

DATED **[INSERT]**

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**GOODS, SERVICES AND RELATED WORKS CONTRACT**

between

**The Metropolitan Borough of Solihull**

and

**[Supplier]**

for

**[Contract Name]**

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This agreement is dated [DATE]

## PARTIES

- (1) The Metropolitan Borough of Solihull of Council House, Manor Square, Solihull B91 3QB (“the **Council**”)
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (“the **Supplier**”)

## BACKGROUND

- (A) [The Council placed a contract notice [REFERENCE] on [DATE] on [Find-a-Tender and] Contracts Finder [REFERENCE] on [DATE] seeking expressions of interest from potential providers for the provision of [INSERT OUTLINE OF SERVICES].]
- (B) The Council has, through a competitive process, selected the Supplier to provide these services and the Supplier is willing and able to provide the services in accordance with the terms and conditions of this agreement.

## AGREED TERMS

### 1. Interpretation

The following definitions and rules of interpretation apply in this agreement.

#### 1.1 Definitions:

**Applicable Law:** the laws of England and Wales and the European Union and any other laws or regulations, regulatory policies, guidelines or industry codes of practice judgement of a relevant court of law with which the Supplier is bound to comply or otherwise applies to the provision of the Services.

**Authorised Service Recipient:** [the [companies] [organisations] or [persons] listed in Schedule 4 (*Authorised service recipients*) OR each of the Council's Group Company who may be designated by the Council to receive any of the Services from time to time in accordance with the Change Control Procedure].

**Background IPR:** any and all IPRs that are owned by or licensed to either party and which are or have been developed independently of this agreement (whether prior to the Effective Date or otherwise).

**Best Industry Practice:** the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the Service Levels, the Term, the pricing structure and any other relevant factors.

**Business Day:** a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Change:** any change to this agreement including to any of the Services.

**Change Control Note:** the written record of a Change agreed or to be agreed by the parties pursuant to the Change Control Procedure.

**Change Control Procedure:** the procedure for changing this agreement, as set out in clause 17 (*Change control procedure*).

**Change of Control:** a change in Control of the Supplier or any Material Sub-Contractor.

**Change Request:** a written request (in the case of the Council) or a recommendation (in the case of the Supplier) for a Change which is submitted by one party to the other pursuant to the Change Control Procedure.

**Charges:** [the Implementation Service Charges], the Operational Service Charges, [the Transitional Assistance Service Charges] and any other charges which may become due and payable pursuant to this agreement.

**Conditions:** means the conditions contained in this agreement and any modification thereof duly made in accordance with their provisions.

**Confidential Information:** any information, however conveyed or presented, that relates to the business, affairs, operations, Councils, processes, budgets, pricing policies, product information, strategies, developments, trade secrets, know-how, personnel and suppliers of the disclosing party, together with all information derived by the receiving party from any such information and any other information clearly designated by a party as being confidential to it (whether or not it is marked "confidential"), or which ought reasonably be considered to be confidential.

**Consents:** all permissions, consents, approvals, certificates, permits, licences, agreements and authorities (whether statutory, regulatory, contractual or otherwise) necessary for the provision of the Services.

**Consumer Prices Index:** the Consumer Prices Index as published by the Office for National Statistics from time to time or failing such publication, such other index as the parties may agree most closely resembles such index.

**Contracting Authority:** has the meaning set out in Regulation 2 of the Regulations.

**Contract Documents:** means the conditions contained in this agreement and all the Schedules attached to these Conditions;

**Contract Year:** a period of 12 months (or such shorter period if this agreement is terminated earlier), commencing on the Operational Services Commencement Date and/or each anniversary of the Operational Services Commencement Date.

**Control:** in respect of either the Supplier or a Material Sub-Contractor, the acquisition of either:

- (a) the voting rights attaching to 25% or more of the voting shares in the Supplier or any Material Sub-Contractor (as applicable); or
- (b) the power to direct or cause the direction and management of the policies of the Supplier or any Material Sub-Contractor in accordance with the acquirer's wishes, whether as a result of the ownership of shares, control of the board of

directors, contract or any powers conferred by the articles of association or other constitutional documents of the Supplier or any Material Sub-Contractor.

**Controller, Data Controller:** has the meaning set out in the Data Protection Legislation in force at the time.

**Council's Assets:** the Council's Data, the Council's Equipment, the Council's Software and the Council's Operating Environment together with any other data, software, assets or other property which is owned by the Council and which is, or may be, used in connection with the provision or receipt of the Services.

**Council's Data:** any data (including any Personal Data relating to the staff, Councils or suppliers of the Council), documents, text, drawings, diagrams, images or sounds (together with any database made up of any of those), embodied in any medium, that are supplied to the Supplier by or on behalf of the Council, or which the Supplier is required to generate, process, store or transmit pursuant to this agreement.

**Council's Equipment:** the equipment listed in Part 4 of Schedule 11 (Software and Equipment) which is owned by or has been used by the Council prior to the Operational Services Commencement Date and which is to be used by the Supplier to provide the Operational Services after the Operational Services Commencement Date.

**Council's Implementation Services Manager:** the person identified as such in Part 1 of Schedule 9 (*Key personnel*) or any replacement person appointed by the Council pursuant to clause 18 (*Key personnel*) being the person responsible for managing the Implementation Services on behalf of the Council.

**Council's Operating Environment:** the Council's computing environment (consisting of hardware, software and telecommunications networks) that is to be used by the Council in connection with its use of the Services and which interfaces with the Supplier's System in order for the Council to receive the Services, but excluding the Council's Equipment.

**Council's Operational Services Manager:** the person identified as such in Part 1 of Schedule 9 (*Key personnel*) or any replacement person appointed by the Council pursuant to clause 18 (*Key personnel*), being the person responsible for managing the Operational Services on behalf of the Council.

**Council's Premises:** the premises identified in Schedule 16 (*Council's premises*) and which are to be made available for use by the Supplier for the provision of the Services on the terms set out in this agreement.

**Council's Representative:** the person identified as such in Part 1 of Schedule 9 (*Key personnel*) or any replacement person appointed by the Council pursuant to clause 18 (*Key personnel*), being the person responsible for managing the Council's overall relationship with the Supplier.

**Council's Software:** any software listed in Part 3 of Schedule 11 (*Software, equipment*) which is used by, or licensed to, the Council other than pursuant to this agreement, and which may be used by the Supplier for the sole purpose of providing the Services to the Council.

**Critical Service Failure:** an event where the Supplier's performance of any Operational Service falls to, or below, any of the Critical Service Levels for that Operational Service and as set out in Schedule 5 (*Service levels*).

**Critical Service Levels:** has the meaning set out in Schedule 5 (*Service levels*).

**Crown:** means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government and particular bodies and government agencies.

**Database:** the compilation of any data supplied to the Supplier by, or on behalf of, the Council or generated by the Supplier from any such data.

**Data Protection Legislation:** all applicable privacy and data protection legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK **GDPR**), the Data Protection Act 2018 (DPA 2018) the Privacy, and Electronic Communications Regulations 2003 (SI 2003/2426) (Privacy Regulations) as amended.

**Data Subject:** as defined in the Data Protection Legislation

**Default:** any default by the Supplier in complying with its obligations under this agreement.

**Delay:** a delay in the successful achievement of a Milestone.

**Detailed Implementation Plan:** the detailed plan for the implementation of each of the Services that is developed in accordance with clause 6 (*Implementation*), and as amended from time to time in accordance with the Change Control Procedure.

**Dispute:** any dispute under this agreement.

**Dispute Resolution Procedure:** the dispute resolution procedure set out in clause 40 (*Dispute resolution procedure*).

**Documentation:** all technical specifications, user manuals, operating manuals, process definitions and procedures, and all such other documentation as:

- (a) is required to be supplied by the Supplier to the Council to enable it to use the Operational Services; and
- (b) is required to be developed by the Supplier in order to provide the Services.

**Due Date:** has the meaning give in clause 11.3 (*Charging and invoicing*).

**Effective Date:** the date of this agreement.

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

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

**Exit Plan:** the plan for the provision of the Transitional Assistance Services in the event of the expiry or termination of this agreement for any reason, which is to be developed by the parties pursuant to clause 39 (*Exit and service transfer*).

**Financial Distress Event:** the occurrence of one or more of the events listed in paragraph 1.1 in Part 2 of Schedule 7 (*Charges and Financial Distress*);



**Financial Distress Remediation Plan:** a plan setting out how the Supplier will ensure the continued performance and delivery of the Services in accordance with this Agreement in the event that a Financial Distress Event occurs.

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

**Force Majeure Event:** any cause affecting, preventing or hindering the performance by a party of its obligations under this agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Supplier, the Supplier's Personnel or any other failure in the Supplier's supply chain.

**Group:** in relation to a company, that company, any subsidiary or holding company at the date of this agreement of that company.

**Group Company:** in relation to a company, any member of its Group.

**Holding company:** has the meaning give in clause 1.5 (*Interpretation*).

**Implementation Plan:** the Outline Implementation Plan unless and until it is superseded by the Detailed Implementation Plan.

**Implementation Service Charges:** the charges which shall become due and payable by the Council to the Supplier in respect of the Implementation Services in accordance with the provisions of this agreement, as such charges are set out in Schedule 7 (*Charges and Financial Distress*).

**Implementation Services:** the services set out in the Implementation Plan.

**Implementation Services Managers:** the Council's Implementation Services Manager and the Supplier's Implementation Services Manager.

**Initial Term:** the period commencing on the Effective Date and ending on the [NUMBER] anniversary of the [Effective Date OR Operational Service Commencement Date].

**Insolvency Related Event:**

- (a) the party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (IA 1986) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
- (b) the party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (c) the party applies to court for, or obtains, a moratorium under Part A1 of the IA 1986;

- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the party (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of that with one or more other companies or the solvent reconstruction of that other party;
- (e) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the party (being a company, partnership or limited liability partnership);
- (f) the holder of a qualifying floating charge over the assets of that party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (g) a person becomes entitled to appoint a receiver over all or any of the assets of the party or a receiver is appointed over all or any of the assets of the party;
- (h) a creditor or encumbrancer of the party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the party's assets and such attachment or process is not discharged within 14 days; or
- (i) any event occurs, or proceeding is taken, with respect to the party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to clause (h) (inclusive).

**Intellectual Property Rights:** any and all intellectual property rights of any nature anywhere in the world whether registered, registrable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

**Key Milestone:** any Milestone which is identified as "key" in the Implementation Plan or by operation of the Change Control Procedure.

**Key Milestone Date:** the date for completion of any Key Milestone as set out in the Implementation Plan.

**Key Personnel:** those personnel identified Schedule 9 (*Key personnel*) for the roles attributed to such personnel, as modified pursuant to clause 18 (*Key personnel*).

**Malicious Software:** means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.

**Management Reports:** the reports to be prepared and presented by the Supplier in accordance with clause 14.2 and Schedule 10 to include a comparison of Achieved KPIs

with the Target KPIs in the measurement period in question and measures to be taken to remedy any deficiency in Achieved KPIs.

**Mandatory Policies:** the Council's business policies listed in Schedule 8 (*Standards and policies*), as amended by notification to the Supplier from time to time.

**Method Statement:** means the statement contained in the Supplier's delivery response annexed at Schedule 2 detailing the Supplier's proposals for the performance of the Services. In the event of any inconsistency between the Method Statement and the Conditions and other Schedules then the Conditions and other Schedules shall prevail.

**Milestone:** an event or task described in the Implementation Plan which, if applicable, shall be completed by the relevant Milestone Date.

**Milestone Date:** the date set against the relevant Milestone in the Implementation Plan by which the Milestone shall be completed.

**Month:** a calendar month; and **monthly:** shall be interpreted accordingly.

**Operational Service Charges:** the charges which become due and payable by the Council to the Supplier in respect of the Operational Services, which shall be calculated in accordance with Schedule 7 (*Charges and Financial Distress*).

**Operational Services:** the operational services described as such in the Specification.

**Operational Services Commencement Date:** [insert date] or the date set out in the Implementation Plan for the commencement of the Operational Services.

**Operational Services Managers:** the Council's Operational Services Manager and the Supplier's Operational Services Manager.

**Outline Implementation Plan:** the outline plan set out in Schedule 3 (*Implementation plan*) for the implementation of [all Phases of] the Services.

**Payment Plan:** the plan for payment of the Charges as set out in Schedule 7 (*Charges and Financial Distress*).

**Personal Data:** has the meaning set out in the Data Protection Legislation.

**Phase:** each of the phases identified in the Implementation Plan during which the Supplier shall deliver each element of the Supplier's System and the implementation of the Operational Services.

**Prevent Duty:** the obligations and duties imposed by the Counter Terrorism and Security Act 2015

**Processor, Data Processor:** has the meaning set out in the Data Protection Legislation.

**Prohibited Act:** the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to: (i) induce the person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this agreement;

- (c) committing any offence: (i) under the Bribery Act; (ii) under legislation or common law concerning fraudulent acts; or (iii) defrauding, attempting to defraud or conspiring to defraud the Council;
- (d) any activity, practice or conduct which would constitute one of the offences listed under (a) to (c), if such activity, practice or conduct had been carried out in the UK.

**Regulated Activity:** in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

**Regulated Activity Provider:** shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.

**Regulations:** The Public Contracts Regulations 2015.

**Regulatory Body:** any government department and regulatory, statutory and any other entity, committee and body which, whether under statute, rules, regulations, code of practice or otherwise, is entitled by any Applicable Law to supervise, regulate, investigate or influence the matters dealt with in this agreement or any other affairs of the Council.

**Relevant Transfer;** shall have the meaning as set out in Schedule 14 (*Employees*).

**Remediation Notice:** a written notice given by the Council to the Supplier pursuant to clause 37 (*Remediation plan process*) to initiate the Remediation Plan Process.

**Remediation Plan:** the plan agreed in accordance with clause 37 (*Remediation plan process*) for the resolution of a Supplier's Default.

**Remediation Plan Process:** the process for resolving certain of the Supplier's Defaults as set out in clause 37 (*Remediation plan process*).

**Replacement Services:** any services which are identical or substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Council internally or by any Replacement Supplier.

**Replacement Supplier:** any third party supplier of Replacement Services appointed by the Council from time to time.

**Representatives:** the Council's Representatives and/or the Supplier's Representatives.

**Service Description:** the solution which the Supplier has developed to satisfy the Specification as set out in Schedule 2 (*Service description*).

**Service Failure:** a failure by the Supplier to deliver any part of the Operational Services in accordance with the Service Levels and/or the Specification.

**Service Levels:** the service levels to which the Operational Services are to be provided, as set out in the Specification and/or Schedule 5 (*Service levels*).

**Services:** the services to be delivered by or on behalf of the Supplier under this agreement, including the Implementation Services, the Operational Services, and the Transitional Assistance Services and Service means any of the Services (or any part of any of them).

**Specification:** the Council's requirements for the Operational Services as set out in Schedule 1 (*Specification*) as amended from time to time in accordance with the Change Control Procedure.

**Social Value:** means the process by which the Council shall meet its needs for goods, services and works and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits not only to the Council, but also to society and the economy, whilst minimising damage to the environment

**Social Value Method Statement:** the method statement contained in Schedule 17 (*Social Value Obligations*).

**Social Value Obligation:** the targets in relation to Social Value set out in the Social Value Proposal and the Social Value Method Statement.

**Social Value Proposal:** the proposal contained in Schedule 17 (*Social Value Obligations*).

**Software:** the Supplier's Software and the Third Party Software including, but not limited to, the software listed in Part 1 and Part 2 of Schedule 11 (*Software and equipment*).

**Sub-Contract:** means any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the Services [or Goods] from that third party.

**Sub-Contractors:** those persons with whom the Supplier enters into a Sub-Contract or its or their servants or agents[, and any third party with whom that third party enters into a sub-contract or its servants or agents].

**Supplier's Equipment:** the hardware, computer and telecoms devices and equipment supplied by the Supplier or its Sub-Contractors (but not hired, leased or loaned from the Council) for the provision of the Services.

**Supplier's Implementation Services Manager:** the person identified as such in Part 2 of Schedule 9 (*Key personnel*) or any replacement person appointed by the Supplier pursuant to clause 18 (*Key personnel*) being the person responsible for managing the Implementation Services on behalf of the Supplier.

**Supplier's Operational Service Manager:** the person identified as such in Part 2 of Schedule 9 (*Key personnel*) or any replacement person appointed by the Supplier pursuant to clause 18 (*Key personnel*) being the person responsible for managing the Operational Services on behalf of the Supplier.

**Supplier's Personnel:** all employees, staff, other workers, agents and consultants of the Supplier and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

**Supplier's Premises:** any premises in the possession or control of the Supplier or any Sub-Contractor (which are not the Council's Premises) from which the Services are delivered, in whole or in part or in which records relating to the Services are kept.

**Supplier's Representative:** the person identified as such in Part 2 of Schedule 9 (*Key personnel*) or any replacement person appointed by the Supplier pursuant to clause 18 (*Key personnel*) as the person responsible for managing the Supplier's overall relationship with the Council.

