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| --- |
| Dated: [date] |
| THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL (1)  and  THE SUPPLIER (2) |
| Contract for the provision of  OCCUPATIONAL HEALTH SERVICES FOR HEREFORDSHIRE COUNCIL  SERVICES |

|  |  |
| --- | --- |
| **CONTRACT DETAILS – Contract Reference no [ ]** | |
| **Supplier** | [Add name of Supplier] and [Company Registered Number] |
| **Supplier's Address for Notices:** | [Add registered office address of Supplier] |
| **Contract Managers:** | The Council: [ ]  Supplier: [ ]  or such other person as is notified by a party to the other in writing. |
| **Commencement Date:** | 1st April 2024 |
| **Expiry Date:** | 31st March 2027 |
| **Extension Period:** | Up to 24 months subject to future governance approvals and provider’s satisfactory performance |
| **Necessary Consents:**  **As per Clause 4.2.2** | N/A |
| **Schedule 1 - Optional Clauses to apply:** | * Optional Clause 4 – No Fault Termination * Optional Clause 5 – Collaborative Procurement – Right of Other Bodies to Participate * Optional Clause 6 - call off provisions |
| **Schedule 2 – Supply of Goods** | Schedule 2 (Supply of Goods) shall not apply to this Agreement. |
| **Schedule 3 – TUPE** | Schedule 3 (TUPE) shall not apply to this Agreement. |
| **Schedule4 – Charges and Payments** | Schedule 4 (Charges and Payments) shall apply |
| **Schedule 5 – Specification** | Schedule 5 (Specification) shall apply |
| **Schedule 6 – Supplier’s Tender Response/Quotation** | Schedule 6 (Supplier’s Tender Response) shall apply to this Agreement. |
| **Schedule 7 – Other documentation** | Schedule 7 (Other documentation) shall apply to this Agreement - SPECIAL TERMS AND CONDITIONS |
| **Schedule 8 – Data Processing, Personal Data and Data Subjects** | The parties to this agreement are:  Controllers in common  The Council is a Controller and the Supplier is a Processor and the Schedule 8 Data Processing, Personal Data and Data Subjectsshall apply to this Agreement |
| **Safeguarding and DBS requirements:** | Safeguarding does not apply  DBS checks are required  Enhanced DBS & Barred List Check are required  Employment Checks are required |
| **Special Conditions:** | none |
| **Liability Limit**  As per Clause 19.6 | £5 million |
| **Insurance:**  As per Clause 20 | Public liability insurance: £ 5 million.  Employer's liability insurance: £ 5 million.  Medical malpractice insurance: £ 5 million.  Professional indemnity insurance: £ 5 million. in relation to any one claim or series of connected claims to be maintained for a period of six years after the expiry of the contract |

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**THIS AGREEMENT** is made on [INSERT DATE]

**BETWEEN**:

1. THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL of Plough Lane, Hereford, HR4 0LE ("the Council"); and
2. THE SUPPLIER whose identity and address for service is set out in the Contract Details ("the Supplier")

each a **Party** and together the **Parties**.

**BACKGROUND**

1. The Council is a local authority and a best value authority with duties and powers to make arrangements to secure continuous improvement in the way it exercises its functions, having regard to a combination of economy, efficiency and effectiveness pursuant to Part I of the Local Government Act 1999.
2. The Council has advertised for providers of the Services (as defined in Clause 1.1 (Definitions) below) and following a tender process has selected the Supplier to provide the Services to the Council.
3. The Agreement sets out the terms and conditions on and subject to which the Supplier will provide the Services and Goods to the Council.

**SECTION A: PRELIMINARIES**

1. DEFINITIONS AND INTERPRETATION
   1. In this Agreement, unless the context otherwise requires, capitalised terms shall have the meaning given to that term as set out below or the meaning given to such term where it is defined elsewhere in this Agreement.
2. Affected Party has the meaning given to the term in Clause 21.2 (Force Majeure).
3. Agreement means the agreement concluded between the Council and the Supplier for the provision of the Services comprising of the Agreement and Schedules and other documents as listed in the Contract Details;
4. Audit Agents means:
   1. the Council's statutory and regulatory auditors and any other auditors appointed by the Council; and
   2. the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office.
5. Business Day means a day, other than Saturday, Sunday or a public holiday in England.
6. Charges means the charges for the provision of the Services set out in Schedule 4 of this Agreement.
7. Codes shall have the meaning given to that term in Clause 17.2 (Freedom of Information).
8. Commencement Date means the date the Agreement starts as set out in the Contract Details.
9. Commercially Sensitive Information means any information of a commercially sensitive nature relating to the Supplier, its Intellectual Property Rights or its business or which the Supplier has indicated to the Council that, if disclosed by the Council, would cause the Supplier significant commercial disadvantage or material financial loss.
10. Confidential Information means:
    1. Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Agreement that relates to:
       1. the Disclosing Party; or
       2. the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party;
    2. other Information provided by the Disclosing Party pursuant to or in anticipation of this Agreement that is clearly designated as being confidential or equivalent (whether or not it is so marked) or that ought reasonably to be considered to be confidential which comes (or has come) to the Recipient’s attention or into the Recipient’s possession in connection with this Agreement;
    3. discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Agreement and all matters arising therefrom; and
    4. Information derived from any of the above,

but not including any Information which:

* + 1. was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;
    2. the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient’s knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;
    3. was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or
    4. was independently developed without access to the Confidential Information.

1. Contract Details means the front sheet to this Agreement which sets out the particulars of the Agreement.
2. Contract Term means the period commencing on the Commencement Date and ending on the Expiry Date or on the expiry of any Extension Period or on earlier termination of this Agreement in accordance with Clause 23 (Termination for Breach).
3. Contract Year means a period of 12 months commencing on the Commencement Date and/or each anniversary of the Commencement Date.
4. Council Assets means any assets, equipment or other property which is owned by the Council and which is or may be used in connection with the provision or receipt of the Services.
5. Council Data means:
   1. the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are supplied to the Supplier by or on behalf of the Council pursuant to this Agreement; and
   2. any Personal Data for which the Council is the Data Controller.
6. Council Premises means any Council premises which are to be made available for use by the Supplier for the provision of the Services on the terms set out in this Agreement.
7. Council Representative means the person appointed by the Council and identified in the Contract Details with authority to act on behalf of the Council in relation to all matters set out in, or in connection with this Agreement.
8. Data Controller means a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed.
9. Data Loss Event means any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
10. Data Processor, in relation to personal data, means any person (other than an employee of the data controller) who processes the data on behalf of the data controller.
11. Data Protection Impact Assessment means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
12. Data Protection Legislation: means the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.
13. Data Subject means an individual who is the subject of personal data.
14. Data Subject Access Request means a request made by a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access his Personal Data.

Defaults mean any failure by the Supplier to perform its material obligations under this Agreement.

1. Disclosing Party has the meaning given to it in Clause 16.1 (Confidentiality).
2. Dispute means any dispute, issue, difference or question of interpretation arising out of or in connection with this Agreement, including any dispute, issue, difference or question of interpretation relating to the Services or any matter where this Agreement directs the Parties to resolve a matter by reference to the Dispute Resolution Procedure.
3. Dispute Notice has the meaning given to it in Clause 13.2.2 (Disputes).
4. Dispute Resolution Procedure means the dispute resolution procedure set out in Clauses 13.2 to 13.8 (Disputes).
5. DOTAS means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992.
6. EIR means the Environmental Information Regulations 2004 and any subordinate legislation from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such Regulations.
7. Exit Plan means the plan for the transfer of Services to the Council and/or any Replacement Supplier in the event of the expiry or termination of this Agreement for any reason, which is to be developed by the Parties pursuant to Clause 23 (Consequences of Expiry or Termination).
8. Expiry Date means the date the Agreement expires as set out in the Contract Details.
9. Extension Period means any agreed extension period as set out in the Contract Details
10. FOIA means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to the Freedom of Information Act 2000.
11. Force Majeure Event means war, natural flood, exceptionally adverse weather, strike or lockout (other than a strike or lockout which is limited to the Supplier's Personnel), civil disorder, act of God, power cuts or delays or other wholly exceptional events outside the control of the parties which could not have been reasonably foreseen or avoided, but excluding:
    1. any industrial action occurring within the Supplier
    2. any industrial action occurring from any subcontractor for which the Supplier is responsible for

which directly causes either Party to be unable to comply with all or a material part of its obligations under this Agreement.

1. General Anti-Abuse Rule means:
   1. the legislation in Part 5 of the Finance Act 2013; and
   2. any future legislation introduced into Parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions.
2. Guidance means any applicable guidance or directions with which the Supplier is bound to comply.
3. Information means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form).
4. Intellectual Property means all intellectual property of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the look and feel of any websites.
5. Intellectual Property Rights means any and all rights relating to Intellectual Property.
6. Invitation to Tender means the invitation to quote for, or tender for the supply of the Services by the Supplier to the Council.
7. Law means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply.
8. LGA 1999 means the Local Government Act 1999.
9. Losses means all losses, liabilities, damages, demands, charges, costs, and expenses (including legal and other professional charges and expenses) litigation, settlement, judgement interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise and the term Loss shall be construed accordingly.
10. Necessary Consents means all approvals, certificates, authorisations, permissions, licences, permits and consents necessary from time to time for the performance of the Services (which shall include any listed in the Contract Details).
11. Occasion of Tax Non-Compliance means:
    1. any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of:
       1. a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule;
       2. the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or
    2. the Supplier’s tax affairs give rise on or after 1 April 2013 to a conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a penalty for civil fraud or evasion.
12. Performance Levels means the performance levels against which the Council will monitor the Services supplied by the Supplier, if any, and where applicable as set out in the Services Specification.
13. Personal Data means personal data (as defined in the Data Protection Legislation) which is Processed by the Supplier on behalf of the Council pursuant to or in connection with this Agreement.
14. Personal Data Breach means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed by the Supplier under this Agreement.
15. Process has the meaning given to that term under the Data Protection Legislation and Processed and Processing shall be construed accordingly.
16. Prohibited Act means:
    1. to directly or indirectly offer, promise or give any person working for or engaged by the Council or its members, a financial or other advantage to:
       1. induce that person to perform improperly a relevant function or activity; or
       2. reward that person for improper performance of a relevant function or activity;
    2. 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 Agreement;
    3. an offence:
       1. under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
       2. under legislation or common law concerning fraudulent acts; or
       3. defrauding, attempting to defraud or conspiring to defraud the Council; or
    4. 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;
17. Protected Characteristics has the meaning set out in Clause 27.1 (Equal Opportunities).
18. Protective Measures means 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 the measures adopted by it.
19. Recipient has the meaning set out in Clause 16.1 (Confidentiality and Transparency).
20. Records shall have the meaning given to that term in Clause 10.2 (The Supplier's Records and Provision of Information).
21. Relevant Authority means any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union.
22. Relevant Tax Authority means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is required to submit a tax return.
23. Relevant Requirements means 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.
24. Replacement Supplier means any third party supplier of replacement services appointed by the Council from time to time.
25. Representatives means the Council Representative and the Supplier Representative and Representative shall mean either one of them as the context so requires as identified in the Contract Details.
26. Request for Information shall have the meaning set out in the FOIA or the EIR as relevant.
27. Required Insurance means the insurances to be taken out by the Supplier in accordance with Clause 20.1 (Insurance).
28. Required Professional Standard means the exercise of that degree of skill, care and diligence which would reasonably and ordinarily be expected from a skilled and experienced professional provider of services similar to the Services to a customer like the Council, such provider seeking to comply at all times with their contractual and regulatory obligations and complying with applicable Laws;
29. Senior Representatives has the meaning given to term in Clause 13.2.3 (Disputes).
30. Service Users means users who consume or benefit from the Services.
31. Services means the whole of the services or any of them to be provided by the Supplier as identified in the Services Specification pursuant to this Agreement from time to time.
32. Services Specification means the specification of the Services set out in the Invitation to Tender;
33. Subcontract means any contract or agreement between the Supplier and any third party whereby that third party agrees to provide the Supplier all or any part of the Services.
34. Subcontractors means any third party with whom the Supplier enters into a Subcontract.
35. Sub-processor means any third party appointed to process Personal Data on behalf of the Supplier under the terms of this Agreement.
36. Successor Body shall have the meaning given to that term in Clause 32.2 (Assignment and Other Dealings).
37. Supplier's Equipment means any equipment belonging to the Supplier which is used by the Supplier in the supply of the Services to the Council.
38. Supplier Personnel means all directors, officers and employees of the Supplier engaged in the performance of the Supplier's obligations under this Agreement.
39. Supplier Representative means the person appointed by the Supplier and identified in the Contract Details, with authority to act on behalf of the Supplier in relation to all matters set out, or in connection with this Agreement.
40. Supplier's Tender Response means the Supplier's response to the Council's Invitation To Tender for the award of this Agreement to deliver the Services.
41. Transparency Code shall have the meaning given to that term in Clause 16.8 (Confidentiality and Transparency).
42. Data Protection Legislation means all applicable data protection and privacy legislation, subordinate legislation and statutory guidance in force from time to time in the UK including the UK General Data Protection Regulation, the Data Protection Act 2018, the Privacy and Electronic Communications Directive 2002/58/EC (as update by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
43. Value Added Tax or VAT means value added tax as provided for in the Value Added Tax Act 1994 or such similar tax which may be imposed in place from time to time.
44. Working Day any day other than a Saturday, Sunday or public holiday in England.
    1. In this Agreement, unless the context otherwise requires:
       1. words in the singular include the plural and vice versa and words importing a gender includes the other gender and the neuter;
       2. references to a person include an individual, Supplier, body corporate, corporation, unincorporated association, firm, partnership or other legal entity;
       3. a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
       4. any phrase introduced by the terms "**including**", "**include**", "**in particular**", "**for** **example**" or any similar expression shall be construed as illustrative and shall not limit the generality of the words preceding those terms;
       5. references to “**writing**” include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly unless expressly stated otherwise in this Agreement;
       6. references to Clauses and Schedules are, unless otherwise specified, references to the clauses and schedules of this Agreement and references in any Schedule to Paragraphs and Parts are, unless otherwise specified, references to the paragraphs and parts of the Schedule or the Part of the Schedule in which the references appear;
       7. the Schedules form part of this Agreement; and
       8. headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement.
    2. If there is any conflict between the Clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
       1. the Contract details
       2. the Clauses;
       3. the Services Specification;
       4. any other Schedules;
       5. the Supplier's Tender Response;
       6. the Tender Clarifications;
       7. Invitation to Tender.
45. CONTRACT TERM
    1. Subject to Clauses 23 (Termination for Breach) and 41.1.4 where applicable, this Agreement shall take effect on the Commencement Date and shall continue in force for the Contract Term.

