

SOUTH GLOUCESTERSHIRE COUNCIL
TERMS AND CONDITIONS FOR THE PROVISION OF SERVICES (PURCHASE ORDER VERSION)

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Where a Purchase Order is issued by the Council that refers to these terms and conditions, the Contract is made between the Council and the Supplier on the date of that Purchase Order. The Contract is subject to the terms set out in the schedules listed below (“**Schedules**”).

The Council and the Supplier undertake to comply with the provisions of the Schedules in the performance of the Contract.

The Supplier shall supply to the Council, and the Council shall receive and pay for, the Services on the terms of the Contract.

For the avoidance of doubt, any actions or work undertaken by the Supplier prior to the receipt of a Purchase Order covering the relevant Services shall be undertaken at the Supplier’s risk and expense and the Supplier shall only be entitled to invoice for Services covered by a valid Purchase Order.

The Definitions in Schedule 4 apply to the use of all capitalised terms in the Contract.

Schedules

Schedule 1	Key Provisions
Schedule 2	General Terms and Conditions
Schedule 3	Information and Data Provisions
Schedule 4	Definitions and Interpretations

Schedule 1

Key Provisions

1 Application of the Key Provisions

1.1 The Key Provisions at Clauses 1 to 7 of this Schedule 1 shall apply to this Contract.

2 Term

2.1 This Contract commences on the Commencement Date.

2.2 The Term of this Contract shall be as set out in the Purchase Order.

2.3 The Term may be extended in accordance with Clause 15.2 of Schedule 2 provided that the duration of this Contract shall be no longer than originally advertised by the Council (including any options to extend).

3 Contract Managers

3.1 The Contract Managers at the commencement of this Contract shall be as set out in the Specification and Tender Response Document or as otherwise agreed between the Parties in writing.

4 Names and addresses for notices

4.1 Unless otherwise agreed by the Parties in writing, notices served under this Contract are to be delivered to such persons at such addresses as referred to in the Purchase Order.

5 Management levels for escalation and dispute resolution

5.1 Unless otherwise agreed by the Parties in writing, the management levels at which a Dispute will be dealt with are as follows:

Level	Council representative	Supplier representative
1	Contract Manager	Contract Manager
2	Assistant Director or equivalent	Assistant Director or equivalent
3	Director or equivalent	Director or equivalent

6 Order of precedence

6.1 Subject always to Clause 1.10 of Schedule 4, should there be a conflict between any other parts of this Contract the order of priority for construction purposes shall be:

6.1.1 the provisions on the front page of these Terms and Conditions for the Provision of Services (Purchase Order Version);

- 6.1.2 Schedule 1: Key Provisions;
- 6.1.3 the Specification and Tender Response Document (but only in respect of the Council's statements and requirements and in respect of the prices for the Services);
- 6.1.4 Schedule 2: General Terms and Conditions;
- 6.1.5 Schedule 3: Information Governance Provisions;
- 6.1.6 Schedule 4: Definitions and Interpretations; and
- 6.1.7 any other documentation forming part of the Contract in the date order in which such documentation was created with the more recent documentation taking precedence over older documentation to the extent only of any conflict.

7 Application of TUPE at the commencement of the provision of Services

- 7.1 The Parties agree that at the commencement of the provision of Services by the Supplier TUPE and the Cabinet Office Statement shall not apply so as to transfer the employment of any employees of the Council or a Third Party to the Supplier.
- 7.2 If any person who is an employee of the Council or a Third Party claims or it is determined that their contract of employment has been transferred from the Council or Third Party to the Supplier or a Sub-contractor pursuant to TUPE, or claims that their employment would have so transferred had they not resigned, then:
 - 7.2.1 the Supplier will, within seven (7) days of becoming aware of that fact, give notice in writing to the Council;
 - 7.2.2 the Council or Third Party may offer employment to such person within twenty-eight (28) days of the notification by the Supplier;
 - 7.2.3 if such offer of employment is accepted, the Supplier or a Sub-contractor shall immediately release the person from their employment;
 - 7.2.4 if after that period specified in Clause 7.2.2 of this Schedule 1 has elapsed, no offer of employment has been made by the Council or Third Party, or such offer has been made by the Council or Third Party but not accepted within a reasonable time, the Supplier or Sub-contractor shall employ that person in accordance with its obligations and duties under TUPE and shall be responsible for all liabilities arising in respect of any such person and shall (where relevant) be bound to apply Fair Deal for Staff Pensions in respect of any such person in accordance with the requirements of Part D of Schedule 7 of the Council's Terms and Conditions for the Provision of Services (Contract Version).

Schedule 2

General Terms and Conditions

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1 Provision of Services

- 1.1 The Council appoints the Supplier and the Supplier agrees to provide the Services:
 - 1.1.1 promptly and in any event within any time limits as may be set out in this Contract;
 - 1.1.2 in accordance with all other provisions of this Contract;
 - 1.1.3 with reasonable skill and care and in accordance with any quality assurance standards as set out in the Specification and Tender Response Document and/or the Purchase Order;
 - 1.1.4 in accordance with the Law and with Guidance;
 - 1.1.5 in accordance with Good Industry Practice;
 - 1.1.6 in accordance with the Policies; and
 - 1.1.7 in a professional and courteous manner.
- 1.2 The Supplier shall comply with the Implementation Requirements (if any) in accordance with any timescales as may be set out in the Specification and Tender Response Document. Without limitation to the foregoing provisions of this Clause 1.2 of this Schedule 2, the Supplier shall, if specified in the Specification and Tender Response Document, implement the Services fully in accordance with the Implementation Plan. If the Implementation Plan is an outline plan, the Supplier shall, as part of implementation, develop the outline plan into a full plan and agree this with the Council. Once this is agreed, the Supplier shall comply with the full Implementation Plan.
- 1.3 The Supplier shall commence delivery of the Services on the Services Commencement Date.
- 1.4 The Supplier shall comply fully with its obligations set out in the Specification and Tender Response Document, including without limitation the KPIs.
- 1.5 The Supplier shall ensure that all relevant consents, authorisations, licences and accreditations required to provide the Services are in place at the Actual Services Commencement Date and are maintained throughout the Term.
- 1.6 If the Services, or any part of them, are regulated by any regulatory body, the Supplier shall ensure that at the Actual Services Commencement Date it has in place all relevant registrations and shall maintain such registrations during the Term. The Supplier shall notify the Council forthwith in writing of any changes to such registration or any other matter relating to its registration that would affect the delivery or the quality of Services.
- 1.7 The Supplier shall notify the Council forthwith in writing:
 - 1.7.1 of any pending inspection of the Services, or any part of them, by a regulatory body immediately upon the Supplier becoming aware of such inspection; and

- 1.7.2 of any failure of the Services, or any part of them, to meet the quality standards required by a regulatory body, promptly and in any event within two (2) Business Days of the Supplier becoming aware of any such failure. This shall include without limitation any informal feedback received during or following an inspection raising concerns of any nature regarding the provision of the Services.
- 1.8 Following any inspection of the Services, or any part of them, by a regulatory body, the Supplier shall provide the Council with a copy of any report or other communication published or provided by the relevant regulatory body in relation to the provision of the Services.
- 1.9 Upon receipt of notice pursuant to Clause 1.7 of this Schedule 2 or any report or communication pursuant to Clause 1.8 of this Schedule 2, the Council shall be entitled to request further information from the Supplier and/or a meeting with the Supplier, and the Supplier shall cooperate fully with any such request.
- 1.10 Where applicable, the Supplier shall implement and comply with the Policies on reporting and responding to all incidents and accidents, including serious incidents requiring investigation, shall complete the Council's incident and accident forms in accordance with the Policies and provide reasonable support and information as requested by the Council to help the Council deal with any incident or accident relevant to the Services. The Supplier shall ensure that its Contract Manager informs the Council's Contract Manager in writing forthwith upon (a) becoming aware that any serious incidents requiring investigation and/or notifiable accidents have occurred; or (b) the Supplier's Contract Manager having reasonable cause to believe any serious incidents and/or notifiable accidents requiring investigation have occurred. The Supplier shall ensure that its Contract Manager informs the Council's Contract Manager in writing within forty eight (48) hours of all other incidents and/or accidents that have or may have an impact on the Services.
- 1.11 The Supplier shall be relieved from its obligations under this Contract to the extent that it is prevented from complying with any such obligations due to any acts, omissions or defaults of the Council. To qualify for such relief, the Supplier must notify the Council promptly (and in any event within five (5) Business Days) in writing of the occurrence of such act, omission, or default of the Council together with the potential impact on the Supplier's obligations.

2 Premises, locations and access

- 2.1 The Services shall be provided at such Council premises and at such locations within those premises, as may be set out in the Specification and Tender Response Document or as otherwise agreed by the Parties in writing ("**Premises and Locations**").
- 2.2 Subject to the Supplier and its Staff complying with all relevant Policies applicable to such Premises and Locations, the Council shall grant reasonable access to the Supplier and its Staff to such Premises and Locations to enable the Supplier to provide the Services.
- 2.3 Subject to Clause 2.4 of this Schedule 2, any access granted to the Supplier and its Staff under Clause 2.2 of this Schedule 2 shall be non-exclusive and revocable. Such access shall not be deemed to create any greater rights or interest than so granted (to include, without limitation, any relationship of landlord and tenant) in the Premises

and Locations. The Supplier warrants that it shall carry out all such reasonable further acts to give effect to this Clause 2.3 of this Schedule 2.

- 2.4 Where, in order to provide the Services, the Supplier requires any greater rights to use or occupy any specific Premises and Locations over and above such reasonable access rights granted in accordance with Clause 2.2 and Clause 2.3 of this Schedule 2, such further rights shall be limited to any rights granted to the Supplier by the Council in accordance with any licence and/or lease entered into by the Supplier in accordance with the Specification and Tender Response Document.
- 2.5 Where it is provided for by a specific mechanism set out in the Specification and Tender Response Document, the Council may increase, reduce or otherwise vary the Premises and Locations in accordance with such mechanism subject to the provisions of any licence or lease entered into by the Parties as referred to at Clause 2.4 of this Schedule 2. Where there is no such specific mechanism set out in the Specification and Tender Response Document, any variations to the Premises and Locations where the Services are to be provided shall be agreed by the Parties in accordance with Clause 21 of this Schedule 2. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the dispute resolution process set out in Clause 5 of the Key Provisions and Clause 22.3 of this Schedule 2.

3 Cooperation with third parties

- 3.1 The Supplier shall, as reasonably required by the Council, cooperate with any other service providers to the Council and/or any other third parties as may be relevant in the provision of the Services.

4 Use of Council equipment

- 4.1 Unless otherwise set out in the Specification and Tender Response Document or otherwise agreed by the Parties in writing, any equipment or other items provided by the Council for use by the Supplier:
- 4.1.1 shall be provided at the Council's sole discretion;
 - 4.1.2 shall be inspected by the Supplier in order that the Supplier can confirm to its reasonable satisfaction that such equipment and/or item is fit for its intended use and shall not be used by the Supplier until it has satisfied itself of this;
 - 4.1.3 must be returned to the Council within any agreed timescales for such return or otherwise upon the request of the Council; and
 - 4.1.4 shall be used by the Supplier at the Supplier's risk and the Supplier shall upon written request by the Council reimburse the Council for any loss or damage relating to such equipment or other items caused by the Supplier (fair wear and tear exempted).

5 Staff

- 5.1 Subject to the requirements of this Contract and any Law, the Supplier shall be entirely responsible for the employment and conditions of service of Staff. The

Supplier shall ensure that such conditions of employment are consistent with its obligations under this Contract.

- 5.2 The Supplier will employ sufficient Staff to ensure that it complies with its obligations under this Contract. This will include, but not be limited to, the Supplier providing a sufficient reserve of trained and competent Staff to provide the Services during Staff holidays or absence.
- 5.3 The Supplier shall use reasonable endeavours to ensure the continuity of all Staff in the provision of the Services and, where any member of Staff is designated as key to the provision of the Services as set out in the Specification and Tender Response Document or as otherwise agreed between the Parties in writing, any redeployment and/or replacement of such member of Staff by the Supplier shall be subject to the prior written approval of the Council, such approval not to be unreasonably withheld or delayed.
- 5.4 The Supplier shall ensure that all Staff are aware of, and at all times comply with, the Policies.
- 5.5 The Supplier shall:
 - 5.5.1 employ only those Staff who are careful, skilled and experienced in the duties required of them;
 - 5.5.2 ensure that every member of Staff is properly and sufficiently trained and instructed;
 - 5.5.3 ensure all Staff have the qualifications to carry out their duties;
 - 5.5.4 maintain throughout the Term all appropriate licences and registrations with any relevant bodies (at the Supplier's expense) in respect of the Staff; and
 - 5.5.5 ensure all Staff comply with such registration, continuing professional development and training requirements or recommendations appropriate to their role including those from time to time issued by or any relevant regulatory body or any industry body in relation to such Staff.
- 5.6 The Supplier shall not deploy in the provision of the Services any person who has suffered from, has signs of, is under treatment for, or who is suffering from any medical condition which is known to, or does potentially, place the health and safety of the Council's staff, members of the public, service users or visitors at risk unless otherwise agreed in writing with the Council.
- 5.7 The Supplier shall ensure that all potential Staff or persons performing any of the Services during the Term who may reasonably be expected in the course of performing any of the Services under this Contract to have access to or come into contact with children or other vulnerable persons and/or have access to or come into contact with persons receiving health or social care services:
 - 5.7.1 are questioned concerning their Convictions; and
 - 5.7.2 obtain appropriate disclosures from the Disclosure and Barring Service (or other appropriate body) as required by Law and/or the Policies before the

Supplier engages the potential staff or persons in the provision of the Services.