**Supplier's Software:** the software which is owned by the Supplier, or the Supplier's Group Company, and which is to be used by the Supplier and/or the Council in the context of the provision or receipt of any of the Services including the software listed in Part 1 of Schedule 11 (*Software and equipment*).

**[Supplier's System:** the information and communications technology system to be used by the Supplier in performing the Operational Services, including the Software, the Supplier's Equipment and communications links between the Supplier's Equipment and the Council's Operating Environment.]

**[Target Response Time:** is the period of time from when an incident is first reported to the Supplier up until the time when someone from the Supplier starts to assist the Council.]

**[Target Resolution Time:** is the period of time from when an incident is first reported to the Supplier up until the time that the service is restored or incident resolved.]

**Term:** the period of the Initial Term as may be varied by:

- a) any extensions to this agreement which are agreed pursuant to clause 3.2 (*Extension of agreement*); or
- b) the duration of the Termination Period; or
- c) the earlier termination of this agreement in accordance with clause 36 (*Termination*).

**Termination Date:** the date of expiry or termination of this agreement.

**Termination Notice:** any notice to terminate this agreement which is given by either party in accordance with clause 36 (*Termination*).

**Termination Period:** the period of up to **[six months]** as specified in the Termination Notice pursuant to clause 36 (*Termination*) during which period the Council may require the Supplier to continue to provide the Services after a Termination Notice has been given provided always that such period may not extend the Initial Term (as extended by clause 3.2) by more than six months.

**Third Party Software:** software which is proprietary to any third party and that is either licensed to the Council or is used by the Supplier in the provision of the Operational Services, excluding any of the Council's Software but including the software specified as such in Part 2 of Schedule 11 (*Software and equipment*).

**TULRCA:** Trade Union and Labour Relations (Consolidation) Act 1992.

**Use:** with respect to each of the following IPRs and, in each case, in connection with the Services:

- a) the right to load, execute, store, transmit, display and copy (for the purposes of loading, execution, storage, transmission or display) the Third Party Software [and the Supplier's Background IPRs];
- b) the right to load, execute, store, transmit, display, copy (for the purposes of loading, execution, storage, transmission or display), modify, adapt, enhance, reverse compile, decode, translate and otherwise utilise the Supplier's Software; and

- c) the right to copy, adapt, publish, distribute and otherwise use the Documentation.

**VAT:** value added tax as provided for in the Value Added Tax Act 1994.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 A reference to **holding company** or a **subsidiary** means a "holding company" and "subsidiary" as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee. [In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sub sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.]
- 1.6 Unless the context requires otherwise, words in the singular include the plural and in the plural include the singular.
- 1.7 Unless the context requires otherwise, a reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 Unless the context otherwise requires, any reference to European Union law that is directly applicable or directly effective in the UK at any time is a reference to it as it applies in England and Wales from time to time including as retained, amended, extended, re-enacted or otherwise given effect on or after 11pm on 31 January 2020.
- 1.11 A reference to **writing** or **written** does not include email.

- 1.12 A reference to **this agreement** or to any other agreement or document referred to in this agreement is a reference to this agreement or such other agreement as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.
- 1.13 References to clauses and schedules are to the clauses and schedules of this agreement and references to paragraphs are to paragraphs of the relevant schedule.
- 1.14 Any words following the terms **including, include, in particular**, for example or any other similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or terms preceding those terms.

## **2. Documents Mutually Explanatory**

- 2.1 Except as otherwise expressly provided, the Contract Documents are to be taken as mutually explanatory of one another. Any ambiguities or discrepancies shall be resolved by the Council's Representative who shall thereupon issue to the Supplier appropriate instructions in writing and the Supplier shall carry out and be bound by such instructions.
- 2.2 In the event of any inconsistency between the provisions of the body of these Conditions and the Schedules, or between the Schedules, the inconsistency shall be resolved according to the following descending order of priority;
- (a) these Conditions;
  - (b) Schedule 1 (Specification);
  - (c) the Schedules (excluding Schedule 1 (Specification) and Schedule 2 (Supplier's Delivery Response and Method Statement));
  - (d) Schedule 2 (Supplier's Delivery Response and Method Statement).

For the avoidance of doubt, the Specification shall at all times have priority over the Method Statement and the Supplier shall be obliged to comply with the Specification and provide the Services in accordance with the Specification.

- 2.3 Any changes to the Method Statement may only be made in accordance with the Clause 17 (Change Control).

## **3. Commencement and duration**

- 3.1 This agreement shall take effect on the Effective Date and shall continue for the Term.
- 3.2 The Council may extend this agreement beyond the Initial Term for a further period **of up to [two] years by [two] [one] year periods** (each such extension together with any such extensions, being the "**Extension Period**"). If the Council wishes to extend this agreement, it shall give the Supplier at least three months' written notice of such intention before the expiry of the Initial Term or Extension Period.
- 3.3 If the Council gives such notice then the Term shall be extended by the period set out in the notice.



3.4 If the Council does not wish to extend this agreement beyond the Initial Term this agreement shall expire on the expiry of the Initial Term and the provisions of clause 36 shall apply. After such expiry, the Supplier shall still be obliged to provide the Transitional Assistance Services to the Council for a period of time no greater than [NUMBER] months in accordance with the provisions of clause 39 (*Exit and service transfer*) and the Exit Plan.

#### **4. Services**

4.1 The Council shall appoint the Supplier, and the Supplier shall provide the Services to the Council [on behalf of itself and each Authorised Service Recipient] pursuant to the terms and conditions of this agreement.

4.2 In providing each of the Services, the Supplier shall at all times:

- (a) provide the Services in accordance with the Specification
- (b) provide the Services in accordance with Best Industry Practice;
- (c) provide the Services in accordance with all Applicable Laws;
- (d) obtain, maintain and comply with all Consents;
- (e) allocate sufficient resources to provide the Services in accordance with the terms of this agreement;
- (f) ensure that any of the Supplier's Personnel who are engaged in the provision of any of the Services shall, if required by the Council, attend such meetings at the premises of the Council or elsewhere as may be reasonably required by the Council;
- (g) provide such reasonable co-operation and information in relation to the Services to such of the Council's other suppliers as the Council may reasonably require for the purposes of enabling any such person to create and maintain any interfaces that the Council may reasonably require; and
- (h) deliver the Social Value Proposal in accordance with the social value method statement as set out in Schedule 17.

4.3 [The Supplier acknowledges that it is not being appointed as an exclusive provider of any of the Services and the Council may at any time perform any part of the Services itself or procure them from a third party.]

4.4 The Supplier shall be responsible for and bear all costs incurred in the implementation, maintenance and development of the Services including the costs of contracts which are entered into by the Supplier to enable it to provide the Services.

#### **5. Due diligence**

5.1 The Supplier acknowledges and confirms that:

- (a) the Council has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this agreement;

- (b) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied or made available to it by or on behalf of the Council pursuant to clause 5.1(a);
- (c) it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Council before the Commencement Date) of all relevant details relating to the performance of its obligations under this agreement (including without limitation the suitability of Council Premises); and
- (d) it has entered into this agreement in reliance on its own due diligence.

5.2 Save as provided in this agreement, no representations, warranties or conditions are given or assumed by the Council in respect of any information which is provided to the Supplier by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

5.3 The Supplier:

- (a) warrants and represents that all information and statements made by the Supplier as a part of the procurement process, including without limitation the Supplier's Tender or response to any pre-qualification questionnaire (if applicable), remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the agreement; and
- (b) shall promptly notify the Council in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Council during such due diligence which materially and adversely affects its ability to perform the Services or meet any Target KPIs.

5.4 Nothing in this clause 5 shall limit or exclude the liability of the Council for fraud or fraudulent misrepresentation.

## **6. Implementation**

6.1 **The Detailed Implementation Plan shall be agreed as follows:**

- (a) **The Supplier shall prepare and deliver to the Council for the Council's approval a draft of the Detailed Implementation Plan within [NUMBER] Business Days of the Effective Date.**
- (b) **The Supplier shall not be entitled to propose any variations to the Key Milestone Dates set out in the Outline Implementation Plan.**
- (c) **The Council shall review and comment on the draft Detailed Implementation Plan as soon as reasonably practicable.**
- (d) **Following such review and consultation, the Council shall formally approve or reject the draft Detailed Implementation Plan no later than [NUMBER] Business Days after the date on which the draft Detailed Implementation Plan is first delivered to the Council. If the Council rejects the draft Detailed Implementation Plan, the provision of clause 6.2 shall apply.**

- (e) Once the draft Detailed Implementation Plan is approved, it shall replace the Outline Implementation Plan.

6.2 The following shall apply if the Council rejects the draft Detailed Implementation Plan:

- (a) The Council shall inform the Supplier in writing of its reasons for its rejection.
- (b) The Supplier shall then revise the draft Detailed Implementation Plan (taking reasonable account of the Council's comments) and shall re-submit a revised draft Detailed Implementation Plan to the Council for the Council's approval within [NUMBER] Business Days of the date of the Council's notice of rejection.

The provisions of clause 6.1 and this clause 6.2 shall apply again to any resubmitted draft Detailed Implementation Plan, provided that either party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

6.3 The Supplier shall co-operate with the Customer in connection with the transition and migration of any of the Customer's Data that is in the possession of the Customer to the Supplier, and in all other respects, such that there is a seamless transition of the responsibility of providing the Operational Services from the Customer to the Supplier with minimal disruption to the Customer's business.

6.4 The Supplier shall perform each of the tasks identified in the Implementation Plan by the applicable Milestone Date assigned to the particular task in the Implementation Plan.

6.5 If, at any time, the Supplier becomes aware that it will not (or is unlikely to) successfully achieve any Milestone by the applicable Milestone Date, it shall immediately notify the Council of the fact of the Delay, the reasons for the Delay, the consequences of the Delay for the rest of the Implementation Plan and how the Supplier proposes to mitigate the Delay.

6.6 Whether the Delay is due to a Council's Default or not, the Supplier shall deploy all additional resources and efforts, and take all reasonable steps, to eliminate or mitigate the consequences of the Delay.

6.7 Any disputes about or arising out of Delays shall be resolved through the Dispute Resolution Procedure. Pending the resolution of the dispute, both parties shall continue to work together to resolve the causes of, and mitigate the effects of, the Delay.

## 7. Operational Services

7.1 The Supplier shall provide the Operational Services to the Council [and each Authorised Service Recipient] from the Operational Services Commencement Date.

7.2 The Supplier shall ensure that each of the Operational Services meets and satisfies the Specification and the Service Description.

7.3 In the event of the Supplier's failure to provide any of the Operational Services in accordance with the requirements of this agreement, the Council may, without prejudice to its other rights, require the Supplier to re-perform the applicable Operational Services.

- 7.4 [All of the Supplier's property located on the Council's Premises, including all elements of the Supplier's System, shall remain at the sole risk and responsibility of the Supplier, except that the Council shall be liable for the loss of or damage to any of the Supplier's property located on any Council's Premises which is due to the negligent act or omission of the Council.]
- 7.5 The Supplier shall ensure that, at all times, its maintenance and operating procedures are sufficient to ensure that the Services are provided in accordance with the Service Levels.
- 8. Service Levels**
- 8.1 The Supplier shall ensure that the Operational Services meet or exceed the Service Levels at all times from the Operational Services Commencement Date.
- 8.2 The Supplier shall provide the Council with a monthly report detailing its performance in respect of each of the Service Levels ("Monthly Performance Report").
- 8.3 If there is a Service Failure, the Supplier shall:
- (a) notify the Council immediately of the Service Failure;
  - (b) provide the Council with a Remediation Plan in accordance with clause 37 (*Remediation plan process*);
  - (c) deploy all additional resources and take all remedial action that is necessary to rectify or to prevent the Service Failure from recurring; and
  - (d) carry out the actions identified in Remediation Plan in accordance with its terms.
- 8.4 The Operational Services Managers shall have regular [monthly or quarterly] meetings to monitor and review the performance of this agreement, [the achievement of the Service Levels] and the provision of the Services. Such meetings shall be minuted by the Council's Operational Services Manager and copies of those minutes shall be circulated to the Supplier.
- 8.5 Prior to each [monthly or quarterly] meeting, the Council's Operational Services Manager shall notify the Supplier's Operational Services Manager, and vice versa, of any problems relating to the provision of the Operational Services for discussion at the [monthly or quarterly] meeting. At the meeting, the parties shall agree a plan to address such problems. In the event of any problem being unresolved, or a failure to agree on the plan, the procedures set out in clause 37 (*Remediation plan process*) shall apply. Progress in implementing the plan shall be included in the agenda for the next [monthly or quarterly] meeting.
- 8.6 A review meeting to assess the performance of the Supplier in the delivery of the Operational Services shall be held at [annual] intervals throughout the Term. Each meeting shall be attended by senior representatives of the Council and of the Supplier, together with the Operational Services Managers.

8.7 [The Council and the Supplier shall review the Service Levels every [six] months throughout the Term and make any changes in accordance with the Change Control Procedure to reflect changes in the Specification.]

## 9. Social Value

9.1 Where the Supplier is unable to deliver the Social Value Obligations contained in the Social Value Proposal the Supplier shall advise the Council as soon as practicably reasonable and the Parties shall agree a reallocation of the financial value of the relevant Social Value Obligation to another or other Social Value Obligations and the Social Value Proposal and Social Value Method Statement shall be varied in accordance with clause 17 (*Change Control*).

9.2 In the event that the Parties are unable to agree a reallocation of the relevant Social Value Obligation in accordance with clause 9.1 above or the Supplier is unable to deliver the varied Social Value Obligations or otherwise commits a breach in that regard during the Term the Supplier shall pay to the Council the value of the Total Social Value Committed as set out in the Social Value Proposal in respect of the Social Value Obligation(s) that has not been delivered such sum to be paid within 30 days of delivery of the Council's invoice for the same.

## 10. Supplier's system and security networks

10.1 The Supplier warrants that:

- (a) it has, and that each Sub-Contractor has, obtained ISO 27001 certification for its information security and shall comply with, and maintain, such certification requirements for the Term; and
- (b) the Supplier's Software will:
  - (i) be currently supported versions of that software;
  - (ii) be free of material defects and errors; and
  - (iii) perform in accordance with the user manuals and the published specification for such software.

10.2 With regard to anti-virus software:

- (a) the Supplier shall, throughout the Term, use the latest versions of anti-virus software available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the Supplier's System; and
- (b) if, notwithstanding clause 10.2(a), Malicious Software is found, the parties shall co-operate with the other to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of the Council's Data, assist each other to mitigate any losses and restore the Services to their original operating efficiency.

10.3 In relation to the security of supplier's network and information systems, the Supplier:

- (a) shall notify the Council immediately if it becomes aware of any security incident affecting its network and information systems that could potentially affect the Council, and respond without delay to all queries and requests for information from the Council about any security incident, whether discovered by the Supplier or the Council, in particular noting the extent of the Council's reporting obligations under the Network and Information Systems Regulations 2018 (NISR) and that the Council may be required to comply with statutory or other regulatory timescales;
- (b) shall use its reasonable endeavours to ensure business continuity for the Council at all times; and
- (c) agrees to cooperate with the Council in all aspects of its compliance with the NISR including, without limitation, any requests for information if there is a suspected or actual security incident and any inspections by regulators.

10.4 The Supplier shall, at its own cost, provide for the carriage of all elements of the Supplier's System from and to the premises at which it is to be used in the provision of the Services. If any element of the Supplier's System is to be installed at the Council's Premises, the Supplier shall ensure that it leaves such premises clean, tidy and free from damage.

10.5 The Supplier shall ensure that, at all times, its maintenance and operating procedures are sufficient to ensure that the Services are provided in accordance with the Service Levels.

10.6 All of the Supplier's property located on the Council's Premises, including all elements of Supplier's System, shall remain at the sole risk and responsibility of the Supplier, except that the Supplier shall not in any circumstance be liable for the loss of or damage to any of the Supplier's property located on any Council's Premises which is due to the negligent act or omission of the Council.

## 11. Charging and invoicing

11.1 In consideration of the provision of the Services by the Supplier in accordance with the terms and conditions of this agreement, the Council shall pay the Charges to the Supplier in accordance with the Payment Plan.

11.2 The Supplier shall invoice the Council for payment of the Charges at the time the Charges are expressed to be payable in accordance with the Payment Plan. All invoices shall be directed to the Council's Representative.

11.3 The Council shall pay the Charges which have become payable in accordance with the Payment Plan within 30 days of receipt of an undisputed invoice from the Supplier (**Due Date**).

11.4 Unless otherwise stated in Schedule 7, the Charges:

- (a) shall remain fixed during the Initial Term; and
- (b) 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 and the cost of Supplier's Personnel.