2.2 The Agreement may be extended for a further period or periods as set out in the Contract Details by agreement in writing between the parties.

1. DUE DILIGENCE
   1. Subject to Clause 3.2, the Supplier acknowledges that it is the Supplier's responsibility to carry out such due diligence as it considers appropriate before entering into this Agreement and, in so doing, that it:
      1. has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Council all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this Agreement;
      2. has received all information requested by it from the Council pursuant to Clause 3.1.1 to enable it to determine whether it is able to provide the Services in accordance with the terms of this Agreement;
      3. has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council pursuant to Clause 3.1.2;
      4. has raised all relevant due diligence questions with the Council before the Commencement Date; and
      5. has entered into this Agreement in reliance on its own due diligence alone.
   2. Save as provided in this Agreement, no representations, warranties or conditions are given or assumed by the Council in respect of any information which is provided to the Supplier by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by Law.
2. WARRANTIES
   1. The Supplier represents and warrants that:
      1. it has full capacity and authority to enter into and to perform its obligations under this Agreement;
      2. there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might adversely affect its ability to perform its obligations under this Agreement;
      3. it has not done, and in performing its obligations under this Agreement, it shall not do, any act or thing that contravenes the Bribery Act 2010 or any other applicable anti-bribery or anti-money laundering laws and/or regulations and it has maintained and monitored, and will maintain and monitor, policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance with the Bribery Act 2010 and related applicable Laws; and
      4. its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors’ rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or Law).
   2. The Supplier represents and warrants that as at the Commencement Date:
      1. (as appropriate) it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
      2. it has obtained all Necessary Consents;
      3. all information contained in the Supplier's Tender Response remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to the Commencement Date and separately warrants to inform the Council in the event there are any changes to such information during the Contract Term; and
      4. shall promptly notify the Council in writing if it becomes aware during the performance of this Agreement of any inaccuracies in any information provided to it by the Council during such due diligence which materially and adversely affects its ability to perform the Services or meet any Performance Levels.
   3. Each of the representations and warranties set out in Clauses 4.1 to 4.2 (inclusive) shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Agreement.
   4. Save as expressly set out in this Agreement, all warranties, representations, conditions and other terms implied by Law (whether statutory or otherwise), are hereby excluded to the fullest extent permitted by Law.

**SECTION B: THE SERVICES**

1. THE SERVICES
   1. The Supplier shall commence the provision of the Services on the Commencement Date and shall thereafter continue to provide the Services throughout the Contract Term in accordance with the terms of this Agreement.
   2. The Supplier shall at all times during the Contract Term perform the Services under this Agreement in accordance with:
      1. all applicable Law and Guidance;
      2. the Required Professional Standard;
      3. the Services Specification;
      4. the Performance Levels;
      5. all relevant rules, codes, policies, procedures and standards of the Councils which may be referred to in the Services Specification;
      6. the Council’s Whistleblowing Policy and Information Security Policy as published on the Council’s website from time to time (and procure that its staff do so);
      7. the Council’s reasonable instruction; and
      8. the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 5.2.1 to 5.2.6.
   3. The Supplier shall:
      1. pay proper regard to (and, where appropriate, ensure compliance with) the statutory duties of the Council insofar as the Supplier is required to perform such statutory duties on the Council's behalf;
      2. at all times allocate sufficient resources with the appropriate professional expertise to provide the Services in accordance with this Agreement;
      3. obtain and maintain throughout the Contract Term, all Necessary Consents;
      4. as far as reasonably practicable minimise any disruption to the Council's operations when providing the Services;
      5. not wilfully engage in any act or omission which is reasonably likely to bring the Council into disrepute; and
      6. cooperate with the Council in all matters relating to the Services

**SUPPLIER PERSONNEL**

* 1. The Supplier shall at all times ensure that, in respect of the Supplier Personnel engaged in the provision of the Services:
     1. each of such Supplier Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged
     2. there is an adequate number of the Supplier Personnel to properly provide the Services; and
     3. all of the Supplier Personnel who require access to the Council's Premises in connection with the provision of the Services comply with the relevant Council policies relating to access and/or use of the Council's Premises, provided always that such policies (including any updates thereto) are brought to the attention of the Supplier and the Supplier is provided with copies of such policies.
  2. The Council reserves the right to refuse to admit (acting reasonably) to the Council's Premises any person employed or engaged by the Supplier (including any Subcontractor) where admission would, in the reasonable opinion of the Council:
     1. present a risk to the Council or to Service Users; or
     2. would be a threat to the security or operations of the Council.
  3. Where the Council exercises its right to refuse admission to any person employed or engaged by the Supplier pursuant to Clause 5.5, the Council shall notify the Supplier in writing of such refusal without delay, including the identity of the person who has been refused such admission and the Council's reasons for refusing admission to such persons.

1. council's premises and assets
   1. Where the Supplier (and its Subcontractors) are required by the Council to access parts of the Council's Premises, for the purposes only of properly providing the Services, then the Council shall provide such necessary access to the Council Premises to the Supplier for this purpose.
   2. In the event of the expiry or termination of the Agreement, the Council shall on reasonable notice provide the Supplier with such access as the Supplier reasonably requires to the Council's Premises to remove any of the Supplier's Equipment. All such equipment shall be promptly removed by the Supplier.
   3. The Supplier shall ensure that:
      1. where using the Council's Premises and any Council Assets they are kept properly secure and it will comply and cooperate with the Council's Representative's reasonable directions regarding the security of the same;
      2. only those of the Supplier's Personnel that are duly authorised to enter upon the Council's Premises for the purposes of providing the Services, do so; and
      3. any Council Assets used by the Supplier are maintained (or restored at the end of the Term) in the same or similar condition as at the Commencement Date (fair wear and tear excepted) and are not removed from Council Premises unless expressly permitted under this Agreement or by the Council's Representative.
   4. The Council shall maintain and repair the Council Assets, however, where such maintenance or repair arises directly from the act, omission, default or negligence of the Supplier or its representatives (fair wear and tear excluded) the costs incurred by the Council in maintaining and repairing the same shall be recoverable from the Supplier as a debt.
   5. The Supplier shall notify the Council immediately on becoming aware of any damage caused by the Supplier, its agents, employees or Subcontractors to any property of the Council, to any of the Council's Premises or to any property of any other recipient of the Services in the course of providing the Services.

**SECTION C: PAYMENT, TAXATION AND BEST VALUE PROVISIONS**

1. CHARGES AND INVOICING
   1. The Supplier shall comply with the Council’s charging, invoicing and payment requirements as set out in this Clause 7 and Schedule 4.
   2. In consideration of the provision of the Services by the Supplier in accordance with this Agreement, the Council shall pay any undisputed Charges to the Supplier in accordance with the provisions of Schedule 4.
   3. The Supplier shall invoice the Council for payment of the Charges at the time the Charges are expressed to be payable as set out in Schedule 4.
   4. The invoicing provisions set out in Clauses 7.2 to 7.3 shall be included in any Subcontract.
   5. If the Council fails to pay any undisputed Charges properly invoiced under this Agreement, the Supplier shall have the right to charge interest on the overdue amount at 2% above the Bank of England Base Rate accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
   6. The Council may at any time, without limiting any of its other rights or remedies, withhold or set off any liability of the Supplier to the Council against any liability of the Council to the Supplier.
   7. The Council shall, in its absolute discretion but at all times acting reasonably, consider whether and to what extent the Charges will be adjusted. The Council shall notify the Supplier of its discretion in writing and any adjustments shall apply to this Agreement with effect from the following anniversary of the Commencement Date. Both Parties agree to act reasonably and in good faith with respect to the operation of this Clause.
2. VALUE ADDED TAX AND PROMOTING TAX COMPLIANCE
   1. Charges are stated exclusive of VAT. Where VAT is chargeable in respect of any of the Services, the Supplier shall calculate the amount of VAT to be paid by the Council at the applicable prevailing rate, which shall be added to the Charges and paid by the Council following the submission of a VAT invoice by the Supplier in respect of the same.
   2. All amounts due under this Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by Law).
   3. The Supplier shall indemnify the Council against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Council at any time in respect of the Supplier's failure to account for, or to pay, any VAT relating to payments made to the Supplier under this Agreement
   4. If, at any point during the Contract Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
      1. notify the Council in writing of such fact within five Working Days of its occurrence; and
      2. promptly provide to the Council:
         1. details of the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and prevent the same from recurring, together with any mitigating factors that it considers relevant; and
         2. such other information in relation to the Occasion of Tax Non-Compliance as the Council may reasonable require.

**SECTION D: CONTRACT GOVERNANCE**

1. GOVERNANCE
   1. The Supplier shall comply with the provisions of the Services Specification in relation to the reporting requirements, provision of management information and governance of the Services under this Agreement.
2. The Supplier'S RECORDS AND PROVISION OF INFORMATION
   1. During the Contract Term the Supplier shall retain and maintain at its own expense all Records within the United Kingdom in accordance with Required Professional Standard in a form that is capable of audit and such Records shall be retained by the Supplier for a period of at least six years from the end of the Contract Term or for such longer period as may be required by any applicable Law.
   2. The records that shall be retained and maintained by the Supplier pursuant to Clause 10.1 are:
      1. this Agreement, its Schedules and all amendments to such documents;
      2. invoices (including any VAT invoices) prepared by the Supplier and submitted to the Council in respect of claims for the Charges under this Agreement;
      3. records required to be retained by the Supplier by Law, including records of incidents relating to health and safety;
      4. personnel records on the Supplier Personnel engaged in the provision of the Services; and
      5. all documents relating to the Required Insurances and any claims in respect of them,

together the "**Records**".

* 1. The Supplier shall at reasonable times and within normal business hours:
     1. make the relevant Records available for inspection by the Audit Agents; and
     2. provide or procure access to such facilities to enable the Audit Agents to visit any place where the Records are held for the purposes of such inspection,

provided always that the Council shall give the Supplier reasonable notice of such inspection and afford the Supplier a reasonable period of time to collate any relevant information and/or Records where this is required for the purposes of the inspection.

* 1. All information and Records referred to in this Clause 10 are subject to the provisions of Clauses 15 (Data Protection), 16 (Confidentiality and Transparency) and 17 (Freedom of Information).

1. AUDIT
   1. Subject always to Clauses 15 (Data Protection) and 16 (Confidentiality and Transparency) of this Agreement, the Supplier shall at all reasonable times during the Contract Term and during normal business hours, afford to or procure for any Audit Agent access to and permission to copy and remove any copies of any books records information and data in the possession or control of the Supplier which relate to or have been used in connection with the performance of the Services.
   2. The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services by the Supplier or adversely affect the performance by the Supplier of its obligations under this Agreement.
   3. Subject to the Supplier's obligations of confidentiality, the Supplier shall provide the Council (and its Audit Agents) with all reasonable co-operation, access and assistance in relation to each audit.
   4. The Council shall provide at least ten Working Days' notice of any audit unless such audit is conducted in respect of a suspected fraud, in which event no notice shall be required.
   5. The Parties shall bear their own costs and expenses incurred in respect of compliance with their obligations under this Clause 11.
2. scrutiny/cabinet attendance
   1. Where the value of the Services to be supplied under the Agreement exceeds one hundred thousand pounds (£100,000) in value during the Contract Term and for a period of six years after termination of expiry of the Agreement the Council reserves the right to require the Supplier to:
      1. provide all reasonable assistance for the purposes of answering the Council's questions pertaining to the operation of the Agreement (including but not limited to the Supplier's performance of the Agreement); and,
      2. attend the Council's Scrutiny Committee and/or Cabinet as and when reasonably required by the Council,

and the Supplier shall comply with any such requirements. Wherever possible, the Council will aim to give the Supplier reasonable advanced notice if the Supplier's attendance is required at the Council's Scrutiny Committee and/or Cabinet.

* 1. If, pursuant to Clause 12.1 the Council requires the Supplier to attend the Council's Scrutiny Committee and/or Cabinet following termination or expiry of the Agreement, the Council shall reimburse the Supplier for reasonable travel costs incurred.