- 5.8 The Supplier shall take all necessary steps to ensure that such potential staff or persons obtain standard and (where regulated activities as defined by the Safeguarding of Vulnerable Groups Act 2006 are involved) enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) and shall ensure all such disclosures are kept up to date. The obtaining of such disclosures shall be at the Supplier's cost and expense.
- 5.9 The Supplier shall ensure that no person is employed or otherwise engaged in the provision of the Services without the Council's prior written consent if:
- 5.9.1 the person has disclosed any Convictions upon being questioned about their Convictions in accordance with Clause 5.7.1 of this Schedule 2;
 - 5.9.2 the person is found to have any Convictions following receipt of standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) in accordance with Clause 5.7.2 of this Schedule 2; or
 - 5.9.3 the person fails to obtain standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) upon request by the Supplier in accordance with Clause 5.7.2 of this Schedule 2.
- 5.10 In addition to the requirements of Clause 5.7 to Clause 5.9 of this Schedule 2, where the Services are or include regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 the Supplier:
- 5.10.1 warrants that it shall comply with all requirements placed on it by the Safeguarding Vulnerable Groups Act 2006;
 - 5.10.2 warrants that at all times it has and will have no reason to believe that any member of Staff is barred in accordance with the Safeguarding Vulnerable Groups Act 2006; and
 - 5.10.3 shall ensure that no person is employed or otherwise engaged in the provision of the Services if that person is barred from carrying out, or whose previous conduct or records indicate that they would not be suitable to carry out, any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to members of the public, service users or any other person.
- 5.11 The Supplier shall ensure that the Council is kept advised at all times of any member of Staff who, subsequent to their commencement of employment as a member of Staff receives a Conviction or whose previous Convictions become known to the Supplier or whose conduct or records indicate that they are not suitable to carry out any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to members of the public, service users or any other person. The Supplier shall only be entitled to continue to engage or employ such member of Staff with the Council's written consent and with such safeguards being put in place as the Council may reasonably request. Should the Council withhold consent the Supplier shall remove such member of Staff from the provision of the Services forthwith.

- 5.12 The Supplier shall immediately provide to the Council any information that the Council reasonably requests to enable the Council to satisfy itself that the obligations set out in Clause 5.7 to Clause 5.11 of this Schedule 2 have been met.
- 5.13 The Council may at any time request that the Supplier remove and replace any member of Staff from the provision of the Services, provided always that the Council will act reasonably in making such a request. Prior to making any such request the Council shall raise with the Supplier the Council's concerns regarding the member of Staff in question with the aim of seeking a mutually agreeable resolution. The Council shall be under no obligation to have such prior discussion should the Council have concerns regarding staff, member of the public or service user safety.
- 5.14 NOT USED

6 Business continuity

- 6.1 The Supplier shall use reasonable endeavours to ensure its Business Continuity Plan operates effectively alongside the Council's business continuity plan where relevant to the provision of the Services. The Supplier shall also ensure that its Business Continuity Plan complies on an ongoing basis with any specific business continuity requirements, as may be set out in the Specification and Tender Response Document.
- 6.2 Throughout the Term, the Supplier will ensure its Business Continuity Plan provides for continuity during a Business Continuity Event. The Supplier confirms and agrees such Business Continuity Plan details and will continue to detail robust arrangements that are reasonable and proportionate to:
- 6.2.1 the criticality of this Contract to the Council; and
- 6.2.2 the size and scope of the Supplier's business operations,
- regarding continuity of the provision of the Services during and following a Business Continuity Event.
- 6.3 The Supplier shall test its Business Continuity Plan at reasonable intervals, and in any event no less than once every twelve (12) months or such other period as may be agreed between the Parties taking into account the criticality of this Contract to the Council and the size and scope of the Supplier's business operations. The Supplier shall promptly provide to the Council, at the Council's written request, copies of its Business Continuity Plan, reasonable and proportionate documentary evidence that the Supplier tests its Business Continuity Plan in accordance with the requirements of this Clause 6.3 of this Schedule 2 and reasonable and proportionate information regarding the outcome of such tests. The Supplier shall provide to the Council a copy of any updated or revised Business Continuity Plan within fourteen (14) Business Days of any material update or revision to the Business Continuity Plan.
- 6.4 The Council may suggest reasonable and proportionate amendments to the Supplier regarding the Business Continuity Plan at any time. Where the Supplier, acting reasonably, deems such suggestions made by the Council to be relevant and appropriate, the Supplier will incorporate into the Business Continuity Plan all such suggestions made by the Council in respect of such Business Continuity Plan.

Should the Supplier not incorporate any suggestion made by the Council into such Business Continuity Plan it will explain the reasons for not doing so to the Council.

- 6.5 Should a Business Continuity Event occur at any time, the Supplier shall implement and comply with its Business Continuity Plan and provide regular written reports to the Council on such implementation.
- 6.6 During and following a Business Continuity Event, the Supplier shall use reasonable endeavours to continue to provide the Services in accordance with this Contract.

7 The Council's obligations

- 7.1 Subject to the Supplier providing the Services in accordance with this Contract, the Council will pay the Supplier for the Services in accordance with Clause 9 of this Schedule 2.
- 7.2 The Council shall, as appropriate, provide copies of or give the Supplier access to such of the Policies that are relevant to the provision of the Services.
- 7.3 The Council shall comply with the Council's Obligations.
- 7.4 The Council shall provide the Supplier with any reasonable and proportionate cooperation necessary to enable the Supplier to comply with its obligations under this Contract. The Supplier shall at all times provide reasonable advance written notification to Council of any such cooperation necessary in circumstances where such cooperation will require the Council to plan for and/or allocate specific resources in order to provide such cooperation.

8 Contract management

- 8.1 Each Party shall appoint and retain a Contract Manager who shall be the primary point of contact for the other Party in relation to matters arising from this Contract. Should the Contract Manager be replaced, the Party replacing the Contract Manager shall promptly inform the other Party in writing of the name and contact details for the new Contract Manager. Any Contract Manager appointed shall be of sufficient seniority and experience to be able to make decisions on the day to day operation of the Contract. The Supplier confirms and agrees that it will be expected to work closely and cooperate fully with the Council's Contract Manager.
- 8.2 Each Party shall ensure that its representatives (to include, without limitation, its Contract Manager) shall attend review meetings on a regular basis to review the performance of the Supplier under this Contract and to discuss matters arising generally under this Contract. Each Party shall ensure that those attending such meetings have the authority to make decisions regarding the day to day operation of the Contract. Review meetings shall take place at the frequency specified in the Specification and Tender Response Document. Should the Specification and Tender Response Document not state the frequency, then the first such meeting shall take place on a date to be agreed on or around the end of the first month after the Commencement Date. Subsequent meetings shall take place at monthly intervals or as may otherwise be agreed in writing between the Parties.
- 8.3 Two weeks prior to each review meeting (or at such time and frequency as may be specified in the Specification and Tender Response Document) the Supplier shall

provide a written contract management report to the Council regarding the provision of the Services and the operation of this Contract. Unless otherwise agreed by the Parties in writing, such contract management report shall contain:

- 8.3.1 details of the performance of the Supplier when assessed in accordance with the KPIs since the last such performance report;
 - 8.3.2 details of any complaints from or on behalf of members of the public or other service users, their nature and the way in which the Supplier has responded to such complaints since the last review meeting written report;
 - 8.3.3 the information specified in the Specification and Tender Response Document;
 - 8.3.4 a status report in relation to the implementation of any current Remedial Proposals by either Party; and
 - 8.3.5 such other information as reasonably required by the Council.
- 8.4 Unless specified otherwise in the Specification and Tender Response Document, the Council shall take minutes of each review meeting and shall circulate draft minutes to the Supplier within a reasonable time following such review meeting. The Supplier shall inform the Council in writing of any suggested amendments to the minutes within five (5) Business Days of receipt of the draft minutes. If the Supplier does not respond to the Council within such five (5) Business Days the minutes will be deemed to be approved. Where there are any differences in interpretation of the minutes, the Parties will use their reasonable endeavours to reach agreement. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the dispute resolution process set out in Clause 5 of the Key Provisions and Clause 22.3 of this Schedule 2.
- 8.5 The Supplier shall provide such management information as the Council may request from time to time within seven (7) Business Days of the date of the request. The Supplier shall supply the management information to the Council in such form as may be specified by the Council.
- 8.6 Upon receipt of management information supplied by the Supplier to the Council and/or the Third Party Body, or by the Council to the Third Party Body, the Parties hereby consent to the Third Party Body and the Council:
- 8.6.1 storing and analysing the management information and producing statistics; and
 - 8.6.2 sharing the management information, or any statistics produced using the management information with any other Contracting Authority.
- 8.7 NOT USED
- 8.8 The Council may make changes to the type of management information which the Supplier is required to supply and shall give the Supplier at least one (1) month's written notice of any changes.

9 Price and payment

- 9.1 The Contract Price shall be calculated as set out in the Specification and Tender Response Document and/or the Purchase Order.
- 9.2 Unless otherwise stated in the Specification and Tender Response Document and/or the Purchase Order, the Contract Price:
- 9.2.1 shall be payable from the Actual Services Commencement Date;
 - 9.2.2 shall remain fixed during the Term; and
 - 9.2.3 is the entire price payable by the Council to the Supplier in respect of the Services and includes, without limitation, any royalties, licence fees, supplies and all consumables used by the Supplier, travel costs, accommodation expenses, the cost of Staff and all appropriate taxes (excluding VAT), duties and tariffs and any expenses arising from import and export administration.
- 9.3 Unless stated otherwise in the Specification and Tender Response Document and/or the Purchase Order:
- 9.3.1 where the Specification and Tender Response Document and/or the Purchase Order confirms that the payment profile for this Contract is monthly in arrears, the Supplier shall invoice the Council, within fourteen (14) days of the end of each calendar month, the Contract Price in respect of the Services provided in compliance with this Contract in the preceding calendar month; or
 - 9.3.2 where Clause 9.3.1 of this Schedule 2 does not apply, the Supplier shall invoice the Council for Services at any time following completion of the provision of the Services in compliance with this Contract.
- Each invoice shall contain such information and be addressed to such individual as the Council may inform the Supplier from time to time.
- 9.4 The Contract Price is exclusive of VAT, which, if properly chargeable, the Council shall pay at the prevailing rate subject to receipt from the Supplier of a valid and accurate VAT invoice. Such VAT invoices shall show the VAT calculations as a separate line item.
- 9.5 The Council shall verify and pay each valid and undisputed invoice received in accordance with Clause 9.3 of this Schedule 2 within thirty (30) days of receipt of such invoice at the latest. However, the Council shall use its reasonable endeavours to pay such undisputed invoices sooner in accordance with any applicable government prompt payment targets. If there is undue delay in verifying the invoice in accordance with this Clause 9.5 of this Schedule 2, the invoice shall be regarded as valid and undisputed for the purposes this Clause 9.5 after a reasonable time has passed.
- 9.6 Where the Council raises a query with respect to an invoice the Parties shall liaise with each other and agree a resolution to such query within thirty (30) days of the query being raised. If the Parties are unable to agree a resolution within thirty (30) days the query shall be referred to dispute resolution in accordance with Clause 22 of

this Schedule 2. For the avoidance of doubt, the Council shall not be in breach of any of its payment obligations under this Contract in relation to any queried or disputed invoice sums unless the process referred to in this Clause 9.6 of this Schedule 2 has been followed and it has been determined that the queried or disputed invoice amount is properly due to the Supplier and the Council has then failed to pay such sum within a reasonable period following such determination.

- 9.7 The Supplier shall pay to the Council any service credits and/or other sums and/or deductions (to include, without limitation, deductions relating to a reduction in the Contract Price) that may become due in accordance with the provisions of the Specification and Tender Response Document. For the avoidance of doubt, the Council may invoice the Supplier for such sums or deductions at any time in the event that they have not automatically been credited to the Council in accordance with the provisions of the Specification and Tender Response Document. Such invoice shall be paid by the Supplier within 30 days of the date of such invoice.
- 9.8 The Council reserves the right to set-off:
- 9.8.1 any monies due to the Supplier from the Council as against any monies due to the Council from the Supplier under this Contract; and
- 9.8.2 any monies due to the Council from the Supplier as against any monies due to the Supplier from the Council under this Contract.
- 9.9 Where the Council is entitled to receive any sums (including, without limitation, any costs, charges or expenses) from the Supplier under this Contract, the Council may invoice the Supplier for such sums. Such invoices shall be paid by the Supplier within 30 days of the date of such invoice.
- 9.10 If a Party fails to pay any undisputed sum properly due to the other Party under this Contract, the Party due such sum shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

10 Warranties

- 10.1 The Supplier warrants and undertakes that:
- 10.1.1 it has, and shall ensure its Staff shall have, and shall maintain throughout the Term all appropriate licences and registrations with the relevant bodies to fulfil its obligations under this Contract;
- 10.1.2 it has all rights, consents, authorisations, licences and accreditations required to provide the Services and shall maintain such consents, authorisations, licences and accreditations throughout the Term;
- 10.1.3 it has and shall maintain a properly documented system of quality processes covering all aspects of its obligations under this Contract and/or under Law and/or Guidance and shall at all times comply with such quality controls and processes;

