

[A CONTRACT FOR THE SUPPLY OF SERVICES]

[NAME] SERVICES

between

BARROW DISTRICT COUNCIL

and

[SERVICE PROVIDER]

THIS CONTRACT IS DATED

[INSERT]

PARTIES

- (1) BARROW DISTRICT COUNCIL, a local authority incorporated under the Local Government Act 1972, having its whose principal place of business is at **[ADDRESS]** (**Council**); and
- (2) **[FULL COMPANY NAME]** incorporated and registered in England and Wales with company number **[NUMBER]** whose registered office is at **[REGISTERED OFFICE ADDRESS]** (**Service Provider**).

BACKGROUND

- (A) The Council placed a contract notice **[REFERENCE]** on **[DATE]** in the Find a Tender Service seeking expressions of interest from potential Service Providers for the provision of Services ("FTS Notice")
- (B) Following receipt of expressions of interest, the Council invited potential service providers (including the Service Provider) on **[DATE]** to tender for the provision of **[DESCRIPTION]** services.
- (C) On the basis of the Service Provider's Tender, the Council selected the Service Provider to provide services in accordance with the Contract
- (D) The Council is a Contracting Body, as specified in the FTS Notice. It has selected the Service Provider to provide the Services and the Service Provider is willing and able to provide the Services in accordance with the terms and conditions of this Contract.
- (E) The Contract sets out the terms and conditions for the provision of Services and the obligations of the Service Provider under Contract.

CONTENTS

CLAUSE

1.	Definitions.....
2.	Interpretation.....
3.	Contract Scope.....
4.	Contract Period and Extension
5.	Service Provider's status
6.	Council's obligations
7.	Mistakes in Information.....
8.	Services.....
9.	TUPE
10.	[Key Personnel]
11.	Service Provider's Staff.....
12.	Non-solicitation
13.	Premises Conditions of Use
14.	Security of premises
15.	Equipment and Assets.....
16.	Environmental requirements.....
17.	Health and safety.....
18.	Contract Price
19.	Payment and VAT.....
20.	Recovery of sums due
21.	Conflicts of interest
22.	Prevention of bribery and modern slavery
23.	Discrimination
24.	Confidentiality
25.	Official Secrets Acts 1911 to 1989.....
26.	Data Protection Act.....
27.	Freedom of Information
28.	Publicity, media and official enquiries
29.	Intellectual Property Rights.....
30.	Records and audit access
31.	Replacement of corrupted data.....
32.	Provision of information and meetings.....
33.	Monitoring of Contract performance
34.	Remedies in the event of inadequate performance
35.	Rights and remedies.....
36.	Transfer and sub-contracting.....
37.	Waiver
38.	Variation
39.	The Contracts (Rights of Third Parties) Act 1999
40.	Severance
41.	Liability, indemnity and insurance.....
42.	Insurances
43.	Taxation, National Insurance and employment liability
44.	Warranties, representations and Due Diligence

45.	Termination on insolvency and change of control.....
46.	Termination for Breach
47.	Other Termination Rights.....
48.	Consequences of termination or expiry
49.	Disruption
50.	Recovery on termination.....
51.	Dispute resolution
52.	Force majeure.....
53.	Entire agreement
54.	Notices.....
55.	Governing law and jurisdiction
56.	Local Authority Rights.....
57.	Costs and Expenses.....
58.	Supplemental Terms and Conditions.....

SCHEDULES

SCHEDULE 1	SERVICES
	SPECIFICATION
SCHEDULE 2	PRICING SCHEDULE
1.	CALCULATION OF THE CHARGES
2.	CHARGES BASED ON A FIXED PRICE
3.	CHARGES BASED ON HOURLY RATES
4.	PAYMENT TRIGGERED BY MEETING MILESTONES
5.	MENU PRICING
6.	PAYMENT PLAN
SCHEDULE 3	CONTRACT MANAGEMENT
	KEY PERSONNEL
	MEETINGS
	REPORTS
SCHEDULE 4	SERVICE PROVIDER'S TENDER
SCHEDULE 5	SUPPLEMENTARY TERMS AND CONDITIONS
SCHEDULE 6	VARIATION
	VARIATION PROCEDURE
SCHEDULE 7	PERFORMANCE
PART 1.	KEY PERFORMANCE INDICATORS
PART 2.	[SERVICE CREDITS]
PART 3.	CONSISTENT FAILURE
SCHEDULE 8	TUPE
SCHEDULE 9	PREMISES AND ASSETS
SCHEDULE 10	DATA PROTECTION

GENERAL PROVISIONS

1. DEFINITIONS

In the Contract, unless the context otherwise requires, the following provisions shall have the meanings given to them below:

Achieved KPIs: in respect of any Service in any measurement period, the standard of performance actually achieved by the Service Provider in the provision of the Service in the measurement period in question calculated and expressed in the same way as the KPI for that Service is calculated and expressed in Schedule 7.

Act or Act of Parliament: any act of the United Kingdom Parliament and any delegated law made under it.

Approval: the prior written approval of the Council.

Auditor: the National Audit Office or an auditor appointed by the Council as the context requires.

Authorised Representative: the persons respectively designated as such by the Council and the Service Provider and notified to the other Party in writing from time to time.

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 KPIs, the term, the pricing structure and any other relevant factors.

Bribery Act 2010: the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

Commencement Date: [insert date] which shall be the date at which the Contract Period begins

Confidential Information: any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including [information which would or would be likely to prejudice the commercial interests of any person,] trade secrets, Intellectual Property Rights, know-how of either Party and all personal data and sensitive data within the meaning of the Data Protection Legislation.

Consistent Failure: shall have the meaning set out in Part 3 of Schedule 7.

Contract: the written agreement between the Council and the Service Provider for the provision of Services to the Council, consisting of these Terms and Conditions.

Contract Period: the period from the Commencement Date to:

- (a) the date of expiry set out in **clause 4**;
- (b) following an extension pursuant to **clause 0**, the date of expiry of the extended period; or
- (c) such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract.

Contract Price: the price (exclusive of any applicable VAT), payable to the Service Provider by the Council under the Contract, as detailed in Schedule 2, for the full and proper performance by the Service Provider of its obligations under the Contract.

Contract Year: a period of 12 months, commencing on the Service Commencement Date.

Contracting Authority: any contracting Council as defined in regulation 2 of the Public Contracts Regulations 2015 (*SI 2015/102*) other than the Council.

Council Assets: any materials, plant or equipment owned, controlled or held by the Council which are identified in Schedule 9 and which are, subject to the terms and conditions of this Contract, provided by the Council to the Service Provider for use in the provisions of the Services.

Crown: the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the Welsh Government), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf.

Data Protection Legislation: all applicable data protection and privacy 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) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a Party.

Data Protection Risk Assessment: an assessment by the Data Controller or any agent appointed on its behalf to evaluate the extent of risk of any data breach.

Data Sharing Code of Practice: the code of practice issued by the Information Commissioner in respect to the sharing of Personal Data.

Data Subject: an individual who is the subject of Personal Data.

Default: any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any significant or persistent deficiencies in the performance of a substantive requirement under the Contract or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in

relation to the subject matter of the Contract and in respect of which such Party is liable to the other.

Deliverables: those deliverables listed in the Schedule 1.

Dispute Resolution Procedure: the dispute resolution procedure in **clause 46**.

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

Equipment: the Service Provider's equipment, plant, materials and such other items supplied and used by the Service Provider in the performance of its obligations under the Contract.

Fees Regulations: the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (*SI 2004/3244*).

FOIA: the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time, together with any guidance and codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

[ALWAYS SEEK ADVICE FROM LEGAL RE THE FORCE MAJEURE CLAUSE]

Force Majeure: any event or occurrence that is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including: fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; epidemic or pandemic but always excluding Coronavirus; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:

- (d) any industrial action occurring within the Service Provider's or any Sub-Contractor's organisation; or
- (e) the failure by any Sub-Contractor to perform its obligations under any Sub-Contract.

Good Industry Practice: standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

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

Information Commissioner: as defined by the Data Protection Act 2018.

Initial Contract Period: the period set out in **clause 4**.

Intellectual Property Rights: any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise,

including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright 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 Councils, marketing methods and procedures and advertising literature, including the look and feel of any websites, and **Intellectual Property** shall refer to such materials.

Key Performance Indicators: (KPIs) are the minimum levels of Service standards required and stipulated by the Council, including 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 as detailed in Schedule 7 attached hereto.

Key Personnel: any individual identified in writing by the Parties as being key personnel.

Law: any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body of which the Service Provider is bound to comply.

Management Information: the management information specified in Schedule 3.

Management Reports: the reports to be prepared and presented by the Service Provider in accordance with **clause 8.1** and Schedule 3 [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].

Modern Slavery Act 2015: the Modern Slavery Act 2015 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

Month: calendar month.

Parent Company: any company which is the ultimate Holding Company of the Service Provider or any other company of which the ultimate Holding Company of the Service Provider is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the Service Provider or which is engaged by the same or similar business to the Service Provider. The term

Holding Company: shall have the meaning ascribed in section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto.

Month: shall mean a calendar month

Party: the Service Provider or the Council and Parties shall mean both the Service Provider and the Council.