1. DISPUTES
   1. The Parties shall resolve Disputes arising out of or in connection with this Agreement in accordance with the procedure set out in Clauses 13.2 to 13.8 below.
   2. The Parties shall attempt, in good faith, to resolve any Dispute promptly by negotiation which shall be conducted as follows:
      1. the Dispute shall be referred, by either Party, to the Representatives for resolution;
      2. if the Dispute cannot be resolved by the Representatives within 14 days after the Dispute has been referred to them, either Party may give notice to the other Party in writing (a **Dispute Notice**) that a Dispute has arisen; and
      3. within seven days of the date of the Dispute Notice, each Party shall refer the Dispute to the Chief Executives of the Parties (the **Senior Representatives**) for resolution.
   3. If the Senior Representatives are unable, or fail, to resolve the Dispute within 14 days of the reference to the Senior Representatives pursuant to Clause 13.2.3, the Parties may attempt to resolve the Dispute by mediation in accordance with Clause 13.4.
   4. If, within 21 days of the Dispute Notice, the Parties have failed to agree on a resolution, either Party may refer any Dispute for mediation pursuant to this Clause 13.4:
      1. the reference shall be a reference under the Model Mediation Procedure (**MMP**) of the Centre of Dispute Resolution (**CEDR**) for the time being in force;
      2. both Parties shall, immediately on such referral, co-operate fully, promptly and in good faith with CEDR and the mediator and shall do all such acts and sign all such documents as the CEDR or the mediator may reasonably require to give effect to such mediation, including a contract in, or substantially in, the form of CEDR’s Model Mediation Contract for the time being in force; and
      3. to the extent not provided for by such contract of the MMP:
         1. the mediation shall commence by either Party serving on the other written notice setting out, in summary form, the issues in dispute and calling on that other Party to agree the appointment of a mediator;
         2. unless otherwise agreed or determined, the Parties will share equally the costs of mediation; and
         3. the mediation shall be conducted by a sole mediator (which shall not exclude the presence of a pupil mediator) agreed between the Parties or, in default of agreement, appointed by CEDR.
   5. If and to the extent that the parties do not resolve any Dispute or any issue in the course of any mediation, either Party may commence or continue court proceedings in respect of such unresolved Dispute or issue.
   6. Nothing in this Clause shall prevent either Party from instigating legal proceedings where an order for an injunction, disclosure or legal precedent is required.
   7. Without prejudice to the Council’s right to seek redress in court, the Supplier shall continue to provide the Services and to perform its obligations under this Agreement notwithstanding any Dispute or the implementation of the procedures set out in this Clause.
   8. Where a Dispute has been referred to mediation under this Agreement and the Supplier is in a related dispute with a sub-contractor which is substantially the same as the matter referred to mediation hereunder, the Parties consent to the joinder of such sub-contractor as a party to the mediation (subject to such sub-contractor having agreed to be subject to the same or substantially the same obligations as those imposed on the Parties by Clauses 13.2 to 13.7) and to the reference of such related dispute to the mediator appointed hereunder and further agree that the mediator shall have power to order the consolidation of such mediation proceedings and/or to order the holding of concurrent mediation sessions.
   9. The Parties shall continue to perform their obligations under this Agreement in accordance with its terms until any Dispute has been resolved.

**SECTION E: INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY**

1. INTELLECTUAL PROPERTY RIGHTS
   1. All Intellectual Property Rights in any materials provided by the Council to the Supplier for the purposes of this Agreement shall remain the property of the Council. In so far as it is able the Council shall grant (or procure from any third party licensor the grant) to the Supplier of a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement for the sole purpose of enabling the Supplier to perform its obligations under the Agreement.
   2. In the absence of prior written agreement by the Council to the contrary, all Intellectual Property created by the Supplier or any employee, agent or subcontractor of the Supplier:
      1. in the course of performing the Services; and
      2. exclusively for the purpose of performing the Services,

shall vest in the Council on creation.

* 1. The Supplier shall indemnify the Council against all claims, actions, proceedings and any Losses, costs, fees and expenses incurred by the Council arising from or incurred by reason of any alleged infringement of any third party’s Intellectual Property Rights by the Intellectual Property created by the Supplier during the course of the provision of the Services, except to the extent that they have been caused by or contributed to by the Council's acts or omissions.

1. DATA PROTECTION
   1. The Parties have determined in the Contract Particulars in respect of any Processing of Personal Data the relationship between them. Clauses 15.1 to 15.15 shall apply in all cases and the relevant clauses below will apply depending on the arrangement identified in the contract particulars.
   2. Each Party has paid such fees as are required by its the Information Commissioner which, by the time that the Processing of Personal Data under this Agreement is expected to commence, covers the intended Processing pursuant to this Agreement, unless an exemption applies.
   3. The Parties consider that the provision of Personal Data is necessary for the Purpose(s) of the Agreement. Any Personal Data processed under the agreement will be carried out in accordance with the Data Protection Legislation and in particular the Principles set out in Article 5 or Chapter 2 of Part 3 DPA 2018.
   4. Each Party shall ensure that it has legitimate grounds under the Data Protection Legislation for the Processing of Personal Data under this Agreement.
   5. The Parties agree that in respect of the Personal Data processed under this Agreement, they will provide clear and sufficient information to the Data Subjects, in accordance with Article 13 and/or 14 UK or EU GDPR or Clause 44 DPA2018.
   6. The Parties agree to comply with their obligations to respond to Data Subject access requests and to give effect to other rights of Data Subjects in accordance with Data Protection Legislation.
   7. Each Party shall promptly notify the other of any dispute, claim or query brought by any Supervisory Authority or Data Subject concerning the Processing of Personal Data provided under this Agreement.
   8. Each Party agrees to co-operate and provide reasonable assistance and information to the other Party in dealing with any dispute, claim or query brought by any Supervisory Authority or Data Subject in connection with this Agreement, with a view to settling them amicably and in a timely fashion.
   9. The Parties agree to respond to any generally available non-binding mediation procedure initiated by a Data Subject or by a Supervisory Authority. If they do participate in the proceedings, the Parties may elect to do so remotely (such as by telephone or other electronic means). The Parties also agree to consider participating in any other arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.
   10. The Parties agree to have in place throughout the term of this Agreement appropriate technical and organisational security measures to:
       1. prevent:

unauthorised or unlawful Processing of the Personal Data provided under this Agreement; and

the accidental loss or destruction of, or damage to, the Personal Data provided under this Agreement; and

* + 1. ensure a level of security appropriate to:

1. the harm that might result from such unauthorised or unlawful Processing or accidental loss, destruction or damage; and
2. the nature of the Personal Data to be protected
   1. It is the responsibility of each Party to ensure that its staff members are appropriately trained to handle and process the Personal Data in accordance with the agreed technical and organisational security measures together with any other applicable national data protection laws and guidance and have entered into confidentiality agreements relating to the processing of Personal Data.
   2. Where one or more Party is acting as a Controller they shall comply with their obligation to report a Personal Data Breach to the Information Commissioner and (where applicable) Data Subjects and shall each inform the other Party of any Personal Data Breach in relation to Personal Data relating to this agreement irrespective of whether there is a requirement to notify any Supervisory Authority or Data Subject(s).
   3. Any transfer of Personal Data to a third Party located outside the UK shall be in accordance with Chapter V UK GDPR or EU GDPR or Chapter 5 of Part 3 DPA 2018
   4. For the purposes of clause 15.13, transfers of Personal Data shall mean any sharing of Personal Data by one Party with a third Party, and shall include, but is not limited to, the following:
      * + 1. subcontracting the processing of Shared Personal Data;
          2. granting a third Party Controller access to the Shared Personal Data.
   5. The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. The Council may on not less than 30 Working Days’ notice to the Provider amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner’s Office or variation to the Data Protection Legislation.

**Controllers in Common**

* 1. The Parties agree that they are Controllers in common in connection with Personal Data processed under this Agreement, and are not joint Controllers. Each Party shall comply with all the obligations imposed on a Controller under the Data Protection Legislation.
  2. The Personal Data shared between the Parties (Shared Personal Data) must not be irrelevant or excessive with regard to the Purposes. The Shared Personal Data provided under this Agreement must be limited to the Shared Personal Data outlined in Schedule 2 and shall not be further processed in a way that is incompatible with the Purposes.
  3. The types of Personal Data and special categories of Personal Data which may be processed under this Agreement and/shared between the Parties and the relevant categories of Data Subjects to whom such Personal Data relates are outlined in Schedule 2.
  4. The Shared Personal Data shall only by provided to the other Party using secure methods as agreed between the Parties.
  5. The Parties shall agree at the end of this Agreement whether Shared Personal Data are returned to the other Party or destroyed in accordance with any agreed deletion procedure in the following circumstances:
     1. on termination of the Agreement;
     2. on expiry of the Term of the Agreement;
     3. once processing of the Shared Personal Data is no longer necessary for the purposes it was originally shared for.
  6. Following the deletion of any Personal Data, the Party destroying the Personal Data shall notify the other(s) that the Personal Data in question has been deleted in accordance with this Agreement.

**Joint Controllers**

* 1. The Parties agree to only process Shared Personal Data as set out in Schedule 2, for the Purposes and in the means set out in Schedule 2.
  2. The Parties shall not process Shared Personal Data in a way that is incompatible with the Purposes set out in Schedule 2.
  3. The Shared Personal Data must not be irrelevant or excessive with regard to the Agreed Purposes.
  4. Each Party shall comply with its obligations under Article 26 of the UK GDPR and:
     1. shall make available to Data Subjects the essence of the arrangements contemplated by this Agreement as is required by Article 26(2) of the UK GDPR and the EU GDPR;
     2. acknowledges that Data Subjects may exercise their rights under the UK GDPR or EU GDPR in respect of and against each Party in accordance with Article 26(3) of the UK GDPR; and
     3. agrees to provide to each other Party such cooperation as may reasonably be required to assist that other Party in compliance with its obligations under Article 26 of the UK GDPR or EU GDPR.
  5. Each Party shall continue to retain any Personal Data in accordance with any statutory or agreed retention periods applicable and shown in the respective retention schedules held by the Parties.
  6. The Parties shall agree at the end of this Agreement whether Shared Personal Data are returned to the other Party or destroyed in accordance with any agreed exit plan in the following circumstances:
     1. on termination of the Agreement;
     2. on expiry of the Term of the Agreement;
     3. once processing of the Shared Personal Data is no longer necessary for the purposes it was originally shared for.
  7. Following the deletion of any Personal Data, the Party destroying the Personal Data shall notify the other(s) that the Personal Data in question has been deleted in accordance with this Agreement.
  8. The Shared Personal Data shall only by provided to the other Party using secure methods as agreed between the Parties.

Data Processor

* 1. For the purposes of the Data Protection Legislation, the Council is the Controller and the Provider is the Processor. The only processing that the Provider is authorised to do is listed in the Schedule 2 to this Agreement by the Council and may not be determined by the Provider.
  2. The Provider shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
  3. The Provider 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:

### a systematic description of the envisaged processing operations and the purpose of the processing;

### an assessment of the necessity and proportionality of the processing operations in relation to the Services;

### an assessment of the risks to the rights and freedoms of Data Subjects; and

### the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

* 1. The Provider shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
     1. process that Personal Data only in accordance with Schedule 2, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Council before processing the Personal Data unless prohibited by Law;
     2. ensure that it has in place Protective Measures, which have been reviewed and approved by the Council as appropriate to protect against a Data Loss Event having taken account of the:
        + 1. nature of the data to be protected;
          2. harm that might result from a Data Loss Event;
          3. state of technological development; and
          4. cost of implementing any measures;
     3. ensure that:
     4. the Provider’s Personnel do not process Personal Data except in accordance with the Data Protection Legislation and this Agreement (and in particular Schedule 2);
     5. it takes all reasonable steps to ensure the reliability and integrity of any Processor’s Personnel who have access to the Personal Data and ensure that they:
     6. are aware of and comply with the Provider’s duties under this clause;
     7. are subject to appropriate confidentiality undertakings with the Provider or any Sub-processor;
     8. 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 Agreement; and
     9. have undergone adequate training in the use, care, protection and handling of Personal Data; and
     10. not transfer Personal Data outside of the UK unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:

the Council or the Provider has provided appropriate safeguards in relation to the transfer in accordance with Data Protection Legislation;

the Data Subject has enforceable rights and effective legal remedies;

the Provider 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 Council in meeting its obligations); and

the Provider complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;

## at the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the Agreement unless the Provider is required by Law to retain the Personal Data.

* 1. The Provider shall notify the Council immediately if it:

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

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

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

## receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;

## 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

## becomes aware of a Data Loss Event

* 1. Taking into account the nature of the Processing, the Provider 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 this Agreement (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:
     1. the Council with full details and copies of the complaint, communication or request;
     2. 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;
     3. the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
     4. assistance as requested by the Council following any Data Loss Event;
     5. 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.
  2. The Provider shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Provider employs fewer than 250 staff, unless:

## the Council determines that the processing is not occasional;

## the Council determines the processing includes special categories of data as referred to in Article 9(1) of the UK or EU GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK or EU GDPR; and

## the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

* 1. The Provider shall allow for audits of its Data Processing activity by the Council or the Council’s designated auditor.
  2. The Provider shall designate a data protection officer if required by the Data Protection Legislation.
  3. 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 Agreement)

1. CONFIDENTIALITY AND TRANSPARENCY

**Confidentiality**

* 1. For the purposes of this Clause 16, the term “**Disclosing Party**” shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and “**Recipient**” shall mean the Party which receives or obtains directly or indirectly Confidential Information.
  2. Except to the extent set out in this Clause 16 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:
     1. treat the Disclosing Party’s Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
     2. not disclose the Disclosing Party’s Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner's prior written consent;
     3. not use or exploit the Disclosing Party’s Confidential Information in any way except for the purposes anticipated under this Agreement; and
     4. immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party’s Confidential Information.
  3. The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
     1. the Recipient is required to disclose the Confidential Information by Law, provided that Clause 17 (Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs; or
     2. the need for such disclosure arises out of or in connection with:
        1. any legal challenge or potential legal challenge against a Party arising out of or in connection with this Agreement; or
        2. the purpose of the examination and certification of the either Party's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6 (1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council is making use of any Services provided under this Agreement.
  4. If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or the Relevant Authority requiring such disclosure and the Confidential Information to which such disclosure would apply.
  5. Subject to this Clause 16, either Party may only disclose the Confidential Information of the other Party on a confidential basis to:
     1. its personnel who are directly involved in the provision or receipt of the Services (as the case may be) and need to know the Confidential Information to enable performance by the respective Party of its obligations under this Agreement; and
     2. its professional advisers for the purposes of obtaining advice in relation to this Agreement.