- 11.5 If the Council receives an invoice which it reasonably believes includes a sum which is not valid and properly due:
- (a) the Council shall notify the Supplier in writing as soon as reasonably practicable;
  - (b) the Council's failure to pay the disputed Charges shall not be deemed to be a breach of this agreement;
  - (c) the Council shall pay the balance of the invoice which is not in dispute by the Due Date; and
  - (d) the dispute as to the sum to be paid shall be determined in accordance with clause 40 (*Dispute Resolution Procedure*).
  - (e) once the dispute has been resolved, where either party is required to make a balancing payment, it shall do so within 30 days and, where the Supplier is required to issue a credit note, it shall do so within 30 days.
- 11.6 The Supplier shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Council pursuant to this agreement. Such records shall be retained for inspection by the Council for 6 years from the end of the Contract Year to which the records relate or in relation to the Implementation Service Charges, from the date of the last payment in respect thereof.
- 11.7 The Supplier shall not suspend the supply of the Services if any payment is overdue unless it is entitled to terminate this agreement under clause 36.4 (*Termination by supplier for Council's failure to pay*) for failure to pay undisputed charges.
- 11.8 If a party fails to make any payment due to the other party under this agreement by the due date for payment, then[, without limiting the other party's remedies under clause 36 (*Termination*),] the defaulting party shall pay interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount.
- 11.9 Except as otherwise provided, the parties shall each bear their own costs and expenses incurred in respect of compliance with their obligations under this agreement.
- 11.10 All sums payable by either party under this agreement shall be paid in sterling.
- 11.11 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Council following delivery of a valid VAT invoice. The Supplier shall indemnify the Council against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Council at any time in respect of the

Supplier's failure to account for, or to pay, any VAT relating to payments made to the Supplier under this agreement.

- 11.12 The Council may retain or set off any sums owed to it by the Supplier which have fallen due and payable against any sums due to the Supplier under this agreement or any other agreement pursuant to which the Supplier [or the Supplier's Group Company] provides goods or services to the Council.
- 11.13 If the Council wishes to set off any amount owed by the Supplier to the Council against any amount due to the Supplier pursuant to clause 11.12 it shall give notice to the Supplier within 30 days of receipt of the relevant invoice setting out the Council's reasons for withholding or retaining the relevant Charges.

## **12. Price Adjustment on Extension of Initial Term**

- 12.1 The Charges shall apply for the Term. In the event that the Council extends the Initial Term pursuant to clause 3.2 (Contract Extension) the Council shall, in the 6 month period prior to the expiry of the Contract Term, enter into good faith negotiations with the Supplier (for a period of not more than 30 days) subject to clause 12.4 to agree a variation in the Operational Charges.
- 12.2 If the Parties are unable to agree a variation in the Operational Charges the Contract shall terminate at the end of the Initial Term.
- 12.3 If a variation in the Operational Charges is agreed between the Council and the Supplier, the revised Charges will take effect from the first day of any Extension period and shall apply during such Extension Period.
- 12.4 Any increase or decrease in the Operational Charges shall not exceed the percentage change in the Office of National Statistics' Consumer Prices Index (CPI) (or another such index specified in the Pricing Schedule) between the [Effective Date] or [Operational Services Commencement Date] and the date 6 months before the end of the Initial Term.
- 12.5 Acceptance of any Charges variation is at the discretion of the Council in accordance with clause 17 (*Change Control*).

## **13. Financial Distress**

The Parties shall comply with the provisions of Part 2 of Schedule 7 (*Financial Distress*) in relation to the assessment of the financial standing of the Supplier and other specified entities and the consequences of a change to that financial standing.

## **14. Governance**

- 14.1 The parties agree to manage this agreement through the governance structure more specifically detailed in Schedule 10 (*Contract and service management*).
- 14.2 The Supplier shall provide the Management Reports in the form and at the intervals set out in Schedule 10.



## **15. Sub-contracting**

- 15.1 The Supplier shall not sub-contract any of its obligations under this agreement without the Council's prior written consent.
- 15.2 In the event that the Supplier enters into any Sub-Contract in connection with this agreement it shall:
- (a) remain responsible to the Council for the performance of its obligations under the agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;
  - (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms; and
  - (c) provide a copy, at no charge to the Council, of any such Sub-Contract on receipt of a request for such by the Council's Representative.
- 15.3 The Council has consented to the engagement of the Sub-Contractors listed in Schedule 6 (*Sub-Contractors*).
- 15.4 The Supplier shall not terminate or materially amend the terms of any Sub-Contract without the Council's prior written consent, which shall not be unreasonably withheld or delayed.
- 15.5 The Council may require the Supplier to terminate a Sub-Contract where the acts or omissions of the relevant Sub-Contractor have given rise to the Council's right of termination of this agreement pursuant to clause 36 (*Termination for cause*).
- 15.6 If the Council is able to obtain from any Sub-Contractor or any other third party more favourable commercial terms with respect to the supply of any goods, software or services used by the Supplier in the supply of the Services, then the Council may:
- (a) require the Supplier to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Council in respect of the relevant item; or
  - (b) enter into a direct agreement with that Sub-Contractor or third party in respect of the relevant item, provided that the Council makes the relevant item available to the Supplier where this is necessary for the Supplier to provide the Services.
- 15.7 If the Council exercises either of its options pursuant to clause 15.6, then the Charges shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.

## **16. Audits**

- 16.1 The Supplier shall allow the Council and any auditors of or other advisers to the Council to access any of the Supplier's Premises, personnel and relevant records as may be reasonably required in order to:

- (a) fulfil any legally enforceable request by any Regulatory Body; or
  - (b) undertake verifications of the accuracy of the Charges or identify suspected fraud; or
  - (c) undertake verification that the Services are being provided and all obligations of the Supplier are being performed in accordance with this agreement; or
  - (d) verify the accuracy and completeness of Management Reports required or delivered under this agreement.
- 16.2 The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services by the Supplier and that, where possible, individual audits are co-ordinated with each other to minimise any disruption.
- 16.3 Subject to the Council's obligations of confidentiality, the Supplier shall provide the Council (and its auditors and other advisers) with all reasonable co-operation, access and assistance in relation to each audit.
- 16.4 The Council shall provide at least 2 Business Days' notice of its intention to conduct an audit unless such audit is conducted in respect of a suspected fraud, in which event no notice shall be required.
- 16.5 The parties shall bear their own costs and expenses incurred in respect of compliance with their obligations under this clause 16, unless the audit identifies a material Default by the Supplier, in which case the Supplier shall reimburse the Council for all its reasonable costs incurred in the course of the audit.
- 16.6 If an audit identifies that:
- (a) the Supplier has failed to perform its obligations under this agreement, the provisions of clause 37 (*Remediation plan process*) shall apply, provided that, if the audit demonstrates that the Supplier is failing to comply with any of its obligations under this agreement then, without prejudice to the other rights and remedies of the Council, the Supplier shall take the necessary steps to comply with its obligations at no additional cost to the Council;
  - (b) the Council has overpaid any Charges, the Supplier shall pay to the Council the amount overpaid within 30 days from the date of receipt of an invoice or notice to do so; and
  - (c) the Council has underpaid any Charges, the Council shall pay to the Supplier the amount of the under-payment within 30 days from the date of receipt of an invoice for such amount.
- 16.7 The Council may increase the extent to which it monitors the conduct of the Operational Services if the Supplier fails to meet the Service Levels or fails to fulfil its other obligations under this agreement. The Council shall give the Supplier prior notification of its intention to increase the level of its monitoring. The Supplier shall bear its own costs in complying with

the Council in relation to any monitoring which is conducted by the Council pursuant to this clause 16.7.

## **17. Change control**

Any requirement for a Change shall be subject to the Change Control Procedure in accordance with Schedule 12 (*Change Control Procedure*).

## **18. Key Personnel**

18.1 Each party shall appoint the persons named as such in Schedule 9 (*Key personnel*) as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each party as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of their respective party on the matters for which they are expressed to be responsible.

18.2 The Supplier shall not remove or replace any of the Key Personnel unless:

- (a) requested to do so by the Council; or
- (b) the person is on long-term sick leave; or
- (c) the element of the Services in respect of which the individual was engaged has been completed to the Council's satisfaction; or
- (d) the person resigns from their employment with the Supplier; or
- (e) the Supplier obtains the prior written consent of the Council.

18.3 The Supplier shall inform the Council of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified. The Council shall be entitled to interview any such person and may object to any such proposed appointment within 5 Business Days of being informed of or meeting any such replacement if, in its reasonable opinion, it considers the proposed replacement to be unsuitable for any reason.

18.4 Each party shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than 90 days. Any replacement shall be as, or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced. A temporary replacement shall be identified with immediate effect from the Supplier or the Council becoming aware of the role becoming vacant.

18.5 The Council may require the Supplier to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities.

18.6 If the Supplier replaces the Key Personnel as a consequence of this clause 18, the cost of effecting such replacement shall be borne by the Supplier.

## **19. Supplier's Personnel**

19.1 At all times, the Supplier shall ensure that:

- (a) each of the Supplier's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
- (b) there is an adequate number of Supplier's Personnel to provide the Services properly;
- (c) only those people who are authorised by the Supplier (under the authorisation procedure to be agreed between the parties) are involved in providing the Operational Services; and
- (d) all of the Supplier's Personnel comply with all of the Council's policies including those that apply to persons who are allowed access to the applicable Council's Premises.

19.2 The Council may refuse to grant access to, and remove, any of the Supplier's Personnel who do not comply with any such policies, or if they otherwise present a security threat.

19.3 The Supplier shall replace any of the Supplier's Personnel who the Council reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Supplier's Personnel for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

19.4 The Supplier shall ensure that the Supplier's Implementation Services Manager and the Supplier's Operational Services Manager are dedicated to the co-ordination of the management and operation of the Services, the performance of the Supplier's obligations under this agreement and the management of the Supplier's day-to-day relationship with the Council.

19.5 The Supplier shall maintain up-to-date personnel records on the Supplier's Personnel engaged in the provision of the Services and, on request, provide reasonable information to the Council on the Supplier's Personnel. The Supplier shall ensure at all times that it has the right to provide these records under Data Protection Legislation.

19.6 The Supplier shall use its reasonable endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good at the prevailing industry norm for similar services, locations and environments.

## **20. Disclosure and Barring**

- 20.1 [The parties acknowledge that the Supplier is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006.]
- 20.2 [The Supplier shall:
- (a) [ensure that all individuals engaged in [Regulated Activity] [the Services] are subject to a valid enhanced disclosure check [for regulated activity] undertaken through the Disclosure and Barring Service (DBS); and]
  - (b) [monitor the level and validity of the checks under this clause 20.1 for each member of staff;]
  - (c) [not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users.]]
- 20.3 [The Supplier warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Supplier in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.]
- 20.4 [The Supplier shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 20 have been met.]
- 20.5 [The Supplier shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to [the service users OR children OR vulnerable adults].]

## **21. TUPE and Pensions**

- 21.1 The parties agree that the provisions of Schedule 14 (*Employees*) shall apply to any Relevant Transfer of staff under this agreement.
- 21.2 The Supplier shall comply with its obligations under sections 257 and 258 Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005.

## **22. Intellectual property**

- 22.1 In the absence of prior written agreement by the Council to the contrary, all Intellectual Property Rights created by the Supplier or Supplier's Personnel:
- (a) in the course of performing the Services; or
  - (b) exclusively for the purpose of performing the Services

shall vest in the Council on creation.

22.2 Subject to clause 23 (*Grant of licences*):

- (a) the Council shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, in relation to:
  - (i) the Intellectual Property Rights relating to the Supplier's Software;
  - (ii) the Intellectual Property Rights relating to the Third Party Software; and
  - (iii) the Supplier's Background Intellectual Property Rights; and
- (b) the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Council or its licensors, including:
  - (i) the Intellectual Property Rights relating to the Council's Software;
  - (ii) the Intellectual Property Rights relating to the Council's documentation, processes and procedures;
  - (iii) the Intellectual Property Rights relating to the Council's know-how;
  - (iv) the Intellectual Property Rights relating to the Council's Data;
  - (v) the Intellectual Property Rights relating to the Database; and
  - (vi) the Council's Background Intellectual Property Rights.

**23. Grant of licences**

23.1 The Supplier grants to the Council, or shall procure the direct grant to the Council of, a licence to Use the Supplier's Software and the Third Party Software during the Term.

23.2 The Supplier shall, if requested by the Council in accordance with Schedule 13 (*Exit plan and service transfer arrangements*), grant or procure the grant to the Council or the Replacement Supplier of a licence to Use any of the Supplier's Software and Third Party Software, subject to the Council or the Replacement Supplier entering into confidentiality undertakings with the Supplier in a form reasonably acceptable to the Council.

23.3 The Council grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use:

- (a) the Council's Software;
- (b) the Council's documentation, processes and procedures; and
- (c) the Council's Data and the Database, including the right to grant sub-licences to its Sub-Contractors, provided that any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier in a form reasonably acceptable to the Council.

23.4 The licence granted in clause 23.3 is granted solely to the extent necessary for performing the Services in accordance with this agreement. The Supplier shall not use the licensed materials for any other purpose.

23.5 The Supplier shall not have any right to use any of the Council's names, logos or trade marks on any of its products or services without the Council's prior written consent.

23.6 In the event of the termination or expiry of this agreement, the licences referred to in clause 23.1 and clause 23.3 and any licence granted in accordance with clause 23.5 shall terminate automatically and the Supplier shall deliver to the Council all material licensed to the Supplier pursuant to clause 23.1, clause 23.3 or clause 23.5 in its possession or control. However, the licences granted pursuant to clause 23.2 shall continue in full force and effect.

#### **24. IPR indemnity**

24.1 The Supplier shall indemnify the Council against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Council's acts or omissions.

#### **25. Data protection**

25.1 In this agreement where the Supplier is processing Personal Data (as defined by the Data Protection Legislation) on behalf of the Council:

- (a) the Council is the Controller and the Supplier is the Processor; and
- (b) the types of Personal Data and categories of Data Subject which will be processed, the nature and purpose of that processing and the duration of that processing are as set out in Schedule 15 (*Data processing*).

25.2 In relation to the processing of Personal Data, the Supplier shall:

- (a) only process Personal Data in accordance with the Council's written instructions from time to time (which may be specific instructions or standing instructions of general application in relation to the Services, whether set out in this agreement or otherwise notified to the Supplier), unless such processing is required by any Applicable Law (other than contract law) to which the Supplier is subject, in which case the Supplier shall (to the extent permitted by law) inform the Council of that legal requirement before carrying out the processing;
- (b) immediately notify the Council if it considers that the Council's instructions are in breach of the UK GDPR; and
- (c) keep a written record of all such processing activities which shall include the information required to be kept under Article 30(2) of the UK GDPR.

25.3 In relation to the security and confidentiality of the Personal Data, the Supplier shall:

- (a) ensure that it has in place appropriate technical and organisational measures to ensure a level of security for the Personal Data which is appropriate to the risks to individuals that may result from the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Personal Data

having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data ensuring confidentiality, integrity, availability and resilience of systems and services ensuring that availability and access to personal data can be restored in a timely manner after an incident and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted);

- (b) ensure that laptops and other portable and mobile devices including magnetic media, used to store and transmit Personal Data, the loss of which could cause damage or distress to individuals, shall be protected using approved encryption software which is designed to guard against the compromise of information;
- (c) in addition to the confidentiality obligations in clause 26 (*Confidentiality*):
  - (i) ensure that only those of the Supplier's Personnel who need to have access to the Personal Data are granted access to such data and only for the purposes of the performance of this agreement and all of the Supplier's Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data, comply with the obligations set out in this clause 25, and are bound by appropriate confidentiality obligations when accessing the Personal Data; and
  - (ii) not publish, disclose or divulge any of the Personal Data to any third party (including for the avoidance of doubt the Data Subject itself) unless directed to do so in writing by the Council or required by law. Where the Provider is so required by law it shall promptly notify the Council unless prohibited by law; and
- (d) not modify, amend, alter or delete the contents of the Personal Data unless specifically authorised in writing by the Council and where so authorised by the Council the Provider shall promptly comply with such authorisation.

25.4 If the Supplier becomes aware of a Personal Data breach, it shall notify the Council immediately on becoming of aware of such a breach. Such notification shall be to the Council's data protection officer as required to be appointed under the Data Protection Legislation.

25.5 The Supplier shall notify the Council immediately upon receiving the following:

- (a) a request from a Data Subject to have access to that person's Personal Data; or
- (b) a request to rectify, block or erase any Personal Data
- (c) a complaint or request relating to the either Parties obligations under the Data Protection Legislation;
- (d) any other communication relating directly or indirectly to the processing of any Personal Data in connection with this agreement; or
- (e) a request from any third party for disclosure of Personal Data where compliance is required or purported to be required by law.