Personal Data: personal data (as defined in the Data Protection Legislation) which is processed by the Service Provider or any Staff on behalf of the Council pursuant to or in connection with this Contract.

Personal Data Breach: a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data. This includes breaches that are the result of both accidental and deliberate causes.

PQQ Response: the response to the pre-qualification questionnaire issued by the Council and submitted by the Service Provider on [DATE].

Premises: any land or premises, owned or controlled by the Council as identified in Schedule 9 and which are, subject to the terms and conditions of this Contract, made available from time to time to the Service Provider by the Council in connection with the Contract.

Processing: any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;

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 that 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 Contract;
- (c) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under the Modern Slavery Act 2015;
 - (iii) under legislation creating offences concerning fraudulent acts;
 - (iv) at common law concerning fraudulent acts relating to this Contract or any other contract with the Council; or
- (d) defrauding, attempting to defraud or conspiring to defraud the Council.

Quality Standards: the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Service Provider would reasonably and ordinarily be expected to comply with and any other quality standards set out in Schedule 1.

Regulatory Bodies: those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Council.

Replacement Service Provider: any third party service provider appointed by the Council to supply any services that are substantially the same as or similar to any of the Services and which the Council receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract.

Relevant Transfer: a relevant transfer for the purposes of TUPE.

Request for Information: shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply).

Schedule: the schedule in [9] parts annexed as relative to this Contract.

Service Commencement Date: the service commencement date set out in Schedule 1.

Services: the [NAME] services to be supplied as specified in Schedule 1.

[Service Credits: the sums as specified in Error! Reference source not found. of Error! Reference source not found..]

Service Failure: a failure by the Service Provider to provide the Services in accordance with any Target KPI.

Staff: all persons employed by the Service Provider to perform its obligations under the Contract together with the Service Provider's agents, Service Providers and Sub-Contractors used in the performance of its obligations under the Contract.

Staff Vetting Procedures: the Council's procedures and departmental policies for the vetting of personnel.

Sub-Contract: any contract between the Service Provider and a third party under which the Service Provider agrees to source the provision of any of the Services from that third party.

Sub-Contractor: the contractors or service providers that enter into a Sub-Contract with the Service Provider.

Sub-processor: any person, organisation or agent other than the Service Provider (excluding an employee of the Service Provider) appointed on behalf of the Service Provider to process Personal Data for Trafford Council for the purposes of this Contract.

Supplementary Terms and Conditions: the terms and conditions attached hereto at Schedule 5 which shall be incorporated into the Contract.

Target KPI: the minimum level of performance for a KPI which is required by the Council as set out against the relevant KPI in Schedule 7.

Tender: the document(s) submitted by the Service Provider to the Council in response to the Council's FTS Notice.

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended by the "Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014, as may be amended from time to time.

United Kingdom: United Kingdom of Great Britain and Northern Ireland.

UK GDPR: the UK General Data Protection Regulation.

Variation: has the meaning given to it in **clause 35**.

VAT: value added tax as provided for in the Value Added Tax Act 1994 as amended from time to time or any similar tax introduced in substitution thereof.

Working Day: any day other than a Saturday or Sunday or public holiday in England and Wales.

2. INTERPRETATION

2.1 The interpretation and construction of the Contract shall be subject to the following provisions:

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (e) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

- (f) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
 - (g) headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract;
 - (h) the Schedules form part of the Contract and shall have effect as if set out in full in the body of the Contract and any reference to the Contract shall include the Schedules;
 - (i) references in the Contract to any clause or sub-clause or Schedule without further designation shall be construed as a reference to the clause or sub-clause or Schedule to the Contract so numbered;
 - (j) references in the Contract to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to the Contract so numbered;
 - (k) A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established;
 - (a) A reference to writing or written includes faxes [but not OR and] e-mail.
- 2.2 Any obligation in this Contract on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 2.3 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this Contract) at any time.
- 2.4 Where there is any conflict or inconsistency between the provisions of the Contract, such conflict or inconsistency shall be resolved according to the following order of priority:
- (a) Schedule 5 to this Contract;
 - (b) these clauses of the Contract;
 - (c) Schedule 1 of this Contract;
 - (d) Schedule 2 of the Contract
 - (e) the remaining schedules to this Contract;

3. CONTRACT SCOPE

- 3.1 The Parties agree and acknowledge that the Service Provider shall provide the Services to the Council in accordance with this Contract during the Contract Period.

3.2 The parties agree and acknowledge that the parties have entered into this Contract for the benefit of the Council and the Council requires the provision by the Service Provider of the Services to the Council under the terms of the Contract.

3.3 The Service Provider shall provide the Services as specified in Schedule 1 to the Council in accordance with the Contract terms and conditions.

4. CONTRACT PERIOD AND EXTENSION

4.1 The Contract shall take effect on the Commencement Date and shall continue for the Contract Period.

4.2 The Contract shall take effect on the Commencement Date and shall expire automatically on [insert the date of expiry], unless it is otherwise terminated in accordance with the provisions of the Contract ("Initial Contract Period").

[4.2 The Council may, by giving written notice to the Service Provider not less than [NUMBER] Month(s) before the last day of the Initial Contract Period, extend the Contract Period for any further period or periods, provided that the total Contract Period does not exceed [NUMBER] years. The provisions of the Contract will apply throughout any such extended period.]

4.3 If the Council gives such notice then the Contract Period shall be extended by the period set out in the notice.

4.4 If the Council does not wish to extend the Contract beyond the Initial Contract Period the Contract shall expire on the expiry of the Initial Term.

5. SERVICE PROVIDER'S STATUS

5.1 At all times during the Contract Period the Service Provider shall be an independent service provider and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party except as expressly permitted by the terms of the Contract.

6. COUNCIL'S OBLIGATIONS

6.1 Except as otherwise expressly provided, the obligations of the Council under the Contract are obligations of the Council in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation on, or in any other way fetter or constrain, the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Council to the Service Provider.

7. MISTAKES IN INFORMATION

- 7.1 The Service Provider shall be responsible for the accuracy of all drawings, documents and information supplied to the Council by the Service Provider in connection with the supply of the Services and shall pay the Council any extra costs occasioned by any discrepancies, errors or omissions therein.

SUPPLY OF SERVICES

8. SERVICES

- 8.3 The Service Provider shall supply the Services during the Contract Period in accordance with the Council's requirements as set out in the Contract in consideration for the payment of the Contract Price.
- 2.2 The Service Provider shall provide the Services, or procure that they are provided:
- 8.2.1 with reasonable skill and care and in accordance with the Best Industry practice; and
 - 8.2.2 in all respects in accordance with the Council's policies as set out in **Schedule 1; and**
 - 8.2.3 in accordance with all relevant applicable laws; and
 - 8.2.4 in accordance with all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise); and
 - 8.2.4 any other requirements and instructions which the Council reasonably imposes in connection with any equality obligations imposed on the Council at any time under applicable equality law.
- 2.3 If the Service Provider fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Council may serve a written notice on the Service Provider setting out the details of the Service Provider's default ("Default Note") and in doing so shall instruct the Service Provider to remedy the failure and the Service Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within **[ten]** Working Days of the Council's instructions or such other reasonable period of time as the Council may determine in the Default Notice.

- 8.4 The Service Provider acknowledges that it has made its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council before submitting its Tender so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.
- 8.5 The Service Provider shall:
- (a) at all times comply with the Quality Standards, and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body;
 - (b) to the extent that the standard of Services has not been specified in the Contract, agree the relevant standard of the Services with the Council before the supply of the Services; and
 - (c) at all times perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- 8.6 The Service Provider shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.
- 8.7 The Parties agree that, timely supply of the Services shall be of the essence of the Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.
- 8.8 The Service Provider shall comply with the Contract Management requirements as determined in Schedule 3.
- 8.9 Where any Service is stated in Schedule 1 and/or Schedule 7 to be subject to a specific KPI, the Service Provider shall provide that Service in such a manner as will ensure that the Achieved KPI in respect of that Service is equal to or higher than such specific Target KPI.
- 8.10 As existing Services are varied and new Services are added, Target KPIs for the same will be determined and included within Schedule 7.
- 8.11 The Service Provider shall provide records of and Management Reports summarising the Achieved KPIs as provided for in **clause32**.
- 8.12 [In the event that any Achieved KPI falls short of the relevant Target KPI, without prejudice to any other rights the Authority may have, and the Service Provider commits a Service Failure, the Service Provider shall pay to the Council the Service Credit set out in **Error! Reference source not found.** of Schedule 7]

STAFFING

2. TUPE

9.1 The Parties agree that the provisions of Schedule [8] shall apply to any Relevant Transfer of staff under this Contract.]