Where a Party discloses the Confidential Information of the other Party pursuant to this Clause 16.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.

* 1. The Council may disclose the Confidential Information of the Supplier:
     1. strictly on a confidential basis for the purpose of Clause 11 (Audit); or
     2. to a Successor Body which substantial performs any of the duties previously performed by the Council.
  2. Nothing in this Clause 16 shall prevent a Recipient 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 use does not result in a disclosure of the Disclosing Party’s Confidential Information or an infringement of Intellectual Property Rights.

**Transparency**

* 1. The Supplier acknowledges that the Council is required to comply with The Code of Recommended Practice on Data Transparency for Local Authorities published by The Department for Communities and Local Government under section 2 of the Local Government Planning and Land Act 1980 (the **"Transparency Code"**).
  2. The Supplier acknowledges that the Council may be required to publish this Agreement (with the exception of any Commercially Sensitive Information), including from time to time agreed changes to this Agreement, to the general public in accordance with the Transparency Code provided that, in doing so:
     1. the Council shall consult with the Supplier prior to publishing the Agreement in order to discuss in good faith and agree any redactions (such agreement not to be unreasonably withheld or delayed); and
     2. the Supplier shall provide reasonable assistance at no additional cost to the Council to enable the Council to publish this Agreement.

1. FREEDOM OF INFORMATION
   1. The Supplier acknowledges that the Council is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
      1. provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and EIRs;
      2. transfer to the Council all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two Working Days of receipt;
      3. provide the Council with a copy of all Information belonging to the Council requested in the Request for Information which is in its possession or control in the form that the Council reasonably requires within ten Working Days (or such other period as the Council may reasonably specify) of the Council's request for such Information; and
      4. not respond directly to a Request for Information unless authorised in writing to do so by the Council.
   2. The Supplier acknowledges that the Council may in certain circumstances be required under the FOIA and EIRs to disclose Information without consulting or obtaining consent from the Supplier. The Council shall take all reasonable steps to notify and consult the Supplier about all Requests for Information (in accordance with the Secretary of State for Constitutional Affairs' section 45 Code of Practice on the Discharge of the Functions of Public Authorities) under Part 1 of the FOIA and the Code of Practice on the discharge of the obligations of public authorities under the Environmental Information Regulations 2004 (together the **Codes**) to the extent that it is permissible and reasonably practical for it to do so and shall take the Supplier's views into account regarding the relevant Request for Information.
   3. Subject to Clauses 17.4 and 17.5, where the Council receives a Request for Information in relation to Information that the Supplier is holding on its behalf, and which the Council does not hold itself, the Council shall transfer to the Supplier such Request for Information that it receives as soon as practicable and in any event within five Working Days of receiving a Request for Information and the Supplier shall:
      1. provide the Council with a copy of all such Information in the form that the Council reasonably requires as soon as reasonably practicable and in any event within ten Working Days (or such other period as the Council may specify, acting reasonably) of the Council’s request; and
      2. provide all necessary assistance as reasonably requested by the Council in connection with any such Information, to enable the Council to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Section 5 of the EIR as applicable.
   4. Subject to Clause 17.2, following notification under Clause 17.3 and up until such time as the Supplier has provided the Council with all the Information specified in Clause 17.3.1, the Supplier may make representations to the Council as to whether or not or on what basis Information requested should be disclosed, and whether further Information should reasonably be provided in order to identify and locate the Information requested, and the Council shall take such representations into account provided always that the Council shall be responsible for determining at its absolute discretion:
      1. whether the Information is exempt from disclosure under the FOIA or the EIR as applicable; and
      2. whether the Information is to be disclosed in response to a Request for Information.
   5. Without prejudice to Clause 17.4, if the Council receives a Request for Information (whether via the Supplier or otherwise) which relates to or requires the disclosure of Commercially Sensitive Information, the Council shall, in good faith, consider any objections and/or representations made by the Supplier regarding the disclosure of such Commercially Sensitive Information prior to responding to the Request for Information. The Supplier acknowledges that the Council is responsible for determining in its absolute discretion whether the Commercially Sensitive Information is exempt from disclosure in accordance with the provisions of the Codes, FOIA or the EIR.
   6. If, in response to a Request for Information, the Council concludes that it is obliged to disclose some or all of the Commercially Sensitive Information it shall (in accordance with any recommendations of the Codes) take all reasonable steps to give the Supplier notice in writing of its decision prior to the disclosure of the Commercially Sensitive Information.
   7. In the event of a request from the Council pursuant to Clause 17.3 the Supplier shall as soon as practicable, and in any event within five Working Days of receipt of such request, inform the Council of the Supplier's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Council under section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Council’s own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in section 12(1) of the FOIA and as set out in the Fees Regulations, the Council shall inform the Supplier in writing whether or not it still requires the Supplier to comply with the request and where it does require the Supplier to comply with the request the ten Working Days period for compliance shall be extended by such number of additional days for compliance as the Council is entitled to under section 10 of the FOIA. In such case, the Council shall notify the Supplier of such additional days as soon as practicable after becoming aware of them and shall reimburse the Supplier for such costs as the Supplier incurs in complying with the request.
   8. Notwithstanding the provisions of this Clause 17, in the event that the Supplier is considered and/or treated as a "public authority" (as defined in FOIA and the EIR, as applicable) for the purposes of FOIA and the EIR, nothing in this Agreement shall prevent and/or hinder the Supplier from performing its statutory duties pursuant to FOIA and the EIR in its capacity as a "public authority" and the Supplier shall have no liability to the Council under this Agreement in respect of the performance of such statutory duties by the Supplier.
   9. For the purpose of this Clause 17, "**Information**" has the meaning given under section 84 of the FOIA and the meaning attached to "environmental information" contained in section 2 of the EIR as appropriate.
2. PRESS STATEMENTS AND PUBLICation of the AGREEMENT
   1. The Supplier, including but not limited to all Supplier Personnel and Subcontractors, shall not:
      1. communicate with representatives of the press, television or radio or other media;
      2. issue any press release or public statement;
      3. grant permission to film or photograph in the Council Premises;
      4. engage in any marketing activity; or
      5. make any other announcements or publications, including via social media or otherwise,

relating to, in connection with, or arising out of the delivery of the Services without obtaining the Council's prior written approval as to the contents thereof and the manner of its presentation and publication.

* 1. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement is not Confidential Information. The Council shall be responsible for determining in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.
  2. The Council may consult with the Supplier to inform its decision regarding any redactions but the Council shall have the final decision in its absolute discretion.
  3. The Supplier shall assist and cooperate with Council to enable the Council to publish this Agreement.

**SECTION F: LIABILITIES AND INSURANCE**

**19** **liability**

19.1 Subject to clause 19.2, the Supplier shall indemnify and keep indemnified the Council against all liabilities, costs, expenses, damages and losses incurred by the Council arising out of or in connection with:

19.1.1 the Supplier’s breach or negligent performance or non-performance of this Agreement;

19.1.2 any claim made against the Council arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Agreement by the Supplier or Supplier Personnel;

19.1.3 the enforcement of this Agreement.

19.2 The indemnity under clause 19.1 shall apply except insofar as the liabilities, costs, expenses, damages and losses incurred by the Council are directly caused (or directly arise) from the negligence or breach of this Agreement by the Council.

19.3 Nothing in this Agreement shall limit or exclude the Supplier's or the Council’s liability for:

19.3.1 death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;

19.3.2 fraud or fraudulent misrepresentation;

19.3.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and

19.3.4 any other liability which cannot be limited or excluded by applicable Law.

19.4 Nothing in this Agreement shall limit or exclude the Supplier’s liability under Clause 8.3 (VAT indemnity), Clause 14.3 (IPR indemnity), Clause 23.2 (Termination for Breach indemnity), Clause 28 (Human Rights Act indemnity) and no amounts awarded or agreed to be paid under those clauses or schedule shall count towards the cap on the Supplier’s liability.

19.5 Subject to Clause 19.3, 19.4 and 19.7, neither party shall have any liability to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise for any indirect or consequential loss arising under or in connection with this Agreement.

19.6 Subject to Clause 19.3 and Clause 19.4, the Supplier's total aggregate liability to the Council, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement shall in no event exceed the amount in each Contract Year set out in the Contract Details.

19.7 Notwithstanding the provisions of Clause 19.5 but subject always to Clause 19.6, the Supplier assumes responsibility for the following losses which may be recoverable by the Council:

19.7.1 the Council’s additional operational and administrative costs and expenses arising from a Default;

19.7.2 the Council’s wasted expenditure or charges reasonably incurred by the Council arising from a Default;

19.7.3 any compensation or interest paid to a third party by the Council arising from a Default;

19.7.4 any loss or corruption to or alteration of any Council Data; and

19.7.5 any fines, expenses or other losses suffered or incurred by the Council arising from a breach by the Supplier of any Law.

19.8 Nothing in this Agreement shall be taken as in any way reducing or affecting a general duty to mitigate loss suffered by a party.

1. INSURANCE
   1. Without prejudice to Clause 19 (Liability), the Supplier shall at its own cost effect and maintain in force with reputable insurance companies such policies of insurance as set out in the Contract Details (the **Required Insurances**).
   2. The Supplier shall not, during the term of this Agreement do anything to invalidate any insurance policy and use its reasonable endeavours to procure that the terms of such policies are not altered in such a way as to have a material adverse effect on the benefit of such policies as they were at the Commencement Date.
   3. Following a written request of the Council (acting reasonably) for the same, the Supplier shall provide the Council with:
      1. copies of all insurance policies relating to the Required Insurances (or a broker's verification of insurance) and the Council shall be entitled to inspect such insurance policies at reasonable times during ordinary business hours; and
      2. evidence that the premiums payable under the insurance policies relating to the Required Insurances have been paid and that the insurances are in full force and effect.
   4. Without prejudice to the Council’s other rights under this Agreement, if, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, the Council may make alternative arrangements to keep such insurance in force and may recover the costs of such arrangements from the Supplier.
   5. The Council shall immediately notify the Supplier of any claims or potential claims of which it becomes aware in relation to any risk covered by any of the Required Insurances and for which it reasonably believes that the Supplier is responsible and shall provide the Supplier with all information and assistance it may reasonably require in order for the Supplier to effectively manage such claim.

**SECTION G: REMEDIES AND RELIEF**

1. FORCE MAJEURE
   1. Subject to the remaining provisions of this Clause 21, neither Party shall in any circumstances be liable to the other Party for any delay, or non-performance of its obligations under this Agreement to the extent that such delay or non-performance is due to a Force Majeure Event.
   2. In the event that either Party (the **Affected Party**) is delayed or prevented from performing its obligations under this Agreement due to a Force Majeure Event, the Affected Party shall:
      1. give notice in writing of such delay or prevention to the other Party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof, its estimated duration and any action proposed to mitigate its effect;
      2. use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Agreement; and
      3. resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
   3. The Affected Party cannot claim relief if the Force Majeure Event is attributable to the Affected Party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
   4. As soon as practicable following the Affected Party's notification pursuant to Clause 21.2, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement.
   5. The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event unless agreed otherwise by the Parties in writing.
   6. In the event that the Supplier is prevented from carrying out its obligations under the Agreement by any act of Force Majeure which continues for a period of 25 days, the other Party may terminate the Agreement by notice in writing giving 14 Days' notice. Where this Agreement is terminated pursuant to this Clause 21.6 the Council shall not be liable to the Supplier for any Losses arising out of the termination.
2. CONTINUED PERFORMANCE
   1. Save as may be required to give effect to the granting of relief from obligations under Clause 21 (Force Majeure), the Parties shall continue to perform their obligations under this Agreement notwithstanding the giving of any notice of termination, or natural expiry, of this Agreement until the termination or expiry of this Agreement becomes effective in accordance with the relevant provision.