- 10.1.4 it shall not make any significant changes to its system of quality processes in relation to the Services without notifying the Council in writing at least twenty one (21) days in advance of such change (such notice to include the details of the consequences which follow such change being implemented);
- 10.1.5 where any act of the Supplier requires the notification to and/or approval by any regulatory or other competent body in accordance with any Law and Guidance, the Supplier shall comply fully with such notification and/or approval requirements;
- 10.1.6 receipt of the Services by or on behalf of the Council and use of the deliverables or of any other item or information supplied or made available to the Council as part of the Services will not infringe any third party rights, to include without limitation any Intellectual Property Rights;
- 10.1.7 it will comply with all Law, Guidance, Policies and the Supplier Code of Conduct in so far as is relevant to the provision of the Services;
- 10.1.8 it will provide the Services using reasonable skill and care and in accordance with Good Industry Practice and shall fulfil all requirements of this Contract using appropriately skilled, trained and experienced staff;
- 10.1.9 unless otherwise set out in the Specification and Tender Response Document and/or as otherwise agreed in writing by the Parties, it has and/or shall procure all resources, equipment, consumables and other items and facilities required to provide the Services;
- 10.1.10 without limitation to the generality of Clause 10.1.7 of this Schedule 2, it shall comply with all health and safety processes, requirements safeguards, controls, and training obligations in accordance with its own operational procedures, Law, Guidance, Policies, Good Industry Practice, the requirements of the Specification and Tender Response Document and any notices or instructions given to the Supplier by the Council and/or any competent body, as relevant to the provision of the Services and the Supplier's access to the Premises and Locations in accordance with this Contract;
- 10.1.11 without prejudice to any specific notification requirements set out in this Contract, it will promptly notify the Council of any health and safety hazard which has arisen, or the Supplier is aware may arise, in connection with the performance of the Services and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards;
- 10.1.12 any equipment it uses in the provision of the Services shall comply with all relevant Law and Guidance, be fit for its intended purpose and maintained fully in accordance with the manufacturer's specification and shall remain the Supplier's risk and responsibility at all times;
- 10.1.13 unless otherwise confirmed by the Council in writing (to include, without limitation, as part of the Specification and Tender Response Document), it will ensure that any products purchased by the Supplier partially or wholly for the purposes of providing the Services will comply with requirements

five (5) to eight (8), as set out at Annex 1 of the Cabinet Office Procurement Policy Note - Implementing Article 6 of the Energy Efficiency Directive (Action Note 07/14 3rd June 2014), to the extent such requirements apply to the relevant products being purchased;

- 10.1.14 it shall use Good Industry Practice to ensure that any information and communications technology systems and/or related hardware and/or software it uses are free from corrupt data, viruses, worms and any other computer programs or code which might cause harm or disruption to the Council's information and communications technology systems;
- 10.1.15 it shall: (i) comply with all relevant Law and Guidance and shall use Good Industry Practice to ensure that there is no slavery or human trafficking in its supply chains; and (ii) notify the Council immediately if it becomes aware of any actual or suspected incidents of slavery or human trafficking in its supply chains;
- 10.1.16 it shall at all times conduct its business in a manner that is consistent with any anti-slavery Policy of the Council and shall provide to the Council any reports or other information that the Council may request as evidence of the Supplier's compliance with this Clause 10.1.16 and/or as may be requested or otherwise required by the Council in accordance with its anti-slavery Policy;
- 10.1.17 it will fully and promptly respond to all requests for information and/or requests for answers to questions regarding this Contract, the provision of the Services, any complaints and any Disputes at the frequency, in the timeframes and in the format as requested by the Council from time to time (acting reasonably);
- 10.1.18 all information included within the Supplier's responses to any documents issued by the Council as part of the procurement relating to the award of this Contract (to include, without limitation, as referred to in the Specification and Tender Response Document) and all accompanying materials is accurate;
- 10.1.19 it has the right and council to enter into this Contract and that it has the capability and capacity to fulfil its obligations under this Contract;
- 10.1.20 it is a properly constituted entity and it is fully empowered by the terms of its constitutional documents to enter into and to carry out its obligations under this Contract and the documents referred to in this Contract;
- 10.1.21 all necessary actions to authorise the execution of and performance of its obligations under this Contract have been taken before such execution;
- 10.1.22 there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition, business or operations of the Supplier;
- 10.1.23 there are no material agreements existing to which the Supplier is a party which prevent the Supplier from entering into or complying with this Contract;

- 10.1.24 it has and will continue to have the capacity, funding and cash flow to meet all its obligations under this Contract; and
 - 10.1.25 it has satisfied itself as to the nature and extent of the risks assumed by it under this Contract and has gathered all information necessary to perform its obligations under this Contract and all other obligations assumed by it.
 - 10.1.26 it shall ensure that its employees, agents and subcontractors are familiar and have a good understanding of the 'Prevent' strategy, are trained to recognise vulnerability to be drawn into terrorism and are aware of the available programmes to deal with this issue.
- 10.2 The Supplier warrants that all information, data and other records and documents required by the Council as set out in the Specification and Tender Response Document shall be submitted to the Council in the format and in accordance with any timescales set out in the Specification and Tender Response Document.
- 10.3 Without prejudice to the generality of Clause 10.2 of this Schedule 2, the Supplier acknowledges that a failure by the Supplier following the Actual Services Commencement Date to submit accurate invoices and other information on time to the Council may result in an entity responsible for reimbursing costs to the Council, delaying or failing to make relevant payments to the Council. Accordingly, the Supplier warrants that, from the Actual Services Commencement Date, it shall submit accurate invoices and other information on time to the Council.
- 10.4 NOT USED
- 10.5 The Supplier warrants and undertakes to the Council that, as at the Commencement Date, it has notified the Council in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance. If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- 10.5.1 notify the Council in writing of such fact within five (5) Business Days of its occurrence; and
 - 10.5.2 promptly provide to the Council:
 - (i) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Council may reasonably require.
- 10.6 The Supplier further warrants and undertakes to the Council that it will inform the Council in writing immediately upon becoming aware that any of the warranties set out in Clause 10 of this Schedule 2 have been breached or there is a risk that any warranties may be breached.

- 10.7 Any warranties provided under this Contract are both independent and cumulative and may be enforced independently or collectively at the sole discretion of the enforcing Party.

11 Intellectual property

- 11.1 The Supplier warrants and undertakes to the Council that either it owns or is entitled to use and will continue to own or be entitled to use all Intellectual Property Rights used in the development and provision of the Services and/or necessary to give effect to the Services and/or to use any deliverables, matter or any other output supplied to the Council as part of the Services.
- 11.2 The Supplier hereby grants to the Council, for the life of the use by the Council of any deliverables, material or any other output supplied to the Council in any format as part of the Services, an irrevocable, royalty-free, non-exclusive licence to use, modify, adapt or enhance such items in the course of the Council's normal business operations. For the avoidance of doubt, unless specified otherwise in any Purchase Order and/or the Specification and Tender Response Document, the Council shall have no rights to commercially exploit (e.g. by selling to third parties) any deliverables, matter or any other output supplied to the Council in any format as part of the Services.

12 Indemnity

- 12.1 The Supplier shall be liable to the Council for, and shall indemnify and keep the Council indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings in respect of:
- 12.1.1 any injury or allegation of injury to any person, including injury resulting in death;
 - 12.1.2 any loss of or damage to property (whether real or personal);
 - 12.1.3 any breach of Clause 10.1.6 and/or Clause 11 of this Schedule 2; and/or
 - 12.1.4 any failure by the Supplier to commence the delivery of the Services by the Services Commencement Date;

that arise or result from the Supplier's negligent acts or omissions or breach of contract in connection with the performance of this Contract including the provision of the Services, except to the extent that such loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings have been caused by any act or omission by, or on behalf of, or in accordance with the instructions of, the Council.

- 12.2 Liability under Clauses 12.1.1, 12.1.3 and 17.13 of this Schedule 2 and Clause 2.6 of Schedule 3 shall be unlimited. Liability under Clauses 12.1.2 and 12.1.4 of this Schedule 2 shall be subject to the limitation of liability set out in Clause 13 of this Schedule 2.
- 12.3 In relation to all third party claims against the Council, which are the subject of any indemnity given by the Supplier under this Contract, the Council shall use its reasonable endeavours, upon a written request from the Supplier, to transfer the

conduct of such claims to the Supplier unless restricted from doing so. Such restrictions may include, without limitation, any restrictions:

- 12.3.1 relating to any legal, regulatory, governance, information governance, or confidentiality obligations on the Council; and/or
- 12.3.2 relating to the Council's insurance arrangements.

Such transfer shall be subject to the Parties agreeing appropriate terms for such conduct of the third party claim by the Supplier (to include, without limitation, the right of the Council to be informed and consulted on the ongoing conduct of the claim following such transfer and any reasonable cooperation required by the Supplier from the Council).

13 Limitation of liability

13.1 Nothing in this Contract shall exclude or restrict the liability of either Party:

- 13.1.1 for death or personal injury resulting from its negligence;
- 13.1.2 for fraud or fraudulent misrepresentation; or
- 13.1.3 in any other circumstances where liability may not be limited or excluded under any applicable law.

13.2 Subject to Clauses 12.2, 13.1, 13.3 and 13.5 of this Schedule 2, the total liability of each Party to the other under or in connection with this Contract whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to the greater of: (a) five million GBP (£5,000,000); or (b) one hundred and twenty five percent (125%) of the total Contract Price paid or payable by the Council to the Supplier for the Services.

13.3 There shall be no right to claim losses, damages and/or other costs and expenses under or in connection with this Contract whether arising in contract (to include, without limitation, under any relevant indemnity), tort, negligence, breach of statutory duty or otherwise to the extent that any losses, damages and/or other costs and expenses claimed are in respect of loss of production, loss of business opportunity or are in respect of indirect loss of any nature suffered or alleged. For the avoidance of doubt, without limitation, the Parties agree that for the purposes of this Contract the following costs, expenses and/or loss of income shall be direct recoverable losses (to include under any relevant indemnity) provided such costs, expenses and/or loss of income are properly evidenced by the claiming Party:

- 13.3.1 extra costs incurred purchasing replacement or alternative services;
- 13.3.2 the costs of extra management time; and/or
- 13.3.3 loss of income due to an inability to provide general public services,

in each case to the extent to which such costs, expenses and/or loss of income arise or result from the other Party's breach of contract, negligent act or omission, breach of statutory duty, and/or other liability under or in connection with this Contract.

- 13.4 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which that Party is entitled to bring a claim against the other pursuant to this Contract.
- 13.5 If the total Contract Price paid or payable by the Council to the Supplier over the Term:
- 13.5.1 is less than or equal to one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 shall be replaced with one million pounds (£1,000,000);
 - 13.5.2 is less than or equal to three million pounds (£3,000,000) but greater than one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 shall be replaced with three million pounds (£3,000,000);
 - 13.5.3 is equal to, exceeds or will exceed ten million pounds (£10,000,000), but is less than fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 shall be replaced with ten million pounds (£10,000,000) and the figure of one hundred and twenty five percent (125%) at Clause 13.2 of this Schedule 2 shall be deemed to have been deleted and replaced with one hundred and fifteen percent (115%); and
 - 13.5.4 is equal to, exceeds or will exceed fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 shall be replaced with fifty million pounds (£50,000,000) and the figure of one hundred and twenty five percent (125%) at Clause 13.2 of this Schedule 2 shall be deemed to have been deleted and replaced with one hundred and five percent (105%).
- 13.6 Clause 13 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.

14 Insurance

- 14.1 Subject to Clauses 14.2 and **Error! Reference source not found.** of this Schedule 2 and unless otherwise confirmed in writing by the Council, as a minimum level of protection, the Supplier shall put in place and/or maintain in force at its own cost with a reputable commercial insurer, insurance arrangements in respect of employer's liability, public liability and professional indemnity in accordance with Good Industry Practice with the minimum cover per claim of the greater of five million pounds (£5,000,000) or any sum as required by Law unless otherwise agreed with the Council in writing.
- 14.2 Without limitation to any insurance arrangements as required by Law, the Supplier shall put in place and/or maintain the different types and/or levels of indemnity arrangements explicitly required by the Council, if specified in the Specification and Tender Response Document.
- 14.3 NOT USED
- 14.4 The amount of any indemnity cover shall not relieve the Supplier of any liabilities under this Contract. It shall be the responsibility of the Supplier to determine the

amount of indemnity cover that will be adequate to enable it to satisfy its potential liabilities under this Contract. Accordingly, the Supplier shall be liable to make good any deficiency if the proceeds of any indemnity cover is insufficient to cover the settlement of any claim.

- 14.5 The Supplier warrants that it shall not take any action or fail to take any reasonable action or (in so far as it is reasonable and within its power) permit or allow others to take or fail to take any action, as a result of which its insurance cover may be rendered void, voidable, unenforceable, or be suspended or impaired in whole or in part, or which may otherwise render any sum paid out under such insurances repayable in whole or in part.
- 14.6 The Supplier shall from time to time and in any event within five (5) Business Days of written demand provide documentary evidence to the Council that insurance arrangements taken out by the Supplier pursuant to Clause 14 of this Schedule 2 and the Specification and Tender Response Document are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.
- 14.7 Upon the expiry or earlier termination of this Contract, the Supplier shall ensure that any ongoing liability it has or may have arising out of this Contract shall continue to be the subject of appropriate indemnity arrangements for the period of twenty one (21) years from termination or expiry of this Contract or until such earlier date as that liability may reasonably be considered to have ceased to exist.

15 Term and termination

- 15.1 This Contract shall commence on the Commencement Date and unless terminated earlier in accordance with the terms of this Contract or the general law, shall continue until the end of the Term.
- 15.2 The Council shall be entitled to extend the Term on one or more occasions by giving the Supplier written notice no less than three (3) months prior to the date on which this Contract would otherwise have expired, provided that the duration of this Contract shall be no longer than the total term referred to in the Key Provisions.
- 15.3 In the case of a breach of any of the terms of this Contract by either Party that is capable of remedy (including, without limitation any breach of any KPI and, subject to Clause 9.6 of this Schedule 2, any breach of any payment obligations under this Contract), the non-breaching Party may, without prejudice to its other rights and remedies under this Contract, issue a Breach Notice and shall allow the Party in breach the opportunity to remedy such breach in the first instance via a remedial proposal put forward by the Party in breach ("**Remedial Proposal**") before exercising any right to terminate this Contract in accordance with Clause 15.4(ii) of this Schedule 2. Such Remedial Proposal must be agreed with the non-breaching Party (such agreement not to be unreasonably withheld or delayed) and must be implemented by the Party in breach in accordance with the timescales referred to in the agreed Remedial Proposal. Once agreed, any changes to a Remedial Proposal must be approved by the Parties in writing. Any failure by the Party in breach to:
 - 15.3.1 put forward and agree a Remedial Proposal with the non-breaching Party in relation to the relevant default or breach within a period of ten (10) Business Days (or such other period as the non-breaching Party may agree in writing) from written notification of the relevant default or breach from the non-breaching Party;

15.3.2 comply with such Remedial Proposal (including, without limitation, as to its timescales for implementation, which shall be thirty (30) days unless otherwise agreed between the Parties); and/or

15.3.3 remedy the default or breach notwithstanding the implementation of such Remedial Proposal in accordance with the agreed timescales for implementation,

shall be deemed, for the purposes of Clause 15.4(ii) of this Schedule 2, a material breach of this Contract by the Party in breach not remedied in accordance with an agreed Remedial Proposal.