9. [KEY PERSONNEL

WHERE NOT APPLICABLE – DELETE KEY PERSONNEL CLAUSE AND INSERT 'CLAUSE NOT USED'

- 9.13 The Parties have agreed to the appointment of the Key Personnel. The Service Provider shall, and shall procure that any Sub-Contractor shall, obtain the prior Approval of the Council before removing or replacing any Key Personnel during the Contract Period, and, where possible, at least [NUMBER] Months' written notice must be provided by the Service Provider of its intention to replace Key Personnel.
- 9.14 The Council shall not unreasonably delay or withhold its consent to the appointment of a replacement for any relevant Key Personnel by the Service Provider or Sub-Contractor, but the Council may interview the candidates for Key Personnel positions before they are appointed.
- 9.15 The Service Provider acknowledges that the Key Personnel are essential to the proper provision of the Services to the Council. The Service Provider shall ensure that the role of any Key Personnel is not vacant for any longer than ten Working Days and that any replacement shall have suitable qualifications and experience and be fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.
- 9.16 The Council may also require the Service Provider to remove any Key Personnel that the Council considers in any respect unsatisfactory. The Council shall not be liable for the cost of replacing any Key Personnel.

10. SERVICE PROVIDER'S STAFF

- 2.4 At all times, the Service Provider shall ensure that:
- (a) each of the Staff 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 Staff to provide the Services properly;
 - (c) only those people who are authorised by the Service Provider (under the authorisation procedure to be agreed between the parties) are involved in providing the Services; and

- (d) all of the Staff comply with all of the relevant Council's policies, as identified in this Contract, including those that apply to persons who are allowed access to the Premises.

10.17 The Council may, by written notice to the Service Provider, refuse to admit onto, or withdraw permission to remain on, the Premises:

- (a) any member of the Staff; or
- (b) any person employed or engaged by any member of the Staff,

whose admission or continued presence would, in the reasonable opinion of the Council, be undesirable.

10.18 At the Council's written request, the Service Provider shall provide a list of the names of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Council may reasonably request.

10.19 If the Service Provider fails to comply with **clause 11.3** within **[two (2) Months]** of the date of the request then the Council may exclude Service Provider Staff from entry to the Premises. Exercise of the Council's rights under this **clause 11.4** shall not excuse the Service Provider from any attributable failure to perform the Services.

10.20 The Service Provider's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force and notified to the Service Provider from time to time for the conduct of personnel when at or within the boundaries of those Premises.

2.5 The Service Provider shall maintain up-to-date personnel records on the Staff Services and shall provide information to the Council as the Council reasonably requests. The Service Provider warrants and shall ensure that at all times that it has the right to provide these records and information to the Council in compliance with the applicable Data Protection Legislation.

10.21 The Service Provider warrants that it has complied with the Staff Vetting Procedures in respect of all Staff employed or engaged by the Service Provider at the Service Commencement Date and that it shall not employ or engage any person in the provision of the Services who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out the Services.

11. NON-SOLICITATION

- 12.1 For the duration of the Contract Period and for a period of twelve (12) Months thereafter neither the Council nor the Service Provider shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the contract management of the Services without that other Party's prior written consent.

PREMISES

12. PREMISES CONDITIONS OF USE

- 12.22 Any land or Premises made available from time to time to the Service Provider by the Council in connection with the Contract shall be made available to the Service Provider subject to the conditions stipulated in Schedule 9 (Premises Conditions of Use) and, unless otherwise agreed in writing by the Parties, shall be used by the Service Provider solely for the purpose of performing its obligations under the Contract. The Service Provider shall have the use of such land or Premises as prescribed in the Premises Conditions of Use and shall vacate the same on completion, termination or abandonment of the Contract.
- 12.23 Unless otherwise agreed in writing by the Parties, the Service Provider shall limit access to the land or Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Service Provider shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Council may reasonably request.
- 12.24 Should the Service Provider require modifications to the Premises, such modifications shall be subject to prior written Approval and shall be carried out by the Council at the Service Provider's expense. The Council shall undertake modification work approved by the Council in writing without undue delay. Ownership of such modifications shall rest with the Council. Before the end of the Contract Period, the Service Provider shall, at the request of the Council remove any modifications made to the Premises and reinstate or rebuild the Premises in a manner equivalent in size, quality, layout and facilities to the Premises prior to the modifications.
- 12.25 Without prejudice to **clauses 11.4 & 11.5**, the Service Provider shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of the Premises notified to it by the Council, and the Service Provider shall pay for the cost of making good any damage caused by the Service Provider or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- 12.26 The Parties agree that there is no intention on the part of the Council to create a tenancy of any nature whatsoever in favour of the Service Provider or its Staff

and that no such tenancy has or shall come into being and, notwithstanding any rights granted under the Contract, the Council retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

13. SECURITY OF PREMISES

- 13.27 The Service Provider shall comply with all reasonable security requirements of the Council while on the Premises and shall ensure that all Staff comply with such requirements.

14. EQUIPMENT AND ASSETS

- 14.28 Unless otherwise stated **Schedule 1** the Service Provider shall provide all the Equipment necessary for the supply of the Services.
- 14.29 Where relevant, the Service Provider shall not deliver any Equipment nor begin any work on the Premises without obtaining prior written Approval.
- 14.30 All Equipment brought onto the Premises shall be at the Service Provider's own risk and the Council shall have no liability for any loss of or damage to any Equipment unless the Service Provider is able to demonstrate that such loss or damage was caused or contributed to by the Council's Default. The Service Provider shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Service Provider.
- 14.31 The Service Provider shall maintain all items of Equipment within the Premises or utilised in the provision of the Services in a safe, serviceable and clean condition.
- 2.6 The Service Provider shall, at the Council's written request, at its own expense and as soon as reasonably practicable:
- (a) remove from the Premises and/or provision of the Services any Equipment that in the reasonable opinion of the Council is either hazardous, noxious or not in accordance with the Contract; and
 - (b) replace such item with a suitable substitute item of Equipment.
- 14.32 Where the Council issues Council Assets to the Service Provider, such Council Assets shall be and remain the property of the Council and the Service Provider irrevocably licences the Council and its agents to enter upon any premises of the Service Provider during normal business hours on reasonable notice to recover any such Council Assets. The Service Provider shall not in any circumstances have a lien or any other interest on the Council Assets and at all times the Service Provider shall possess the Council Assets as fiduciary agent and bailee of the Council. The Service Provider shall take all reasonable steps

to ensure that the title of the Council to the Council Assets and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Council's request, store the Council Assets separately and ensure that it is clearly identifiable as belonging to the Council.

- 14.33 The Council Assets shall be deemed to be in good condition when received by or on behalf of the Service Provider unless the Service Provider notifies the Council otherwise within five Working Days of receipt.
- 14.34 The Service Provider shall maintain (or restore at the end of the Contract Period) the Council Assets in the same or similar condition as at the Commencement Date and in good order and condition (excluding fair wear and tear), and shall use the Council Assets solely in connection with the Contract and for no other purpose without prior Approval.
- 14.35 The Service Provider shall ensure the security of all the Council Assets while in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Council's reasonable security requirements as required from time to time.
- 14.36 The Service Provider shall be liable for all loss of, or damage to, the Council Assets (excluding fair wear and tear), unless such loss or damage was caused by the Council's Default. The Service Provider shall inform the Council within two Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Council Assets.
- 2.7 The Service Provider shall notify the Council immediately on becoming aware of any damage caused by the Service Provider, its agents, Staff or Sub-Contractors to any Council Assets, or to any property and/or assets of any other recipient of the Services in the course of providing the Services.
- 14.37 On completion of the Services the Service Provider shall:
 - 15.12.1 remove the Equipment together with any other materials used by the Service Provider to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Service Provider is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Service Provider or any Staff; and
 - 15.12.2 return all Council Assets to the Council within a reasonable period of time as determined by the Council.

15. ENVIRONMENTAL REQUIREMENTS

- 16.1 The Service Provider shall, when working on the Premises, perform its obligations under the Contract in accordance with the Council's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

16. HEALTH AND SAFETY

- 2.8 The Service Provider shall perform its obligations under this Contract (including those in relation to the Services) in accordance with:
- (a) all applicable Law regarding health and safety; and
 - (b) the Health and Safety Policy whilst at the Premises.
- 16.38 The Service Provider shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Council shall promptly notify the Service Provider of any health and safety hazards which may exist or arise at the Premises and which may affect the Service Provider in the performance of its obligations under the Contract.
- 16.39 While on the Premises, the Service Provider shall comply with any health and safety measures implemented by the Council in respect of Staff and other persons working there.
- 16.40 The Service Provider shall notify the Council immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to Council Assets and or other property and or any equipment which could give rise to personal injury.
- 16.41 The Service Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Contract.
- 16.42 The Service Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Council on request.

PAYMENT AND CONTRACT PRICE

17. CONTRACT PRICE

- 17.43 In consideration of the Service Provider's performance of its obligations under the Contract, the Council shall pay the Contract Price in accordance with **clause 19**.
- 17.44 The Council shall, in addition to the Contract Price and following evidence of a valid VAT invoice, pay the Service Provider a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

18. PAYMENT AND VAT

- 18.45 The Service Provider shall ensure that each invoice is submitted in accordance with the payment profile set out in Schedule 2 and contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documents reasonably required by the Council to substantiate the invoice. [Any such invoices shall take into account any Service Credits which have been accrued in the previous period.]
- 18.46 Where the Service Provider submits an invoice to the Council in accordance with **clause 18.45**, the Council will consider and verify that invoice within **[7]** days.
- 18.47 The Council shall pay the Service Provider any sums due under such an invoice no later than a period of 30 days from the date on which the Council has determined that the invoice submitted in accordance with **clause 19.1** is valid and undisputed.
- 18.48 Where the Service Provider enters into a Sub-Contract, the Service Provider shall include in that Sub-Contract:
- (a) provisions having the same effect as **clause 19.2** and **clause 19.3** of this Contract; and
 - (b) a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as **clause 18.46** and **clause 19.3** of this Contract.