**SECTION H: TERMINATION AND EXIT MANAGEMENT**

1. TERMINATION FOR Breach
   1. This Agreement shall terminate automatically on the Expiry Date unless it is terminated earlier in accordance with this Agreement. For the avoidance of doubt the Supplier shall not be entitled to any compensation on expiry. Without limiting its other rights or remedies, the Council may terminate the Agreement with immediate effect by giving written notice to the Supplier if:
      1. the Supplier commits a material breach of the Agreement which is not capable of remedy;
      2. the Supplier commits a Default provided that if the Default is capable of remedy, the Council may only terminate this Agreement under this Clause 23 if the Supplier has failed to remedy such Default within 28 days of receipt of notice from the Council;
      3. subject to Clause 29 (Prevention of Fraud and Bribery) the Supplier commits a Prohibited Act;
      4. a representation and warranty given by the Supplier pursuant to Clause 4 (Warranties) being materially untrue or misleading;
      5. the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a Supplier) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
      6. the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a Supplier) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
      7. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a Supplier) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
      8. a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
      9. an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier (being a Supplier);
      10. a floating charge holder over the assets of the Supplier (being a Supplier) has become entitled to appoint or has appointed an administrative receiver;
      11. a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
      12. the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business;
      13. makes an assignment of this Agreement in breach of Clause 32 (Assignment and other dealings);
      14. breaches any of its obligations under Clause 20 (Insurance);
      15. fails to provide the Services during a continuous period of four days or for a total period of ten days in any three month period during the Agreement Period other than as a result of a Force Majeure Event; or
      16. if any of the provisions of Regulation 73(1) of the Public Contract Regulations 2015 apply; or,

23.1.17 The Council receives any claim that the procurement of the Services or the award of this Agreement has breached any of the provisions of the Public Contracts Regulations 2015.

* 1. If this Agreement is terminated by the Council for cause such termination shall be at no loss or cost to the Council and the Supplier hereby indemnifies the Council against any such loss or costs which the Council may suffer as a result of any such termination for cause including the cost of procuring and implementing replacement services.

1. CONSEQUENCES OF EXPIRY OR TERMINATION
   1. The termination or expiry of this Agreement shall not affect:
      1. the continuing rights and obligations of the Parties pursuant to Clauses 10 (The Supplier's Records and Provision of Information), 11 (Audit), 15 (Data Protection), 16 (Confidentiality and Transparency), 17 (Freedom of Information), 19 (Liability), 20 (Insurance), 23 (Termination for Breach) and this Clause 24 and any other provision of this Agreement that expressly or by implication is intended to come into or continue in force after the termination or expiry of this Agreement; and
      2. any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry of this Agreement.

24.2 The Supplier shall, within three months after the Commencement Date, produce an Exit Plan for the orderly transition of the Services from the Supplier to the Council or the Replacement Supplier in the event of the termination or expiry of this Agreement. Within 10 Business Days after the submission of that Exit Plan, the Parties shall meet and use all reasonable endeavours to agree the contents of that Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Business Days either Party may refer the Dispute for resolution in accordance with the Dispute Resolution Procedure.

24.3 The Exit Plan shall:

24.3.1 facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Council and shall ensure that there is no disruption in the supply of the Services and no deterioration in the quality of delivery of the Services; and

24.3.2 detail how the Services will transfer to the Replacement Supplier and/or the Council including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Council's technology components from any technology components run by the Supplier or any of its Subcontractors (where applicable).

24.4 The Supplier shall keep the Exit Plan under review. Following any update, the Supplier shall submit the revised Exit Plan to the Council for review and approval.

24.5 In the event of the termination or expiry of this Agreement for any reason, the provisions of the Exit Plan shall come into effect and the Supplier shall co-operate with the Council and/or the Replacement Supplier to the extent reasonably required to facilitate the smooth migration of the Services from the Supplier to the Council or the Replacement Supplier.

24.6 On reasonable notice, the Supplier shall provide to the Council and/or to its Replacement Supplier (subject to the Replacement Supplier entering into reasonable written confidentiality undertakings with the Supplier), such material and information as the Council shall reasonably require in order to facilitate the preparation by the Council of any invitation to tender.

24.7 On termination of this Agreement and on satisfactory completion of the Exit Plan (or where reasonably so required by the Council prior to such completion) the Supplier shall submit to the Council all relevant data held by the Supplier in respect of the contract which the Council may reasonably need for future reference or to maintain performance of the contract internally or through another Supplier. Such data shall be supplied electronically in the relevant Microsoft product (which is the Council's standard software currently) or in such other electronic product as may be Council's standard at the time, and in e-gif compliant format (if applicable).

**SECTION I: COMPLIANCE WITH LAWS**

1. Health and Safety
   1. The Supplier shall perform its obligations under this Agreement (including those in relation to the Services) in accordance with:
      1. all applicable Law regarding health and safety; and
      2. the Council's health and safety policy.
   2. The Supplier shall notify the Council as soon as practicable of any health and safety incidents or material health and safety hazards on any premises where the Services are being provided of which it becomes aware and which relate to or arise in connection with the performance of this Agreement. Each Party shall instruct their personnel (as applicable) to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.
2. Environmental
   1. The Supplier shall:
      1. when working on premises where the Services are being provided, perform this Agreement in accordance with the Council's environmental policy, which is committed to the prevention of pollution, reduction of our CO2 emissions, minimise the environmental impacts associated with all activities, products and services of the Council's business;
      2. follow a sound environmental management policy so that its activities comply with all applicable environmental legislation and regulations and that the Services are procured, and delivered in ways that are appropriate from an environmental protection perspective; and
      3. comply with all applicable environmental legislation and other requirements as appropriate to the Services, which may apply in the performance of this Agreement.
3. Equal OPPORTUNITIES
   1. The Supplier shall not unlawfully harass or victimise a person or discriminate either directly or indirectly because of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, colour, nationality, ethnic or national origin, religion, or belief, sex, or sexual orientation (the **Protected Characteristics**) and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010, the Human Rights Act 1998 or other relevant legislation, or any statutory modification or re-enactment thereof.
   2. The Supplier shall give due regard to the need to eliminate discrimination, advance equality and foster good relations within the meaning and scope of the Public Sector Equality Duty in Section 149 of the Equality Act 2010 in the execution of the Agreement.
   3. The Supplier shall take all reasonable steps to secure the observance of Clauses 27.1 and 27.2 by all servants, employees or agents of the Supplier and all suppliers and Subcontractors employed in the execution of the Agreement.
   4. The Supplier shall demonstrate to the Council that it has a policy to comply with its statutory obligations under the legislation referred to above in Clauses 27.1 and 27.2.
   5. If there should be any findings of unlawful discrimination made against the Supplier by any court or employment tribunal, or an adverse finding in a formal investigation by a Commission, the Supplier shall take appropriate steps to prevent repetition of the unlawful discrimination.
   6. The Council reserve the right to test the Supplier's equality performance through the life of the Agreement. The Supplier shall cooperate with the Council regarding the provision of a date and/or access for site visits as reasonably required by the Council.
4. Human Rights act 1998
   1. The Supplier shall comply in all respects with the provision of the Human Rights Act 1998 and will indemnify the Council against all actions, costs, expenses, claims, proceedings and demands which may be brought against the Council for a breach of statutory duty under the Act attributable to the Supplier.
5. PREVENTION OF FRAUD AND BRIBERY
   1. The Supplier represents and warrants that as at the Commencement Date neither it, nor to the best of its knowledge any of the Supplier Personnel have at any time prior to the Commencement Date:
      1. committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
      2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government contracts on the grounds of a Prohibited Act.
   2. The Supplier shall not during the Contract Term of this Agreement:
      1. commit a Prohibited Act; and/or
      2. do or suffer anything to be done which would cause the Council to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
   3. The Supplier shall during the Contract Term of this Agreement:
      1. establish, maintain and enforce, and require that its Subcontractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
      2. keep appropriate records of its compliance with its obligations under Clause 29.3.1 and make such records available to the Council on request.
   4. The Supplier shall as soon as reasonably practicable notify the Council in writing if it becomes aware of any breach of Clause 29.2.1 and/or 29.2.2, or has reason to believe that it has:
      1. been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
      2. 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; and/or
      3. received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly connected with this Agreement has committed or attempted to commit a Prohibited Act.
   5. If the Supplier makes a notification to the Council pursuant to Clause 29.4, the Supplier shall respond promptly to the Council's reasonable enquiries and cooperate with any investigation carried out by the Council (acting reasonably) in respect of such notification.
   6. If the Supplier is in breach of Clauses 29.1 and/or 29.2 the Council may by notice require the Supplier to remove from performance of this Agreement any member of staff or Subcontractor whose acts or omissions have caused the breach.
   7. Any notice served by the Council under Clause 29.6 shall specify the nature of the Prohibited Act, the identity of the person who the Council reasonably believes has committed the Prohibited Act and the action that the Council requires the Supplier to take as a result.

**SECTION J: MISCELLANEOUS AND GOVERNING LAW**

1. COMPLAINTS/LOCAL GOVERNMENT OMBUDSMAN
   1. The Supplier shall keep a record of any complaints received (whether received orally or in writing, and whether from members of the Council, members of the public or otherwise) and of the action taken by the Supplier to remedy or fully investigate each such complaint. Such records shall be kept available for inspection by the Council's Representative at all reasonable times during normal working hours.
   2. The Supplier shall provide the Council with all reasonable cooperation and assistance in relation to any investigation by the Local Government Ombudsman in connection with the performance by the Supplier of the Services under this Agreement.
2. VARIATION
   1. No amendment or variation of this Agreement shall be effective unless it is in writing and signed by the Parties (acting through their Representatives) and is expressed to be for the purpose of such amendment or variation.
3. ASSIGNMENT AND OTHER DEALINGS
   1. The Supplier shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of the Council (such consent not to be unreasonably withheld or delayed).
   2. The Council may at its discretion assign, novate, or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement to a body other than the Council which performs any of the functions that previously had been performed by the Council (a **Successor Body**).
   3. The Supplier may not subcontract any part of this Agreement without the prior written consent of the Council. In the event that the Council consents to the Supplier entering into a Subcontract, the Subcontract must include terms:
      1. requiring the Supplier to pay any undisputed sums due to the Sub-Contractor within 30 days of receipt of a valid invoice;
      2. requiring the counterparty to that Subcontract to include in any subcontract it awards a provision having the same effect as Clause 32.3.1; and
      3. refrain from acting, or act, in any way which would cause the Supplier to be in breach of this Agreement.
   4. The Supplier shall ensure that any Subcontractor that performs any part of the Services pursuant to this Clause 32 shall be fully supplied with all relevant information about the Supplier's obligations under this Agreement. The Supplier shall remain responsible for all acts and omissions of its Subcontractors and the acts and omissions of those employed or engaged by the Subcontractors as if they were its own. An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation on the Supplier to procure that its employees, staff and agents and Subcontractors' employees, staff and agents also do, or refrain from doing, such act or thing.
   5. The Supplier shall notify the Council of any change to the details of a Subcontractor as soon as reasonably practicable, in accordance with Regulation 71(4)(a) of the Public Contract Regulations 2015.
   6. Notwithstanding any subcontracting permitted under this Clause 32, the Supplier shall be responsible and liable for the acts and omissions of its Subcontractors as if they were its own acts and omissions.
4. ENTIRE AGREEMENT
   1. This Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
   2. Neither Party has been given, nor entered into this Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.
   3. Nothing in this Clause 33 shall exclude any liability in respect of misrepresentations made fraudulently.
5. WAIVER AND CUMULATIVE REMEDIES
   1. A waiver of any right or remedy under this Agreement or by Law is only effective if given in writing, which expressly states that a waiver is intended, and such waiver shall not be deemed a waiver of any subsequent breach or default.
   2. A failure or delay by a Party in ascertaining or exercising any right or remedy provided under this Agreement or by Law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by Law shall prevent or restrict the further exercise of that or any other right or remedy.
   3. Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.
6. SEVERANCE
   1. If any provision of this Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Agreement shall not be affected.
   2. In the event that any deemed deletion under Clause 35.1 is so fundamental as to prevent the accomplishment of the purpose of this Agreement or materially alters the balance of risks and rewards in this Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Agreement and, to the extent that is reasonably possible, achieves the Parties' original intentions.
   3. If the Parties are unable to agree on the revisions to this Agreement within five Working Days of the date of the notice given pursuant to Clause 39 (Notices) the matter shall be dealt with in accordance with the Dispute Resolution Procedure.
7. FURTHER ASSURANCES
   1. At its own expense, each Party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.
8. RELATIONSHIP OF THE PARTIES
   1. Except as expressly provided otherwise in this Agreement, nothing in this Agreement, nor any actions taken by the Parties pursuant to this Agreement, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.
9. THIRD PARTY RIGHTS
   1. A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
   2. The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.
10. NOTICES
    1. Any notice or other communication given to a Party under or in connection with this Agreement shall be in writing marked for the attention of the Party's Representative and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service or by email at its registered office (if a company) or its principal place of business (in any other case).
    2. Any notice or communication shall be deemed to have been received:
       1. if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; or
       2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service; or
    3. This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
11. GOVERNING LAW AND JURISDICTION
    1. This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England.
    2. Subject to Clause 13 (Disputes), the Parties agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.
12. OPTIONAL CLAUSES and Schedules
    1. The following Clauses, set out in Schedule 1 (Optional Clauses), relating to:
       1. Price Variation;
       2. Safeguarding and Improper Conduct;
       3. Social Networking/Internet;
       4. No Fault Termination; and
       5. Collaborative Procurement – Right of Other Bodies to Participate

shall only apply if specifically stated in the Contract Details.

* 1. If specifically stated in the Contract Details, where the Services supplied include the supply of Goods, then the provisions of Schedule 2 (Goods) shall apply to the supply of the Goods in addition to the terms and conditions of this Agreement.
  2. If specifically stated in the Contract Details, then the provisions of Schedule 3 (TUPE) shall apply to this Agreement.
  3. If specifically stated in the Contract Details, then the provisions of Schedule 4 (Charges and Payments) shall apply to this Agreement.
  4. If specifically stated in the Contract Details, then the provisions of Schedule 5 (Specification) shall apply to this Agreement.
  5. If specifically stated in the Contract Details, then the provisions of Schedule 6 (Tender Submission) shall apply to this Agreement.
  6. If specifically stated in the Contract Details, then the provisions of Schedule 7 shall apply to this Agreement.