15.4 Either Party may terminate this Contract by issuing a Termination Notice to the other Party if such other Party commits a material breach of any of the terms of this Contract which is:

(i) not capable of remedy; or

(ii) in the case of a breach capable of remedy, which is not remedied in accordance with a Remedial Proposal.

15.5 The Council may terminate this Contract by issuing a Termination Notice to the Supplier if:

15.5.1 the Supplier does not commence delivery of the Services by any Long Stop Date;

15.5.2 the Supplier, or any third party guaranteeing the obligations of the Supplier under this Contract, ceases or threatens to cease carrying on its business; suspends making payments on any of its debts or announces an intention to do so; is, or is deemed for the purposes of any Law to be, unable to pay its debts as they fall due or insolvent; enters into or proposes any composition, assignment or arrangement with its creditors generally; takes any step or suffers any step to be taken in relation to its winding-up, dissolution, administration (whether out of court or otherwise) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) otherwise than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation; has a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer appointed (in each case, whether out of court or otherwise) in respect of it or any of its assets; has any security over any of its assets enforced; or any analogous procedure or step is taken in any jurisdiction;

15.5.3 the Supplier undergoes a change of control within the meaning of sections 450 and 451 of the Corporation Tax Act 2010 (other than for an intra-group change of control) without the prior written consent of the Council and the Council shall be entitled to withhold such consent if, in the reasonable opinion of the Council, the proposed change of control will have a material impact on the performance of this Contract or the reputation of the Council;

- 15.5.4 the Supplier purports to assign, Sub-contract, novate, create a trust in or otherwise transfer or dispose of this Contract in breach of Clause 28.1 of this Schedule 2;
 - 15.5.5 pursuant to and in accordance with any termination rights set out in Clauses 15.6, 23.8; 25.2; 25.4 and 29.2 of this Schedule 2; or
 - 15.5.6 the warranty given by the Supplier pursuant to Clause 10.5 of this Schedule 2 is materially untrue, the Supplier commits a material breach of its obligation to notify the Council of any Occasion of Tax Non-Compliance as required by Clause 10.5 of this Schedule 2, or the Supplier fails to provide details of proposed mitigating factors as required by Clause 10.5 of this Schedule 2 that in the reasonable opinion of the Council are acceptable.
- 15.6 If the Council, acting reasonably, has good cause to believe that there has been a material deterioration in the financial circumstances of the Supplier and/or any third party guaranteeing the obligations of the Supplier under this Contract and/or any material Sub-contractor of the Supplier when compared to any information provided to and/or assessed by the Council as part of any procurement process or other due diligence leading to the award of this Contract to the Supplier or the entering into a Sub-contract by the Supplier, the following process shall apply:
- 15.6.1 the Council may (but shall not be obliged to) give notice to the Supplier requesting adequate financial or other security and/or assurances for due performance of its material obligations under this Contract on such reasonable and proportionate terms as the Council may require within a reasonable time period as specified in such notice;
 - 15.6.2 a failure or refusal by the Supplier to provide the financial or other security and/or assurances requested in accordance with Clause 15.6 of this Schedule 2 in accordance with any reasonable timescales specified in any such notice issued by the Council shall be deemed a breach of this Contract by the Supplier and shall be referred to and resolved in accordance with the Dispute Resolution Procedure; and
 - 15.6.3 a failure to resolve such breach in accordance with such Dispute Resolution Procedure by the end of the escalation stage of such process (as set out in Clause 22.3 of this Schedule 2) shall entitle, but shall not compel, the Council to terminate this Contract in accordance with Clause 15.4(i) of this Schedule 2.
- In order that the Council may act reasonably in exercising its discretion in accordance with Clause 15.6 of this Schedule 2, the Supplier shall provide the Council with such reasonable and proportionate up-to-date financial or other information relating to the Supplier or any relevant third party entity upon request.
- 15.7 The Council may terminate this Contract by issuing a Termination Notice to the Supplier where:
- 15.7.1 the Contract has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure;

- 15.7.2 the Council has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Contract;
- 15.7.3 the Contract should not have been awarded to the Supplier in view of a serious infringement of obligations under European law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU; or
- 15.7.4 there has been a failure by the Supplier and/or one its Sub-contractors to comply with legal obligations in the fields of environmental, social or labour Law. Where the failure to comply with legal obligations in the fields of environmental, social or labour Law is a failure by one of the Supplier's Sub-contractors, the Council may request the replacement of such Sub-contractor and the Supplier shall comply with such request as an alternative to the Council terminating this Contract under this Clause 15.7.4.
- 15.8 If the Council novates this Contract to any body that is not a Contracting Authority, from the effective date of such novation, the rights of the Council to terminate this Contract in accordance with Clause 15.5.2 to Clause 15.5.4 of this Schedule 2 shall be deemed mutual termination rights and the Supplier may terminate this Contract by issuing a Termination Notice to the entity assuming the position of the Council if any of the circumstances referred to in such Clauses apply to the entity assuming the position of the Council.
- 15.9 Within three (3) months of the Commencement Date the Supplier shall develop and agree an exit plan with the Council consistent with the Exit Requirements, which shall ensure continuity of the Services on expiry or earlier termination of this Contract. The Supplier shall provide the Council with the first draft of an exit plan within one (1) month of the Commencement Date. The Parties shall review and, as appropriate, update the exit plan on each anniversary of the Commencement Date of this Contract. If the Parties cannot agree an exit plan in accordance with the timescales set out in this Clause 15.9 of this Schedule 2 (such agreement not to be unreasonably withheld or delayed), such failure to agree shall be deemed a Dispute, which shall be referred to and resolved in accordance with the Dispute Resolution Procedure.

16 Consequences of expiry or early termination of this Contract

- 16.1 Upon expiry or earlier termination of this Contract, the Council agrees to pay the Supplier for the Services which have been completed by the Supplier in accordance with this Contract prior to expiry or earlier termination of this Contract.
- 16.2 Immediately following expiry or earlier termination of this Contract and/or in accordance with any timescales as set out in the agreed exit plan:
- 16.2.1 the Supplier shall comply with its obligations under any agreed exit plan;
- 16.2.2 all data, excluding Personal Data, documents and records (whether stored electronically or otherwise) relating in whole or in part to the Services, including without limitation relating to members of the public or other

service users, and all other items provided on loan or otherwise to the Supplier by the Council shall be delivered by the Supplier to the Council provided that the Supplier shall be entitled to keep copies to the extent that (a) the content does not relate solely to the Services; (b) the Supplier is required by Law and/or Guidance to keep copies; or (c) the Supplier was in possession of such data, documents and records prior to the Commencement Date; and

- 16.2.3 any Personal Data Processed by the Supplier on behalf of the Council shall be returned to the Council or destroyed in accordance with the relevant provisions of the Data Protection Protocol.
- 16.3 The Supplier shall retain all data relating to the provision of the Services that are not transferred or destroyed pursuant to Clause 16.2 of this Schedule 2 for the period set out in Clause 24.1 of this Schedule 2.
- 16.4 The Supplier shall cooperate fully with the Council or, as the case may be, any replacement supplier during any re-procurement and handover period prior to and following the expiry or earlier termination of this Contract. This cooperation shall extend to providing access to all information relevant to the operation of this Contract, as reasonably required by the Council to achieve a fair and transparent re-procurement and/or an effective transition without disruption to routine operational requirements.
- 16.5 Immediately upon expiry or earlier termination of this Contract any licence or lease entered into in accordance with the Specification and Tender Response Document shall automatically terminate.
- 16.6 The expiry or earlier termination of this Contract for whatever reason shall not affect any rights or obligations of either Party which accrued prior to such expiry or earlier termination.
- 16.7 The expiry or earlier termination of this Contract shall not affect any obligations which expressly or by implication are intended to come into or continue in force on or after such expiry or earlier termination.

17 Staff information and the application of TUPE at the end of the Contract

- 17.1 Upon the day which is no greater than nine (9) months before the expiry of this Contract or as soon as the Supplier is aware of the proposed termination of the Contract, the Supplier shall, within twenty eight (28) days of receiving a written request from the Council and to the extent permitted by Law, supply to the Council and keep updated all information required by the Council as to the terms and conditions of employment and employment history of any Supplier Personnel (including all employee liability information identified in regulation 11 of TUPE) and the Supplier shall warrant such information is full, complete and accurate.
- 17.2 No later than twenty eight (28) days prior to the Subsequent Transfer Date, the Supplier shall or shall procure that any Sub-contractor shall provide a final list to the Successor and/or the Council, as appropriate, containing the names of all the Subsequent Transferring Employees whom the Supplier or Sub-contractor expects will transfer to the Successor or the Council and all employee liability information

identified in regulation 11 of TUPE in relation to the Subsequent Transferring Employees.

- 17.3 If the Supplier shall, in the reasonable opinion of the Council, deliberately not comply with its obligations under Clauses 17.1 and 17.2 of this Schedule 2, the Council may withhold payment under Clause 9 of this Schedule 2.
- 17.4 The Supplier shall be liable to the Council for, and shall indemnify and keep the Council indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings that arise or result from any deficiency or inaccuracy in the information which the Supplier is required to provide under Clauses 17.1 and 17.2 of this Schedule 2.
- 17.5 Subject to Clauses 17.6 and 17.7 of this Schedule 2, during the period of nine (9) months preceding the expiry of this Contract or after notice of termination of this Contract has been served by either Party, the Supplier shall not, and shall procure that any Sub-contractor shall not, without the prior written consent of the Council, such consent not to be unreasonably withheld or delayed:
- 17.5.1 make, propose or permit any material changes to the terms and conditions of employment or other arrangements of any of the Supplier Personnel;
 - 17.5.2 increase or seek to increase the emoluments (excluding cost of living increases awarded in the ordinary course of business) payable to any of the Supplier Personnel;
 - 17.5.3 replace any of the Supplier Personnel or increase the total number of employees providing the Services;
 - 17.5.4 deploy any person other than the Supplier Personnel to perform the Services;
 - 17.5.5 terminate or give notice to terminate the employment or arrangements of any of the Supplier Personnel;
 - 17.5.6 increase the proportion of working time spent on the Services by any of the Supplier Personnel; or
 - 17.5.7 introduce any new contractual term or customary practice concerning the making of any lump sum payment on the termination of employment of any of the Supplier Personnel.
- 17.6 Clause 17.5 of this Schedule 2 shall not prevent the Supplier or any Sub-contractor from taking any of the steps prohibited in that Clause in circumstances where the Supplier or Sub-contractor is required to take such a step pursuant to any changes in legislation or pursuant to a collective agreement in force at that time.
- 17.7 Where the obligations on the Supplier under Clause 17 of this Schedule 2 are subject to the Data Protection Legislation, the Supplier will, and shall procure that any Sub-contractor will, use its best endeavours to seek the consent of the Supplier Personnel to disclose any information covered under the Data Protection Legislation and utilise any other exemption or provision within the Data Protection Legislation which would allow such disclosure.