In this **clause 19.4**, "Sub-Contract" means a contract between two or more Service Providers, at any stage of remoteness from the Council in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.

- 18.49 The Service Provider shall add VAT to the Contract Price at the prevailing rate as applicable.

- 2.9 Where any Party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with **clause 51**. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of **[NUMBER]** days after resolution of the dispute between the parties.
- 2.10 Subject to **clause 19.6**, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this Contract in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Service Provider shall not suspend the supply of the Services if any payment is overdue unless it is entitled to terminate this Contract under for failure to pay undisputed charges.
- 18.50 The Service Provider shall indemnify the Council on a continuing basis 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 Service Provider's failure to account for or to pay any VAT relating to payments made to the Service Provider under the Contract. Any amounts due under this **clause 19.8** shall be paid by the Service Provider to the Council not less than five Working Days before the date on which the tax or other liability is payable by the Council.
- 18.51 The Service Provider shall not suspend the supply of the Services unless the Service Provider is entitled to terminate the Contract under **clause 46.3** for failure to pay undisputed sums of money.
- 2.11 The Service Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Council pursuant to this Contract. Such records shall be retained for inspection by the Council for **[NUMBER]** years from the end of the Contract Period.
- 2.12 The Council shall accept and process for payment an electronic invoice submitted for payment by the Service Provider where the invoice is undisputed and where it complies with the standard on electronic invoicing.
- 2.13 For the purposes of paragraph 19.11, an electronic invoice complies with the standard on electronic invoicing where it complies with the United Kingdom standard and the Public Procurement (Electronic Invoices etc.) Regulations 2019, as may be amended from time to time.

19. RECOVERY OF SUMS DUE

- 19.52 Wherever under the Contract any sum of money is recoverable from or payable by the Service Provider (including any sum which the Service Provider is liable to pay to the Council in respect of any breach of the Contract), the Council may

unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Service Provider under the Contract or under any other agreement or contract with the Council.

- 19.53 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 19.54 The Service Provider shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Service Provider has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Service Provider.
- 19.55 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

STATUTORY OBLIGATIONS AND REGULATIONS

20. CONFLICTS OF INTEREST

- 20.56 The Service Provider shall take appropriate steps to ensure that neither the Service Provider nor any Staff are placed in a position where (in the reasonable opinion of the Council), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider or Staff and the duties owed to the Council under the provisions of the Contract.
- 20.57 The Service Provider shall promptly notify the Council (and provide full particulars to the Council) if any conflict referred to in **clause 20.56** above arises or is reasonably foreseeable.
- 20.58 The Council reserves the right to terminate the Contract immediately by giving notice in writing to the Service Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider and the duties owed to the Council under the provisions of the Contract. The actions of the Council under this **clause 21.3** shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

21. PREVENTION OF BRIBERY AND MODERN SLAVERY

- 21.59 The Service Provider:

- (a) shall not, and shall procure that the Staff and all Sub-Contractor personnel shall not, in connection with this Contract commit a Prohibited Act; and
- (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Contract.

21.60 The Service Provider shall:

- (a) if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010 and/or the Modern Slavery Act 2015; and
- (b) within five (5) Working Days of the Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Service Provider) compliance with this **clause 22** by the Service Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Service Provider shall provide such supporting evidence of compliance as the Council may reasonably request.

21.61 The Service Provider shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any Staff or Sub-Contractors from committing a Prohibited Act and shall enforce it where appropriate.

21.62 If any breach of **clause 21.59** is suspected or known, the Service Provider must notify the Council immediately.

21.63 If the Service Provider notifies the Council that it suspects or knows that there may be a breach of **clause 22.1**, the Service Provider must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documents. [This obligation shall continue for [NUMBER] years following the expiry or termination of the Contract.]

21.64 The Council may terminate this Contract by written notice with immediate effect if the Service Provider, its Staff or Sub-Contractors (in all cases whether or not acting with the Service Provider's knowledge) breaches **clause 21.59**.

21.65 Any notice of termination under **clause 21.64** must specify:

- (a) the nature of the Prohibited Act;

- (b) the identity of the party whom the Council believes has committed the Prohibited Act; and
- (c) the date on which this Contract will terminate.

21.66 Despite **clause 51**, any dispute relating to:

- (a) the interpretation of **clause 22**; or
- (b) the amount or value of any gift, consideration or commission,

shall be determined by the Council and its decision shall be final and conclusive.

21.67 Any termination under **clause 22** will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

22. DISCRIMINATION

22.68 The Service Provider shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).

22.69 The Service Provider shall take all reasonable steps to secure the observance of **clause 23** by all servants, employees or agents of the Service Provider and all Service Providers and Sub-contractors employed in the execution of the Contract.

INFORMATION

23. CONFIDENTIALITY

23.70 Subject to **clause 23.71**, the parties shall keep confidential the Confidential Information of the other Party and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.

23.71 **Clause** Error! Reference source not found. shall not apply to any disclosure of information:

- (a) required by any applicable law, provided that **clause 27** shall apply to any disclosures required under the FOIA or the Environmental Information Regulations;
- (b) that is reasonably required by persons engaged by a Party in the performance of such Party's obligations under this Contract;
- (c) that is reasonably required by the Council;

- (d) where a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of **clause** Error! Reference source not found.;
- (e) by the Council of any document to which it is a party and which the parties to this Contract have agreed contains no Confidential Information;
- (f) to enable a determination to be made under **clause 51**;
- (g) which is already lawfully in the possession of the receiving party, before its disclosure by the disclosing party, and the disclosing party is not under any obligation of confidence in respect of that information;
- (h) by the Council to any other department, office or agency of the government, provided that the Council informs the recipient of any duty of confidence owed in respect of the Confidential Information; and
- (i) by the Council relating to this Contract and in respect of which the Service Provider has given its prior written consent to disclosure.

23.72 On or before the expiry of the Contract, the Service Provider shall ensure that all documents and/or computer records in its possession, custody or control which contain Confidential Information or relate to personal information of the Authorities' employees, rate-payers or service users, are delivered up to the Council or securely destroyed.

24. OFFICIAL SECRETS ACTS 1911 TO 1989

24.73 The Service Provider shall comply with, and shall ensure that its Staff comply with, the provisions of:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) section 182 of the Finance Act 1989.

24.74 In the event that the Service Provider or its Staff fail to comply with this **clause 25**, the Council reserves the right to terminate the Contract by giving notice in writing to the Service Provider.

25. DATA PROTECTION ACT

25.75 Both parties will comply with all applicable requirements of the Data Protection Legislation. These clauses are in addition to, and does not relieve, remove or replace a Party's obligations under the Data Protection Legislation. Any terms which are not defined within the interpretations above shall have the meanings given within the Data Protection Legislation.

25.76 Schedule 10 sets out the scope, nature and purpose for which the Personal Data is to be held by the Service Provider, the duration of the processing and the types of

personal data (as defined in the Data Protection Legislation, Personal Data) and categories of Data Subject.

25.77 Where the Service Provider is acting as Data Processor Clauses 26.5- 26.11 and Schedule 10 apply.

25.78 Where the Service Provider is acting as a Data Controller or both Parties are considered as a Data Controller and Data Processor, Clauses 26.12- 26.17 and Schedule 10 apply.

SERVICE PROVIDER IS A DATA PROCESSOR

25.79 Without prejudice to the generality of **clause 26.2**, the Council will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Service Provider for the duration and purposes of this Contract.

25.80 Without prejudice to the generality of **clause 26.1**, the Service Provider shall, in relation to any Personal Data processed in connection with the performance by the Provider of its obligations under this Contract:

- (a) process Personal Data only on the written instructions of the Council unless the Service Provider is required by Domestic Law or by an Act of Parliament applicable to the Service Provider to process Personal Data (**Applicable Laws**). ;
- (b) ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, 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 its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that only personnel who are required to assist the Service Provider in fulfilling its obligations under the terms of this Contract have access to any Personal Data are obliged to keep that Personal Data confidential. Such staff must be adequately trained; and

- (d) not transfer any Personal Data outside of the United Kingdom unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
 - (i) the Council or the Service Provider has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies
 - (iii) the Service Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Service Provider complies with reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
- (e) assist the Council at no additional cost to the Council, in responding to any request from a Data Subject within 21 days of the request and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Council without undue delay on becoming aware of a Personal Data breach, of any data loss, or any request to erase, block or transfer Personal Data;
- (g) at the written direction of the Council, delete or return Personal Data and copies thereof to the Council on termination of the Contract unless required by Applicable Law to store the Personal Data; and
- (h) maintain and submit complete and accurate records and information to demonstrate its compliance with this Contract and allow and contribute to audits by the Council or the Council's designated auditor.
- (i) comply with the Data Sharing Code of Practice as issued by the Information Commissioner.

2.14 The Service Provider shall not be entitled to appoint any third party processor of Personal Data under this Contract unless prior written consent is provided by the Council. The Service Provider confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this this Clause 26. As between the Council and the Service Provider, the Service Provider shall remain fully liable for all acts or omissions of any third-party processor appointed.