25.6 The Supplier shall provide the Council with full co-operation and assistance in order to enable the Council to comply with its obligations under the Data Protection Legislation in relation to:

- (a) the Council's obligations in relation to responding to Data Subject requests, including (but not limited to) the following:
  - (i) complying with the relevant timescales as set out in the Data Protection Legislation but strictly in accordance with the Council's instructions;
  - (ii) providing the Council with any Personal Data that it holds in relation to the Data Subject making the complaint or request within the timescales are required by the Council; and
  - (iii) providing the Council with any other information as so requested by the Council in this regard,
- (b) the security of the Personal Data;
- (c) notifying Personal Data breaches to the relevant supervisory authorities or regulators;
- (d) communicating personal data breaches to the Data Subject;
- (e) impact assessments and related consultations with supervisory authorities or regulators; and
- (f) any other Data Subject rights under Chapter III of UK GDPR

25.7 Subject to the provisions of clause 16 (*Audits*), the Supplier shall:

- (a) make available to the Council all information that the Council requests from time to time to enable the Council to verify that the Supplier is in compliance with its obligations in this clause 25; and
- (b) permit the Council or its external advisers to inspect and audit the Supplier's data processing activities to inspect and audit the Supplier's data processing activities and those of its agents, subsidiaries and Sub-Contractors.

25.8 Without affecting clause 15 (*Sub-Contractors*), this clause 25.8 shall only apply in relation to the sub-contracting of Personal Data processing under this agreement:

- (a) the Supplier shall not engage or authorise a Sub-Contractor to process the Personal Data unless:
  - (i) it has obtained the prior written consent of the Council (which may be granted or withheld in the Council's sole discretion) before transferring the Personal Data to any Sub-Contractors in connection with the provision of the Services; and
  - (ii) the Sub-Contractor has either entered into a direct contract with the Council or a contract with the Supplier which incorporates the provisions equivalent to those in this agreement in relation to confidentiality, data protection and security, and

- (b) where a Sub-Contractor is appointed pursuant to clause 25.8(a), the Supplier shall remain liable for the acts and omissions of that Sub-Contractor as if they were the Supplier's own.

25.9 In relation to transfers of Personal Data to areas outside the UK:

- (a) the Supplier shall not transfer any Personal Data outside the UK without the Council's prior written consent; and
- (b) if the Council consents to any transfers pursuant to clause 25.9(a), the Supplier shall ensure that the following conditions are met in relation to such transfers:
  - (i) the Supplier complies with its obligations under the Data Protection Legislation by ensuring that there is an adequate level of protection to any Personal Data that is transferred;
  - (ii) that there are appropriate safeguards in place in relation to that transfer;
  - (iii) that Data Subjects have enforceable rights and effective legal remedies; and
  - (iv) that the Supplier shall comply with any other reasonable instructions as notified to it by the Council in relation to such transfers.

25.10 The Council may at any time, on not less than 20 Business Days written notice to the Supplier, revise this clause 25 by replacing it with any applicable Controller to Processor standard clauses or similar terms forming part of an application certification scheme (which shall apply when incorporated by attachment to this contract);

25.11 The Council may, on not less than 20 Business Days written notice to the Supplier amend the Contract to ensure that it complies with any guidance issued by the Information Commissioners Office.

25.12 On the expiry or termination of this agreement, the Supplier shall, without prejudice to and in addition to its obligations in clause 38 (*Consequences of expiry and termination*), notify the Council of the Personal Data that it holds. If requested by the Council (or any replacement supplier as nominated by the Council), a copy of all Personal Data in a non-proprietary format shall be provided to the Council. Promptly following such expiry or termination, the Supplier shall return or securely and permanently destroy all copies of Personal Data in its possession or control (other than any copy transferred to the Council in accordance with this paragraph) unless the Supplier is required by law to retain any copies of such data. For the purposes of this clause 25.12, the Supplier shall be the Controller in relation to any such retained Personal Data, and shall process it solely as necessary to comply with its obligations under the Data Protection Legislation.

25.13 The Supplier shall, at all times during and after the Term, indemnify the Council and keep the Council indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Council arising from the Supplier failing to comply with Data Protection Legislation or any breach of the Supplier's obligations under this clause 25 except and to the extent that such liabilities have resulted directly from the Council's instructions.

## **26. Confidentiality**

- 26.1 Except to the extent set out in this clause 26, or where disclosure is expressly permitted elsewhere in this agreement, each party shall:
- (a) treat the other party's Confidential Information as confidential; and
  - (b) not disclose the other party's Confidential Information to any other person without the owner's prior written consent.
- 26.2 Clause 26.1 shall not apply to the extent that:
- (a) such information was in the possession of the party making the disclosure, without obligation of confidentiality, prior to its disclosure; or
  - (b) such information was obtained from a third party without obligation of confidentiality; or
  - (c) where a party is required to disclose by judicial administrative governmental or regulatory process in connection with any action suit proceedings or claims or otherwise by Applicable Law including FOIA and EIRs; or
  - (d) such information was already in the public domain at the time of disclosure otherwise than through a breach of this agreement; or
  - (e) such information was independently developed without access to the other party's Confidential Information.
- 26.3 The Supplier may only disclose the Council's Confidential Information to the Supplier's Personnel who are directly involved in the provision of the Services and who need to know the information. The Supplier shall ensure that such Supplier's Personnel are aware of, and comply with, these confidentiality obligations.
- 26.4 The Supplier shall not, and shall procure that the Supplier's Personnel do not, use any of the Council's Confidential Information received otherwise than for the purposes of this agreement.
- 26.5 The Supplier undertakes (except as may be required by law or in order to instruct professional advisers in connection with this agreement) not to:
- (a) disclose or permit disclosure of any details of this agreement to the news media or any third party other than its Sub-Contractors; or
  - (b) disclose that the Council is a customer or client of the Supplier; or
  - (c) use the Council's name or brand in any promotion or marketing without the prior written consent of the Council.
- 26.6 Nothing in this clause 26 shall prevent either party from using any techniques, ideas or know-how gained during the performance of this agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPRs.

26.7 On the Termination Date, each party shall:

- (a) return to the other party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information;
- (b) at the election of the other party, [return or] erase all the other party's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically practicable); and
- (c) certify in writing to the other party that it has complied with the requirements of this clause, provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by law or any applicable governmental or regulatory Council. The provisions of this clause shall continue to apply to any such documents and materials retained by a recipient party.

26.8 Except as expressly stated in this agreement, no party makes any express or implied warranty or representation concerning its Confidential Information.

## **27. Freedom of Information**

27.1 The Supplier acknowledges that the Council is subject to the requirements of the FOIA and the EIRs and shall:

- (a) Provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and the EIRs;
- (b) Transfer to the Council all requests for information relating to this agreement that it receives as soon as practicable and in any event within 2 Business Days of receipt;
- (c) Provide the Council with a copy of all information belonging to the Council requested in the request for information which is in its possession or control in the form that the Council requires within 5 Business Days (or such other period as the Council may reasonably specify) of the Council's request for such information; and
- (d) Not respond directly to a request for information unless authorised in writing to do so by the Council.

27.2 The Supplier acknowledges that the Council may be required under the FOIA and the EIRs to disclose Information concerning the Supplier or the Services (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. In these circumstances the Council shall, in accordance with any relevant guidance issued under the FOIA and EIRs, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

27.3 Notwithstanding any other provision in this agreement, the Council shall be responsible for determining in its absolute discretion whether any information relating to the Supplier or the Services is exempt from disclosure in accordance with the FOIA and/or the EIRs.

## **28. Security requirements**

28.1 The Council shall have the right, in its absolute discretion, to require the Supplier not to use specified individuals employed or engaged by the Supplier, or by a Sub-Contractor, in the performance of specified elements of the Services. The Council shall not exercise this right in breach of any law.

28.2 The Supplier shall comply with, and shall procure that each of the Sub-Contractors complies with, the Council's procedures for vetting personnel in respect of all Supplier's Personnel employed or engaged in the provision of the Services.

## **29. Warranties and representations**

29.1 The supplier warrants, represents and undertakes that:

- (a) it has full capacity and authority to enter into and to perform this agreement;
- (b) this agreement is executed by a duly authorised representative of that party;
- (c) there are no actions, suits or proceedings or regulatory investigations pending or, to that party's knowledge, threatened against or affecting that party before any court or administrative body or arbitration tribunal that might affect the ability of that party to meet and carry out its obligations under this agreement;
- (d) once duly executed, this agreement will constitute its legal, valid and binding obligations;
- (e) its Representative shall be authorised to carry out the matters for which they are expressed to be responsible in Schedule 9 (*Key personnel*); and
- (f) it will execute all documents and do all such acts as the other party may require to perfect the assignment of any IPR pursuant to the operation of the Exit Plan.

29.2 The Supplier undertakes, warrants and represents on an ongoing basis that:

- (a) the Supplier will perform and procure the performance of its obligations under this agreement in compliance with all Applicable Laws;
- (b) it has, and will continue to hold, all consents and regulatory approvals necessary to provide the Services;
- (c) it shall discharge its obligations under this agreement using personnel of required skill, experience and qualifications and with all due skill, care and diligence including in accordance with Best Industry Practice;
- (d) it has, and will continue to have, all necessary rights in and to the Supplier's Software, the Third Party Software and the Supplier's Background IPRs, or any other materials made available by the Supplier or the Sub-Contractors to the Council which are used to perform the Supplier's obligations under this agreement; and

- (e) all Software used by or on behalf of the Supplier pursuant to this agreement will:
  - (i) be currently supported versions of that Software;
  - (ii) be free of material defects and errors; and
  - (iii) perform in accordance with the user manuals and the published specification for such Software.
- (f) within the previous 12 months, no Financial Distress Events have occurred or are subsisting (or any events that would be deemed to be Financial Distress Events under this Agreement had this Agreement been in force) and there are currently no matters that it is aware of that could cause a Financial Distress Event to occur or subsist.

### **30. Compliance with Applicable Laws and Mandatory Policies**

#### **30.1 Compliance with Applicable Laws**

- (a) The Supplier shall (at no additional cost to the Council) at all times carry out and provide the Services in compliance with all Applicable Laws. The Supplier shall maintain such records as are necessary pursuant to such Applicable Laws and shall promptly on request make them available for inspection by any relevant authority that is entitled to inspect them and by the Council (or its authorised representative).
- (b) Without prejudice to clause 30.1(a), the Supplier shall monitor and shall keep the Council informed in writing of any changes in the Applicable Laws which may impact the Services and shall provide the Council with timely details of measures it proposes to take and changes it proposes to make to comply with any such changes.
- (c) The Supplier shall consult with the Council (and wherever possible agree with the Council) on the manner, form and timing of changes it proposes to make to meet any changes in Applicable Laws where they would impact the Services. The Supplier shall not implement any change, without the Council's prior written agreement, which would have an adverse effect on the Supplier's ability to provide the Services in accordance with the Service Levels.
- (d) Any change which impacts any of the Services including the Service Levels shall be agreed and documented in accordance with the Change Control Procedure.
- (e) Without prejudice to the rest of this clause 30, the Supplier shall use all reasonable endeavours to minimise any disruption caused by any changes in Applicable Laws introduced pursuant to this clause 30.

#### **30.2 Compliance with Mandatory Policies**

In performing its obligations under this agreement, the Supplier shall comply with the Mandatory Policies.

### 30.3 Breach of compliance requirements

Breach of clause 30.1(a) and clause 30.2 shall be deemed a material Default of this agreement, which is irredeemable, under clause 36.1(d) (ii) (Termination for material default).

## 31. Prevention of Bribery

31.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier's Personnel, have at any time prior to the Effective Date:

- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

31.2 The Supplier shall not during the Term:

- (a) commit a Prohibited Act; and/or
- (b) do or suffer anything to be done which would cause the Council or any of the Council's employees, consultants, contractors, Sub-Contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.

31.3 The Supplier shall immediately notify the Council in writing if it becomes aware of any breach of clause 31.1 and/or clause 31.2, or has reason to believe that it has or any of the Supplier's Personnel have:

- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this agreement or otherwise suspects that any person or Party directly or indirectly connected with this agreement has committed or attempted to commit a Prohibited Act.

31.4 If the Supplier makes a notification to the Council pursuant to clause 31.3, the Supplier shall respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit any books, records and/or any other relevant documentation in accordance with clause 16 (*Audit*).

## **32. Prevent Duty**

- 32.1 The Supplier acknowledges that the Council is subject to the Prevent Duty which requires it to act to deal with the present and growing threat of terrorism within the UK, treat security with the utmost importance and recognise the need to tackle terrorism and, where possible, to prevent individuals from being drawn into terrorism.
- 32.2 Where the Council has any concerns about a person, or becomes aware of any other matters which may require it to take action in accordance with the Prevent Duty, the Supplier shall at the request of the Council provide the Council with a copy of all relevant information which is available to it in the form the Council requires and shall provide all necessary assistance requested by the Council to report and/or take such action.
- 32.3 The Council shall be responsible for determining in its absolute discretion what action it needs to take and the Provider acknowledges that the Council may for the purpose of complying with the Prevent Duty disclose such information.
- 32.4 The Supplier undertakes to comply and to ensure that the Supplier Personnel, agents and Sub-Contractors comply with the Council's policies concerning the Prevent Duty as they may be updated from time to time.

## **33. Force majeure**

- 33.1 Subject to the remaining provisions of this clause 33, neither party to this agreement shall in any circumstances be liable to the other for any delay or non-performance of its obligations under this agreement to the extent that such delay or non-performance is due to a Force Majeure Event.
- 33.2 In the event that either party is delayed or prevented from or hindered in performing its obligations under this agreement by a Force Majeure Event, such party shall:
- (a) give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause of the delay or prevention and its estimated duration;
  - (b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this agreement; and
  - (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 33.3 A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 33.4 The Supplier cannot claim relief if the Force Majeure Event is one where a reasonable service provider should have foreseen and provided for the cause in question.
- 33.5 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued



performance of this agreement. Where the Supplier is the affected party, it shall take or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.

- 33.6 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
- 33.7 The Council may, during the continuance of any Force Majeure Event, terminate this agreement in accordance with clause 36.4 in the circumstances set out in that clause.

#### **34. Limitations on liability**

- 34.1 Nothing in this agreement shall limit or exclude the Supplier's or the Council's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its personnel, agents or Sub-Contractors;
  - (b) fraud or fraudulent misrepresentation; and
  - (c) any other liability which cannot be limited or excluded by applicable law.
- 34.2 The Supplier shall indemnify and keep indemnified the Council fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with the Contract including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Supplier, or any other loss which is caused directly or indirectly by any act or omission of the Supplier. This clause shall not apply to the extent that the Supplier is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or default, or the negligence or default of the Supplier's Personnel or Sub-Contractors, or by any circumstances within its or their control.

#### **35. Insurance**

The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:

- 35.1 Public and Product Liability insurance with a limit of indemnity of not less than **£10,000,000** in relation to any one claim;
- 35.2 Employer's Liability insurance with a limit of indemnity of not less than **£10,000,000** and in accordance with any legal requirement for the time being in force in relation to any one claim;
- 35.3 **[Professional Indemnity insurance with a limit of indemnity of not less than £2,000,000 to be held in the annual aggregate and for a period of six years following the expiry of the**

contract. All professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover.]

- 35.4 The cover shall be in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of the agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.
- 35.5 The Supplier shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 35.6 If, for whatever reason, the Supplier fails to give effect to and maintain the required Insurances, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 35.7 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the agreement.

## **36. Termination**

- 36.1 Where the Council wishes to terminate this agreement due to the Supplier's Default:
- (a) subject to clause 37 (*Remediation plan process*), the Council may terminate this agreement, immediately or on the expiry of the notice period specified in the Termination Notice, by giving written notice to the Supplier if one or more of the circumstances set out in clause 36.1(d) (*Termination for cause*) occurs or exists;
  - (b) where the Council is terminating this agreement for a material Default, it may rely on a single material Default or on a number of Defaults or repeated Defaults that, taken together, constitute a material Default;
  - (c) the Council shall also inform the Supplier in the Termination Notice of the duration of the Termination Period during which it requires the Supplier to continue to provide, or procure the provision of, some or all of the Services. The Council may extend or shorten such period by giving the Supplier at least 20 Business Days' notice;
  - (d) the events which shall entitle the Council to issue a Termination Notice are as follows:
    - (i) the Supplier is in material Default of this agreement and such Default is not remedied in accordance with the Remediation Plan Process; or
    - (ii) the Supplier is in material Default of this agreement, which is irremediable; or
    - (iii) the parties fail to agree the Remediation Plan in accordance with the Remediation Plan Process; or

- (iv) the Supplier fails to implement or successfully complete the Remediation Plan in accordance with the Remediation Plan Process; or
- (v) the circumstances referred to in clause 37.8 (*Remediation plan process*) occur; or
- (vi) the Supplier has committed a Critical Service Failure; or
- (vii) any action by the Supplier, whether in relation to the Services and this agreement or otherwise, which in the reasonable opinion of the Council's Representative has or may cause significant harm to the reputation of the Council; or
- (viii) an Insolvency Related Event affecting the Supplier occurs.

36.2 The Council may terminate this agreement for convenience at any time, in whole or in part, on giving not less than 6 months' prior written notice to the Supplier.

36.3 The Council may terminate this agreement by written notice if there is a Change of Control of the Supplier to which the Council reasonably objects, provided that the Council serves its notice within three months of the date on which the Supplier informs the Council (by written notice) of the Change of Control or on which the Council otherwise becomes aware of the Change of Control.