- 17.8 Having as appropriate gained permission from any Sub-contractor, the Supplier hereby permits the Council to disclose information about the Supplier Personnel to any Interested Party provided that the Council informs the Interested Party in writing of the confidential nature of the information.
- 17.9 The Parties agree that where a Successor or the Council provides the Services or services which are fundamentally the same as the Services in the immediate or subsequent succession to the Supplier or Sub-contractor (in whole or in part) on expiry or early termination of this Contract (howsoever arising) TUPE, the Cabinet Office Statement and Fair Deal for Staff Pensions may apply in respect of the subsequent provision of the Services or services which are fundamentally the same as the Services. If TUPE, the Cabinet Office Statement and Fair Deal for Staff Pensions apply then Clause 17.11 to Clause 17.14 of this Schedule 2 and (where relevant) the requirements of Clause 1.15 of Part D of Schedule 7 of Council's Terms and Conditions for the Provision of Services (Contract Version)) shall apply.
- 17.10 If on the termination or at the end of the Contract TUPE does not apply, then all Employment Liabilities and any other liabilities in relation to the Supplier Personnel shall remain with the Supplier or Sub-contractor as appropriate. The Supplier will, and shall procure that any Sub-contractor shall, indemnify and keep indemnified the Council in relation to any Employment Liabilities arising out of or in connection with any allegation or claim raised by any Supplier Personnel.
- 17.11 In accordance with TUPE, and any other policy or arrangement applicable, the Supplier shall, and will procure that any Sub-contractor shall, comply with its obligations to inform and consult with the appropriate representatives of any of its employees affected by the subsequent transfer of the Services or services which are fundamentally the same as the Services.
- 17.12 The Supplier will and shall procure that any Sub-contractor will on or before any Subsequent Transfer Date:
- 17.12.1 pay all wages, salaries and other benefits of the Subsequent Transferring Employees and discharge all other financial obligations (including reimbursement of any expenses and any contributions to retirement benefit schemes) in respect of the period between the Transfer Date and the Subsequent Transfer Date;
 - 17.12.2 account to the proper council for all PAYE, tax deductions and national insurance contributions payable in respect of the Subsequent Transferring Employees in the period between the Transfer Date and the Subsequent Transfer Date;
 - 17.12.3 pay any Successor or the Council, as appropriate, the amount which would be payable to each of the Subsequent Transferring Employees in lieu of accrued but untaken holiday entitlement as at the Subsequent Transfer Date;
 - 17.12.4 pay any Successor or the Council, as appropriate, the amount which fairly reflects the progress of each of the Subsequent Transferring Employees towards achieving any commission, bonus, profit share or other incentive payment payable after the Subsequent Transfer Date wholly or partly in respect of a period prior to the Subsequent Transfer Date; and

- 17.12.5 subject to any legal requirement, provide to the Successor or the Council, as appropriate, all personnel records relating to the Subsequent Transferring Employees including, without prejudice to the generality of the foregoing, all records relating to national insurance, PAYE and income tax. The Supplier shall for itself and any Sub-contractor warrant that such records are accurate and up to date.
- 17.13 The Supplier will and shall procure that any Sub-contractor will indemnify and keep indemnified the Council and/or a Successor in relation to any Employment Liabilities arising out of or in connection with any claim arising from:
- 17.13.1 the Supplier's or Sub-contractor's failure to perform and discharge its obligations under Clause 17.12 of this Schedule 2;
 - 17.13.2 any act or omission by the Supplier or Sub-contractor in respect of the Subsequent Transferring Employees occurring on or before the Subsequent Transfer Date;
 - 17.13.3 any allegation or claim by any person who is not a Subsequent Transferring Employee but who alleges that their employment should transfer or has transferred to the Successor or the Council, as appropriate;
 - 17.13.4 any emoluments payable to a person employed or engaged by the Supplier or Sub-contractor (including without limitation all wages, accrued holiday pay, bonuses, commissions, PAYE, national insurance contributions, pension contributions and other contributions) payable in respect of any period on or before the Subsequent Transfer Date;
 - 17.13.5 any allegation or claim by any of the Subsequent Transferring Employees on the grounds that the Successor or Council, as appropriate, has failed to continue a benefit provided by the Supplier or Sub-contractor as a term of such Subsequent Transferring Employee's contract as at the Subsequent Transfer Date where it was not reasonably practicable for the Successor or Council, as appropriate, to provide an identical benefit but where the Successor or Council, as appropriate, has provided (or offered to provide where such benefit is not accepted by the Subsequent Transferring Employee) an alternative benefit which, taken as a whole, is no less favourable to such Subsequent Transferring Employee; and
 - 17.13.6 any act or omission of the Supplier or any Sub-contractor in relation to its obligations under regulation 13 of TUPE, or in respect of an award of compensation under regulation 15 of TUPE except to the extent that the liability arises from the Successor's or Council's failure to comply with regulation 13(4) of TUPE.
- 17.14 The Supplier will, or shall procure that any Sub-contractor will, on request by the Council provide a written and legally binding indemnity in the same terms as set out in Clause 17.13 of this Schedule 2 to any Successor in relation to any Employment Liabilities arising up to and including the Subsequent Transfer Date.
- 17.15 The Supplier will indemnify and keep indemnified the Council and/or any Successor in respect of any Employment Liabilities arising from any act or omission of the Supplier or Sub-contractor in relation to any other Supplier Personnel who is not a

Subsequent Transferring Employee arising during any period whether before, on or after the Subsequent Transfer Date.

- 17.16 If any person who is not a Subsequent Transferring Employee claims or it is determined that their contract of employment has been transferred from the Supplier or any Sub-contractor to the Council or Successor pursuant to TUPE or claims that their employment would have so transferred had they not resigned, then:
- 17.16.1 the Council will, or shall procure that the Successor will, within seven (7) days of becoming aware of that fact, give notice in writing to the Supplier;
 - 17.16.2 the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within twenty eight (28) days of the notification by the Council or Successor;
 - 17.16.3 if such offer of employment is accepted, the Council will, or shall procure that the Successor will, immediately release the person from their employment; and
 - 17.16.4 if after the period in Clause 17.16.2 of this Schedule 2 has elapsed, no such offer of employment has been made or such offer has been made but not accepted, the Council will, or shall procure that the Successor will (whichever is the provider of the Services or services of the same or similar nature to the Services), employ that person in accordance with its obligations and duties under TUPE and shall be responsible for all liabilities arising in respect of any such person after the Subsequent Transfer Date.

18 Complaints

- 18.1 To the extent relevant to the Services, the Supplier shall have in place and operate a complaints procedure which complies with the requirements of the Local Council Social Services and National Health Service Complaints (England) Regulations 2009.
- 18.2 Each Party shall inform the other of all complaints from or on behalf of Council staff, members of the public or other service users arising out of or in connection with the provision of the Services within twenty four (24) hours of receipt of each complaint and shall keep the other Party updated on the manner of resolution of any such complaints.

19 Sustainable development

- 19.1 The Supplier shall comply in all material respects with applicable environmental, social and labour Law requirements in force from time to time in relation to the Services. Where the provisions of any such Law are implemented by the use of voluntary agreements, the Supplier shall comply with such agreements as if they were incorporated into English law subject to those voluntary agreements being cited in the Specification and Tender Response Document. Without prejudice to the generality of the foregoing, the Supplier shall:
 - 19.1.1 comply with all Policies and/or procedures and requirements set out in the Specification and Tender Response Document in relation to any stated environmental, social and labour requirements, characteristics and impacts of the Services and the Supplier's supply chain;

- 19.1.2 maintain relevant policy statements documenting the Supplier's significant labour, social and environmental aspects as relevant to the Services being provided and as proportionate to the nature and scale of the Supplier's business operations; and
- 19.1.3 maintain plans and procedures that support the commitments made as part of the Supplier's significant labour, social and environmental policies, as referred to at Clause 19.1.2 of this Schedule 2.
- 19.2 The Supplier shall meet reasonable requests by the Council for information evidencing the Supplier's compliance with the provisions of Clause 19 of this Schedule 2.

20 Electronic services information – NOT USED

21 Change management

- 21.1 The Supplier acknowledges to the Council that the Council's requirements for the Services may change during the Term and the Supplier shall not unreasonably withhold or delay its consent to any reasonable variation or addition to the Specification and Tender Response Document, as may be requested by the Council from time to time.
- 21.2 Subject to Clause 21.3 of this Schedule 2, any change to the Services or other variation to this Contract shall only be binding once it has been agreed in writing and signed by an authorised representative of both Parties.
- 21.3 Any change to the Data Protection Protocol shall be made in accordance with the relevant provisions of that protocol.

22 Dispute resolution

- 22.1 During any Dispute, including a Dispute as to the validity of this Contract, it is agreed that the Supplier shall continue its performance of the provisions of the Contract (unless the Council requests in writing that the Supplier does not do so).
- 22.2 In the case of a Dispute arising out of or in connection with this Contract the Supplier and the Council shall make every reasonable effort to communicate and cooperate with each other with a view to resolving the Dispute and follow the procedure set out in Clause 22.3 of this Schedule 2 as the first stage in the Dispute Resolution Procedure.
- 22.3 If any Dispute arises out of the Contract either Party may serve a notice on the other Party to commence formal resolution of the Dispute. The Parties shall first seek to resolve the Dispute by escalation in accordance with the management levels as set out in Clause 5 of the Key Provisions. Respective representatives at each level, as set out in Clause 5 of the Key Provisions, shall have five (5) Business Days at each level during which they will use their reasonable endeavours to resolve the Dispute before escalating the matter to the next level until all levels have been exhausted. Level 1 will commence on the date of service of the Dispute Notice. The final level of the escalation process shall be deemed exhausted on the expiry of five (5) Business Days following escalation to that level unless otherwise agreed by the Parties in writing.

- 22.4 If the procedure set out in Clause 22.3 of this Schedule 2 above has been exhausted and fails to resolve such Dispute, as part of the Dispute Resolution Procedure, the Parties will attempt to settle it by mediation. The Parties shall, acting reasonably, attempt to agree upon a mediator. In the event that the Parties fail to agree a mediator within five (5) Business Days following the exhaustion of all levels of the escalation procedure at Clause 22.3 of this Schedule 2, the mediator shall be nominated and confirmed by the Centre for Effective Dispute Resolution, London.
- 22.5 The mediation shall commence within twenty eight (28) days of the confirmation of the mediator in accordance with Clause 22.4 of this Schedule 2 or at such other time as may be agreed by the Parties in writing. Neither Party will terminate such mediation process until each Party has made its opening presentation and the mediator has met each Party separately for at least one hour or one Party has failed to participate in the mediation process. After this time, either Party may terminate the mediation process by notification to the other party (such notification may be verbal provided that it is followed up by written confirmation). The Council and the Supplier will cooperate with any person appointed as mediator providing them with such information and other assistance as they shall require and will pay their costs, as they shall determine or in the absence of such determination such costs will be shared equally.
- 22.6 Nothing in this Contract shall prevent:
- 22.6.1 the Council taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with the provision of the Services; or
- 22.6.2 either Party seeking from any court any interim or provisional relief that may be necessary to protect the rights or property of that Party or that relates to the safety of Council staff, members of the general public and other service users or the security of Confidential Information, pending resolution of the relevant Dispute in accordance with the Dispute Resolution Procedure.
- 22.7 Clause 22 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.

23 Force majeure

- 23.1 Subject to Clause 23.2 of this Schedule 2 neither Party shall be liable to the other for any failure to perform all or any of its obligations under this Contract nor liable to the other Party for any loss or damage arising out of the failure to perform its obligations to the extent only that such performance is rendered impossible by a Force Majeure Event.
- 23.2 The Supplier shall only be entitled to rely on a Force Majeure Event and the relief set out in Clause 23 of this Schedule 2 and will not be considered to be in default or liable for breach of any obligations under this Contract if:
- 23.2.1 the Supplier has fulfilled its obligations pursuant to Clause 6 of this Schedule 2;
- 23.2.2 the Force Majeure Event does not arise directly or indirectly as a result of any wilful or negligent act or default of the Supplier; and

- 23.2.3 the Supplier has complied with the procedural requirements set out in Clause 23 of this Schedule 2.
- 23.3 Where a Party is (or claims to be) affected by a Force Majeure Event it shall use reasonable endeavours to mitigate the consequences of such a Force Majeure Event upon the performance of its obligations under this Contract, and to resume the performance of its obligations affected by the Force Majeure Event as soon as practicable.
- 23.4 Where the Force Majeure Event affects the Supplier's ability to perform part of its obligations under the Contract the Supplier shall fulfil all such contractual obligations that are not so affected and shall not be relieved from its liability to do so.
- 23.5 If either Party is prevented or delayed in the performance of its obligations under this Contract by a Force Majeure Event, that Party shall as soon as reasonably practicable serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to its failure to perform or any anticipated delay in performance of its obligations.
- 23.6 Subject to service of such notice, the Party affected by such circumstances shall have no liability for its failure to perform or for any delay in performance of its obligations affected by the Force Majeure Event only for so long as such circumstances continue and for such time after they cease as is necessary for that Party, using its best endeavours, to recommence its affected operations in order for it to perform its obligations.
- 23.7 The Party claiming relief shall notify the other in writing as soon as the consequences of the Force Majeure Event have ceased and of when performance of its affected obligations can be resumed.
- 23.8 If the Supplier is prevented from performance of its obligations as a result of a Force Majeure Event, the Council may at any time, if the Force Majeure Event subsists for thirty (30) days or more, terminate this Contract by issuing a Termination Notice to the Supplier.
- 23.9 Following such termination in accordance with Clause 23.8 of this Schedule 2 and subject to Clause 23.10 of this Schedule 2, neither Party shall have any liability to the other.
- 23.10 Any rights and liabilities of either Party which have accrued prior to such termination in accordance with Clause 23.8 of this Schedule 2 shall continue in full force and effect unless otherwise specified in this Contract.

24 Records retention and right of audit

- 24.1 Subject to any statutory requirement and Clause 24.2 of this Schedule 2, the Supplier shall keep secure and maintain for the Term and six (6) years afterwards, or such longer period as may be agreed between the Parties, full and accurate records of all matters relating to this Contract.
- 24.2 Where any records could be relevant to a claim for personal injury such records shall be kept secure and maintained for a period of twenty one (21) years from the date of expiry or earlier termination of this Contract.

- 24.3 The Council shall have the right to audit the Supplier's compliance with this Contract. The Supplier shall permit or procure permission for the Council or its authorised representative during normal business hours having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records reasonably required to audit the Supplier's compliance with its obligations under this Contract.
- 24.4 Should the Supplier Sub-contract any of its obligations under this Contract, the Council shall have the right to audit and inspect such third party. The Supplier shall procure permission for the Council or its authorised representative during normal business hours no more than once in any twelve (12) months, having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records used in the performance of the Supplier's obligations under this Contract that are Sub-contracted to such third party. The Supplier shall cooperate with such audit and inspection and accompany the Council or its authorised representative if requested.
- 24.5 The Supplier shall grant to the Council or its authorised representative, such access to those records as they may reasonably require in order to check the Supplier's compliance with this Contract for the purposes of:
- 24.5.1 the examination and certification of the Council's accounts; or
- 24.5.2 any examination pursuant to section 6(1) of the National Audit Act 1983 of the economic efficiency and effectiveness with which the Council has used its resources.
- 24.6 The Comptroller and Auditor General may examine such documents as they may reasonably require which are owned, held or otherwise within the control of the Supplier and may require the Supplier to provide such oral and/or written explanations as they consider necessary. Clause 24 of this Schedule 2 does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Supplier under sections 6(3)(d) and 6(5) of the National Audit Act 1983.
- 24.7 The Supplier shall provide reasonable cooperation to the Council, its representatives and any regulatory body in relation to any audit, review, investigation or enquiry carried out in relation to the subject matter of this Contract.
- 24.8 The Supplier shall provide all reasonable information as may be reasonably requested by the Council to evidence the Supplier's compliance with the requirements of this Contract.