2.15 Either Party may, at any time on not less than 30 days' notice, revise this Schedule by replacing it with any applicable controller to processor standard

clauses or similar terms forming party of an applicable certification scheme (which shall apply when replaced by attachment to this Contract

- 2.16 On satisfactory completion of the Service or on termination of this Contract, the Service Provider (Data Processor) will ensure that the Personal Data is securely removed from their systems and any printed copies securely destroyed. In complying with this clause, electronic copies of the Personal Data shall be securely destroyed by either physical destruction of the storage media or secure deletion using appropriate electronic shredding software that meets HM Government standards. Any hard copy will be destroyed by cross-cut shredding and secure re-cycling of the resulting paper waste.
- 2.17 The Service Provider (Data Processor) shall fully indemnify the Council against the costs of dealing with any claims made in respect of any information subject to the Data Protection Act, where claims would not have arisen but for some act, omission or negligence on the part of the Service Provider, its sub-contractors, agents or staff.
- 2.18 Both Parties agree to abide by the Information Commissioner's data sharing code of conduct.

COUNCIL AND SERVICE PROVIDER ARE BOTH CONTROLLERS OF PERSONAL DATA

- 2.19 Each Party acknowledges that one party (the Data Discloser) will regularly disclose to the other party (the Data Recipient) Personal data as identified in the Schedule 10 and collected by the Data Discloser for the Purpose outlined in the Schedule 10.
- 2.20 Each Party shall comply with all the obligations imposed on a Controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one party shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate this Contract with immediate effect.
- 2.21 Each Party shall:
- (a) ensure that it has all necessary notices and consents in place to enable lawful transfer of the Data identified in Schedule 10 to the Permitted Recipients for the purposes outlined in Schedule 10
 - (b) give full information to any data subject whose Personal Data may be processed under this Contract of the nature such processing. This includes giving notice that, on the termination of this Contract, Personal Data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;

- (c) process the Personal Data only for the purpose outlined in Schedule 10;
- (d) not disclose or allow access to the disclosed Personal Data to anyone other than the Permitted Recipients;
- (e) ensure that all Permitted Recipients are subject to written contractual obligations concerning the disclosed Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this Contract;
- (f) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.
- (g) not transfer any Personal Data received from the Data Discloser outside the United Kingdom unless the transferor:
 - (i) complies with the provisions of Articles 26 of the UK GDPR (in the event the third party is a joint controller); and
 - (ii) ensures that (i) the transfer is to a country approved by the Information Commissioner as providing adequate protection pursuant to Article 45 UK GDPR;
 - (iii) there are appropriate safeguards in place pursuant to Article 46 UK GDPR; or (iii) one of the derogations for specific situations in Article 49 UK GDPR applies to the transfer.

2.22 Each Party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each Party shall:

- (a) consult with the other Party about any notices given to Data Subjects in relation to Personal Data disclosed under this contract;
- (b) promptly inform the other Party about the receipt of any Data Subject access request;
- (c) provide the other Party with reasonable assistance in complying with any data subject access request
- (d) not disclose or release any Personal Data in response to a Data Subject access request without first consulting the other Party wherever possible;
- (e) notify the other Party without undue delay on becoming aware of any breach of the Data Protection Legislation;
- (f) at the written direction of the Data Discloser, delete or return Personal Data and copies thereof to the Data Discloser on termination of this Contract unless required by law to store the Personal Data;

- (g) use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from Personal Data transfers;
 - (h) maintain complete and accurate records and information to demonstrate its compliance with this clause and allow for audits by the other Party or the other Party's designated auditor; and
 - (i) provide the other Party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Data Protection Legislation.
- 2.23 Each Party shall indemnify the other against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the indemnified Party arising out of or in connection with the breach of the Data Protection Legislation by the indemnifying Party, its employees or agents, provided that the indemnified Party gives to the indemnifier prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it.
- 2.24 Either Party may, at any time on not less than 30 days' notice; revise these Clauses or Schedule 10 by replacing it with any applicable amendments published by the Information Commissioner or in line with any other government body.

26. FREEDOM OF INFORMATION

- 26.81 The Service Provider acknowledges that the Council is subject to the requirements of the FOIA and the EIRs. The Service Provider 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 EIRs;
 - (b) transfer to the Council all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within 2 Working 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 Working 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.

26.82 The Service Provider acknowledges that the Council may be required under the FOIA and EIRs to disclose Information (including Confidential Information) without consulting or obtaining consent from the Service Provider. The Council shall take reasonable steps to notify the Service Provider of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) the Council shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

27. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

27.83 The Service Provider shall not make any press announcements or publicise the Contract in any way without the Council's prior written Approval.

27.84 The Council shall be entitled to publicise the Contract in accordance with any legal obligation on the Council, including any examination of the Contract by the Auditor.

27.85 The Service Provider shall not do anything, or cause anything to be done, which may damage the reputation of the Council or bring the Council into disrepute.

28. INTELLECTUAL PROPERTY RIGHTS

28.86 The Service Provider shall retain ownership of all Intellectual Property created by the Service Provider or any Staff or Sub-Contractor of the Service Provider:

- (a) in the course of performing the Services; or
- (b) exclusively for the purpose of performing the Services.

28.87 The Service Provider hereby grants, or shall procure the direct grant, to the Council of a perpetual, royalty free, irrevocable and non-exclusive licence of the Intellectual Property, and shall allow the Council to use the Intellectual Property for any purpose relating to the exercise of the business or function of the Council provided in each case that such rights shall not extend to the commercial exploitation of the Intellectual Property. This licence shall, during its term, include the right to sub-licence to a third party (including, for the

avoidance of doubt, any replacement Service Provider or other third party invited by the Council to participate in a tendering process for the award of a contract to deliver replacement services).

- 28.88 The Service Provider 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.

29. RECORDS AND AUDIT ACCESS

- 29.89 The Service Provider shall provide, keep and maintain during the Contract Period and for a period of [NUMBER] years after the expiry of the Contract Period to the Council and the Auditor (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including the Services provided under it, the Contracts entered into with the Council and the amounts paid by the Council.
- 29.90 The Service Provider shall keep the records and accounts referred to in **clause 29.89** above in accordance with good accountancy practice.
- 29.91 The Service Provider shall on request afford the Council, the Council's representatives and/or the Auditor such access to such records and accounts as may be required by the Council from time to time.
- 29.92 The Council shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Service Provider or delay the provision of the Services, except insofar as the Service Provider accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Council.
- 29.93 Subject to the Council 's rights of confidentiality, the Service Provider shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each audit, including:
- (a) all information requested by the Council within the scope of the audit;
 - (b) reasonable access to sites controlled by the Service Provider and to Equipment used in the provision of the Services; and
 - (c) access to Staff.
- 29.94 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this **clause 30**, unless the audit reveals a Default by the Service Provider in which case the

Service Provider shall reimburse the Council for the Council's reasonable costs incurred in relation to the audit.

30. REPLACEMENT OF CORRUPTED DATA

- 31.1 If, through any Default of the Service Provider, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Service Provider shall be liable for the cost of reconstitution of that data and shall reimburse the Council in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

CONTROL OF THE CONTRACT

31. PROVISION OF INFORMATION AND MEETINGS

- 31.95 The Service Provider shall submit Management Information to the Council throughout the Contract Period **on the date and at the frequency stipulated in Schedule 3.**
- 31.96 The Service Provider shall, within a reasonable period of time as stipulated by the Council, submit to the Council throughout the Contract Period any other information, in relation to this Contract and/or provision of the Services pursuant to this Contract, that is reasonably required by the Council to: monitor Service delivery, assess Service performance standards and/or investigate Service performance concerns.
- 31.97 The Authorised Representatives **[and Key Personnel]** shall meet in accordance with the details **set out in Schedule 3** and the Service Provider shall, at each meeting, present its previously circulated Management Information.
- 2.25 The Council may, where there is any failure by the Service Provider to submit Management information in accordance with **clause 32.1** or information reasonably requested by the Council pursuant to **clause 32.2**, either wholly or in part, serve a Default Notice on the Service Provider.

33. MONITORING OF CONTRACT PERFORMANCE

- 33.1 The Council may monitor the performance of the Services by the Service Provider.
- 33.2 The Service Provider shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Council in carrying out the monitoring referred to in **clause 33.1** at no additional charge to the Council.
- 33.3 The Service Provider shall comply with the monitoring arrangements set out in Schedule 3 including, but not limited to, providing such data and information as the Service Provider may be required to produce under the Contract.

3. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE

31.98 Where a Default Notice is issued by the Council the Council shall ensure that the Default Notice:

34.1.1 identifies the Default committed; and

34.1.2 stipulates the actions required by the Service Provider to remedy the Default.

2.26 Where a Default is not remedied within the time period determined in the Default Notice, or as otherwise agreed in writing by the Council, the Council may, in its sole discretion, acting reasonably:

(a) Subject to **clause 34.7**, may withhold, in respect of each Default, a sum equal to a maximum figure stated in **Part 2, Schedule 7** from the date of the expiry of the time period determined in the Default Notice; and

(a) may issue a report ("Default Notice Report") to the relevant Party's chief executive and/or Board of Directors in order that each of them may take whatever steps they think appropriate to facilitate the remedy of the Default ("Remedial Action Plan").