41.8 If specifically stated in the Contract Details, then the provisions of Schedule 8 shall apply to this Agreement.

1. MODERN SLAVERY
   1. To the extent that the Modern Slavery Act 2015 may apply to the Supplier, the Supplier:
      1. represents and warrants that it is compliant with its obligations under the Modern Slavery Act 2015 and that neither the Supplier nor any of its officers, employees subcontractors, agents or other persons associated with it:
         1. have been convicted of any offence involving slavery and human trafficking anywhere in the world;
         2. have been or are the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body anywhere in the world regarding any offence or alleged offence of or in connection with slavery and human trafficking.
      2. shall implement and maintain throughout the term of this Agreement due diligence procedures for its own suppliers, sub–contractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.
      3. shall report to the Council any breach or alleged breach of the Supplier’s anti-slavery and human trafficking policies and procedures or those of its suppliers, sub–contractors and other participants in its supply chain and shall provide reasonable assistance to the Council to allow the Council to carry out any audit of the Suppliers anti-slavery and human trafficking policies and procedures or those of any suppliers, sub–contractors and other participants in its supply chains.

Signed by the parties (or on their behalf by their respective authorised representatives) on the date indicated above.

**SIGNED for and on behalf of the [Supplier] by:**

………………………………………………….

Name:

Position

**SIGNED for and on behalf of The County of Herefordshire District Council by:**

………………………………………………….

Name:

Position

1. – OPTIONAL CLAUSES
2. Only those Optional Clauses listed in the Contract Details shall apply to this Agreement.
   * + 1. **PRICE VARIATION**
          1. One month prior to each anniversary of the Commencement Date, the Supplier may apply to the Council for an increase in Charges. Charges may only be adjusted in accordance with:

the price variation formula set out in the Schedule 4 (Charges and Payments); and

following written evidence from the Supplier that the relevant change in cost has taken place.

* + - * 1. The Council shall, in its absolute discretion but at all times acting reasonably, consider whether and to what extent the Charges will be adjusted. The Council shall notify the Supplier of its decision in writing and any adjustments shall apply to this Agreement with effect from the next anniversary of the Commencement Date.
        2. Both parties agree to act reasonably and in good faith in the operation of this Clause.
      1. **Safeguarding and Improper Conduct**
         1. The Supplier acknowledges that the Council is a regulated activity provider with ultimate responsibility for the management and control of the regulated activity provided under this Agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
         2. The Supplier shall

Ensure that all individuals engaged in regulated activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service;

Monitor the level and validity of the checks under this Clause 2.2 for each member of Supplier Personal;

Not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out regulated activity or who may otherwise present a risk to Service Users;

At the Commencement Date have in place an improper conduct policy and use reasonable endeavours to ensure all Supplier Personnel comply with its policy;

ensure adequate training is annually provided to Supplier Personal on the prevention of improper conduct, identifying incidents, and reporting processes; and

Comply with all the Council's Safeguarding Procedures.

* + - * 1. The Supplier warrants that at all times for the purposes of this Agreement it has no reason to believe that any person who is or will be employed or engaged by the Supplier in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

2.4 Where a DBS check discloses a conviction, caution or other information the Supplier shall notify the Council. Where the outcome of a DBS Check suggests that the member of Supplier Personnel should not be engaged to provide or supervise the provision of the Services, the Council shall, acting reasonably, be entitled to require the Supplier to remove the member of Supplier Personnel from the Services. Upon being advised of this requirement the Supplier shall immediately remove the member of Supplier Personnel and shall not re-instate that person without the prior written consent of the Council.

2.5 The Council shall in no circumstances be liable either to the Supplier and or any member of its Supplier Personnel in respect of any liability, loss or damage occasioned by any action whatsoever taken in accordance with clause 2.4 above and the Supplier shall fully and promptly indemnify and keep the Council and where relevant any Replacement Supplier indemnified against any claim made by such member of Supplier Personnel.

2.6 The Supplier shall immediately notify the Council of any information it reasonably requests to enable it to be satisfied that the obligations of this Clause 2 have been met.

2.7 The Supplier shall refer information about any person carrying out the Services to the Disclosure and Barring Service where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to Service Users, or children or vulnerable adults.

* + - 1. **Social Networking and Internet**
         1. The Supplier is only permitted to use social media platforms to market or deliver the Services when the Council has given prior written approval to do so.
         2. If, subject to Clause 3.1, the Supplier uses social media platforms to market or deliver the Services, all Supplier Personnel who administer them must ensure they are used in a professional context and have undertaken eSafety training.
         3. If the Supplier uses social media platforms to market or deliver the Services, a risk assessment must be undertaken and can be requested by the Council at any time.
         4. The Supplier must have a social networking and/or social media policy and guidance for all Supplier Personnel.
      2. **No Fault Termination**
         1. Without limiting its other rights or remedies, the Parties may terminate this Agreement by giving the other party a minimum of 6 months written notice.
      3. **COLLABORATIVE PROCUREMENT – RIGHT OF OTHER BODIES TO PARTICIPATE**
         1. For the purposes of this Clause "**Partner Organisation"** mean such other contracting authorities as are permitted, in accordance with the relevant Official Journal of the European Union contract notice, to access this Agreement.
         2. The Parties agree and acknowledge that the Council enters into this Agreement for itself and for the benefit of Partner Organisations.
         3. In addition to the specific Services expressly required to be provided to the Council pursuant to this Agreement, any Partner Organisation, with the prior written consent of the Council (which consent the Council may in its absolute discretion refuse), may require the provision by the Supplier of any of the Services under this Agreement subject to the same or substantially the same terms and conditions contained herein and subject to the additional conditions set out in Clause 5.4.
         4. If and to the extent that any such additional Services under this Agreement are required to be provided by the Supplier to any Partner Organisation:

each and every such Partner Organisation shall enter into a specific contract with the Supplier for such additional Services incorporating by reference or otherwise the same or substantially the same terms and conditions contained in this Agreement (but not the provisions of this Clause 5);

any non-substantial amendments to the terms and conditions in this Agreement agreed between the Supplier and the Partner Organisation shall be clearly set out in such specific contract; and

in order to enter into a specific contract with the Supplier the Partner Organisation may, in accordance with relevant public procurement regulations, consult the Supplier in writing requesting the Supplier to supplement the Supplier’s Tender Response as may be necessary.

* + - * 1. The Council does not guarantee that any Partner Organisation will require the Supplier to provide any additional Services under this Agreement or otherwise and nothing in this Agreement shall give the Supplier a right to receive such requirement for additional Services.
        2. The Council shall not in any circumstances be liable to the Supplier or any Partner Organisation for payment or otherwise in respect of any such additional Services required to be provided by the Supplier to any Partner Organisation.
        3. It shall be the responsibility of any Partner Organisation to satisfy itself that entering into any contract with the Supplier under Clause 5.4.1 of this Agreement does not breach any relevant public procurement regulations, the general European Community procurement principles or its own contracting rules and procedures.

**6. Call Off Provisions**

6.1 At any time during the Contract the Council may request the provision of Goods and/or Services under this contract (Service Request).

6.2 The Council will issue the Supplier with a Service Request together with any other documentation or information relevant to the provision of the Service and/or supply of Goods.

6.3 On receipt of the Service Request the Supplier is required to acknowledge receipt of the Service Request.

6.4 Once the Supplier has accepted a Service Request and agreed the arrangements for the provision Services or supply of Goods with the Council, the Supplier will be obliged to provide the Goods and/or Services in accordance with the Service Request and failure to comply with the reasonable requirements of the Council in terms of acknowledging and accepting a Service Request will not affect the Supplier’s liability in respect of this.

6.5 The terms and conditions of this contract will apply to any Service Request issued under this contract.

6.6 For the avoidance of doubt:

6.6.1 The Council does not guarantee that any Service Requests will be issued to the Supplier during the Contract and nothing in this Contract gives the Supplier a right to receive a Service Request;

6.6.2 The Council reserves the right to appoint any other Supplier to provide the Goods and/or Services;

6.6.3 The Council reserves the right to cancel a Service Request at any time prior to the commencement of the provision of the Services or the supply of the Goods and shall give reasonable notice of such cancellation.

1. – supply of goods
   * + 1. **DEFINITIONS**

In this Schedule, unless the context requires otherwise, capitalised terms shall have the meaning given to that term as set out below or the meaning given to such term where it is defined elsewhere in this Agreement:

Delivery Date the date which the Goods are delivered to the Council by the Supplier in accordance with the terms and conditions of this Agreement.

Delivery Location the address which the Goods are delivered to the Council by the Supplier in accordance with the terms and conditions of this Agreement.

**Goods** means the whole of the Goods or any of them to be provided by the Supplier as identified in the Goods Specification pursuant to this Agreement from time to time.

1. Goods Specification means the specification of the Goods set out in the Invitation to Tender. Replacement Goods means any Goods which are the same as or substantially similar to any of the Goods and which the Council receives in substitution for any of the Goods following the expiry or termination of this Agreement, whether those Goods are provided by the Council internally and/or by any third party.
   * + 1. **THE GOODS**
          1. The Supplier shall ensure that the Goods:

correspond with their description and the Goods Specification;

be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Council expressly or by implication, and in this respect the Council relies on the Supplier's skill and judgement;

where they are manufactured products, be free from defects in design, material and workmanship and remain so for 12 months after delivery; and

comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

* + - * 1. The Supplier shall commence the supply of the Goods on the Commencement Date and shall thereafter continue to provide the Goods throughout the Contract Term in accordance with the terms of this Agreement.
        2. The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Agreement.
      1. **DELIVERY AND INSPECTION**
         1. The Council may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Agreement.
         2. If following such inspection or testing the Council considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at Paragraph 2.1, the Council shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
         3. The Council may conduct further inspections and tests after the Supplier has carried out its remedial actions.
         4. The Supplier shall ensure that:

the Goods are properly packed and secured in such manner as to enable them to reach their Delivery Location in good condition;

each delivery of the Goods is accompanied by a delivery note which shows the date of the order, the order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

if the Supplier requires the Council to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.

* + - * 1. The Supplier shall deliver the Goods:

on the Delivery Date;

at the Delivery Location; and

during the Council's normal business hours or as instructed by the Council.

* + - * 1. Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location.
        2. The Supplier shall not deliver the Goods in instalments without the Council's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Council to the remedies set out in Paragraph 4.
      1. **remedies**
         1. If the Goods are not delivered on the Delivery Date, or do not comply with the undertakings set out in Paragraph 2.1, then, without limiting any of its other rights or remedies, and whether or not it has accepted the Goods, the Council may exercise any one or more of the following remedies :

to terminate this Agreement in accordance with Clause 23 (Termination for Breach);

to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;

to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);

to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;

to recover from the Supplier any costs incurred by the Council in obtaining substitute goods from a third party; and

to claim damages for any other costs, loss or expenses incurred by the Council which are in any way attributable to the Supplier's failure to carry out its obligations under the Agreement.

* + - * 1. This Paragraph shall also apply to any repaired or Replacement Goods supplied by the Supplier.
        2. The Council's rights and remedies under the Agreement are in addition to its rights and remedies implied by statute and common law.
      1. **TITLE AND RISK**
         1. Title and risk in the Goods shall pass to the Council upon Delivery.

1. – TUPE/employment
   1. – RELEVANT TRANSFERS
      * 1. **Definitions**
           1. In this Schedule, the following terms have the following meanings:
2. Direct Losses means all damages, losses, liabilities, claims, actions, costs, reasonable expenses (including legal or professional services, legal costs being on an agent/employer paying basis) proceedings, demands and charges whether arising under statute, contract or at common law, but to avoid doubt, excluding Indirect Losses.
3. Directive means the EC Acquired Rights Directive 77/187 as amended.
4. Employee Liability Information has the meaning given to it in Regulation 11 of TUPE.
5. Indirect Losses means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature but excluding any of the same that relates to loss of revenue under the Agreement.
6. Relevant Employees means the employees who are the subject of a Relevant Transfer.
7. Relevant Transfer means a relevant transfer for the purposes of TUPE.
8. Relevant Transfer Date means the date on which a Relevant Employee transfers to the Supplier and/or one or more Subcontractors by virtue of a Relevant Transfer.
9. Retendering Information has the meaning set out in paragraph 1.7.1(a) of Part 1 of this Schedule.
10. Return Date has the meaning set out in paragraph 1.8.2 of Part 1 of this Schedule.
11. Returning Employees has the meaning set out in paragraph 1.8.2 of Part 1 of this Schedule.
12. Third Party Contractor means any contractor (other than the Supplier) engaged by or on behalf of the Council to perform any service equivalent to a Service or any part of the Services;
13. Transferring Employee means an employee of the third party contractor whose contract of employment becomes, by virtue of the application of TUPE in relation to the provision of works and services pursuant to the Agreement between the Council and the Supplier, a contract of employment with someone other than the third party contractor
14. TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (2006/246) and or any other regulations enacted for the purpose of implementing the Directive into English law.
    * + 1. **TUPE**
           1. Relevant Transfers

The Council and the Supplier agree that the following events:

the Relevant Transfer Date; and

where the identity of a third party contractor or the Council of any works or services which constitutes or which will constitute part of the service is changed, whether in anticipation of changes pursuant to the Agreement or not, constitute a Relevant Transfer and that the contracts of employment of any Relevant Employees will have effect (subject to Regulation 4(7) of TUPE) thereafter as if originally made between those employees and the Supplier and/or its Subcontractor except insofar as such contracts relate to those parts of an occupational pension scheme relating to the old age, invalidity and survivors’ benefits (save as required under section 257 and 258 of the Pensions Act 2004). On the occasion of a Relevant Transfer (save on expiry or termination of the Agreement) the Supplier will procure that the former and the new Subcontractor will both comply with their obligations under TUPE.