36.4 The Council may, during the continuance of any Force Majeure Event, terminate this agreement by written notice to the Supplier if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than 90 days.

36.5 The Supplier may terminate this agreement by giving the Council written notice in the event that the Council fails to pay an undisputed sum due to the Supplier under this agreement which, either in isolation or in aggregate, exceeds the Charges due and payable in the previous month and such failure continues for 60 days from receipt by the Council of notice of non-payment from the Supplier.

### **37. Remediation Plan Process**

37.1 If the Supplier commits a Default and the Default is capable of remedy, the Council may not terminate this agreement without first operating the Remediation Plan Process. If the Supplier commits such a Default, the Council shall give a Remediation Notice to the Supplier which shall specify the Default in outline and the actions the Supplier needs to take with respect to remedying the Default.

37.2 The Council shall be under no obligation to initiate the Remediation Plan Process if it issues a Termination Notice pursuant to clause 36.1(a) in the circumstances set out in clause 36.1(d)(ii) (*Termination for material default*), clause 36.1(d)(iv) (*Termination for repeated default in remediation plan*), clause 36.1(d)(vi) (*Termination for critical service failure*), clause 36.1(d)(vii) (*Termination for harm*) or clause 36.1(d)(viii) (*Termination for insolvency*).

37.3 Within 5 Business Days of receipt of a Remediation Notice, the Supplier shall either:

- (a) submit a draft Remediation Plan, even if it disputes that it is responsible for the matters which are the subject of the Remediation Notice; or
  - (b) inform the Council that it does not intend to submit a Remediation Plan, in which event the Council shall be entitled to serve a Termination Notice.
- 37.4 The Council shall either approve the draft Remediation Plan within 5 Business Days of its receipt pursuant to clause 37.3, or it shall inform the Supplier why it cannot accept the draft Remediation Plan. In such circumstances, the Supplier shall address all such concerns in a revised Remediation Plan, which it shall submit to the Council within 5 Business Days of its receipt of the Council's comments. If no such notice is given, the Supplier's draft Remediation Plan shall be deemed to be agreed.
- 37.5 Once agreed, the Supplier shall immediately start work on the actions set out in the Remediation Plan.
- 37.6 If, despite the measures taken under clause 37.4, a Remediation Plan cannot be agreed within 15 Business Days then the Council may elect to end the Remediation Plan Process and serve a Termination Notice.
- 37.7 If a Remediation Plan is agreed between the parties, but the Supplier fails to implement or successfully complete the Remediation Plan by the required remedial plan completion date, the Council may:
  - (a) terminate this agreement by serving a Termination Notice; or
  - (b) give the Supplier a further opportunity to resume full implementation of the Remediation Plan; or
  - (c) escalate any issues arising out of the failure to implement the Remediation Plan to the Supplier's Implementation Services Manager under the Dispute Resolution Procedure.
- 37.8 If, despite the measures taken under clause 37.7, the Supplier fails to implement the Remediation Plan in accordance with its terms, the Council may elect to end the Remediation Plan Process and refer the matter for resolution by the Dispute Resolution Procedure or serve a Termination Notice.
- 37.9 The Council shall not be obliged to follow the Remediation Plan Process if there is a repetition of substantially the same Default as had previously been addressed in a Remediation Plan within a period of twelve months following the conclusion of such previous Remediation Plan. In such event, the Council may serve a Termination Notice.

## **38. Consequences of Expiry and Termination**

- 38.1 Following the service of a Termination Notice for any reason, the Supplier shall continue to provide or procure the provision of the Operational Services to the required Service Levels, and shall ensure that there is no degradation in the standards of the Operational Services until the expiry of the Termination Period.

- 38.2 The Supplier shall comply with its obligations set out in Part B of Schedule 14 (*Employees*).
- 38.3 On the Termination Date, the Supplier shall repay to the Council any amount which it may have been paid in advance in respect of Services not provided or procured by the Supplier as at the Termination Date.
- 38.4 The following clauses shall survive the termination (for whatever reason) or expiry of this agreement:
- a) clause 1 (*Interpretation*);
  - b) clause 5.2 (*No representations or warranties*);
  - c) clause 11.6 (*Retention of service charges records*), clause 11.8 (*Interest*), clause 11.11 (*VAT*) and clause 11.12 (*Set-off*);
  - d) clause 16 (*Audits*);
  - e) clause 21.2 (*Pensions*);
  - f) clause 22 (*IPRs*);
  - g) clause 23.2 (*Grant of licence to replacement supplier*), clause 23.5 (*No use of Council's names, logo or trademarks*) and clause 23.6 (*Termination of licences*);
  - h) clause 24 (*IPR indemnity*);
  - i) clause 25 (*Data protection*);
  - j) clause 26 (*Confidentiality*);
  - k) clause 29.1(f) (*Representation relating to full title guarantee*), clause 29.1(f) (*Perfection of assignment of IPRs*) and clause 29.2(d) (*Representation relating to rights in software and IPRs*);
  - l) clause 34 (*Limitation of liability*);
  - m) clause 35 (*Insurance*);
  - n) clause 36.2 (*Termination for convenience*);
  - o) clause 38 (*Consequences of expiry and termination*);
  - p) clause 39 (*Exit and service transfer*);
  - q) clause 40 (*Dispute resolution procedure*);
  - r) clause 43 (*Waiver*);
  - s) clause 46 (*Announcements*);
  - t) clause 48 (*Further assurance*);
  - u) clause 49 (*Entire agreement*);
  - v) clause 50 (*Third party rights*);
  - w) clause 53 (*Governing law*);
  - x) clause 54 (*Jurisdiction*);
  - y) Schedule 7 (*Charges and Financial Distress*);

- z) Schedule 13 (*Exit plan and service transfer arrangements*);
- aa) Schedule 14 (*Employees*); and
- bb) Schedule 16 (*Council's Premises*).

**39. Exit and service transfer**

- 39.1 In the event of the termination or expiry of this agreement for any reason the Supplier shall provide the Transitional Assistance Services to the Council in accordance with the requirements of the Exit Plan and both parties shall comply with their respective obligations set out in Schedule 13 (*Exit plan and service transfer arrangements*), the Supplier shall co-operate with the Council and/or the Replacement Supplier to the extent reasonably required to facilitate the smooth migration of the Operational Services from the Supplier to the Council or the Replacement Supplier.
- 39.2 The Supplier shall not make any charges for the Transitional Assistance Services provided by the Supplier pursuant to the Exit Plan, and the Council shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with the Exit Plan and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.
- 39.3 The Supplier shall, within six months after the Effective Date (or such other longer period as the parties may agree), produce an Exit Plan based on the principles set out in Schedule 13 (*Exit plan and service transfer arrangements*) for the orderly transition of the Services from the Supplier to the Council or any Replacement Supplier in the event of any termination or expiry of this agreement. Within 20 Business Days after the submission of that Exit Plan, the parties shall meet and use all reasonable endeavours to agree the contents of that Exit Plan, based on the principles set out in Schedule 13. If the parties are unable to agree the contents of the Exit Plan within that 20 Business Day period, the principles set out in Schedule 13 shall apply and either party may refer the Dispute for resolution in accordance with the Dispute Resolution Procedure.
- 39.4 The Supplier shall update the Exit Plan no less than once during each Contract Year to reflect changes in the Services and shall keep the Exit Plan under continuous review. Following each update, the Supplier shall:
- (a) submit the revised Exit Plan to the Council for review;
  - (b) within 20 Business Days after the submission of the revised Exit Plan, the parties shall meet and use all reasonable endeavours to agree the contents of the revised Exit Plan, based on the principles set out in Schedule 13 (*Exit plan and service transfer arrangements*) and the changes that have occurred in the Services since the Exit Plan was last agreed; and
  - (c) if the parties are unable to agree the contents of the revised Exit Plan within that 20 Business Day period, the previous version shall continue to apply and either party may refer the Dispute for resolution in accordance with the Dispute Resolution Procedure.

- 39.5 Until the agreement of the Exit Plan, the Supplier shall provide the Transitional Assistance Services in accordance with the principles set out in Schedule 13 (*Exit plan and service transfer arrangements*) and the last-approved version of the Exit Plan (insofar as this still applies) to the Council in good faith. The Supplier shall ensure that it is able to implement the Exit Plan at any time.
- 39.6 Within 30 days after service of a Termination Notice by either party or six months prior to the expiration of this agreement:
- (a) the Supplier shall update the Exit Plan into a final form that could be implemented immediately and in doing so, provide as much detail as is appropriate given the nature of the termination or expiry and the timing of termination, so that such Exit Plan can be submitted to the Council for review and approval; and
  - (b) the parties shall meet and use their respective reasonable endeavours to agree the contents of such Exit Plan based on the principles set out in Schedule 13 (*Exit plan and service transfer arrangements*); and
  - (c) until the agreement of the updated Exit Plan, the Supplier shall provide the Transitional Assistance Services in accordance with the last-approved version of the Exit Plan (insofar as this still applies) to the Council in good faith.

#### **40. Dispute Resolution Procedure**

- 40.1 The parties shall attempt, in good faith, to resolve any Dispute promptly by negotiation which shall be conducted as follows:
- (a) if a Dispute arises in the opinion of either party, the party in question may give written notice to the other party that the dispute has arisen (**Dispute Notice**);
  - (b) the Dispute shall be referred, by the referring party, first to the Implementation Services Managers or Operational Services Managers of each of the parties for resolution;
  - (c) if the Dispute cannot be resolved by the Implementation Services Managers or Operational Services Managers of the parties within 14 days after the Dispute has been referred to them, either party may refer the Dispute to the Council's Representative and the Supplier's Representative for resolution.
- 40.2 If the Council's Representative and the Supplier's Representative are unable, or fail, to resolve the Dispute within 14 days following referral of the Dispute to them, the parties may attempt to resolve the Dispute by mediation in accordance with clause 40.3.
- 40.3 If, within 30 days of the Dispute Notice, the parties have failed to agree on a resolution, either party may refer any Dispute for mediation pursuant to this clause 40.3, but neither shall be a condition precedent to the commencement of any court proceedings, and either party may issue and commence court proceedings prior to or contemporaneously with the commencement of mediation. The following provisions shall apply to any such reference to mediation:

- (a) the reference shall be a reference under the Model Mediation Procedure (MMP) of the Centre of Dispute Resolution (CEDR) for the time being in force;
- (b) both parties shall, immediately on such referral, co-operate fully, promptly and in good faith with CEDR and the mediator and shall do all such acts and sign all such documents as CEDR or the mediator may reasonably require to give effect to such mediation, including an agreement in, or substantially in, the form of CEDR's Model Mediation Agreement for the time being in force; and
- (c) to the extent not provided for by such agreement of the MMP:
  - (i) the mediation shall commence by either party serving on the other written notice setting out, in summary form, the issues in dispute and calling on that other party to agree the appointment of a mediator; and
  - (ii) the mediation shall be conducted by a sole mediator agreed between the parties or, in default of agreement, appointed by CEDR.

40.4 Notwithstanding clause 40.3, if and to the extent that the parties do not resolve any Dispute or any issue in the course of any mediation, either party may commence or continue court proceedings in respect of such unresolved Dispute or issue.

40.5 Nothing in this clause 40 shall prevent either party from instigating legal proceedings where an order for an injunction, disclosure or legal precedent is required.

40.6 Without prejudice to the Council's right to seek redress in court, the Supplier shall continue to provide the Services and to perform its obligations under this agreement notwithstanding any Dispute or the implementation of the procedures set out in this clause 40.

#### **41. Assignment and other dealings**

41.1 The Supplier shall not assign, novate, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement without the prior written consent of the Council.

41.2 The Council may assign, novate, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under this agreement:

- (a) to any Contracting Authority, provided that it gives prior written notice of such dealing to the Supplier;
- (b) to any other body established by the Crown or under statute in order to substantially to perform any of the functions that had previously been performed by the Council;
- (c) any private sector body which substantially performs the functions of the Council;
- (d) a third party, provided that it obtains the Supplier's prior written consent, such consent not to be unreasonably withheld or delayed. In the case of a novation by the Council to a third party, the novation will on the basis that the third party



assumes all rights and obligations of the Council from the effective date of the novation, provided that:

- (i) the Council shall remain fully responsible for all liabilities arising prior to effective date of the novation;
- (ii) the third party has, in the reasonable opinion of the Supplier, sufficient resources to meet the ongoing financial obligations of the Council; and
- (iii) the Supplier is otherwise willing to provide the Services to that third party.

#### **42. Variation**

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

#### **43. Waiver**

A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

#### **44. Rights and remedies**

The rights and remedies of the Council provided under this agreement are in addition to, and not exclusive of, any of its rights or remedies provided by law.

#### **45. No partnership or agency**

45.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

45.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

#### **46. Announcements**

No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

#### **47. Severance**

47.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or

part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

47.2 If one party gives notice to the other of the possibility that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

#### **48. Further assurance**

Each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this agreement.

#### **49. Entire agreement**

This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

#### **50. Third party rights**

Save as provided for pursuant to Schedule 14 (*Employees*), no one other than a party to this agreement shall have any right to enforce any of its terms.

#### **51. Notices**

51.1 A notice given to a party under or in connection with this agreement shall be in writing and sent to the party at the address given in this agreement or as otherwise notified in writing to the other party.

51.2 The following table sets out methods by which a notice may be sent and its corresponding deemed delivery date and time:

<b>Delivery method</b>	<b>Deemed delivery date and time</b>
Delivery by hand.	On signature of a delivery receipt
Pre-paid first class post or other next working day delivery service.	9.00 am on the second Business Day after posting.
Pre-paid airmail providing proof of postage.	9.00 am on the fifth Business Day after posting.

51.3 For the purpose of clause 51.2 and calculating deemed receipt; all references to time are to local time in the place of deemed receipt.

51.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

51.5 A notice given under this agreement is not valid if sent by email.

**52. Counterparts**

- 52.1 This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 52.2 Transmission of an executed counterpart of this agreement (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this agreement. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.
- 52.3 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

**53. Governing law**

This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

**54. Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

Signed by [NAME OF HEAD OF PROCUREMENT] for and on behalf of The Metropolitan Borough of Solihull .....  
Head of Procurement

Signed by [NAME OF DIRECTOR] for and on behalf of [NAME OF SUPPLIER] .....  
Director

## Schedule 1 Specification

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[INSERT COUNCIL SPECIFICATION or REFER TO AN APPENDIX]

## Schedule 2 Service Description

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[INSERT SUPPLIERS SERVICE DELIVERY RESPONSE or REFER TO AN APPENDIX]

### Schedule 3 Implementation Plan

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[INSERT "NOT USED" IF THERE IS NO IMPLEMENTATION PLAN]

#### **Schedule 4 Authorised Service Recipients**

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[INSERT "NOT USED" IF IT IS ONLY THE COUNCIL RECEIVING THE SERVICES. IF A SERVICE IS BEING PROVIDED TO A SERVICE USER / CUSTOMER / CLIENT OF THE COUNCIL DETAILS TO BE INSERTED IN THIS SCHEDULE]

## Schedule 5 Service Levels

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### Part 1 Service Levels

[REFER BACK TO SPECIFICATION / TENDER RESPONSE]

Description	Target Response Time	Target Resolution Time

### Part 2 Critical Service Levels

[TO BE IDENTIFIED FROM THE SERVICE LEVELS]

Description	Target Response Time	Target Resolution Time

### Part 3 Critical Service Failure

In this agreement, **Critical Service Failure** shall further mean:

- (a) a failure to meet [INSERT NUMBER] or more Target KPIs in a rolling [INSERT NUMBER] month period.]

**[AND/OR]**

- (b) the Council serving [TWO] Remediation Notices in a rolling [SIX] month period.

**[AND/OR]**

- (c) the Supplier repeatedly breaching any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement.