2.27 If the Service Provider:

(b) fails to remedy the Default in accordance with the Default Notice and the failure is materially adverse to the interests of the Council or prevents the Council from discharging a statutory duty or commits a Consistent Failure, the Council may terminate the Contract with immediate effect by giving the Service Provider notice in writing;

(a) fails to remedy the Default within the timescales indicated in the Remedial Action Plan, the Council may retain permanently any sums withheld under **clause 34.2**.

(b) remedies the Default within the timescales indicated in the Remedial Action Plan, the Council must pay the Service Provider any sums withheld under **clause 34.2** within 30 Working Days following the Council's confirmation that the Default has been rectified. Subject to **clause 34.80**, no interest will be payable on those sums

31.99 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Service Provider's obligations under the Contract, then the Council shall take reasonable steps to investigate the complaint. The Council may, in its sole discretion, uphold the complaint, and may, acting

reasonably, subject to **clause 34.7**, deduct a sum in each case equal to a maximum figure stated in **Part 2, Schedule 7**.

31.100 The Parties agree that a deduction made pursuant to **clause 34.4** represents a genuine pre-estimate of the loss likely to be suffered by the Council.

31.101 If the Council is of the reasonable opinion that there has been a material breach of the Contract by the Service Provider, then the Council may, without prejudice to its rights under **clause 46**, do any of the following:

- (a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Service Provider shall have demonstrated to the reasonable satisfaction of the Council that the Service Provider will once more be able to supply all or such part of the Services in accordance with the Contract;
- (b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or
- (c) charge the Service Provider for and the Service Provider shall pay any costs reasonably incurred by the Council (including any reasonable administration costs) in respect of the supply of any part of the Services by the Council or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Service Provider for such part of the Services and provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

34.7 If the Council withholds sums under **clause 34** or retain sums under **clause 34**, and within 20 Working Days of the date of that withholding or retention (as the case may be) the Service Provider produces evidence satisfactory to the Council that the relevant sums were withheld or retained unjustifiably, the Council must pay those sums to the Service Provider within 30 Working Days following the date of the Council's acceptance of that evidence, together with interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 for the period for which the sums were withheld or retained. If the Council does not accept the Service Provider's evidence the Service Provider may refer the matter to Dispute Resolution.

34.8 If the Service Provider does not rectify a breach of a Remedial Action Plan before the expiry of the Contract Period or earlier termination of this Contract, the Council may retain permanently any sums withheld under **clause 34**.

32. RIGHTS AND REMEDIES

- 35.1 The rights and remedies provided under this Contract are in addition to, and not exclusive of, any rights or remedies provided by Law.

33. TRANSFER AND SUB-CONTRACTING

33.102 The Service Provider shall not, without prior written consent from the Council, be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under the Contract and the Service Provider shall not subcontract the whole or any part of its obligations under the Contract except with the express prior written consent of the Council, such consent not to be unreasonably withheld;

- (a) The Service Provider shall remain responsible and liable for the acts and omissions of any sub-contractors as though they were its own.

33.103 Provided that the Council has given prior written consent, the Service Provider shall be entitled to novate the Contract following the novation of the Contract where:

- (a) the specific change in contractor was provided for in the procurement process for the award of the Contract;
- (b) there has been a universal or partial succession into the position of the Service Provider, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this Contract.

33.104 Where the Council has consented to the placing of Sub-Contracts, copies of each Sub-Contract shall, at the request of the Council, be sent by the Service Provider to the Council as soon as reasonably practicable.

33.105 The Council may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

- (a) any Contracting Authority;
- (b) any other body established by the Crown or under statute to substantially perform any of the functions that had previously been performed by the Council; or
- (c) any private sector body which substantially performs the functions of the Council

provided that any such assignment, novation or other disposal shall not increase the burden of the Service Provider's obligations under the Contract.

34. WAIVER

34.106 A waiver of any right or remedy under this Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or Default.

34.107 A failure or delay by a party to exercise any right or remedy provided under this Contract 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 Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

34.108 A party that waives a right or remedy provided under this Contract or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

35. VARIATION

35.109 Subject to the provisions of this **clause 38**, the Council may request a variation to the Contract provided that such variation does not amount to a material change to the Contract. Such a change is hereinafter called a "Variation".

35.110 The Parties may request a Variation using the procedure detailed in Schedule 6 (**Contract Variation Procedure**).

36. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

36.111 Except as expressly provided elsewhere in this Contract, a person who is not a party to this Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

37. SEVERANCE

37.112 If any provision or part-provision of this Contract 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 40** shall not affect the validity and enforceability of the rest of this Contract.

37.113 If any provision or part-provision of this Contract 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.

LIABILITIES

38. LIABILITY, INDEMNITY AND INSURANCE

38.114 Nothing in the Contract shall be construed to limit or exclude either Party's liability for:

- (a) death or personal injury caused by its negligence;
- (b) Fraud or fraudulent misrepresentation;
- (c) any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
- (d) any claim under **clause 19.72.2.9**;
- (c) any claim under the indemnity in **clause 26**;
- (e) any claim under **clause 43**; or
- (f) any claim under the indemnity in **clause 29.3**.

38.115 Subject to **clause 38.116** and **clause 38.117**, the Service Provider shall indemnify and keep indemnified the Council in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported supply, of the Services or the performance or non-performance by the Service Provider of its obligations under the Contract or the presence of the Service Provider or any Staff on the Premises, 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 Service Provider, or any other loss which is caused directly or indirectly by any act or omission of the Service Provider. The Service Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Council or by breach by the Council of its obligations under the Contract.

38.116 Subject always to **clause 38.114** and **clause 41.5**, the liability of either Party for Defaults or damage to property shall be subject to the following financial limits:

- (a) the aggregate liability of either Party for all Defaults resulting in direct loss of the other under or in connection with the Contract shall in no event exceed [AMOUNT]; and
- (b) damage to the property shall not exceed the public liability insurance amount of [AMOUNT]

(c) the annual aggregate liability under the Contract of either Party for all Defaults shall in no event exceed the greater of [AMOUNT] or [PERCENTAGE]% of the Contract Price payable by the Council to the Service Provider in the Contract Year in which the liability arises.

38.117 Subject to clause 41.1 and clause 41.5 the Service Provider's total aggregate liability in respect of Service Credits, is limited, in each Contract Year, to [PERCENTAGE]% of the Contract Price that are payable by the Council in the applicable Contract Year .

38.118 Subject to **clause 38.114**, in no event shall either Party be liable to the other for any:

- (a) loss of profits;
- (b) loss of business;
- (c) loss of revenue;
- (d) loss of or damage to goodwill;
- (e) loss of savings (whether anticipated or otherwise); or
- (f) any indirect or consequential loss or damage.

38.119 The Council may, among other things, recover as a direct loss:

- (a) any additional operational and/or administrative expenses arising from the Service Provider's Default;
- (b) any wasted expenditure or charges rendered unnecessary and/or incurred by the Council arising from the Service Provider's Default; and
- (c) the additional cost of any replacement services for the remainder of the Contract Period following termination of the Contract as a result of a Default by the Service Provider.

38.120 Nothing in the Contract shall impose any liability on the Council in respect of any liability incurred by the Service Provider to any other person, but this shall not be taken to exclude or limit any liability of the Council to the Service Provider that may arise by virtue of either a breach of the Contract or by negligence on the part of the Council, or the Council's employees, servants or agents.

42.INSURANCES

42.1 The Service Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing [an adequate level of cover] **OR** [as a minimum the following levels of cover:

42.1.1 public liability insurance with a limit of indemnity of not less than £[AMOUNT] in relation to any one claim or series of claims;

42.1.2 employer's liability insurance with a limit of indemnity of not less than £[AMOUNT] **OR** in accordance with any legal requirement for the time being in force in relation to any one claim or series of claims;

42.1.3 professional indemnity insurance with a limit of indemnity of not less than £[AMOUNT] in relation to any one claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover; and/or

42.1.4 product liability insurance with a limit of indemnity of not less than £[AMOUNT] in relation to any one claim or series of claims.]

(the "Required Insurances").

42.2 The cover shall be in respect of all risks which may be incurred by the Service Provider, arising out of the Service Provider's performance of the Contract, 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 Service Provider.

42.3 The Service Provider shall ensure that its Sub-Contractors maintain the Required Insurances to the same levels as contained in **Clause 42.1** in respect of any sub-contracted Services pursuant to the Contract.

42.4 The Service Provider 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.

42.5 If, for whatever reason, the Service Provider 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 Service Provider.

42.6 The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the Contract.

42.7 The Service Provider shall hold and maintain the Required Insurances for a minimum of six years following the expiry or earlier termination of the Contract.

4. TAXATION, NATIONAL INSURANCE AND EMPLOYMENT LIABILITY

43.1 The Parties acknowledge and agree that the Contract constitutes a contract for the provision of Services and not a contract of employment. The Service Provider shall at all times indemnify the Council and keep the Council indemnified in full from and against all claims, proceedings, actions, damages,

costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Council is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue or Customs as an employer of the Staff whether during the Contract Period or arising from termination or expiry of the Contract.