The Council will procure if it has the contractual or legal power to do so and shall otherwise use all reasonable endeavours to procure that any third party contractor of a Relevant Employee will comply with its obligations under TUPE in respect of each Relevant Transfer pursuant to the Agreement and the Supplier will comply and will procure that each Subcontractor will comply with its obligations (including without limitation the obligation under Regulation 13(4) of TUPE) in respect of each Relevant Transfer pursuant to the Agreement.

* + - * 1. Emoluments and outgoings

The Council will procure than any Third Party Contractor of a Transferring Employee is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees, including without limitation all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the Relevant Transfer Date.

The Supplier will be responsible or will procure that any relevant Subcontractor is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees and any other person who is or will be employed or engaged by the Supplier or any Subcontractor in connection with the provision of the service, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the Relevant Transfer Date.

* + - * 1. Employment costs

The Council has supplied to the Supplier information, prior to the time for return of tenders, which is contained in Part Two to this Schedule (the First Employee List) in relation to each of those employees of the Third Party Contractor who it is expected, if they remain in the employment of the Third Party Contractor until immediately before the Relevant Transfer Date, would be Transferring Employees. The Council gives no warranty as to the accuracy or completeness of the information.

The Third Party Contractor shall provide all Employee Liability Information twenty (20) Working Days before the Relevant Transfer Date. This list is known as the First Employee List. The Third Party Contractor shall also supply to the Supplier within five (5) Working Days after the Relevant Transfer Date information, which was correct as at the Relevant Transfer Date, in respect of the Transferring Employees on all the same matters as should be provided in the First Employee List. This list is the “Final Employee List” and where there is more than one Relevant Transfer Date the “Final Employee List” means each list so prepared in respect of each part of the service and at each Relevant Transfer Date. The Council shall give no warranty as to the accuracy or completeness of any information in respect of those employees of the Third Party Contractor contained in any update of the First Employee List or in the Final Employee List.

Without prejudice to paragraph 2.3.2 above, the Council will procure if it has the contractual or legal power to do so and shall otherwise use all reasonable endeavours to procure that each Third Party Contractor or subcontractor will:

provide the Employee Liability Information to the Supplier at such time or times as are required by TUPE and

update the Employee Liability Information to take account of any changes as required by TUPE.

The Supplier has provided to the Council, and the Council has agreed, the details set out in Part Three to this Schedule (Workforce Information) which show, in respect of each of the parts of the service, the following information:

the workforce which the Supplier proposes to establish to provide the service (the “**Proposed Workforce**”) classified by reference to grade, job description, hours worked, shift patterns, pay scales, rates of pay, terms and conditions and pension arrangements;

the monthly costs of employing the Relevant Employees who are expected to be engaged in the Provision of the Service. These costs (the “**Remuneration Costs**”) have been calculated on the basis of (amongst other things) the information contained in the First Employee List; and

the costs, including any lump sum payments, which have been agreed between the Parties for the purposes of any reorganisation which may be required to establish the Proposed Workforce or a workforce which is as close as reasonably practicable to the Proposed Workforce [(including but not limited to costs associated with dismissal by reason of redundancy or capability and costs of recruitment)]. These costs (the "**Reorganisation Costs**") have been calculated by the Supplier on the basis of (amongst other things) the information contained in the First Employee List

The Council and the Supplier will, (and the Supplier will procure that each and every Subcontractor will) take all reasonable steps, including co-operation with reasonable requests for information, to ensure that each and every Relevant Transfer pursuant to the Agreement takes place smoothly with the least possible disruption to the service being provided to the Council under the Agreement and to the employees who transfer.

In addition to the Employee Liability Information covered under TUPE Regulation 11(2), training records are provided to the Supplier showing what training and qualifications are held by each Transferring Employee and the expiry dates of that training and qualification. This information is provided at least forty-five (45) days prior to the Relevant Transfer Date. Also, copies of full employee files for all Transferring Employees are provided to the Supplier within two weeks of the Relevant Transfer Date.

* + - * 1. Union Recognition

The Third Party Contractor will supply to the Supplier no later than three (3) months prior to the Relevant Transfer Date true copies of any union recognition agreement(s) and the Supplier will and will procure that each and every Subcontractor will in accordance with TUPE recognise the trade unions representing Transferring Employees (as relevant to each Subcontractor) after the transfer to the same extent as they were recognised before the Relevant Transfer Date.

The Supplier will procure that, on each occasion on which the identity of a Subcontractor changes pursuant to this Agreement, in the event that there is a Relevant Transfer, the new Subcontractor will in accordance with TUPE recognise the trade unions representing the employees whose contracts of employment transfer to the new Subcontractor to the same extent as they were recognised before the change of identity of the Subcontractor in respect of the provision of any works or services in connection with this Agreement.

* + - * 1. Indemnities

The Supplier will indemnify and keep indemnified in full the Council and each and every New Employer against:

all Direct Losses incurred by the Council or any New Employer in connection with or as a result of any claim or demand against the Council or any New Employer by (i) any person who is or has been employed or engaged by the Supplier or any Subcontractor in connection with the provision of any works or services under the Agreement or (ii) any trade union or staff association or employee representative in respect of such person, in either case where such claim arises as a result of any act, fault or omission of the Supplier and/or any Subcontractor after the Relevant Transfer Date,

all Direct Losses incurred by the Council or any New Employer in connection with or as a result of a breach by the Supplier of its obligations in Part 1 of this Schedule and

all Direct Losses incurred by the Council or any New Employer in connection with or as a result of any claim by any Relevant Employee, trade union or staff association or employee representative (whether or not recognised by the Supplier and/or the relevant Subcontractor in respect of all or any of the Relevant Employees) arising from or connected with any failure by the Supplier and/or any Subcontractor to comply with any legal obligation to such trade union, staff association or other employee representative whether under Regulation 13 of TUPE, under the Directive or otherwise and, whether any such claim arises or has its origin before or after the Relevant Transfer Date.

The Supplier will indemnify and keep indemnified in full the Council, against all Direct Losses incurred by the Council in connection with or as a result of:

the change of identity of Council occurring by virtue of TUPE to the Supplier or the relevant Subcontractor being significant and detrimental to any of the Relevant Employees or to any person who would have been a Relevant Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of TUPE) on or before the Relevant Transfer Date as a result of the change in Council and whether such claim arises before or after the Relevant Transfer Date,

any proposed or actual change by the Supplier or any Subcontractor to the Relevant Employees working conditions, terms or conditions or any proposed measures of the Supplier or the relevant Subcontractor which are to any of the Relevant Employees material detriment or to the material detriment of any person who would have been a Relevant Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of TUPE) on or before the Relevant Transfer Date as a result of any such proposed changes or measures and whether such claim arises before or after the Relevant Transfer Date and

any claim arising out of any misrepresentation or mis-statement whether negligent or otherwise made by the Supplier or Subcontractor to the Relevant Employees or their representatives whether before on or after the Relevant Transfer Date and whether liability for any such claim arises before on or after the Relevant Transfer Date.

* + - * 1. Provision of details and indemnity

The Supplier will immediately upon request by the Council provide to the Council details of any measures (as referred to in Regulation 13 of TUPE) which the Supplier or any Subcontractor envisages it or they will take in relation to any employees who are or who will be the subject of a Relevant Transfer, and if there are no measures, confirmation of that fact, and will indemnify the Council against all Direct Losses resulting from any failure by the Supplier to comply with this obligation.

* + - * 1. Retendering

The Supplier will (and will procure that any Subcontractor will) within the period of twelve (12) months immediately preceding the expiry of this Agreement or following the service of a notice under Clause 23 (Termination for Breach), or Schedule 1 paragraph 4 (No Fault Termination) or as a consequence of the Council notifying the Supplier of its intention to re-tender this Agreement:

on receiving a request from the Council provide in respect of any person engaged or employed by the Supplier or any Subcontractor in the provision of any service which is part of the service (the “**Assigned Employees**”) full and accurate details regarding the number, age, sex, length of service, job title, grade and terms and conditions of employment of and other matters affecting each of those Assigned Employees who it is expected, if they remain in the employment of the Supplier or of any Subcontractor as the case may be until immediately before the termination date, would be Returning Employees (the “**Retendering Information**”),

provide the Retendering Information promptly and at no cost to the Council,

notify the Council forthwith in writing of any material changes to the Retendering Information promptly as and when such changes arise,

be precluded from making any material increase or decrease in the numbers of Assigned Employees other than in the ordinary course of business and with the Council’s prior written consent (not to be unreasonably withheld or delayed),

be precluded from making any increase in the remuneration or other change in the terms and conditions of the Assigned Employees other than in the ordinary course of business and with the Council’s prior written consent, which should not be unreasonably withheld and

be precluded from transferring any of the Assigned Employees to another part of its business or moving other employees from elsewhere in its or their business who have not previously been employed or engaged in providing any part of the service to provide any such works and services save with the Council’s prior written consent (not to be unreasonably withheld or delayed).

Without prejudice to paragraphs 2.7.1 and 2.7.3 of Part 1 of this Schedule, the Supplier will provide and will procure that any Subcontractor will provide the Employee Liability Information to the Council at such time or times as are required by TUPE, and will warrant at the time of providing such Employee Liability Information, that such information will be updated to take account of any changes to such information as is required by TUPE.

The Supplier will and will keep indemnified in full the Council and any New Employer against all Direct Losses arising from any claim by any Party as a result of the Supplier or Subcontractor failing to provide or promptly to provide the Council and/or any New Employer where requested by the Council with any Retendering Information and/or Employee Liability Information or to provide full Retendering Information and/or Employee Liability Information or as a result of any material inaccuracy in or omission from the Retendering Information and/or Employee Liability Information provided that this indemnity will not apply in respect of the Retendering Information to the extent that such information was originally provided to the Supplier by the Council and was materially inaccurate or incomplete when originally provided.

* + - * 1. Termination of Agreement

On the expiry or earlier termination of this Agreement, the Council and the Supplier agree that it is their intention that TUPE will apply in respect of the provision thereafter of any works and services equivalent to one or more of the works and services which are part of the service but the position will be determined in accordance with the law at the date of expiry or termination as the case may be and this paragraph is without prejudice to such determination.

For the purposes of paragraph 2.8.1 and this paragraph 2.8.2, “**Returning Employees**” will mean those employees wholly or mainly engaged in the provision of the service as the case may be as immediately before the expiry or termination of this Agreement whose employment transfers to the Council or a New Employer pursuant to TUPE. Upon expiry or termination of the Agreement for whatever reason (such date being termed the “**Return Date**”), the provisions of this paragraph will apply:

The Supplier will or will procure that all wages, salaries and other benefits of the Returning Employees and other employees or former employees of the Supplier or the Subcontractor (who had been engaged in the provision of the service) and all PAYE tax deductions, pension contributions and national insurance contributions relating thereto in respect of the employment of the Returning Employees and such other employees or former employees of the Supplier or Subcontractors up to the Return Date are satisfied,

Without prejudice to paragraph 2.8.2(a) of Part 1 of this Schedule, the Supplier will:

remain (and procure that Subcontractors will remain) (as relevant) responsible for all the Supplier’s or Subcontractor’s employees (other than the Returning Employees) on or after the time of expiry or termination of the Agreement and will indemnify the Council and any New Employer against all Direct Losses incurred by the Council or any New Employer resulting from any claim whatsoever whether arising before on or after the Return Date by or on behalf of any of the Supplier’s or Subcontractor’s employees who do not constitute the Returning Employees,

in respect of those employees who constitute Returning Employees the Supplier will indemnify the Council and any New Employer against all Direct Losses incurred by the Council or any New Employer resulting from any claim whatsoever by or on behalf of any of the Returning Employees in respect of the period on or before the Return Date (whether any such claim, attributable to the period up to and on the Return Date, arises before, on or after the Return Date) including but not limited to any failure by the Supplier or any Subcontractor to comply with its or their obligations under Regulation 13 of TUPE and/or Article 6 of the Directive as if such legislation applied, even if it does not in fact apply save to the extent that any such failure to comply arises as a result of an act or omission of the Council or any New Employer.

The Council will be entitled to assign the benefit of this indemnity to any New Employer.

* + - * 1. Subcontractors

In the event that the Supplier enters into any subcontract in connection with this Agreement, it will impose obligations on such Subcontractor in the same terms as those imposed on it pursuant to this schedule and Schedule 9 (Pensions) and will procure that the Subcontractor complies with such terms. The Supplier will indemnify and keep the Council indemnified in full against all Direct Losses, incurred by the Council or any New Employer as a result of or in connection with any failure on the part of the Supplier to comply with this paragraph and/or the Subcontractor’s failure to comply with such terms.

* + - * 1. Data Protection

Where the Council holds information in respect of any of the Supplier’s employees, the Council will comply with (and ensure that all its employees comply with) any notification requirements under the Data Protection Legislation and will observe its obligations under the Data Protection Legislation which arise in connection with the Agreement.