25 Conflicts of interest and the prevention of fraud

- 25.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Council under the provisions of this Contract. The Supplier will disclose to the Council full particulars of any such conflict of interest which may arise.
- 25.2 The Council reserves the right to terminate this Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable

opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Council under the provisions of this Contract. The actions of the Council pursuant to this Clause 25.2 of this Schedule 2 shall not prejudice or affect any right of action or remedy which shall have accrued or shall subsequently accrue to the Council.

- 25.3 The Supplier shall take all reasonable steps to prevent Fraud by Staff and the Supplier (including its owners, members and directors). The Supplier shall notify the Council immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- 25.4 If the Supplier or its Staff commits Fraud the Council may terminate this Contract and recover from the Supplier the amount of any direct loss suffered by the Council resulting from the termination.

26 Equality and human rights

26.1 The Supplier shall:

26.1.1 ensure that (a) it does not, whether as employer or as provider of the Services, engage in any act or omission that would contravene the Equality Legislation, and (b) it complies with all its obligations as an employer or provider of the Services as set out in the Equality Legislation and take reasonable endeavours to ensure its Staff do not unlawfully discriminate within the meaning of the Equality Legislation;

26.1.2 in the management of its affairs and the development of its equality and diversity policies, cooperate with the Council in light of the Council's obligations to comply with its statutory equality duties whether under the Equality Act 2010 or otherwise. The Supplier shall take such reasonable and proportionate steps as the Council considers appropriate to promote equality and diversity, including race equality, equality of opportunity for disabled people, gender equality, and equality relating to religion and belief, sexual orientation and age; and

26.1.3 the Supplier shall impose on all its Sub-contractors and suppliers, obligations substantially similar to those imposed on the Supplier by Clause 26 of this Schedule 2.

26.2 The Supplier shall meet reasonable requests by the Council for information evidencing the Supplier's compliance with the provisions of Clause 26 of this Schedule 2.

27 Notice

27.1 Subject to Clause 22.5 of Schedule 2, any notice required to be given by either Party under this Contract shall be in writing quoting the date of the Contract and shall be delivered by hand or sent by prepaid first class recorded delivery or by email to the person referred to in the Purchase Order or such other person as one Party may inform the other Party in writing from time to time or to a director of the relevant Party at the head office, main UK office or registered office of such Party.

27.2 A notice shall be treated as having been received:

- 27.2.1 if delivered by hand within normal business hours when so delivered or, if delivered by hand outside normal business hours, at the next start of normal business hours; or
- 27.2.2 if sent by first class recorded delivery mail on a normal Business Day, at 9.00 am on the second Business Day subsequent to the day of posting, or, if the notice was not posted on a Business Day, at 9.00 am on the third Business Day subsequent to the day of posting; or
- 27.2.3 if sent by email, if sent within normal business hours when so sent or, if sent outside normal business hours, at the next start of normal business hours provided the sender has either received an electronic confirmation of delivery or has telephoned the recipient to inform the recipient that the email has been sent.

28 Assignment, novation and Sub-contracting

- 28.1 The Supplier shall not, except where Clause 28.2 of this Schedule 2 applies, assign, Sub-contract, novate, create a trust in, or in any other way dispose of the whole or any part of this Contract without the prior consent in writing of the Council such consent not to be unreasonably withheld or delayed. If the Supplier Sub-contracts any of its obligations under this Contract, every act or omission of the Sub-contractor shall for the purposes of this Contract be deemed to be the act or omission of the Supplier and the Supplier shall be liable to the Council as if such act or omission had been committed or omitted by the Supplier itself.
- 28.2 Notwithstanding Clause 28.1 of this Schedule 2, the Supplier may assign to a third party ("**Assignee**") the right to receive payment of any sums due and owing to the Supplier under this Contract for which an invoice has been issued. Any assignment under this Clause 28.2 of this Schedule 2 shall be subject to:
 - 28.2.1 the deduction of any sums in respect of which the Council exercises its right of recovery under Clause 9.8 of this Schedule 2;
 - 28.2.2 all related rights of the Council in relation to the recovery of sums due but unpaid;
 - 28.2.3 the Council receiving notification of the assignment and the date upon which the assignment becomes effective together with the Assignee's contact information and bank account details to which the Council shall make payment;
 - 28.2.4 the provisions of Clause 9 of this Schedule 2 continuing to apply in all other respects after the assignment which shall not be amended without the prior written approval of the Council; and
 - 28.2.5 payment to the Assignee being full and complete satisfaction of the Council's obligation to pay the relevant sums in accordance with this Contract.
- 28.3 Any council given by the Council for the Supplier to Sub-contract any of its obligations under this Contract shall not impose any duty on the Council to enquire as to the competency of any authorised Sub-contractor. The Supplier shall ensure that any authorised Sub-contractor has the appropriate capability and capacity to

perform the relevant obligations and that the obligations carried out by such Sub-contractor are fully in accordance with this Contract.

- 28.4 Where the Supplier enters into a Sub-contract in respect of any of its obligations under this Contract relating to the provision of the Services, the Supplier shall include provisions in each such Sub-contract, unless otherwise agreed with the Council in writing, which:
- 28.4.1 contain at least equivalent obligations as set out in this Contract in relation to the performance of the Services to the extent relevant to such Sub-contracting;
 - 28.4.2 contain at least equivalent obligations as set out in this Contract in respect of confidentiality, information security, data protection, Intellectual Property Rights, compliance with Law and Guidance and record keeping;
 - 28.4.3 contain a prohibition on the Sub-contractor Sub-contracting, assigning or novating any of its rights or obligations under such Sub-contract without the prior written approval of the Council (such approval not to be unreasonably withheld or delayed);
 - 28.4.4 contain a right for the Council to take an assignment or novation of the Sub-contract (or part of it) upon expiry or earlier termination of this Contract;
 - 28.4.5 requires the Supplier or other party receiving services under the contract to consider and verify invoices under that contract in a timely fashion;
 - 28.4.6 provides that if the Supplier or other party fails to consider and verify an invoice in accordance with Clause 28.4.5 of this Schedule 2, the invoice shall be regarded as valid and undisputed for the purpose of Clause 28.4.7 after a reasonable time has passed;
 - 28.4.7 requires the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed.
 - 28.4.8 permitting the Supplier to terminate, or procure the termination of, the relevant Sub-contract in the event the Sub-contractor fails to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour Law where the Supplier is required to replace such Sub-contractor in accordance with Clause 15.7.4 of this Schedule 2;
 - 28.4.9 permitting the Supplier to terminate, or to procure the termination of, the relevant Sub-contract where the Supplier is required to replace such Sub-contractor in accordance with Clause 28.5 of this Schedule 2; and
 - 28.4.10 requires the Sub-contractor to include a clause to the same effect as this Clause 28.4 of this Schedule 2 in any Sub-contract which it awards.

- 28.5 Where the Council considers that the grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015 apply to any Sub-contractor, then:
- 28.5.1 if the Council finds there are compulsory grounds for exclusion, the Supplier shall ensure, or shall procure, that such Sub-contractor is replaced or not appointed; or
 - 28.5.2 if the Council finds there are non-compulsory grounds for exclusion, the Council may require the Supplier to ensure, or to procure, that such Sub-contractor is replaced or not appointed and the Supplier shall comply with such a requirement.
- 28.6 The Supplier shall pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed. Where the Council pays the Supplier's valid and undisputed invoices earlier than thirty (30) days from verification in accordance with any applicable government prompt payment targets, the Supplier shall use its reasonable endeavours to pay its relevant Sub-contractors within a comparable timeframe from verifying that an invoice is valid and undisputed.
- 28.7 The Council shall upon written request have the right to review any Sub-contract entered into by the Supplier in respect of the provision of the Services and the Supplier shall provide a certified copy of any Sub-contract within five (5) Business Days of the date of a written request from the Council. For the avoidance of doubt, the Supplier shall have the right to redact any confidential pricing information in relation to such copies of Sub-contracts.
- 28.8 The Council may at any time transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Contract or any part of this Contract and the Supplier warrants that it will carry out all such reasonable further acts required to effect such transfer, assignment, novation, sub-contracting or disposal. If the Council novates this Contract to any body that is not a Contracting Authority, from the effective date of such novation, the party assuming the position of the Council shall not further transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Contract or any part of this Contract without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed by the Supplier.

29 Prohibited Acts

- 29.1 The Supplier warrants and represents that:
- 29.1.1 it has not committed any offence under the Bribery Act 2010 or done any of the following ("**Prohibited Acts**"):
 - (i) offered, given or agreed to give any officer or employee of the Council any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining or performance of this or any other agreement with the Council or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with the Council; or

- (ii) in connection with this Contract paid or agreed to pay any commission other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the Council; and
- 29.1.2 it has in place adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010.
- 29.2 If the Supplier or its Staff (or anyone acting on its or their behalf) has done or does any of the Prohibited Acts or has committed or commits any offence under the Bribery Act 2010 with or without the knowledge of the Supplier in relation to this or any other agreement with the Council:
 - 29.2.1 the Council shall be entitled:
 - (i) to terminate this Contract and recover from the Supplier the amount of any loss resulting from the termination;
 - (ii) to recover from the Supplier the amount or value of any gift, consideration or commission concerned; and
 - (iii) to recover from the Supplier any other loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence under the Bribery Act 2010;
 - 29.2.2 any termination under Clause 29.2.1 of this Schedule 2 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Council; and
 - 29.2.3 notwithstanding Clause 22 of this Schedule 2, any Dispute relating to:
 - (i) the interpretation of Clause 29 of this Schedule 2; or
 - (ii) the amount or value of any gift, consideration or commission,shall be determined by the Council, acting reasonably, and the decision shall be final and conclusive.

30 General

- 30.1 Each of the Parties is independent of the other and nothing contained in this Contract shall be construed to imply that there is any relationship between the Parties of partnership or of principal/agent or of employer/employee nor are the Parties hereby engaging in a joint venture and accordingly neither of the Parties shall have any right or council to act on behalf of the other nor to bind the other by agreement or otherwise, unless expressly permitted by the terms of this Contract.
- 30.2 Failure or delay by either Party to exercise an option or right conferred by this Contract shall not of itself constitute a waiver of such option or right.
- 30.3 The delay or failure by either Party to insist upon the strict performance of any provision, term or condition of this Contract or to exercise any right or remedy consequent upon such breach shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.

- 30.4 Any provision of this Contract which is held to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of this Contract and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.
- 30.5 Each Party acknowledges and agrees that it has not relied on any representation, warranty or undertaking (whether written or oral) in relation to the subject matter of this Contract and therefore irrevocably and unconditionally waives any rights it may have to claim damages against the other Party for any misrepresentation or undertaking (whether made carelessly or not) or for breach of any warranty unless the representation, undertaking or warranty relied upon is set out in this Contract or unless such representation, undertaking or warranty was made fraudulently.
- 30.6 Each Party shall bear its own expenses in relation to the preparation and execution of this Contract including all costs, legal fees and other expenses so incurred.
- 30.7 The rights and remedies provided in this Contract are independent, cumulative and not exclusive of any rights or remedies provided by general law, any rights or remedies provided elsewhere under this Contract or by any other contract or document. In this Clause 30.7 of this Schedule 2, right includes any power, privilege, remedy, or proprietary or security interest.
- 30.8 Unless otherwise expressly stated in this Contract, a person who is not a party to this Contract shall have no right to enforce any terms of it which confer a benefit on such person except that a Successor and/or a Third Party may directly enforce any indemnities or other rights provided to it under this Contract. No such person shall be entitled to object to or be required to consent to any amendment to the provisions of this Contract.
- 30.9 This Contract, any variation in writing signed by an authorised representative of each Party and any document referred to (explicitly or by implication) in this Contract or any variation to this Contract, contain the entire understanding between the Supplier and the Council relating to the Services to the exclusion of all previous agreements, confirmations and understandings and there are no promises, terms, conditions or obligations whether oral or written, express or implied other than those contained or referred to in this Contract. Nothing in this Contract seeks to exclude either Party's liability for Fraud. Any tender conditions and/or disclaimers set out in the Council's procurement documentation leading to the award of this Contract shall form part of this Contract.
- 30.10 This Contract, and any Dispute or claim arising out of or in connection with it or its subject matter (including any non-contractual claims), shall be governed by, and construed in accordance with, the laws of England and Wales.
- 30.11 Subject to Clause 22 of this Schedule 2, the Parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any Dispute or claim that arises out of or in connection with this Contract or its subject matter.
- 30.12 All written and oral communications and all written material referred to under this Contract shall be in English.

30.13 The Supplier shall use all reasonable endeavours to adhere to the principles of the 'Prevent' strategy under the Counter-terrorism and Security Act 2015.

Schedule 3

Information and Data Provisions

1 Confidentiality

- 1.1 In respect of any Confidential Information it may receive directly or indirectly from the other Party ("**Discloser**") and subject always to the remainder of Clause 1 of this Schedule 3, each Party ("**Recipient**") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party without the Discloser's prior written consent provided that:
- 1.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the Commencement Date;
- 1.1.2 the provisions of Clause 1 of this Schedule 3 shall not apply to any Confidential Information:
- (i) which is in or enters the public domain other than by breach of this Contract or other act or omissions of the Recipient;
 - (ii) which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
 - (iii) which is authorised for disclosure by the prior written consent of the Discloser;
 - (iv) which the Recipient can demonstrate was in its possession without any obligation of confidentiality prior to receipt of the Confidential Information from the Discloser; or
 - (v) which the Recipient is required to disclose purely to the extent to comply with the requirements of any relevant stock exchange.
- 1.2 Nothing in Clause 1 of this Schedule 3 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the Freedom of Information Act 2000 ("**FOIA**"), Codes of Practice on Access to Government Information, on the Discharge of Public Authorities' Functions or on the Management of Records ("**Codes of Practice**") or the Environmental Information Regulations 2004 ("**Environmental Regulations**").
- 1.3 The Council may disclose the Supplier's Confidential Information:
- 1.3.1 on a confidential basis, to any Contracting Authority (the Parties agree that all Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Contracting Authority);

- 1.3.2 on a confidential basis, to any consultant, contractor or other person engaged by the Council and/or the Contracting Authority receiving such information;
- 1.3.3 to any relevant party for the purpose of the examination and certification of the Council's accounts;
- 1.3.4 to any relevant party for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources;
- 1.3.5 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirements; or
- 1.3.6 on a confidential basis, to a proposed successor body in connection with any proposed or actual, assignment, novation or other disposal of rights, obligations, liabilities or property in connection with this Contract;

and for the purposes of this Contract, references to disclosure "on a confidential basis" shall mean the Council making clear the confidential nature of such information and that it must not be further disclosed except in accordance with Law or this Clause 1.3 of this Schedule 3.