39. WARRANTIES, REPRESENTATIONS AND DUE DILIGENCE

44.1 The Service Provider acknowledges and confirms that:

- (a) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Council all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this Contract;
- (b) it has received all information requested by it from the Council pursuant to **clause 44.1(a)** to enable it to determine whether it is able to provide the Services in accordance with the terms of this Contract;
- (c) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council pursuant to **clause 5(b)**;
- (d) it has raised all relevant due diligence questions with the Council before the Commencement Date; and
- (e) it has entered into this Contract in reliance on its own due diligence.

44.2 The Service Provider warrants and represents that:

- (a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Contract;
- (b) the Contract is executed by a duly authorised representative of the Service Provider;
- (c) in entering the Contract it has not committed any Prohibited Act;
- (d) as at the Service Commencement Date, all information, statements and representations contained in the Tender and the PQQ Response for the Services are true, accurate and not misleading except as may have been specifically disclosed in writing to the Council before execution of the Contract and it will advise the Council of any fact, matter or circumstance of which it may become aware during the Contract Period which would render any such information, statement or representation to be false or misleading;
- (e) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and

belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract;

- (f) it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Contract;
- (g) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Service Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Service Provider's assets or revenue;
- (h) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (i) the Services shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence.

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

TERMINATION

40. TERMINATION ON INSOLVENCY AND CHANGE OF CONTROL

40.121 The Council may terminate the Contract with immediate effect by notice in writing where the Service Provider is a company and in respect of the Service Provider:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- (c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or

- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- (g) being a "small company" within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in H1.1(a)-(g) occurs under the law of any other jurisdiction.

45.2 The Council may terminate the Contract with immediate effect by notice in writing where the Service Provider is an individual and:

- (a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Service Provider's creditors; or
- (b) a petition is presented and not dismissed within 14 days or order made for the Service Provider's bankruptcy; or
- (c) a receiver, or similar officer is appointed over the whole or any part of the Service Provider's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- (d) the Service Provider is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
- (e) a creditor or encumbrancer 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 Service Provider's assets and such attachment or process is not discharged within 14 days; or
- (f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or
- (g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

45.3 The Council may terminate the Contract with immediate effect by notice in writing where the Service Provider is a partnership and:

- (a) a proposal is made for voluntary arrangement within Article 4 of the Insolvent Partnership Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) it is for any reason dissolved; or
- (c) a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator; or
- (d) a receiver, or similar officer is appointed over the whole or any part of its assets; or
- (e) the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or
- (f) any of the following occurs in relation to any of its partners:
 - (i) a petition is presented for his bankruptcy; or
 - (ii) a receiver, or similar officer is appointed over the whole or any part of his assets.

45.4 The Council may terminate the Contract with immediate effect by notice in writing where the Service Provider is a limited liability partnership and:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) it is for any reason dissolved; or
- (c) an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given with Part II of the Insolvency Act 1986; or
- (d) any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986; or

- (e) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986; or
- (f) a receiver or similar officer is appointed over the whole of any part of its assets; or
- (g) it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (h) a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986.

45.5 References to the Insolvency Act 1986 in this **clause 45** shall be construed as being references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.

45.6 The Service Provider shall notify the Council immediately if the Service Provider undergoes a Change of Control.

45.7 The Service Provider shall notify the Council immediately if the Service Provider undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 (**Change of Control**). The Council may terminate the Contract by giving notice in writing to the Service Provider with immediate effect within six Months of:

- (a) being notified that a Change of Control has occurred; or
- (b) where no notification has been made, the date that the Council becomes aware of the Change of Control;

but shall not be permitted to terminate where an Approval was granted before the Change of Control.

41. TERMINATION FOR BREACH

41.122 The Council may terminate the Contract by giving written notice to the Service Provider with immediate effect if the Service Provider commits a material breach and if:

- (a) the Service Provider has not remedied the material breach to the satisfaction of the Council within [20 OR [NUMBER]] Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the material breach and requesting it to be remedied; or
- (b) the material breach is not, in the opinion of the Council, capable of remedy.

41.123 The Council may terminate the Contract by giving written notice to the Service Provider with immediate effect if:

- (a) the Service Provider repeatedly breaches any of the terms of this Contract 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 Contract; or
- (b) the Service Provider fails to remedy a Default in accordance with a Remedial Action Plan;
- (c) if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply; or
- (d) any warranty given by the Service Provider in **clause 44** of this Contract is found to be untrue or misleading; or
- (d) the Service Provider commits a Consistent Failure; or
- (e) the Service Provider is convicted of a criminal offence; or
- (f) the Service Provider ceases or threatens to cease to carry on its business; or
- (g) there is a risk or a genuine belief that reputational damage to the Council will occur as a result of the Contract continuing.

41.124 If the Council fails to pay the Service Provider undisputed sums of money when due, the Service Provider shall notify the Council in writing of such failure to pay. If the Council fails to pay such undisputed sums within [90] Working Days of the date of such written notice, the Service Provider may terminate the Contract in writing with immediate effect, except that such right of termination shall not apply where the failure to pay is due to the Council exercising its rights under **clause 20**.

42. OTHER TERMINATION RIGHTS

47.1 [[The Council **OR** Parties] may terminate this Contract at any time by giving [NUMBER] Months' written notice to the [Service Provider **OR** other Party.]

47.2 The Council may terminate the Contract, where a Variation has been proposed by the Council but has been rejected by the Service Provider and where the Council considers that variation to be a necessary variation to the Contract in order to maintain and/or sustain the viability of the Contract and to avoid any significant financial or other adverse or detrimental effect to the Council:

47.2.1 where the Council terminates the Contract under **clause 427.2**, the Council shall indemnify the Service Provider against any reasonable commitments, liabilities or expenditure which would otherwise

represent an unavoidable loss by the Service Provider by reason of the termination of the Contract, provided that the Service Provider takes all reasonable steps to mitigate such loss. Where the Service Provider holds insurance, the Service Provider shall reduce its unavoidable costs by any insurance sums available. The Service Provider shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Service Provider as a result of termination under **clause 427.2**.

47.2.2 The Council shall not be liable under **clause 43.126** to pay any sum that:

- (a) was claimable under insurance held by the Service Provider, and the Service Provider has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
- (b) when added to any sums paid or due to the Service Provider under the Contract, exceeds the total sum that would have been payable to the Service Provider if the Contract had not been terminated before the expiry of the Contract Period.

43. CONSEQUENCES OF TERMINATION OR EXPIRY

43.125 Where the Council terminates the Contract under **clause 46** and then makes other arrangements for the supply of Services, the Council may recover from the Service Provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Council throughout the remainder of the Contract Period. The Council shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under **clause 46**, no further payments shall be payable by the Council to the Service Provider until the Council has established the final cost of making those other arrangements.

43.126 DELETE THESE CLAUSES AND INSERT 'NOT USED' IF CLAUSE 48.1 IS DELETED [Subject to **clause 41**, where [the Council **OR** either Party] terminates the Contract under **clause 428**, the [Council **OR** terminating Party] shall indemnify the [Service Provider **OR** other Party] against any reasonable commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the [Service Provider **OR** other Party] by reason of the termination of the Contract, provided that the [Service Provider **OR** other Party] takes all reasonable steps to mitigate such loss. Where the [Service Provider **OR** other Party] holds insurance, the [Service Provider **OR** other Party] shall reduce its unavoidable costs by any insurance sums available. The [Service Provider **OR** other Party] shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by

the [Service Provider **OR** other Party] as a result of termination under **clause 428.**]

43.127 The [Council **OR** terminating Party] shall not be liable under clause 43.126 to pay any sum that:

- (a) was claimable under insurance held by the [Service Provider **OR** other Party], and the [Service Provider **OR** other Party] has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
- (b) when added to any sums paid or due to the [Service Provider **OR** other Party] under the Contract, exceeds the total sum that would have been payable to the [Service Provider **OR** other Party] if the Contract had not been terminated before the expiry of the Contract Period.]

43.128 Except as otherwise expressly provided in the Contract:

- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract before termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Council or the Service Provider under **clause 18, clause 19, clause 20, clause 21, clause 24, clause 25, clause 26, clause 27, clause 29, clause 30, clause 35, clause 41, clause 42, clause 43, clause 47, clause 48, clause 49, clause 50, and clause 55.**

44. DISRUPTION

44.129 The Service Provider shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Council, its employees or any other service provider employed by the Council.

44.130 The Service Provider shall immediately inform the Council of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.

44.131 In the event of industrial action by the Staff, the Service Provider shall seek the Council 's Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under the Contract.

44.132 If the Service Provider's proposals referred to in **clause 44.131** are considered insufficient or unacceptable by the Council acting reasonably then the Council may:

- (a) require the Service Provider to provide alternative proposals; or
- (b) undertake the services itself and recover from the Service Provider the additional costs incurred in the process.

Subject to **clause 44.133**, nothing in this clause shall release the Service Provider from the proper performance of its obligations under the Contract.

44.133 If the Service Provider is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Council, an appropriate allowance by way of extension of time will be approved by the Council. In addition, the Council will reimburse any additional expense reasonably incurred by the Service Provider as a direct result of such disruption.