* 1. – PENSIONS
     + - 1. Supplier Scheme

The Supplier will or will procure that any relevant Subcontractor will not later than the Relevant Transfer Date or the Cessation Date (as the case may be) nominate to the Council in writing the occupational pension scheme or schemes which it proposes will be “**the Supplier Scheme**”. Such pension scheme or schemes must be:

established within 3 months after to the Relevant Transfer Date,

registered within the meaning of the Finance Act 2004, and

The Supplier agrees that it will and will procure that any relevant Subcontractor will procure that:

the Eligible Employees will by three (3) months after the Relevant Transfer Date or as soon as reasonably practicable be offered membership of the Supplier Scheme with effect from and including the Relevant Transfer Date),

If the Supplier Scheme is terminated, a replacement pension scheme will be provided with immediate effect for those Eligible Employees who are still employed by the Supplier or relevant Subcontractor

* + - * 1. Undertaking from the Supplier

The Supplier undertakes to the Council (for the benefit of the Council itself and for the Council as agent and trustee for the benefit of the Eligible Employees) that:

all information which the Council or the Administering Authority or their respective professional advisers may reasonably request from the Supplier or any relevant Subcontractor for the administration of the LGPS or concerning any other matters raised in paragraphs 2.7 or 3.8 of Part 1 of this Schedule or Part 2 of this Schedule (Bulk Transfer Terms) will be supplied to them as expeditiously as possible,

it will not and will procure that any relevant Subcontractor will not, without the consent in writing of the Council (which will not be unreasonably withheld but will be subject to the payment by the Supplier or the relevant Subcontractor of such reasonable costs as the Council or the Administering Authority may require) consent to instigate, encourage or assist any event which could impose on the Council a cost in respect of any Eligible Employee greater than the cost which would have been payable in respect of that Eligible Employee had that consent, instigation, encouragement or assistance not been given,

until the Relevant Transfer Date, it will not and will procure that any relevant Subcontractor will not issue any announcements (whether in writing or not) to the Eligible Employees concerning the matters stated in paragraphs 2.1 to 2.6 of Part 1 of this Schedule inclusive without the consent in writing of the Council and the Administering Authority (not to be unreasonably withheld or delayed),

it will not and will procure that any relevant Subcontractor will not take or omit to take any action which would materially affect the benefits under the LGPS or under the Supplier Scheme of any Eligible Employees who are or will be employed wholly or partially in connection with the provision of the service without the prior written agreement of the Council (not to be unreasonably withheld or delayed) provided that the Supplier and/or such Subcontractor will be so entitled without the requirement of consent to give effect to any pre-existing contractual obligations to any Eligible Employees.

* + - * 1. Pension issues on expiry or termination of the Agreement

The Supplier (and procures that each relevant Subcontractor):

maintains such documents and information as will be reasonably required to manage the pension rights of and aspects of any onward transfer of any person engaged or employed by the Supplier or any Subcontractor in the provision of any service which is part of the provision of the service on the expiry or termination of this Agreement (including without limitation identification of the Eligible Employees),

promptly provides to the Council such documents and information mentioned in paragraph 2.12.1 above which the Council or the Administering Authority may reasonably request in advance of the expiry or termination of this Agreement and

fully co-operates (and use best endeavours to procure that the trustees of the Supplier’s Scheme will fully co-operate) with the reasonable requests of the Council or the Administering Authority relating to any administrative tasks necessary to deal with the pension rights of and aspects of any onward transfer of any person engaged or employed by the Supplier or any Subcontractor in the provision of any service which is part of this Agreement.

1. – Charges and Payments

**Insert Text Here**

**Notes:**

Payment is normally made by the Council within 30 days of receipt of a valid undisputed VAT invoice from the Supplier and any subcontract between the Supplier and its subcontractors must include a similar provisions

The Supplier must ensure that it has received a valid Order form or Purchase Order Number prior to commencing any manufacture or supply of the Goods or delivery of Services. The Council shall have no obligation to make any payment unless the Purchase Order Number is stated on the Supplier’s invoice.

1. – Specification

**Insert Specification Here**

1. – Supplier’s Tender Response

**Insert relevant excepts/tender submission here**

1. – SPECIAL TERMS AND CONDITIONS

**For the purposes of the Special Terms and Conditions the defined terms shall have the meanings given to them in the Core Terms and Conditions and**

**Authorised Users:**  those employees and independent contractors of the Council who are entitled to use the System Platform under this agreement

**Maintenance and Support:**  any error corrections, updates and upgrades that the Provider may provide or perform with respect to the System Platform , as well as any other support or training services provided to the Council under this agreement.

**System Platform:**  the online that the Provider provides to allow Authorised Users to access and use the web based solution, including hosting set-up and ongoing services.

**Virus:** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

**Vulnerability:**  a weakness in the computational logic (for example, code) found in software and hardware components that, when exploited, results in a negative impact to confidentiality, integrity, or availability, and the term **Vulnerabilities** shall be construed accordingly.

**1.** **System Platform:**

* 1. The Provider shall design, install, configure and test the System Platform, as well as set up the hosting facility and internet connectivity for the System Platform
  2. The Provider shall procure, install and configure the hosting equipment to provide access to the System Platform. This includes the rack mounting of servers and related equipment, installation of system and database software components, configuration of clustering and cross-connects, installation of software, and loading of initial Council Data.
  3. The Provider and the Council shall co-operate in rolling out the System Platform to the Council’s Authorised Users in accordance with the Specification
  4. The Provider hereby grants to the Council on and subject to the terms and conditions of this agreement a non-exclusive, non-transferable licence to allow Authorised Users to access the System Platform
  5. The Council’s access to the System Platform shall be limited to the Authorised Users, being the Council’s managers and HR staff employees
  6. The Council shall ensure that each Authorised User keeps a secure password for his use of the System Platform, that such password is changed no less frequently than MONTHLY and that each Authorised User keeps his password confidential;
  7. The Council shall not store, distribute, introduce or transmit through the System Platform:

**(i)**  any Virus,

**(ii)**  any Vulnerability; or

**(iii)**  any material that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities;

**1.8**  the Council shall not:

**(i)**attempt to copy, duplicate, modify, create derivative works from or distribute all or any portion of the System Platform except to the extent expressly set out in this agreement or as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties; **or**

**(ii)**  attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the System Platform , except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties; or

**(iii)**  access all or any part of the System Platform in order to build a product or service which competes with the software and/or the Services

**(iv)**  the Council shall use reasonable endeavours to prevent any unauthorised access to, or use of, the System Platform and notify the Provider promptly of any such unauthorised access or use.

**2.**  **PROPRIETARY RIGHTS**

**2.1**  The Council acknowledges and agrees that the Provider and/or its licensors own all intellectual property rights in the System Platform. Except as expressly stated herein, this agreement does not grant the Council any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the System Platform.

**2.2**  The Provider confirms that it has all the rights in relation to the Software that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

**3.**  **INTERNET CONNECTIVITY**

**3.1**  The Provider shall provide internet connectivity through an internet service provider at the Providers hosting facility. The connectivity shall include multiple, diversely routed high-speed connections, a firewall for security and a load balancer for traffic management and speed optimisation. The Council shall, and shall ensure that its Authorised Users shall, make their own arrangements for internet access in order to access the System Platform .

**3.2**  The Provider shall supply burstable bandwidth connectivity services. The connectivity shall include multiple connections and a network operations centre that monitors servers, the network platform and internet access.

**4.**  **MONITORING SERVICES**

The Provider shall provide, 24 hours a day and seven days a week, monitoring of the computing, operating and networking infrastructure to detect and correct abnormalities. This includes environmental monitoring, network monitoring, load-balancing monitoring, web server and database monitoring, firewall monitoring, and intrusion detection.

**5.**  **BACK-UP, ARCHIVING AND RECOVERY SERVICES**

The Provider shall develop the back-up schedule, perform scheduled back-ups, provide routine and emergency data recovery, and manage the archiving process. The back-up schedule shall include at least weekly full back-ups and daily incremental back-ups. In the event of data loss, the Provider shall provide recovery services to try to restore the most recent back-up.

**6.**  **RELEASE MANAGEMENT AND CHANGE CONTROL**

The Provider shall provide release management and change control services to ensure that versions of servers, network devices, storage, operating system software and utility and application software are audited and logged, and that new releases, patch releases and other new versions are implemented as deemed necessary by the Provider to maintain the System Platform.

**7.**  **MAINTENANCE**

**7.1.**  Maintenance includes all regularly scheduled error corrections, software updates and those upgrades limited to improvements to features described in the Specification.

**7.2.**  The Provider shall maintain and update the System Platform. Should the Council determine that the System Platform includes a defect, the Council may at any time file error reports. During maintenance periods, the Provider may, at its discretion, upgrade versions, install error corrections and apply patches to the hosted systems. The Provider shall use all reasonable endeavours to avoid unscheduled downtime for software maintenance.

**7.3.**  The Provider shall maintain technical support on the two most current releases of the System Platform software.

**8.**  **MAINTENANCE EVENTS**

**8.1**  Routine, planned maintenance of the hosting equipment, facility, software or other aspects of the System Platform that may require interruption of the System Platform (**Maintenance Events**) shall, except for any emergency maintenance, not be performed during normal business hours. The Provider may interrupt the System Platform to perform emergency maintenance during the daily window of 10.00 pm to 2.00 am UK time. In addition, the Provider may interrupt the System Platform outside normal business hours for unscheduled maintenance, provided that it has given the Council at least seven days’ advance notice. Any Maintenance Events which occur during normal business hours, and which were not requested or caused by the Council, shall be considered downtime for the purpose of service availability measurement. The Provider shall at all times endeavour to keep any service interruptions to a minimum.

**8.2**  The Provider may determine, at its sole discretion, that providing appropriate service levels requires additional equipment and/or bandwidth, and may install that equipment and/or bandwidth without approval from the Council.

**9.**  **SERVICE AVAILABILITY**

**9.1**  The Provider shall provide at least a 99.5% uptime service availability level (**Uptime Service Level**). This availability refers to an access point on the Provider hosting provider’s backbone network. It does not apply to the portion of the circuit that does not transit the hosting provider’s backbone network, as the Council is responsible for its own internet access. Availability does not include Maintenance Events as described in clause 8, Council-caused or third party-caused outages or disruptions (except to the extent that such outages or disruptions are caused by those duly authorised third parties sub-contracted by the Provider to perform the Services), or outages or disruptions attributable in whole or in part to force majeure events.

**9.2**     All measurements are performed at five-minute intervals and measure the availability of an availability test page within the software within 30 seconds. Availability measurement shall be carried out by the Provider and is based on the monthly average percentage availability, calculated at the end of each calendar month as the total actual uptime minutes divided by total possible uptime minutes in the month. The Provider shall keep and shall send to the Council, on request, full records of its availability measurement activities under this agreement.

**9.3**  If availability falls below the Uptime Service Level (as defined in clause 9.1) in a given calendar month (**Service Delivery Failure**), the Provider will credit the client as set out in the specification.

**9.4**   The Council acknowledges and agrees that the terms of this Clause 9 relating to Service Credits constitute a genuine pre-estimate of the loss or damage that the Council would suffer as a result of the Provider’s Service Delivery Failure and are not intended to operate as a penalty for the Provider’s non-performance.

**10.**  **TECHNICAL SUPPORT SERVICES**

**10.1** The Provider shall provide the Council with technical support services. The Provider technical support call centre shall accept calls for English language telephone support during normal business hours within Business Days. The Provider shall use reasonable endeavours to process support requests, issue trouble ticket tracking numbers if necessary, determine the source of the problem and respond to the Council.

**10.2** The Provider shall provide training to such number of the Authorised Users as are specified in, and are otherwise in accordance with, the Specification.

**SCHEDULE 8 – DATA PROCESSING, PERSONAL DATA AND DATA SUBJECTS**

This Schedule shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

1. The contact details of the Controller’s Data Protection Officer are:

Carol Trachonitis - Head of Information Compliance and Equality

Herefordshire Council, Plough Lane Hereford, HR4 0LE

Corporate Services

2. The contact details of the Processor’s Data Protection Officer are:

[ ]

3. The Processor shall comply with any further written instructions with respect to processing by the Controller.

4. Any such further instructions shall be incorporated into this Schedule.

|  |  |
| --- | --- |
| Description | Details |
| Subject matter of the processing | Occupational Health Services |
| Duration of the processing | The duration of the contract including any extension periods. |
| Nature and purposes of the processing | The processing of Personal Data will include the transmission of Personal Data relating to Data Subjects required in order for the Supplier to effectively provide the Services. It may involve being processed on systems of the Supplier for the purposes of delivering the Services.  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. |
| Type of Personal Data being Processed | **Personal Data**  Personal Data dependent on the Services being provided and the nature of the Personal Data required to be processed in order for the Services to be provided, including but not limited to, name, address, date of birth, contacts details, telephone number and email address of the Data Subject  **Special Category Personal Data**  Personal Data dependent on the Services being provided and the nature of the Personal Data required to be processed in order for the Services to be provided, including but not limited to racial or ethnic origin, religious or philosophical beliefs, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health  data concerning a natural person's sex life or sexual orientation. |
| Categories of Data Subject | Any employee who is the recipient of the Services, or their personal representatives, any employee or representative of Herefordshire Council (including volunteers, agents, and temporary workers). |
| 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 | Any Personal Data of Data Subjects shall be retained by the Provider only for as long as is necessary for the performance of the Services and/or in compliance with the management information retention provisions (if applicable) set out in this Agreement. All Personal Data shall be either destroyed or returned to Herefordshire Council on termination of the Services |