the Data Controller in relation to the personal information processed under this Agreement, and that the Contractor will act as Data Processor with respect to such personal information. As such, the Contractor must follow the direction of the School as to how Personal Data is processed.
- 4.2 All Personal Data acquired by the Contractor from the School shall only be used for the purposes of this Agreement and shall not be further processed or disclosed without the prior written consent of the School.
- 4.3 The Contractor shall comply with the GDPR requirements with regard to appointing a Data Protection Officer were required by law.
- 4.4 The Contractor warrants that it has given appropriate notification under the DPA under registration number [number] to undertake the subject matter of this Agreement.
- 4.5 The Contractor shall comply with all relevant codes of practice issued under the DPA and GDPR.

- 4.6 The Contractor shall assist the School in safeguarding the legal rights of the data subject.
- 4.7 The Contractor will have in place at all times appropriate technical and organisational security measures to safeguard School Data in compliance with DPA and National Cyber Security Centre (NSNC) guidance.
- 4.8 The Contractor shall indemnify the School against loss, destruction or processing contrary to the DPA by itself, its employees, contractors or agents.
- 4.9 The Contractor shall ensure the reliability and training of all its relevant employees to ensure awareness of and compliance with the Contractor's obligations under the DPA.
- 4.10 The School shall respond to all Subject Access Requests (SAR), whether received by the Contractor or the School, and therefore the Contractor shall provide to the School the personal data requested by the Data Subject (as defined in the DPA) within 10 working days of receipt of instruction by the School for supply of the data.
- 4.11 The Contractor shall immediately notify a senior manager within the School if it receives:
 - 4.9.1 a request from any person whose Personal Data it holds to access his Personal Data; or
 - 4.9.2 a complaint or request relating to the School's obligations under the DPA
- 4.12 The Contractor will assist and co-operate with the School in relation to any complaint or request received, including:
 - 4.10.1 providing full details of the complaint or request;
 - 4.10.2 providing the School with any information relating to a SAR within 10 working days of receipt of the request;
 - 4.10.3 promptly providing the Service Manager with any Personal Data and other information requested by him.
- 4.13 In addition to the obligation undertaken in paragraph 4.4.8, the Contractor shall not further process information outside of the EEA as defined by the DPA without full prior written consent from the School.
- 4.14 The Contractor shall cooperate with Data Protection Compliance Audits as and when requested.
- 4.15 The Contractor shall comply with GDPR requirements for maintaining accurate, current and comprehensive Records of Processing

5. The FOIA and the EIR

- 5.1 The School is subject to the provisions of the FOIA and the EIR and the Contractor shall assist the School (at the Contractor's expense) to enable the School to comply with these Acts. The Contractor acknowledges that the School may be obliged to disclose Information relating to this Agreement. Notwithstanding any other term of this Agreement, the Contractor hereby gives its consent for the School to publish this Agreement in its entirety, including from time to time agreed changes to the Agreement, to the general public in whatever form the School decides.
- 5.2 The Contractor must transfer any request for information under FOIA and EIR to the School as soon as practicable after receipt and in any event within 2 working days of receipt.
- 5.3 Where the School so requires for the purpose of compliance with the Information Legislation, the Contractor shall provide the School with a copy of all Information in its possession or power, in the form that the School requires, within 10 working days (or such other reasonable period as the School may specify) of the School requesting the Information
- 5.4 Without prejudice to paragraph 5.6 and subject to paragraph 5.8 below, where the Contractor believes the disclosure of information would prejudice its commercial interests or constitute an actionable breach of confidentiality, the School shall consider any case made where it is provided within 10 working days (or such other reasonable period as the School may specify) of the School requesting the Information
- 5.5 The Contractor shall provide all necessary assistance as requested by the School under paragraph 5.3 above so as to enable the School to respond to a request for information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.
- 5.6 As between the parties, the School will determine at its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of the FOIA or the EIR.
- 5.7 In no event will the Contractor respond directly to a request for information unless expressly authorised to do so by the School save to acknowledge receipt (if so requested by the School).
- 5.8 The Contractor acknowledges that the School may be obliged under the FOIA or the EIR to disclose Information without consulting with the Contractor, or following consultation with the Contractor and having taken its views into account.
- 5.9 The Contractor must ensure that all Information produced in the course of this Agreement or relating to this Agreement is retained for disclosure in line with the School's policy on information retention periods and must permit the School to inspect such records as requested from time to time.

5.10 The Contractor acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the School may nevertheless be obliged to disclose Confidential Information.

6. Disclosures by the School

6.1 Nothing in this Agreement shall prevent the School disclosing any Information:

6.1.1 for the purpose of the examination and certification of the School's accounts; or

6.1.2 any examination pursuant to Section 6 (1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the School has used its resources; or

6.1.3 to any person engaged in providing any services to the School for any purpose relating to or ancillary to this Agreement provided that in disclosing information the School 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.

7. Accessibility of Data

Where the Contractor is undertaking work on behalf of the School to develop new systems, practices or documentation in processing of data, the Contractor shall ensure that there remains the ability to extract data in a format accessible to and useable by the School (with regard to paragraph 10.3) supported by an Impact Assessment which is approved by the School.

8. Know-how

Nothing in this Agreement shall prevent either party from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Information the subject of this Agreement.

9. Information Breaches

9.1 The Contractor shall ensure all losses or breaches of security or information are reported to the School within 1 working day whether actual, potential or attempted.

9.2 The Contractor will ensure all breaches are internally investigated, and appropriate remedial action taken, along with supporting the School and the

Information Commissioner's Office in any investigation by it. A copy of the investigation report must be provided to the School.

- 9.3 The Contractor will immediately take all reasonable steps to remedy such breaches and to protect the integrity of both parties against any actual, potential or attempted breach or threat and any equivalent attempted breach in the future.

10. Breach, termination and continuance

- 10.1 The Contractor shall indemnify the School for any breach of the requirements of this schedule which renders the School liable for any costs, fines, claims or expenses under Legislation howsoever arising.
- 10.2 Failure on the part of the Contractor to comply with the provisions of this schedule shall amount to a breach of this contract and shall give the School the right to exercise any and all of the remedies in this contract and recover all costs incurred as a consequence of the Contractor's breach.
- 10.3 On termination of this Agreement howsoever arising the Contractor shall when directed to do so by the School, and instruct all its agents and subcontractors to:
- 10.3.1 transfer to the School the whole or any part of the Personal Data and other Information received or acquired by the Contractor for the purposes of or in the course of the delivery of the services the subject of this Agreement; and
 - 10.3.2 ensure that such a transfer is made securely in a manner specified by the School and the data complies with the requirement at paragraph 7; and
 - 10.3.3 securely destroy or erase the whole or any part of such Personal Data and other Information retained by the Contractor and provide to the School such proof of destruction as the School may reasonably specify.
- 10.4 The provisions of this paragraph shall continue in effect notwithstanding termination of this Agreement.