### Part 4 Key Performance Indicators

[Suggestions to be finalised prior to tender and additional KPIs agreed with Supplier]



Key Performance Indicator (KPI)	KPI Target
<b>1. CONTRACT MANAGEMENT</b>	
1.1 Reports to be returned to the Council by the 5th Business Day of the succeeding month of the report.	100%
1.2 Number of errors contained in the Report identified by the Council	0%
1.3 Valid and correct invoices received on a [monthly] basis with supporting information to enable reconciliation.	100%
<b>2. OPERATIONAL EFFICIENCY/PRICE SAVINGS</b>	
2.1 The number of times the supplier has reported opportunities that could lead to process improvements, cost reduction, enhanced service, better sustainability, longer lasting products.	Target to be defined / refined within the first 6 months of the contract
<b>3. CUSTOMER SATISFACTION</b>	
3.1 Customer Complaints: Percentage of complaints resolved within [target time OR X days].	[99]%
3.3 Services delivered on time within the agreed timescales.	100%
3.4 Service availability 24/7/365 (where applicable in line with the Specification).	%
<b>4. INCIDENT RESOLUTION</b>	
4.1 The percentage of incidents resolved within Service Levels timescales	%
4.2 Zero incidents relating to health and safety or environmental legislation	100%

**Schedule 6 Sub-Contractors**

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<b>Name and address of Sub-Contractor</b>	<b>Registered address and company number</b>	<b>Product/service description</b>	<b>Term of Sub-Contract</b>	<b>[If the Sub-Contract is a Material Sub-Contract, price expressed as a percentage of total projected Charges over lifetime of this agreement]</b>
[INSERT]	[INSERT]	[INSERT]	[INSERT]	[INSERT]

## Schedule 7 Charges and Financial Distress

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### Part 1 Charges

1. [Implementation Service Charges]  
REMOVE IF NOT APPLICABLE
2. Operational Service Charges  
[INSERT DETAILS OF CHARGES]
3. [Transitional Assistance Service Charges]  
REMOVE IF NOT APPLICABLE

## Part 2 Financial Distress

### 1. Definitions

In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

**Financial Distress Event:** the occurrence or one or more of the following events:

- a) the credit rating of the Monitored Company dropping below the applicable Credit Rating Threshold;
- b) the Monitored Company issuing a profits warning to a stock exchange or making any other public announcement about a material deterioration in its financial position or prospects;
- c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Monitored Party;
- d) the Monitored Company committing a material breach of covenant to its lenders;
- e) a Key Sub-Contractor (where applicable) notifying the Council that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute; or
- f) any of the following:
  - i. commencement of any litigation against the Monitored Company with respect to financial indebtedness or obligations under a contract;
  - ii. non-payment by the Monitored Company of any financial indebtedness;
  - iii. any financial indebtedness of the Monitored Company becoming due as a result of an event of default; or
  - iv. the cancellation or suspension of any financial indebtedness in respect of the Monitored Company

in each case which the Council reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance of the Contract and delivery of the Deliverables in accordance with the Contract;

**Financial Distress Service Continuity Plan:** a plan setting out how the Supplier will ensure the continued performance and delivery of the Deliverables in accordance with each Contract in the event that a Financial Distress Event occurs;

**Monitored Company:** the Supplier, any Guarantor or any Key Sub-Contractor;

**Rating Agency:** the rating agency listed in Annex 1.

### 2. When this Schedule applies

- 2.1 The Parties shall comply with the provisions of this Schedule in relation to the assessment of the financial standing of the Monitored Companies and the consequences of a change to that financial standing.
- 2.2 The terms of this Schedule shall survive under Contract until the termination or Expiry Date of the Contract.

### **3. What happens when your credit rating changes**

- 3.1 The Supplier warrants and represents to the Council that as at the Effective Date the long term credit ratings issued for the Monitored Companies by each of the Rating Agencies are as set out in Annex 1.
- 3.2 The Supplier shall promptly (and in any event within 5 Business Days) notify the Council in writing if there is any downgrade in the credit rating issued by any Rating Agency for a Monitored Company.
- 3.3 If there is any downgrade credit rating issued by any Rating Agency for the Monitored Company the Supplier shall ensure that the Monitored Company's auditors thereafter provide the Council within 10 Business Days of the end of each Contract Year and within 10 Business Days of written request by the Council (such requests not to exceed 4 in any Contract Year) with written calculations of the quick ratio for the Monitored Company will be as at the end of each Contract Year or such other date as may be requested by the Council. For these purposes the "quick ratio" on any date means:

$$\frac{A + B + C}{D}$$

where:

- A is the value at the relevant date of all cash in hand and at the bank of the Monitored Company;
- B is the value of all marketable securities held by the Monitored Company determined using closing prices on the Business Day preceding the relevant date;
- C is the value at the relevant date of all account receivables of the Monitored Company; and
- D is the value at the relevant date of the current liabilities of the Monitored Company.
- 3.4 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Council in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event and in any event, ensure that such notification is made within 10 Business Days of the date on which the Supplier first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event.
- 3.5 For the purposes of determining whether a Financial Distress Event the credit rating of the Monitored Company (as the case may be) shall be deemed to have dropped below the applicable Credit Rating Threshold if any of the Rating Agencies have rated the Monitored Company at or below the applicable Credit Rating Threshold.

### **4. What happens if there is a financial distress event**

- 4.1 In the event of a Financial Distress Event then, immediately upon notification of the Financial Distress Event (or if the Council becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Council shall have the rights and remedies as set out in paragraphs 4.3 to 4.7.

- 4.2 In the event that a Financial Distress Event arises due to a Key Sub-Contractor notifying the Council that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute then, the Council shall not exercise any of its rights or remedies under paragraph 4.3 without first giving the Supplier 10 Business Days to:
- (a) rectify such late or non-payment; or
  - (b) demonstrate to the Council reasonable satisfaction that there is a valid reason for late or non-payment.
- 4.3 The Supplier shall and shall procure that the other Monitored Companies shall:
- (a) at the request of the Council meet the Council as soon as reasonably practicable (and in any event within 3 Business Days of the initial notification (or awareness) of the Financial Distress Event) to review the effect of the Financial Distress Event on the continued performance of the Contract and delivery of the Deliverables in accordance the Contract; and
  - (b) where the Council reasonably believes (taking into account the discussions and any representations made under paragraph 4.3(a)4.3) that the Financial Distress Event could impact on the continued performance of the Contract and delivery of the Deliverables in accordance with the Contract:
    - (i) submit to the Council for its Approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within 10 Business Days of the initial notification (or awareness) of the Financial Distress Event); and
    - (ii) provide such financial information relating to the Monitored Company as the Council may reasonably require.
- 4.4 If the Council does not (acting reasonably) approve the draft Financial Distress Service Continuity Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to the Council within 5 Business Days of the rejection of the first or subsequent (as the case may be) drafts. This process shall be repeated until the Financial Distress Service Continuity Plan is approved by the Council or referred to the Dispute Resolution Procedure.
- 4.5 If the Council considers that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not remedy the relevant Financial Distress Event, then it may either agree a further time period for the development and agreement of the Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the Dispute Resolution Procedure.
- 4.6 Following Approval of the Financial Distress Service Continuity Plan by the Council, the Supplier shall:
- (a) on a regular basis (which shall not be less than Monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance each Contract and delivery of the Deliverables in accordance with the Contract;
  - (b) where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with paragraph 4.6(a), submit an updated Financial Distress Service Continuity Plan to the Council for its Approval, and the provisions of

paragraphs 4.4 and 4.5 shall apply to the review and Approval process for the updated Financial Distress Service Continuity Plan; and

- (c) comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).

4.7 Where the Supplier reasonably believes that the relevant Financial Distress Event (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Council and subject to the agreement of the Parties, the Supplier may be relieved of its obligations under paragraph 4.5.

## **5. When can the Council or the Buyer terminate for financial distress**

5.1 The Council shall be entitled to terminate this Contract for material Default if:

- (a) the Supplier fails to notify the Council of a Financial Distress Event in accordance with paragraph 3.4; and/or
- (b) the Council and the Supplier fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraphs 4.3 to 4.4; and/or
- (c) the Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraph 4.6(c).

## ANNEX 1: Rating Agencies

Rating Agency 1: CreditSafe

## ANNEX 2: Credit Ratings and Credit Rating Thresholds

Entity	Credit rating (long term)	Credit Rating Threshold
Supplier	[to be populated with the Supplier's CreditSafe rating at the point of award]	Creditsafe – Low Risk
[Guarantor]	[to be populated with the Guarantor's CreditSafe ratings as at the point of award]	[Creditsafe – Very Low Risk]
[Key Sub-Contractor]	[to be populated with the Key Sub-Contractor's CreditSafe ratings at the point of award]	[Creditsafe – Low Risk]

## ANNEX 3: Monitored Companies

Entity	Company Registration Number:	Credit Rating Threshold
Supplier	[to be populated with the Supplier's Company Registration Number]	[to be populated with the Supplier's Registered Office Address]
[Guarantor]	[to be populated with the Guarantor's Company Registration Number]	[to be populated with the Guarantor's Registered Office Address]
[Key Sub-Contractor]	[to be populated with the Key Sub-Contractor's Company Registration Number]	[to be populated with the Sub-Contractor's Registered Office Address]



## Schedule 8 Standards and Policies

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### Mandatory Policies

The Council's Mandatory Policies, from time-to-time in place, as referred to in clause 30 (*Compliance with applicable laws and mandatory policies*) are listed below:

- Prevention of Bribery Policy
- Social Value Policy
- Counter Fraud and Corruption Policy
- Clean Air Strategy
- **[Add any other relevant policies to the Contract]**

These policies can be found at <https://www.solihull.gov.uk/About-the-Council/policies>

## Schedule 9 Key Personnel

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### Part 1 Council's Key Personnel

Name	Job title	Responsibilities
[INSERT DETAILS]	Council's Representative	[INSERT DETAILS]
[INSERT DETAILS]	Council's Implementation Services Manager	[INSERT DETAILS]
[INSERT DETAILS]	Council's Operational Services Manager	[INSERT DETAILS]
[INSERT DETAILS]	[OTHERS]	[INSERT DETAILS]

### Part 2 Supplier's Key Personnel

Name	Job title	Responsibilities
[INSERT DETAILS]	Supplier's Representative	[INSERT DETAILS]
[INSERT DETAILS]	Supplier's Implementation Services Manager	[INSERT DETAILS]
[INSERT DETAILS]	Supplier's Operational Services Manager	[INSERT DETAILS]
[INSERT DETAILS]	[OTHERS]	[INSERT DETAILS]

## Schedule 10 Contract and Service Management

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### Part 1 Authorised representatives

- 1.1. The Council's Representative: [INSERT DETAILS]
- 1.2. The Supplier's Representative: [INSERT DETAILS]

### Part 2 Key personnel

- 2.1. The Council's Operational Services Manager: [INSERT DETAILS]
- 2.2. The Supplier's Operational Services Manager: [INSERT DETAILS]

### Part 3 Meetings

- 3.1. Type: [INSERT DETAILS]
- 3.2. Quorum: [INSERT DETAILS]
- 3.3. Frequency: [Yearly, Half Yearly, Quarterly or Monthly]
- 3.4. Attendees: [INSERT DETAILS]
- 3.5. Agenda: [INSERT DETAILS]

### Part 4 Reports

- 4.1. Type: [INSERT DETAILS]
- 4.2. Contents: [INSERT DETAILS]
- 4.3. Frequency: [Yearly, Half Yearly, Quarterly or Monthly]
- 4.4. Circulation list: [INSERT DETAILS]

## Schedule 11 Software and Equipment

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### Part 1: Supplier's Software

[INSERT DETAILS]

### Part 2: Third Party Software

[INSERT DETAILS]

### Part 3: Council's Software

[INSERT DETAILS]

### Part 4: Council's Equipment

[INSERT DETAILS]

## Schedule 12 Change Control Procedure

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### 1. Principles

- 1.1. Where the Council or the Supplier sees a need to change this agreement, the Council may at any time request, and the Supplier may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 12 provided that such Change does not amount to a material change of this agreement within the meaning of the Regulations and the Applicable Law.
- 1.2. Until such time as a Change is made in accordance with the Change Control Procedure, the Council and the Supplier shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms prior to such Change.
- 1.3. Any discussions which may take place between the Council and the Supplier in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 1.4. Any work undertaken by the Supplier and the Supplier's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 12, shall be undertaken entirely at the expense and liability of the Supplier.

### 2. Procedures

- 2.1. Discussion between the Council and the Supplier concerning a Change shall result in any one of the following:
  - a) no further action being taken; or
  - b) a request to change this agreement by the Council; or
  - c) a recommendation to change this agreement by the Supplier.
- 2.2. Where a written request for an amendment is received from the Council, the Supplier shall, unless otherwise agreed, submit one copy of a Change Control Note signed by the Supplier to the Council within three weeks of the date of the request.
- 2.3. A recommendation to amend this agreement by the Supplier shall be submitted directly to the Council in the form of one copy of a Change Control Note signed by the Supplier at the time of such recommendation. The Council shall give its response to the Change Control Note within three weeks.
- 2.4. Each Change Control Note shall contain:
  - a) the title of the Change;
  - b) the originator and date of the request or recommendation for the Change;
  - c) the reason for the Change;
  - d) full details of the Change, including any specifications;
  - e) the price, if any, of the Change;

- f) a timetable for implementation, together with any proposals for acceptance of the Change;
  - g) a schedule of payments if appropriate;
  - h) the date of expiry of validity of the Change Control Note; and
  - i) provision for signature by the Council and the Supplier.
- 2.5. For each Change Control Note submitted by the Supplier the Council shall, within the period of the validity of the Change Control Note:
- a) allocate a sequential number to the Change Control Note; and
  - b) evaluate the Change Control Note and, as appropriate:
    - (i) request further information; or
    - (ii) arrange for one copy of the Change Control Note to be signed by or on behalf of the Council and return to the Supplier; or
    - (iii) notify the Supplier of the rejection of the Change Control Note.
- 2.6. A Change Control Note signed by the Council and by the Supplier shall constitute an amendment to this agreement.

## Schedule 13 Exit Plan and Service transfer arrangements

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### 1. Definitions

The definitions in this paragraph apply in this Schedule 13.

**Assets:** all assets and rights required to provide any of the Services in accordance with this agreement including without limitation the Supplier's Equipment but excluding the Council's Assets.

**Business Process Manual:** the manual which is prepared by the Supplier and which details the business procedures which it follows in the provision of the Services.

**Exclusive Assets:** those Assets which are used by the Supplier or a Material Sub-Contractor exclusively in connection with the provision of the Services.

**Net Book Value:** the net book value of the relevant Asset(s) calculated in accordance with the depreciation policy in the letter addressed to the Council from the Supplier of even date of this agreement.

**Non-Exclusive Assets:** those Assets used by the Supplier or a Material Sub-Contractor in connection with the provision of the Services but which are also employed by the Supplier or Material Sub-Contractor for other purposes.

**Registers:** the registers and database referred to in paragraph 4.2(a) and paragraph 4.2(b) of this Schedule 13.

**Transferable Assets:** those of the Exclusive Assets which are capable of legal transfer to the Council.

**Transferable Contracts:** the Sub-Contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Council or any Replacement Supplier to perform the Services or the Replacement Services.

**Transferring Assets:** as set out in paragraph 6.1(a) of this Schedule 13.

**Transferring Contracts:** as set out in paragraph 6.1(c) of this Schedule 13.

**Transitional Assistance Notice:** has the meaning set out in paragraph 5 of this Schedule 13.

**Transitional Assistance Service Charges:** the charges (if any) payable by the Council to the Supplier for the provision of the Transitional Assistance Services, which are set out in accordance with Schedule 7 (*Charges and Financial Distress*).

**Transitional Assistance Services:** the services to be provided by the Supplier to the Council pursuant to clause 399 (*Exit and service transfer*) in order to facilitate the transfer of the Services to the Council or a Replacement Supplier.

**Transitional Period:** has the meaning set out in paragraph 5.1. ( c ) of this Schedule 13

## **2. Purpose of Schedule**

- 2.1.** The Supplier is required to ensure the orderly transition of the Services from the Supplier to the Council or any Replacement Supplier in the event of any termination (including partial termination) or expiry of this agreement. This Schedule sets out the principles of the exit and service transition arrangements which are intended to achieve this and upon which the Exit Plan shall be based.
- 2.2.** For the avoidance of doubt the Supplier is responsible for the overall management of the exit and Service transfer arrangements.

## **3. Exit Plan**

The Exit Plan shall:

- (a) address each of the issues set out in this Schedule 13 to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Council and shall ensure that there is no disruption in the supply of the Services and no deterioration in the quality of delivery of the Services;
- (b) detail how the Services will transfer to the Replacement Supplier and/or the Council including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Council's technology components from any technology components run by the Supplier or any of its Sub-Contractors (where applicable);
- (c) specify the scope of the Transitional Assistance Services that may be required by the Council, (subject to paragraph 9 of this Schedule 13) any charges that would be payable for the provision of Transitional Assistance Services and detail how such services would be provided (if required) during the Termination Period;
- (d) provide a timetable and identify critical issues for carrying out the Transitional Assistance Services; and
- (e) set out the management structure to be put in place and employed during the Termination Period.