- 1.4 The Supplier may only disclose the Council's Confidential Information, and any other information provided to the Supplier by the Council in relation to this Contract, to the Supplier's Staff or professional advisors who are directly involved in the performance of or advising on the Supplier's obligations under this Contract. The Supplier shall ensure that such Staff or professional advisors are aware of and shall comply with the obligations in Clause 1 of this Schedule 3 as to confidentiality and that all information, including Confidential Information, is held securely, protected against unauthorised use or loss and, at the Council's written discretion, destroyed securely or returned to the Council when it is no longer required. The Supplier shall not, and shall ensure that the Staff do not, use any of the Council's Confidential Information received otherwise than for the purposes of performing the Supplier's obligations in this Contract.
- 1.5 For the avoidance of doubt, save as required by Law or as otherwise set out in this Schedule 3, the Supplier shall not, without the prior written consent of the Council (such consent not to be unreasonably withheld or delayed), announce that it has entered into this Contract and/or that it has been appointed as a Supplier to the Council and/or make any other announcements about this Contract.
- 1.6 Clause 1 of this Schedule 3 shall remain in force:
 - 1.6.1 without limit in time in respect of Confidential Information which comprises Personal Data or which relates to national security; and
 - 1.6.2 for all other Confidential Information for a period of three (3) years after the expiry or earlier termination of this Contract unless otherwise agreed in writing by the Parties.

2 Data protection

- 2.1 The Parties acknowledge their respective duties under Data Protection Legislation and shall give each other all reasonable assistance as appropriate or necessary to enable each other to comply with those duties. For the avoidance of doubt, the Supplier shall take reasonable steps to ensure it is familiar with the Data Protection Legislation and any obligations it may have under such Data Protection Legislation and shall comply with such obligations.
- 2.2 Where the Supplier is Processing Personal Data under or in connection with this Contract, the Parties shall comply with the Data Protection Protocol within Annex 1 of this Schedule 3.
- 2.3 The Supplier and the Council shall ensure that Personal Data is safeguarded at all times in accordance with the Law, and this obligation will include (if transferred electronically) only transferring Personal Data (a) if essential, having regard to the purpose for which the transfer is conducted; and (b) that is encrypted in accordance with any international data encryption standards and as otherwise required by those standards applicable to the Council under any Law and Guidance (this includes, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes).
- 2.4 Where, as a requirement of this Contract, the Supplier is Processing Personal Data relating to Council staff and/or members of the public as part of the Services, the Supplier shall:
- 2.4.1 NOT USED
 - 2.4.2 NOT USED
 - 2.4.3 nominate an information governance lead able to communicate with the Supplier's board of directors or equivalent governance body, who will be responsible for information governance and from whom the Supplier's board of directors or equivalent governance body will receive regular reports on information governance matters including, but not limited to, details of all incidents of data loss and breach of confidence;
 - 2.4.4 NOT USED
 - 2.4.5 put in place and maintain policies that describe individual personal responsibilities for handling Personal Data and apply those policies vigorously;
 - 2.4.6 NOT USED
 - 2.4.7 put in place and maintain agreed protocols for the lawful sharing of Personal Data with other organisations in circumstances in which sharing of that data is required under this Contract;
 - 2.4.8 where appropriate, have a system in place and a policy for the recording of any telephone calls in relation to the Services, including the retention and disposal of those recordings;

- 2.4.9 at all times comply with any information governance requirements and/or processes as may be set out in the Specification and Tender Response Document; and
- 2.4.10 comply with any new and/or updated requirements, Guidance and/or Policies notified to the Supplier by the Council from time to time (acting reasonably) relating to the Processing and/or protection of Personal Data.
- 2.5 Where any Personal Data is Processed by any Sub-contractor of the Supplier in connection with this Contract, the Supplier shall procure that such Sub-contractor shall comply with the relevant obligations set out in Clause 2 of this Schedule 3, as if such Sub-contractor were the Supplier.
- 2.6 The Supplier shall indemnify and keep the Council indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings whatsoever or howsoever arising from the Supplier's unlawful or unauthorised Processing, destruction and/or damage to Personal Data in connection with this Contract.

3 Freedom of Information and Transparency

- 3.1 The Parties acknowledge the duties of Contracting Authorities under the FOIA, Codes of Practice and Environmental Regulations and shall give each other all reasonable assistance as appropriate or necessary to enable compliance with those duties.
- 3.2 The Supplier shall assist and cooperate with the Council to enable it to comply with its disclosure obligations under the FOIA, Codes of Practice and Environmental Regulations. The Supplier agrees:
 - 3.2.1 that this Contract and any recorded information held by the Supplier on the Council's behalf for the purposes of this Contract are subject to the obligations and commitments of the Council under the FOIA, Codes of Practice and Environmental Regulations;
 - 3.2.2 that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA, Codes of Practice and Environmental Regulations is a decision solely for the Council;
 - 3.2.3 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier itself is subject to the FOIA, Codes of Practice and Environmental Regulations it will liaise with the Council as to the contents of any response before a response to a request is issued and will promptly (and in any event within two (2) Business Days) provide a copy of the request and any response to the Council;
 - 3.2.4 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier is not itself subject to the FOIA, Codes of Practice and Environmental Regulations, it will not respond to that request (unless directed to do so by the Council) and will promptly (and in any event within two (2) Business Days) transfer the request to the Council;

- 3.2.5 that the Council, acting in accordance with the Codes of Practice issued and revised from time to time under both section 45 of FOIA, and regulation 16 of the Environmental Regulations, may disclose information concerning the Supplier and this Contract; and
- 3.2.6 to assist the Council in responding to a request for information, by processing information or environmental information (as the same are defined in FOIA and the Environmental Regulations) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of FOIA, and providing copies of all information requested by the Council within five (5) Business Days of that request and without charge.
- 3.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations, the content of this Contract is not Confidential Information.
- 3.4 Notwithstanding any other term of this Contract, the Supplier consents to the publication of this Contract in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations.
- 3.5 In preparing a copy of this Contract for publication under Clause 3.4 of this Schedule 3, the Council may consult with the Supplier to inform decision making regarding any redactions but the final decision in relation to the redaction of information will be at the Council's absolute discretion.
- 3.6 The Supplier shall assist and cooperate with the Council to enable the Council to publish this Contract.
- 3.7 Where any information is held by any Sub-contractor of the Supplier in connection with this Contract, the Supplier shall procure that such Sub-contractor shall comply with the relevant obligations set out in Clause 3 of this Schedule 3, as if such Sub-contractor were the Supplier.

4 Information Security

- 4.1 Without limitation to any other information governance requirements set out in this Schedule 3, the Supplier shall:
- 4.1.1 notify the Council forthwith of any information security breaches or near misses (including without limitation any potential or actual breaches of confidentiality or actual information security breaches) in line with the Council's information governance Policies; and
- 4.1.2 fully cooperate with any audits or investigations relating to information security and any privacy impact assessments undertaken by the Council and shall provide full information as may be reasonably requested by the Council in relation to such audits, investigations and assessments.
- 4.2 Where required in accordance with the Specification and Tender Response Document, the Supplier will ensure that it puts in place and maintains an information

security management plan appropriate to this Contract, the type of Services being provided and the obligations placed on the Supplier. The Supplier shall ensure that such plan is consistent with any relevant Policies, Guidance, Good Industry Practice and with any relevant quality standards as may be set out in the Key Provisions and/or the Specification and Tender Response Document.

- 4.3 Where required in accordance with the Specification and Tender Response Document, the Supplier shall obtain and maintain certification under the HM Government Cyber Essentials Scheme at the level set out in the Specification and Tender Response Document.

Annex 1 – Data Protection Protocol

Definitions

The definitions and interpretative provisions at Schedule 4 (Definitions and Interpretations) of the Contract shall also apply to this Protocol. Additionally, in this Protocol the following words shall have the following meanings unless the context requires otherwise:

“Data Loss Event”	means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
“Data Protection Impact Assessment”	means an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data;
“Data Protection Officer” and “Data Subject”	shall have the same meanings as set out in the GDPR;
“Data Subject Access Request”	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
“Personal Data Breach”	shall have the same meaning as set out in the GDPR;
“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 such

	measures adopted by it;
“Protocol” or “Data Protection Protocol”	means this Data Protection Protocol;
“Sub-processor”	means any third party appointed to Process Personal Data on behalf of the Supplier related to this Contract.

1 DATA PROTECTION

- 1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Supplier is the Processor.
- 1.2 The Supplier shall notify the Council immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.
- 1.3 The Supplier 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:
 - 1.3.1 a systematic description of the envisaged Processing operations and the purpose of the Processing;
 - 1.3.2 an assessment of the necessity and proportionality of the Processing operations in relation to the Services;
 - 1.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 1.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 1.4 The Supplier shall, in relation to any Personal Data Processed in connection with its obligations under this Contract:
 - 1.4.1 process that Personal Data only in accordance with what has been agreed with the Council;
 - 1.4.2 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:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - 1.4.3 ensure that :
 - (i) the Supplier Personnel do not Process Personal Data except in accordance with this;
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Supplier's duties under this Protocol;

- (B) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
- (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council or as otherwise permitted by this Contract; and
- (D) have undergone adequate training in the use, care, protection and handling of Personal Data;

1.4.4 not transfer Personal Data outside of the EU unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:

- (i) the Council or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the GDPR or Article 37 of the Law Enforcement Directive (Directive (EU) 2016/680)) as determined by the Authority;
- (ii) the Data Subject has enforceable rights and effective legal remedies;
- (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Council in meeting its obligations); and
- (iv) the Supplier complies with any reasonable instructions notified to it in advance by the Council with respect to the Processing of the Personal Data;

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

1.5 Subject to Clause 1.6 of this Protocol, the Supplier shall notify the Council immediately if it:

- 1.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
- 1.5.2 receives a request to rectify, block or erase any Personal Data;
- 1.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- 1.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under this Contract;

- 1.5.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- 1.5.6 becomes aware of a Data Loss Event.
- 1.6 The Supplier's obligation to notify under Clause 1.5 of this Protocol shall include the provision of further information to the Council in phases, as details become available.
- 1.7 Taking into account the nature of the Processing, the Supplier shall provide the Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 1.5 of this Protocol (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:
 - 1.7.1 the Council with full details and copies of the complaint, communication or request;
 - 1.7.2 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;
 - 1.7.3 the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 1.7.4 assistance as requested by the Council following any Data Loss Event;
 - 1.7.5 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.
- 1.8 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this Protocol. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:
 - 1.8.1 the Council determines that the Processing is not occasional;
 - 1.8.2 the Council determines the Processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - 1.8.3 the Council determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 1.9 The Supplier shall allow for audits of its Processing activity by the Council or the Council's designated auditor.
- 1.10 The Supplier shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 1.11 Before allowing any Sub-processor to Process any Personal Data related to this Contract, the Supplier must:

- 1.11.1 notify the Council in writing of the intended Sub-processor and Processing;
 - 1.11.2 obtain the written consent of the Council;
 - 1.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this Protocol such that they apply to the Sub-processor; and
 - 1.11.4 provide the Council with such information regarding the Sub-processor as the Council may reasonably require.
- 1.12 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.
- 1.13 The Council may, at any time on not less than 30 Business Days' notice, revise this Protocol by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 1.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than 30 Business Days' notice to the Supplier amend this Protocol to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 1.15 The Supplier shall comply with any further instructions with respect to Processing issued by the Council by written notice. Any such further written instructions shall be deemed from the date at which such notice is treated as having been received by the Supplier in accordance with Clause 27.2 of Schedule 2 of the Contract.
- 1.16 Subject to Clauses 1.13, 1.14, and 1.15 of this Protocol, any change or other variation to this Protocol shall only be binding once it has been agreed in writing and signed by an authorised representative of both Parties.