## **4. Obligations during the Term**

- 4.1.** The Supplier and the Council shall each appoint an exit manager and provide written notification of such appointment to each other within **[six months]** after the Effective Date. The Supplier's exit manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-Contractors comply with this Schedule. The Supplier shall ensure that its exit manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with this Schedule 13. The exit managers shall liaise with one another in relation to all issues relevant to termination or expiry and all matters connected with this Schedule 13 and each party's compliance with it.
- 4.2.** During the Term, the Supplier shall:
- (a) create and maintain a register of:



- (i) all assets, detailing their ownership status as either Exclusive Assets (separately identifying Transferable Assets) or Non-Exclusive Assets and their Net Book Value; and
    - (ii) all Sub-Contracts and other agreements (separately identifying Transferable Contracts) required to perform the Services;
  - (b) create and maintain a database setting out the Supplier's technical infrastructure through which the Services are delivered. Such database shall be capable of allowing staff of the Replacement Supplier and/or the Council to acquire sufficient technical understanding of how the Supplier provides the Services to ensure the smooth transition of the Services with the minimum of disruption; and
  - (c) at all times keep the Registers up to date and shall maintain copies of any agreements referred to in any Register.
- 4.3.** The parties shall agree the format of the Registers as part of the process of agreeing the first Exit Plan.
- 4.4.** At the same time as the Supplier submits a revised Exit Plan, it shall also submit to the Council up-to-date Registers.
- 4.5.** The Supplier shall ensure all Exclusive Assets are clearly marked to identify that they are exclusively used for the provision of the Services under this agreement.
- 4.6.** The Supplier shall procure that all licences for Third Party Software entered into with effect from or after the Effective Date and all Sub-Contracts shall be assignable or capable of novation at the request of the Council to the Council and/or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Council. If the Supplier cannot procure such rights then the Supplier shall consult with the Council on whether the rights that can be obtained are nevertheless acceptable to the Council or whether the Supplier should seek an alternative provider of the goods or services to which the relevant agreement relates.
- 4.7.** On reasonable notice, the Supplier shall provide to the Council and/or to its Replacement Supplier (subject to the Replacement Supplier entering into reasonable written confidentiality undertakings with the Supplier), such material and information as the Council shall [reasonably] require in order to facilitate the preparation by the Council of any invitation to tender and/or to facilitate any potential Replacement Supplier undertaking due diligence (including in relation to the Services, Assets, Council's Data, Registers and Transferring Employees).

## **5. Transitional Assistance Services**

- 5.1.** The Council shall be entitled to require the provision of Transitional Assistance Services by sending the Supplier a notice to that effect (**Transitional Assistance Notice**) at any time prior to termination or expiry. The Transitional Assistance Notice shall specify:
- (a) the date from which Transitional Assistance Services are required;
  - (b) the nature and extent of the Transitional Assistance Services required; and
  - (c) the period during which it is anticipated that Transitional Assistance Services will be required (**Transitional Period**) (which shall continue no longer than **[INSERT PERIOD]** after the date that the Supplier ceases to provide the Services or, in the event that a Termination Period is specified by the Council, no longer than the end of the Termination Period).

- 5.2. The Council shall have an option to extend the Transitional Period beyond the period specified in the Transitional Assistance Notice by written notice to the Supplier provided that such extension shall not extend beyond **[INSERT PERIOD]** after the expiry of the period referred to in paragraph 5.1(b) of this Schedule 13.
- 5.3. The Council shall have the right to terminate its requirement for Transitional Assistance Services by serving not less than **[20 days']** notice upon the Supplier to such effect.
- 5.4. The Transitional Assistance Services shall be provided in good faith and in accordance with Best Industry Practice.
- 5.5. The Supplier shall continue to provide the Services (or the relevant part of them) during the Transitional Period in accordance with the Service Levels unless the parties agree otherwise pursuant to paragraph 5.6 of this Schedule 13.
- 5.6. Where the Supplier demonstrates to the Council's reasonable satisfaction that transfer of the Services during the Transitional Period will have a material adverse effect on the Supplier's ability to meet a particular Service Level and such adverse effect is not due to a failure by the Supplier to perform this agreement, the parties shall vary the relevant Service Level to take account of such adverse effect.
- 5.7. During the Transitional Period, the Supplier shall, in addition to providing the Services and the Transitional Assistance Services, provide to the Council any reasonable assistance requested by the Council to allow the Services to continue without interruption and to facilitate the orderly transfer of the Services. The Supplier shall use all reasonable endeavours to reallocate resources to provide these services without additional costs. However if this is not possible, any additional reasonable costs incurred by the Supplier in this regard which are not already in the scope of the Transitional Assistance Services or the Exit Plan shall be provided on a time-and-materials basis in accordance with the applicable rates set out in Schedule 7 and subject to agreement under the Change Control Procedure.
- 5.8. The Council and the Supplier acknowledge that the transition of the Services to the Replacement Supplier may be phased over a period of time so that certain identified Services are transferred to the Replacement Supplier before others.
- 5.9. The Council shall, at the Supplier's reasonable request, require the Replacement Supplier and any agent or personnel of the Replacement Supplier, to enter into an appropriate confidentiality undertaking with the Supplier.
- 5.10. The Supplier shall comply with all of its obligations contained in the Exit Plan.
- 5.11. From the date **[six months]** before expiry or from the service by either party of any Termination Notice (whichever is the earlier) and during any Termination Period, the Supplier shall not terminate or vary in any material respect any Transferable Contract without the Council's prior written consent, such consent not to be unreasonably withheld or delayed.
- 5.12. The Supplier shall comply with all of its obligations regarding its personnel in accordance with Schedule 14 (Employees) and **Error! Reference source not found.** (Pensions).
- 5.13. Upon termination or expiry (as the case may be) or upon expiration of the Termination Period or, provided that it does not have an adverse impact on the ability of the Supplier to provide the Services or the Transitional Assistance Services at any time during the Termination Period (as the Council shall require):
  - (a) the Supplier shall cease to use the Council's Data and, at the direction of the Council either:

- (i) provide the Council or Replacement Supplier with a complete and uncorrupted version of the Council's Data in electronic form (or such other format as reasonably required by the Council); or
- (ii) destroy (including removal from any hard disk) or return (at the Council's option) all copies of the Council's Data [not required to be retained by the Supplier for statutory compliance purposes] and confirm in writing that such destruction has taken place;
- (b) the Supplier shall erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Period any software containing the IPRs owned by the Council;
- (c) the Supplier shall return to the Council such of the following as are in the Supplier's possession or control:
  - (i) all Council's Assets;
  - (ii) all materials created by the Supplier under this agreement, the IPRs in which are owned by the Council; and
  - (iii) any items that have been on-charged to the Council, such as consumables.
- (d) the Supplier shall vacate any Council's Premises; and
- (e) each party shall return to the other party all Confidential Information of the other party and shall certify that it does not retain the other party's Confidential Information.

**5.14.** The Transitional Assistance Services to be provided by the Supplier shall include (without limitation) such of the following services as the Council may specify:

- (a) providing to the Council an up-to-date Business Process Manual;
- (b) providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Council or Replacement Supplier after the end of the Termination Period;
- (c) providing details of work volumes and staffing requirements over the preceding 12 months;
- (d) analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth;
- (e) transferring all training material and providing appropriate training to those Council and/or Replacement Supplier staff responsible for internal training in connection with the provision of the Services;
- (f) providing for transfer to the Council and/or the Replacement Supplier of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents; and
- (g) answering all reasonable questions from the Council and/or the Replacement Supplier regarding the Services.

## 6. Transfer of assets and contracts

6.1. Not less than 3 months prior to expiry or, in the case of termination, as soon as practicable (but in any event not later than 1 month following delivery of the up-to-date Registers) or in the event of a Termination Period, not later than 1 month prior to the date of expiration of the Termination Period, the Council shall notify the Supplier:

- (a) which, if any, of the Transferable Assets the Council requires to be transferred to it and/or any Replacement Supplier (**Transferring Assets**);
- (b) which, if any, of the Exclusive Assets which are not Transferable Assets and which of the Non-Exclusive Assets the Council and/or the Replacement Supplier requires the continued use of; and
- (c) which Transferable Contracts the Council requires to be transferred to it and/or to the Replacement Supplier or any other licences of the Supplier's Software or Third Party Software required by the Council and/or the Replacement Supplier (**Transferring Contracts**)

in order for the Council or the Replacement Supplier to provide the Replacement Services from the end of the Termination Period. At the request of the Council the Supplier shall provide such assistance as may be necessary to help the Council and/or the Replacement Supplier to identify which Assets and which Transferable Contracts are required for the continued provision of the Services and the provision of the Replacement Services.

6.2. The Supplier shall sell the Transferring Assets to the Council or the Replacement Supplier (as determined by the Council) with effect from the end of the Termination Period and the sale shall take place at such place as the Council shall specify. The Council or the Replacement Supplier shall acquire the Transferring Assets at Net Book Value. Risk in such Transferring Assets shall pass to the Council or the Replacement Supplier (as appropriate) at the end of the Termination Period and title to such Transferring Assets shall pass to the Council or the Replacement Supplier (as appropriate) on payment for the same.

6.3. Where the Supplier is notified in accordance with paragraph 6.1(b) that the Council and/or the Replacement Supplier requires continued use of any of the Exclusive or Non-Exclusive Assets, the Supplier shall:

- (a) procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Council) for the Council and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms) or, failing which;
- (b) procure a suitable alternative to such assets and the Council or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.

6.4. The Supplier shall at the Council's request and with the co-operation of the Council procure the novation or assignment to the Council and/or Replacement Supplier of the Transferring Contracts.

6.5. The Council shall:

- (a) accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
- (b) once a Transferring Contract is novated or re-assigned to the Council or the Replacement Supplier, the Council shall carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and

exercise its rights arising under that Transferring Contract or, as applicable, procure that the Replacement Supplier does the same.

- 6.6. The Supplier shall indemnify the Council (or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a party to a Transferring Contract which is assigned or novated to the Council (or Replacement Supplier) pursuant to paragraph 6.4 of this Schedule 13 in relation to any matters arising prior to the date of such assignment or novation.
- 6.7. The Council shall notify the Supplier of any obligation under any Transferring Contract which has been or will be novated or assigned under this paragraph which it is unable to carry out or perform without the assistance of the Supplier. The Supplier shall provide all reasonable assistance to the Council to enable it to comply with that obligation.

7. **[Post-termination support]**

[The Supplier shall at the Council's request provide ongoing support of the Supplier's Software and the Third Party Software on its normal commercial terms [at a price no less favourable than the Supplier's then current standard rates] in respect of such support services for as long as it is required.]

8. **Payment on termination or expiry**

- 8.1. Subject to paragraph **Error! Reference source not found.**6.2 of this Schedule 13, the Council shall, or shall procure that the Replacement Supplier shall, pay to the Supplier the price determined in accordance with paragraph 6 of this Schedule 13:
- (a) for the Transferring Assets; and/or
  - (b) for the continued use of the Exclusive Assets and Non-Exclusive Assets as referred to in paragraph 6.1(b) of this Schedule 13.

9. **Charges**

- 9.1. Except as otherwise expressly specified in this Agreement in Schedule 7 (*Charges and Financial Distress*), the Supplier shall not make any charges for the services provided by the Supplier pursuant to, and the Council shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with, this Schedule including the preparation and implementation of the Exit Plan, the Termination Assistance Services and any activities mutually agreed between the Parties to carry on after the expiry of the Transitional Assistance Period.

10. **Apportionments**

- 10.1. There shall be apportioned between the Council and the Supplier or the Replacement Supplier and the Supplier all outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts.
- 10.2. This apportionment shall be carried out as follows:
- (a) the payments shall be annualised and divided by 365 to reach a daily rate;
  - (b) the Council shall be responsible for or shall procure that its nominee or the Replacement Supplier shall be responsible for or entitled to (as the case may be) an amount equal to the number of complete days during the period of the invoice after the transfer multiplied by that daily rate; and

(c) the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.

**10.3.** Each party shall pay and the Council shall procure that its nominee or the Replacement Supplier shall pay any monies due under this paragraph 10 as soon as practicable.

## Schedule 14 Employees

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### **PART A – No TUPE on Commencement**

#### **1. Definitions**

The definitions in this paragraph apply in this Schedule 14.

**Employee Liabilities:** all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (b) unfair, wrongful or constructive dismissal compensation;
- (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (d) compensation for less favourable treatment of part-time workers or fixed term employees;
- (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- (f) employment claims whether in tort, contract or statute or otherwise;
- (g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

**Employment Regulations:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other regulations implementing the Acquired Rights Directive;

**Former Supplier:** a supplier supplying services to the Council before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);

**Relevant Transfer:** a transfer of employment to which the Employment Regulations applies;

**Relevant Transfer Date:** in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;

**Replacement Services:** any services which are the same as or substantially similar to the Services following the expiry or termination of Partial Termination of this Agreement, whether those services are provided by the Council internally and/or by any third party;

**Replacement Supplier:** any third party service provider of Replacement Services appointed by the Council from time to time (or where the Council is providing replacement Services for its own account, the Council);

**Replacement Sub-Contractor:** a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such Sub-Contractor);

**Service Transfer:** any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-Contractor to a Replacement Supplier or a Replacement Sub-Contractor;

**Service Transfer Date:** the date of a Service Transfer;

**Staffing Information:** in relation to all persons identified on the Supplier's Provisional Personnel List or Supplier's Final Personnel List, as the case may be, such information as the Council may reasonably request (subject to all applicable provisions of the Data Protection Act 2018), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement and gender;
- (b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting Party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;



**Supplier Personnel:** all directors, officers, employees, agents, consultants and contractors of the Supplier and/or any Sub-Contractor engaged in the performance of the Supplier's obligations under this Agreement;

**Supplier's Final Personnel List:** a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Relevant Transfer Date;

**Supplier's Provisional Personnel List:** a list prepared and updated by the Supplier of all Supplier Personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier; and

**Transferring Supplier Employees:** those employees of the Supplier and/or the Supplier's Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date

## **2. Interpretation**

**2.1.** Where a provision in this Schedule imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-Contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Council, Former Supplier, Replacement Supplier or Replacement Sub-Contractor, as the case may be.

## **3. Procedure in the Event of Transfer**

**3.1.** The Council and the Supplier believe that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Council and/or any Former Supplier.

**3.2.** If any employee of the Council and/or a Former Supplier claims, or it is determined in relation to any employee of the Council and/or a Former Supplier, that his/her contract of employment has been transferred from the Council and/or the Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

(a) the Supplier shall, and shall procure that the relevant Sub-Contractor shall, within 5 Business Days of becoming aware of that fact, give notice in writing to the Council and, where required by the Council, give notice to the Former Supplier; and

(b) the Council and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Business Days of the notification by the Supplier or the Sub-Contractor (as appropriate) or take such other reasonable steps as the Council or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with Applicable Law.

**3.3.** If an offer referred to in clause 3.2(b) is accepted (or if the situation has otherwise been resolved by the Council and/or the Former Supplier), the Supplier shall, or shall procure that the Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.

**3.4.** If by the end of the 15 Business Day period specified in clause 3.2(b):

(a) no such offer of employment has been made;

- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved;

any such persons shall be treated as having transferred to the Supplier or any relevant Sub-Contractor and the Supplier shall or shall procure the Sub-Contractor shall comply with such obligations as may be imposed upon it under Applicable Law.

- 3.5.** Where any person remains employed by the Supplier and/or any Sub-contractor pursuant to clause 3.4, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-contractor and the Supplier shall indemnify the Council and any Former Supplier, and shall procure that the Sub-contractor shall indemnify the Council and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-contractor.

## OR

### **PART A – TUPE on Commencement between Independent Suppliers**

#### **1. Definitions**

In this Schedule, the following definitions shall apply:

**Employee Liabilities:** all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (b) unfair, wrongful or constructive dismissal compensation;
- (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (d) compensation for less favourable treatment of part-time workers or fixed term employees;
- (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- (f) employment claims whether in tort, contract or statute or otherwise;
- (g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

**Employment Regulations:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other regulations implementing the Acquired Rights Directive;

**Former Supplier:** a supplier supplying services to the Council before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);

**Relevant Transfer:** a transfer of employment to which the Employment Regulations applies;

**Relevant Transfer Date:** in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;

**Replacement Services:** any services which are the same as or substantially similar to the Services following the expiry or termination of Partial Termination of this Agreement, whether those services are provided by the Council internally and/or by any third party;

**Replacement Sub-contractor:** a Sub-Contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such Sub-Contractor);

**Replacement Supplier:** any third party service provider of Services appointed by the Council from time to time (or where the Council is providing replacement Services for its own account, the Council);

**Service Transfer:** any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-Contractor to a Replacement Supplier or a Replacement Sub-Contractor;

**Service Transfer Date:** the date of a Service Transfer;

**Staffing Information:** in relation to all persons identified on the Supplier's Provisional Personnel List or Supplier's Final Personnel List, as the case may be, such information as the Council may reasonably request (subject to all applicable provisions of the Data Protection Act 2018), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement and gender;
- (b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting Party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;

**Supplier's Final Personnel List:** a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Relevant Transfer Date;

**Supplier Personnel:** all directors, officers, employees, agents, consultants and contractors of the Supplier and/or any Sub-Contractor engaged in the performance of the Supplier's obligations under this Agreement;

**Supplier's Provisional Personnel List:** a list prepared and updated by the Supplier of all Supplier Personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;

**Transferring Former Supplier Employees:** in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date; and

**Transferring Supplier Employees:** those employees of the Supplier and/or the Supplier's Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date.

## **2. Interpretation**

Where a provision in this Schedule imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-Contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Council, Former Supplier, Replacement Supplier or Replacement Sub-Contractor, as the case may be.

## **3. Relevant Transfers**

**3.1.** The Council and the Supplier agree that:

- (a) the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and
- (b) as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms dis-applied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or Sub-Contractor and each such Transferring Former Supplier Employee.

**3.2.** The Council shall use reasonable endeavours to procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier shall make, and the Council shall use reasonable endeavours to procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.

## **4. Former Supplier Indemnities**

**4.1.** Subject to paragraph 4.2, the Council shall use reasonable endeavours to procure that each Former Supplier shall indemnify the Supplier and any Sub-Contractor against any Employee Liabilities in respect of any Transferring Former Supplier Employee (or, where applicable

any employee representative as defined in the Employment Regulations) arising from or as a result of:

- (a) any act or omission by the Former Supplier arising before the Relevant Transfer Date;
- (b) the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Former Supplier Employees; and/or
  - (ii) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;
- (c) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier and/or any Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
- (d) a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;
- (e) any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Sub-Contractor as appropriate may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
- (f) any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.

**4.2.** The indemnities in paragraph 4.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor (whether

or not a Sub-Contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or
- (b) arising from the failure by the Supplier and/or any Sub-Contractor to comply with its obligations under the Employment Regulations.

**4.3.** If any person who is not identified by the Council as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by the Council as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

- (a) the Supplier shall, or shall procure that the Sub-Contractor shall, within 5 Business Days of becoming aware of that fact, give notice in writing to the Council and, where required by the Council, to the Former Supplier; and
- (b) the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Business Days of the notification by the Supplier and/or the Sub-Contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

**4.4.** If an offer referred to in paragraph 4.3(b) is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Council, the Supplier shall, or shall procure that the Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.

**4.5.** If by the end of the 15 Business Day period specified in paragraph 4.3(b):

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved,

any such person shall be treated as having transferred to the Supplier or any Sub-Contractor and the Supplier shall, or shall procure that the Sub-Contractor shall, comply with such obligations as may be imposed upon it under the Law.

## **5. Supplier Indemnities and Obligations**

**5.1.** Subject to paragraph 5.2, the Supplier shall indemnify the Council and/or the Former Supplier against any Employee Liabilities in respect of any Transferring Former Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

- (a) any act or omission by the Supplier or any Sub-Contractor whether occurring before, on or after the Relevant Transfer Date;
- (b) the breach or non-observance by the Supplier or any Sub-Contractor on or after the Relevant Transfer Date of:

- (i) any collective agreement applicable to the Transferring Former Supplier Employee; and/or
  - (ii) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub-Contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- (d) any proposal by the Supplier or a Sub-Contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Supplier or a Sub-Contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Council and/or the Former Supplier in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a Sub-Contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- (g) a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date; and
- (h) any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of



any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations.

- 5.2.** The indemnities in paragraph 5.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.
- 5.3.** The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.
- 5.4.** The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to this paragraph 5, to the extent necessary to ensure that any Former Supplier shall have the right to enforce the obligations owed to, and indemnities given to, the Former Supplier by the Supplier in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 5.5.** Despite paragraph 5.4, it is expressly agreed that the parties may by agreement rescind or vary any terms of this Agreement without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

## **6. Information**

The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to the Council and/or at the Council's direction, the Former Supplier, in writing such information as is necessary to enable the Council and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. The Council shall use reasonable endeavours to procure that the Former Supplier shall promptly provide to the Supplier and each Notified Sub-Contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

## **PART B - EMPLOYMENT EXIT PROVISIONS**

### **1. Pre-Service Transfer Obligations**

**1.1.** The Supplier agrees that within 20 Business Days of the earliest of:

- (a) receipt of a notification from the Council of a Service Transfer or intended Service Transfer;
- (b) receipt of the giving of notice of early termination or any Partial Termination of this Agreement;
- (c) the date which is 12 months before the end of the Term; and
- (d) receipt of a written request of the Council at any time (provided that the Council shall only be entitled to make one such request in any six month period)

it shall provide in a suitably anonymised format so as to comply with the Data Protection Act 2018 legislation, the Supplier's Provisional Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Personnel List and it shall provide an updated Supplier's Provisional Personnel List at such intervals as are reasonably requested by the Council.

**1.2.** At least 28 Business Days prior to the Service Transfer Date, the Supplier shall provide to the Council or at the direction of the Council to any Replacement Supplier and/or any Replacement Sub-Contractor:

- (a) the Supplier's Final Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
- (b) the Staffing Information in relation to the Supplier's Final Personnel List (insofar as such information has not previously been provided).

**1.3.** The Council shall be permitted to use and disclose information provided by the Supplier under paragraph 1.1 and paragraph 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-Contractor.

**1.4.** The Supplier warrants, for the benefit of the Council, any Replacement Supplier, and any Replacement Sub-Contractor that all information provided pursuant to paragraph 1.1 and paragraph 1.2 shall be true and accurate in all material respects at the time of providing the information.

**1.5.** From the date of the earliest event referred to in paragraph 1.1(a), paragraph 1.1(b) and paragraph 1.1(c), the Supplier agrees, that it shall not, and agrees to procure that each Sub-Contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Personnel List and shall not without the approval of the Council (not to be unreasonably withheld or delayed):

- (a) replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
- (b) make, promise, propose or permit any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment);

- (c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Personnel List;
- (e) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- (f) terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-Contractor shall promptly notify, the Council or, at the direction of the Council, any Replacement Supplier and any Replacement Sub-Contractor of any notice to terminate employment given by the Supplier or relevant Sub-Contractor or received from any persons listed on the Supplier's Provisional Personnel List regardless of when such notice takes effect.

**1.6.** During the Term, the Supplier shall provide, and shall procure that each Sub-Contractor shall provide, to the Council any information the Council may reasonably require relating to the manner in which the Services are organised, which shall include:

- (a) the numbers of employees engaged in providing the Services;
- (b) the percentage of time spent by each employee engaged in providing the Services; and
- (c) a description of the nature of the work undertaken by each employee by location.

**1.7.** The Supplier shall provide, and shall procure that each Sub-Contractor shall provide, all reasonable cooperation and assistance to the Council, any Replacement Supplier and/or any Replacement Sub-Contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Business Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-Contractor shall provide, to the Council or, at the direction of the Council, to any Replacement Supplier and/or any Replacement Sub-Contractor (as appropriate), in respect of each person on the Supplier's Final Personnel List who is a Transferring Supplier Employee:

- (a) the most recent month's copy pay slip data;
- (b) details of cumulative pay for tax and pension purposes;
- (c) details of cumulative tax paid;
- (d) tax code;
- (e) details of any voluntary deductions from pay; and
- (f) bank/building society account details for payroll purposes.

## **2. Employment Regulations Exit Provisions**

- 2.1.** The Council and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Agreement or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-Contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Council and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms dis-applied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-Contractor (as the case may be) and each such Transferring Supplier Employee.
- 2.2.** The Supplier shall, and shall procure that each Sub-Contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-Contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-Contractor.
- 2.3.** Subject to paragraph 2.4, the Supplier shall indemnify the Council and/or the Replacement Supplier and/or any Replacement Sub-Contractor against any Employee Liabilities in respect of any Transferring Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- (a) any act or omission of the Supplier or any Sub-Contractor whether occurring before, on or after the Service Transfer Date;
  - (b) the breach or non-observance by the Supplier or any Sub-Contractor occurring on or before the Service Transfer Date of:
    - (i) any collective agreement applicable to the Transferring Supplier Employees; and/or
    - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-Contractor is contractually bound to honour;
  - (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
  - (d) any proceeding, claim or demand by HMRC or other statutory Council in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

- (i) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory Council relates to financial obligations arising on and before the Service Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Council and/or Replacement Supplier and/or any Replacement Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory Council relates to financial obligations arising on or before the Service Transfer Date;
- (e) a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);
  - (f) any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-Contractor other than a Transferring Supplier Employee for whom it is alleged the Council and/or the Replacement Supplier and/or any Replacement Sub-Contractor may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
  - (g) any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Council and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.
- 2.4.** The indemnities in paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-Contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
- (a) arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-Contractor to occur in the period on or after the Service Transfer Date); or
  - (b) arising from the Replacement Supplier's failure, and/or Replacement Sub-Contractor's failure, to comply with its obligations under the Employment Regulations.
- 2.5.** If any person who is not a Transferring Supplier Employee claims, or it is determined in relation to any person who is not a Transferring Supplier Employee, that his/her contract of employment has been transferred from the Supplier or any Sub-Contractor to the Replacement Supplier and/or Replacement Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

- (a) the Council shall procure that the Replacement Supplier shall, or any Replacement Sub-Contractor shall, within 5 Business Days of becoming aware of that fact, give notice in writing to the Supplier; and
  - (b) the Supplier may offer (or may procure that a Sub-Contractor may offer) employment to such person within 15 Business Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-Contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.6.** If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-Contractor, the Council shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-Contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 2.7.** If after the 15 Business Day period specified in paragraph 2.5(b) has elapsed:
- (a) no such offer of employment has been made;
  - (b) such offer has been made but not accepted; or
  - (c) the situation has not otherwise been resolved

the Council shall advise the Replacement Supplier and/or Replacement Sub-Contractor, as appropriate that it may within 5 Business Days give notice to terminate the employment or alleged employment of such person.

- 2.8.** Subject to the Replacement Supplier and/or Replacement Sub-Contractor acting in accordance with the provisions of paragraph 2.5 to paragraph 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-Contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.9.** The indemnity in paragraph 2.8:
- (a) shall not apply to:
    - (i) in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-Contractor, any claim for: (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees; or
    - (ii) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-Contractor neglected to follow a fair dismissal procedure; and
  - (b) shall apply only where the notification referred to in paragraph 2.5(a) is made by the Replacement Supplier and/or Replacement Sub-Contractor to the Supplier within six months of the Service Transfer Date.

- 2.10.** If any such person as is described in paragraph 2.5 is neither re-employed by the Supplier or any Sub-Contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-Contractor within the time scales set out in paragraph 2.5 to paragraph 2.7, such person shall be treated as a Transferring Supplier Employee and the Replacement Supplier and/or Replacement Sub-Contractor shall comply with such obligations as may be imposed upon it under applicable Law.
- 2.11.** The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of the Transferring Supplier Employees before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
- (a) the Supplier and/or any Sub-Contractor; and
  - (b) the Replacement Supplier and/or the Replacement Sub-Contractor.
- 2.12.** The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to the Council and any Replacement Supplier and/or Replacement Sub-Contractor, in writing such information as is necessary to enable the Council, the Replacement Supplier and/or Replacement Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Council shall procure that the Replacement Supplier and/or Replacement Sub-Contractor shall promptly provide to the Supplier and each Sub-Contractor in writing such information as is necessary to enable the Supplier and each Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.13.** Subject to paragraph 2.14, the Council shall use reasonable endeavours to procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-Contractor and its sub-contractors against any Employee Liabilities in respect of each Transferring Supplier Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee) arising from or as a result of:
- (a) any act or omission of the Replacement Supplier and/or Replacement Sub-Contractor;
  - (b) the breach or non-observance by the Replacement Supplier and/or Replacement Sub-Contractor on or after the Service Transfer Date of:
    - (i) any collective agreement applicable to the Transferring Supplier Employees; and/or
    - (ii) any custom or practice in respect of any Transferring Supplier Employees which the Replacement Supplier and/or Replacement Sub-Contractor is contractually bound to honour;
  - (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

- (d) any proposal by the Replacement Supplier and/or Replacement Sub-Contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees on or after their transfer to the Replacement Supplier or Replacement Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-Contractor to, or in respect of, any Transferring Supplier Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory Council in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory Council relates to financial obligations arising after the Service Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-Contractor, to the Replacement Supplier or Replacement Sub-Contractor to the extent that the proceeding, claim or demand by HMRC or other statutory Council relates to financial obligations arising after the Service Transfer Date;
- (g) a failure of the Replacement Supplier or Replacement Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period from (and including) the Service Transfer Date; and
- (h) any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations.

**2.14.** The indemnities in paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-Contractor (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-Contractor (as applicable) to comply with its obligations under the Employment Regulations.



- 2.15.** The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to this paragraph 2, to the extent necessary to ensure that any Replacement Supplier shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Supplier by the Supplier in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 2.16.** Despite paragraph 2.15, it is expressly agreed that the parties may by agreement rescind or vary any terms of this Agreement without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

## Schedule 15 Data Processing

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The **GENERAL DATA PROTECTION REGULATIONS (UK GDPR)** makes it mandatory that the council obtains contractual guarantees from all third parties that process personal information on its behalf. It also requires that the council ensure that they have measures in place to prevent unauthorised or unlawful processing of personal information and to prevent accidental loss, destruction or damage to any personal information they are processing on our behalf.

Where the Supplier is processing personal information (as defined by Data Protection legislation) on behalf of the council, the Supplier shall only use the personal information in accordance with instructions from the Council Standard Terms & Conditions of Contract and for purposes defined by the council. Therefore, the purpose of this Schedule is for the council to clearly describe what information the Supplier will be expected to process, how, why and whom else it may be shared with.

[Insert information as appropriate. The light grey text is guidance to assist you in completing the form. Please delete after use.]

### **Subject matter of the processing**

A brief sentence providing an overview of the work – For example, *“The Supplier will contact addresses on behalf of the council to assess eligibility for help with home insulation and energy efficiency under the governments Energy Efficiency Grant”*

### **Duration of the processing**

Describe the length of the contract. It might have a definite start and finish date, or it may be complete once a goal has been achieved or milestone met. – For example *“the length of the contract is not set, however, is likely to take approximately 6 months, dependent upon how long it takes the Supplier to contact each household and assess their eligibility for the grant”*.

### **Nature and purposes of the processing**

There must be no misunderstanding about what you are asking the Supplier to do with the personal information you provide to them or that they collect or generate. It must be clear how you expect them to use the information, how you expect them to share it and any limitations on its use.

For example –

*“The council will provide a list of names and addresses of all households that have applied for the Governments Energy Efficiency Grant to the Supplier, who will write to each address to arrange a mutually convenient time to visit, discuss the matter and provide and collect further information. The Supplier will collect the pre-defined information using the GEEG11 application form and assess the household’s eligibility to participate in the scheme and details of what the entitlement will be. These results will be fed back to the council by the Supplier every Friday until all households have been assessed”*.

*The information provided to the Supplier and collected from households by the Supplier must not be used for any other purpose or disclosed to anyone else.*

### **Type of personal information processed**

You must have a clear understanding of the personal information you are asking the Supplier to process. A generic description such as ‘Personal details’ is not enough, please be specific.

- Sometimes the information will be pre-defined such as in the above GEEG11 form and so the relevant form can be referenced.

- At other times you will be passing specific information to the Supplier for specific reasons and so you can explain what information you are providing them with e.g. name, address, date of birth, gender.

### **Categories of information subject**

List the categories of people you are asking the Supplier to process personal information about, e.g. school pupils; council employees; parents of looked after children, all residents of the borough; council tenants in receipt of housing benefit etc. You may have already explained this in your explanation to previous headings, but please state here for clarity

### **End of contract**

You and the Supplier must have a clear understanding about what will happen to the personal information they hold at the end of the contract. This will be governed by a number of things:

- a) Upon completion of the contract will the council need to retain the personal information for business reasons or legal reasons? If in doubt the Council's [Records Retention Schedule](#) can be referred to or email the Council's Records Manager [dawnwaller@solihull.gov.uk](mailto:dawnwaller@solihull.gov.uk)

If you do need to retain it then you must specify that the information is returned to the council at the end of / or completion of the contract, then any copies held, securely deleted/destroyed by the Supplier

If you do not need to retain a copy then you may wish to have the information returned so that you can securely destroy it, alternatively, if you are confident the Supplier can securely destroy it, this can be included as an instruction in this section.

- b) Sometimes the Supplier may state they wish to keep a copy of some or all of the information. If they do then make sure you understand why and do not be afraid to disagree or seek advice from [infogov@solihull.gov.uk](mailto:infogov@solihull.gov.uk) if you are unsure.

## Schedule 16 Council's Premises

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In relation to the Council's Premises:

- (i) the Council shall, subject to their compliance with the Security Policy, provide the Supplier (and its sub-contractors) with access to such parts of the Council's Premises as the Supplier reasonably requires for the purposes only of properly providing the Services;
- (j) the Council shall provide the Supplier with such accommodation and facilities in the Council's Premises as is specified in this Schedule or which is otherwise agreed by the parties from time to time;
- (k) subject to the requirements of clause 38 (*Consequences of expiry and termination*) and the Exit Plan, in the event of the expiry or termination of the agreement, the Council shall on reasonable notice provide the Supplier with such access as the Supplier reasonably requires to the Council's Premises to remove any of the Supplier's Equipment. All such equipment shall be promptly removed by the Supplier; and
- (l) the Supplier shall notify the Council immediately upon becoming aware of any damage caused by the Supplier, its agents, employees or sub-contractors to any property of the Council, to any of the Council's Premises or to any property of any other recipient of the Services in the course of providing the Services.

<b>Name of Premises</b>	[INSERT]
<b>Address</b>	[INSERT]
<b>Accommodation and Facilities Available</b>	[INSERT]

## Schedule 17 Social Value Obligations

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[INSERT "NOT USED" IF NOT USING SOCIAL PORTAL]

### Part 1 Social Value Proposal

### Part 2 Social Value Method Statement