Schedule 4

Definitions and Interpretations

1 Definitions

1.1 In this Contract the following words shall have the following meanings unless the context requires otherwise:

“Actual Services Commencement Date”	means the date the Supplier actually commences delivery of all of the Services;
“Council”	means the council named on the Purchase Order;
“Council’s Obligations”	means the Council’s further obligations, if any, referred to in the Specification and Tender Response Document;
“Breach Notice”	means a written notice of breach given by one Party to the other, notifying the Party receiving the notice of its breach of this Contract;
“Business Continuity Event”	means any event or issue that could impact on the operations of the Supplier and its ability to provide the Services including an influenza pandemic and any Force Majeure Event;
“Business Continuity Plan”	means the Supplier’s business continuity plan which includes its plans for continuity of the Services during a Business Continuity Event;
“Business Day”	means any day other than Saturday, Sunday, Christmas Day, Good Friday or a statutory bank holiday in England and Wales;
“Cabinet Office Statement”	the Cabinet Office Statement of Practice – Staff Transfers in the Public Sector 2000 (as revised 2013) as may be amended or replaced;
“Codes of Practice”	shall have the meaning given to the term in Clause 1.2 of Schedule 3;
“Commencement Date”	means the date of the Purchase Order;
“Confidential Information”	means information, data and material of any nature, which either Party may receive or obtain in connection with the conclusion and/or operation of the Contract including any procurement process which is: (a) Personal Data including without limitation which relates to any member of Council staff or member of the public (b) designated as confidential by either party or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored); and/or

	(c) Policies and such other documents which the Supplier may obtain or have access to through the Council's intranet;
“Contract”	means the Purchase Order, the provisions on the front page and all Schedules of these Terms and Conditions for the Provision of Services (Purchase Order Version) and the Specification and Tender Response Document;
“Contracting Authority”	means any contracting authority as defined in regulation 3 of the Public Contracts Regulations 2015 (SI2015/102) (as amended), other than the Council;
“Contract Manager”	means for the Council and for the Supplier the individuals specified in the Specification and Tender Response Document or as otherwise agreed between the Parties in writing or such other person notified by a Party to the other Party from time to time in accordance with Clause 8.1 of Schedule 2;
“Contract Price”	means the price exclusive of VAT that is payable to the Supplier by the Council under the Contract for the full and proper performance by the Supplier of its obligations under the Contract;
“Controller”	shall have the same meaning as set out in the GDPR;
“Convictions”	means, other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 or any replacement or amendment to that Act);
“Data Protection Legislation”	means (i) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (ii) the GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Law as amended from time to time; and (iii) all applicable Law about the processing of personal data and privacy;
“Data Protection Protocol”	means any document of that name as provided to the Supplier by the Council (as amended from time to time in accordance with its terms) which shall include, without limitation, any such document appended to Schedule 3 (Information and Data Provisions) of these terms and conditions;
“Dispute(s)”	means any dispute, difference or question of interpretation or construction arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Services, any matters of contractual construction and interpretation relating to the Contract, or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;

“Dispute Notice”	means a written notice served by one Party to the other stating that the Party serving the notice believes there is a Dispute;
“Dispute Resolution Procedure”	means the process for resolving Disputes as set out in Clause 22 of Schedule 2;
“DOTAS”	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue and Customs 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 s.132A Social Security Administration Act 1992;
“Electronic Trading System(s)”	means such electronic data interchange system and/or world wide web application and/or other application with such message standards and protocols as the Council may specify from time to time;
“Employment Liabilities”	means all claims, demands, actions, proceedings, damages, compensation, tribunal awards, fines, costs (including but not limited to reasonable legal costs), expenses and all other liabilities whatsoever;
“Environmental Regulations”	shall have the meaning given to the term in Clause 1.2 of Schedule 3;
“Equality Legislation”	means any and all legislation, applicable guidance and statutory codes of practice relating to equality, diversity, non-discrimination and human rights as may be in force in England and Wales from time to time including, but not limited to, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) and the Human Rights Act 1998;
“Exit Requirements”	means the Council’s exit requirements, as set out in the Specification and Tender Response Document and/or otherwise as part of this Contract, which the Supplier must comply with during the Term and/or in relation to any expiry or early termination of this Contract;
“Fair Deal for Staff Pensions”	means guidance issued by HM Treasury entitled “Fair Deal for staff pensions: staff transfer from central government” issued in October 2013 (as amended, supplemented or replaced);
“FOIA”	shall have the meaning given to the term in Clause 1.2 of

	Schedule 3;
“Force Majeure Event”	<p>means any event beyond the reasonable control of the Party in question to include, without limitation:</p> <ul style="list-style-type: none"> (a) war including civil war (whether declared or undeclared), riot, civil commotion or armed conflict materially affecting either Party’s ability to perform its obligations under this Contract; (b) acts of terrorism; (c) flood, storm or other natural disasters; (d) fire; (e) unavailability of public utilities and/or access to transport networks to the extent no diligent supplier could reasonably have planned for such unavailability as part of its business continuity planning; (f) government requisition or impoundment to the extent such requisition or impoundment does not result from any failure by the Supplier to comply with any relevant regulations, laws or procedures (including such laws or regulations relating to the payment of any duties or taxes) and subject to the Supplier having used all reasonable legal means to resist such requisition or impoundment; (g) compliance with any local law or governmental order, rule, regulation or direction applicable outside of England and Wales that could not have been reasonably foreseen; (h) industrial action which affects the ability of the Supplier to provide the Services, but which is not confined to the workforce of the Supplier or the workforce of any Sub-contractor of the Supplier; and (i) a failure in the Supplier’s and/or Council’s supply chain to the extent that such failure is due to any event suffered by a member of such supply chain, which would also qualify as a Force Majeure Event in accordance with this definition had it been suffered by one of the Parties; <p>but excluding, for the avoidance of doubt, the withdrawal of the United Kingdom from the European Union and any related circumstances, events, changes or requirements;</p>
“Fraud”	<p>means any offence under any law in respect of fraud in relation to this Contract or defrauding or attempting to defraud or conspiring to defraud the government, parliament or any Contracting Authority;</p>
GDPR	<p>means the General Data Protection Regulation (Regulation (EU) 2016/679);</p>

“General Anti-Abuse Rule”	means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
“Good Industry Practice”	means the exercise of that degree of skill, diligence, prudence, risk management, quality management and foresight which would reasonably and ordinarily be expected from a skilled and experienced service provider engaged in the provision of services similar to the Services under the same or similar circumstances as those applicable to this Contract, including in accordance with any codes of practice published by relevant trade associations;
“Guidance”	means any applicable guidance, direction or determination and any policies, advice or industry alerts which apply to the Services, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Supplier by the Council and/or have been published and/or notified to the Supplier by any other regulator or competent body;
“Halifax Abuse Principle”	means the principle explained in the CJEU Case C-255/02 Halifax and others;
“HM Government Cyber Essentials Scheme”	means the HM Government Cyber Essentials Scheme as further defined in the documents relating to this scheme published at: https://www.gov.uk/government/publications/cyber-essentials-scheme-overview
“Implementation Plan”	means the implementation plan, if any, referred to in the Specification and Tender Response Document;
“Implementation Requirements”	means the Council’s implementation and mobilisation requirements (if any), as may be set out in the Specification and Tender Response Document and/or otherwise as part of this Contract, which the Supplier must comply with as part of implementing the Services;
“Intellectual Property Rights”	means all patents, copyright, design rights, registered designs, trade marks, know-how, database rights, confidential formulae and any other intellectual property rights and the rights to apply for patents and trade marks and registered designs;
“Interested Party”	means any organisation which has a legitimate interest in providing services of the same or similar nature to the Services in immediate or proximate succession to the Supplier or any Sub-contractor and who had confirmed such interest in writing to the Council;

“Key Provisions”	means the key provisions set out in Schedule 1;
“KPI”	means the key performance indicators as set out in the Specification and Tender Response Document, if any;
“Law”	<p>means any applicable legal requirements including, without limitation,:</p> <ul style="list-style-type: none"> (a) any applicable statute or proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument as applicable in England and Wales; (b) any applicable European Union obligation, directive, regulation, decision, law or right (including any such obligations, directives, regulations, decisions, laws or rights that are incorporated into the law of England and Wales or given effect in England and Wales by any applicable statute, proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument); (c) any enforceable community right within the meaning of section 2(1) European Communities Act 1972; (d) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales; (e) requirements set by any regulatory body as applicable in England and Wales; (f) any relevant code of practice as applicable in England and Wales; and (g) any relevant collective agreement and/or international law provisions (to include, without limitation, as referred to in (a) to (f) above);
“Long Stop Date”	means the date, if any, specified in the Specification and Tender Response Document;
“Occasion of Tax Non-Compliance”	<p>means:</p> <ul style="list-style-type: none"> (a) any tax return of the Supplier submitted to a Relevant Tax Council on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of: <ul style="list-style-type: none"> (i) a Relevant Tax Council successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; (ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Council under the DOTAS or any equivalent or similar regime; and/or

	(b) any tax return of the Supplier submitted to a Relevant Tax Council on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;
“Party”	means the Council or the Supplier as appropriate and Parties means both the Council and the Supplier;
“Personal Data”	shall have the same meaning as set out in the GDPR;
“Policies”	means the policies, rules and procedures of the Council as notified to the Supplier from time to time;
“Premises and Locations”	has the meaning given under Clause 2.1 of Schedule 2;
“Process”	shall have the same meaning as set out in the GDPR. Processing and Processed shall be construed accordingly;
“Processor”	shall have the same meaning as set out in the GDPR;
“Purchase Order”	means the purchase order issued by the Council to the Supplier referring to these terms and conditions;
“Relevant Tax Authority”	means HM Revenue and Customs, or, if applicable, a tax council in the jurisdiction in which the Supplier is established;
“Remedial Proposal”	has the meaning given under Clause 15.3 of Schedule 2;
“Services”	means the services set out in this Contract;
“Services Commencement Date”	means the date delivery of the Services shall commence as specified in the Specification and Tender Response Document. If no date is specified in the Specification and Tender Response Document, the services commencement date shall be the Commencement Date;
“Services Information”	means information concerning the Services as may be reasonably requested by the Council and supplied by the Supplier to the Council in accordance with Clause 20 of Schedule 2 for inclusion in the Council's services catalogue from time to time;
“Specification and Tender Response Document”	means, taken together: (a) any written statements of the Council’s requirements relating to the Services as provided by or on behalf of the Council to the Supplier; (b) any written statements of the Supplier provided to the Council confirming how it will meet such requirements; and (c) the statement of the prices for the Services,

	whether or not such Council and Supplier statements are in a single document or separate documents and as amended and/or updated in accordance with this Contract;
“Staff”	means all persons employed or engaged by the Supplier to perform its obligations under this Contract including any Sub-contractors and person employed or engaged by such Sub-contractors;
“Sub-contract”	means a contract between two or more suppliers, at any stage of remoteness from the Supplier in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of the whole or any part of this Contract;
“Sub-contractor”	means a party to a Sub-contract other than the Supplier;
“Subsequent Transfer Date”	means the point in time, if any, at which services which are fundamentally the same as the Services (either in whole or in part) are first provided by a Successor or the Council, as appropriate, giving rise to a relevant transfer under TUPE;
“Subsequent Transferring Employees”	means any employee, agent, consultant and/or contractor who, immediately prior to the Subsequent Transfer Date, is wholly or mainly engaged in the performance of services fundamentally the same as the Services (either in whole or in part) which are to be undertaken by the Successor or Council, as appropriate;
“Successor”	means any third party who provides services fundamentally the same as the Services (either in whole or in part) in immediate or subsequent succession to the Supplier upon the expiry or earlier termination of this Contract;
“Supplier”	means the supplier named on the Purchase Order;
“Supplier Code of Conduct”	means the code of that name published by the Government Commercial Function originally dated September 2017, as may be amended, restated, updated, re-issued or re-named from time to time;
“Supplier Personnel”	means any employee, agent, consultant and/or contractor of the Supplier or Sub-contractor who is either partially or fully engaged in the performance of the Services;
“Term”	means the term as referred to in the Key Provisions;
“Termination Notice”	means a written notice of termination given by one Party to the other notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract on a specified date and setting out the grounds for termination;
“Third Party”	means any supplier of services fundamentally the same as the Services (either in whole or in part) immediately before the

	Transfer Date;
“Third Party Body”	has the meaning given under Clause 8.5 of Schedule 2;
“Transfer Date”	means the Actual Services Commencement Date;
"TUPE"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (2006/246) and/or any other regulations or other legislation enacted for the purpose of implementing or transposing the Acquired Rights Directive (77/187/EEC, as amended by Directive 98/50 EC and consolidated in 2001/23/EC) into English law; and
“VAT”	means value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax.

- 1.2 References to any Law shall be deemed to include a reference to that Law as amended, extended, consolidated, re-enacted, restated, implemented or transposed from time to time.
- 1.3 References to any legal entity shall include any body that takes over responsibility for the functions of such entity.
- 1.4 References in this Contract to a “Schedule”, “Appendix”, “Paragraph” or to a “Clause” are to schedules, appendices, paragraphs and clauses of this Contract.
- 1.5 References in this Contract to a day or to the calculation of time frames are references to a calendar day unless expressly specified as a Business Day.
- 1.6 Unless set out in the Specification and Tender Response Document as a chargeable item and subject to Clause 30.6 of Schedule 2, the Supplier shall bear the cost of complying with its obligations under this Contract.
- 1.7 The headings are for convenience only and shall not affect the interpretation of this Contract.
- 1.8 Words denoting the singular shall include the plural and vice versa.
- 1.9 Where a term of this Contract provides for a list of one or more items following the word “including” or “includes” then such list is not to be interpreted as an exhaustive list. Any such list shall not be treated as excluding any item that might have been included in such list having regard to the context of the contractual term in question. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.
- 1.10 Where there is a conflict between the Supplier’s statements set out in the Specification and Tender Response Document and any other part of this Contract, such other part of this Contract shall prevail.
- 1.11 Where a document is required under this Contract, the Parties may agree in writing that this shall be in electronic format only.

- 1.12 Where there is an obligation on the Council to procure any course of action from any third party, this shall mean that the Council shall use its reasonable endeavours to procure such course of action from that third party.
- 1.13 Any Breach Notice issued by a Party in connection with this Contract shall not be invalid due to it containing insufficient information. A Party receiving a Breach Notice ("**Receiving Party**") may ask the Party that issued the Breach Notice ("**Issuing Party**") to provide any further information in relation to the subject matter of the Breach Notice that it may reasonably require to enable it to understand the Breach Notice and/or to remedy the breach. The Issuing Party shall not unreasonably withhold or delay the provision of such further information as referred to above as may be requested by the Receiving Party but no such withholding or delay shall invalidate the Breach Notice.
- 1.14 Any terms defined as part of a Schedule or other document forming part of this Contract shall have the meaning as defined in such Schedule or document.