45. RECOVERY ON TERMINATION

45.134 On the expiry or termination of the Contract for any reason, the Service Provider shall:

- (a) immediately return to the Council all Confidential Information, Personal Data and Council's Intellectual Property in its possession or in the possession or under the control of any permitted Service Providers or Sub-Contractors, which was obtained or produced in the course of providing the Services;
- (b) immediately deliver to the Council all Council Assets and other property belonging to, controlled by and/or owned by the Council (including materials, documents, information and access keys) provided to the Service Provider under **clause 0**. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
- (c) assist and co-operate with the Council to ensure an orderly transition of the provision of the Services to any Replacement Service Provider and/or the completion of any work in progress; and
- (d) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Council for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Council or the Replacement Service Provider to conduct due diligence.

45.135 If the Service Provider fails to comply with **clause 45.134(a)** and **clause 45.134(b)**, the Council may recover possession thereof and the Service Provider grants a licence to the Council or its appointed agents to enter (for the purposes of such recovery) any premises of the Service Provider or its

permitted service providers or Sub-Contractors where any such items may be held.

45.136 Where the end of the Contract Period arises due to the Service Provider's Default, the Service Provider shall provide all assistance under **clause 45.134(c)** and **clause 45.134(d)** free of charge. Otherwise, the Council shall pay the Service Provider's reasonable costs of providing the assistance and the Service Provider shall take all reasonable steps to mitigate such costs.

46. DISPUTE RESOLUTION

46.137 If a dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it (Dispute) then except as expressly provided in this Contract, the parties shall follow the procedure set out in this **clause 51**:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the [EMPLOYEE TITLE] of the Council and [EMPLOYEE TITLE] of the Service Provider shall attempt in good faith to resolve the Dispute;
- (b) if the [EMPLOYEE TITLE] of the Council and [EMPLOYEE TITLE] of the Service Provider are for any reason unable to resolve the Dispute within [30] days of service of the Dispute Notice, the Dispute shall be referred to the [SENIOR OFFICER TITLE] of the Council and [SENIOR OFFICER TITLE] of the Service Provider who shall attempt in good faith to resolve it; and
- (c) if the [SENIOR OFFICER TITLE] of the Council and [SENIOR OFFICER TITLE] of the Service Provider are for any reason unable to resolve the Dispute within [30] days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 21 days after the date of the ADR notice.

46.138 No party may commence any court or arbitration proceedings in relation to the whole or part of the Dispute until [28] days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.

46.139 If the Dispute is not resolved within [28] days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of [28] days, or the mediation terminates before the expiration of the said period of [28] days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with **clause 55**.

47. FORCE MAJEURE

- 52.1 Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the Parties shall agree that either the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed or that the affected party shall be entitled to a reasonable extension of the time for performing such obligations. **If the period of delay or non-performance continues for [NUMBER] [weeks OR months], the party not affected may terminate this Contract by giving [NUMBER] [days'] written notice to the affected party.**
- 52.2 Illness or shortage of the Service Provider's Employees, agents or Sub-Contractors, failure or delay by any of the Service Provider's suppliers to supply goods, components, services or materials and breach of the Service Provider's warranties shall not be regarded as an event of Force Majeure.
- 52.3 Any reasonable delay or failure arising directly or indirectly from Coronavirus (Covid-19) shall not be regarded as an event of Force Majeure.

48. ENTIRE AGREEMENT

- 48.140 The Contract 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.
- 48.141 In the event of and only to the extent of any conflict between the clauses of the Contract and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence:
- (a) These Terms and Conditions;
 - (b) The Supplementary Terms and Conditions as attached at Annex B;
 - (c) the Schedules to the Contract and the appendices to the Contract,;
 - (d) any other document referred to in the clauses of the Contract; and
- 48.142 This Contract may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

49. NOTICES

49.143 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party sending the communication.

49.144 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service) or by fax or e-mail. Such letters shall be addressed to the other Party in the manner referred to in **clause 49.145**. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two Working Days after the day on which the letter was posted, or four hours in the case of fax or e-mail, or sooner where the other Party acknowledges receipt of such letters, fax or e-mail.

49.145 For the purposes of **clause 49.144** the address of each Party shall be:

- (a) for the Council: the address as set out in Schedule 1 or as notified in writing to the other Party.
- (b) for the Service Provider as set out in Schedule1 or as notified in writing to the other Party.

49.146 Either Party may change its address for service by serving a notice in accordance with this **clause 54**.

50. GOVERNING LAW AND JURISDICTION

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

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

56. LOCAL AUTHORITY RIGHTS

56.1 Nothing contained in the Contract shall prejudice the Council's rights, powers and duties as a local authority.

57. COSTS AND EXPENSES

- 57.1 Each of the parties will pay their own costs and expenses incurred in connection with the negotiation, preparation, execution, completion and implementation of the Contract.

58. SUPPLEMENTARY TERMS AND CONDITIONS

- 58.1 The Parties agree that the terms and conditions specified in Schedule 5 shall apply to this Contract.

[INSERT CORRECT ATTESTATION CLAUSE]

DRAFT

SCHEDULE ONE: SERVICES

Council Address for service:	
Invoice address:	
Authorised Representative:	Ref: Phone: E-mail:

Service Provider address for service:	
--	--

SERVICES REQUIREMENTS
(1.1) Services [and deliverables] required:
(1.2) Service Commencement Date:
(1.3) Completion date (including any extension period or periods):
(1.4) Location where Services are to be Provided

SPECIFICATION

[INSERT]

CONFIDENTIAL INFORMATION
(1.5) The following information shall be deemed Confidential Information:
(1.6) Duration that the information shall be deemed Confidential Information:

DRAFT

SCHEDULE TWO: PRICING SCHEDULE

1. CALCULATION OF THE CHARGES
2. CHARGES BASED ON A FIXED PRICE
3. CHARGES BASED ON HOURLY RATES
4. PAYMENT TRIGGERED BY MEETING MILESTONES
5. MENU PRICING
6. PAYMENT PLAN

PRICING MATRICES

Pricing revisions

[The prices contained in the Pricing Matrix are fixed for the duration of the Term.

OR

The prices contained in the Pricing Matrix are subject to revision on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the [Retail Prices Index OR Consumer Prices Index OR Average Earnings Index] in the preceding 12-month period. The first such increase shall take effect at the beginning of the [insert date] and shall be based on the latest available figure for the percentage increase in the [Retail Prices Index OR Consumer Prices Index OR Average Earnings Index] at the beginning of the last month of the previous [ENTER PERIOD].]

SCEHDULE THREE: CONTRACT MANAGEMENT

(3.1) [KEY PERSONEL]
(3.2) Contract Monitoring Arrangements
(3.3) Quality and Performance standards:
(3.4) Meetings:

DRAFT

SCHEDULE FOUR: TENDER DOCUMENTS

DRAFT

**SCHEDULE 5:
SUPPLEMENTARY TERMS AND CONDITIONS
[INSERT]**

DRAFT

SCHEDULE 6: VARIATION

VARIATION PROCEDURE

Schedule 6 details the scope of the variations permitted and the process to be followed where the Council proposes a variation or where the Service Provider requests a variation to the Contract.

The Council may propose and the Service Provider requests a variation to the Contract under Schedule 6 only where the variation does not amount to a material change in the Contract or the Services.

The Council may propose a variation using the procedure contained in section 1 of this Schedule 6.

The Service Provider may request a variation using the procedure contained in section 2 of this Schedule 6.

5. PROCEDURE FOR PROPOSING A VARIATION

50.149 In order to propose a variation, the Council shall serve the Service Provider with written notice of the proposal to vary the Contract (**Notice of Variation**).

50.150 The Notice of Variation shall:

- (a) contain details of the proposed variation providing sufficient information to allow the Service Provider to assess the variation and consider whether any changes to the prices set out in its Pricing Schedule are necessary; and
- (b) require the Service Provider to notify the Council within [NUMBER] days of any proposed changes to the prices set out in its Pricing Schedule.

50.151 On receipt of the Notice of Variation, the Service Provider has [NUMBER] days to respond in writing with any objections to the variation.

50.152 Where the Council does not receive any written objections to the proposed Variation within the timescales detailed in **paragraph 1.3** of this Schedule, the Council may then serve the Service Provider with an agreement document detailing the variation (Variation Agreement) to be signed and returned by the Service Provider within [NUMBER] days of receipt.

50.153 On receipt of a signed Variation Agreement from the Service Provider, the Council shall notify the Service Provider in writing of the commencement date of the variation.

50.154 The Service Provider shall carry out any Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract

50.155 Where the Service Provider fails to return the Variation Agreement, within the period of time prescribed under **paragraph 1.4** of this Schedule, the Council shall be entitled to assert implied consent to the modification by the Service Provider and shall be entitled to notify the Service Provider in writing of the commencement date of the Variation and the Service Provider shall carry out any variation and be bound by the same provisions so far as is applicable, as though such variation was stated in the Contract.

6. PROCEDURE FOR REQUESTING A VARIATION

50.156 In order to request a variation, the Service Provider shall serve the Council with written notice of the request to vary the Contract (**Request Notice**).

50.157 The Request Notice shall:

- (a) contain details of the proposed variation providing sufficient information to allow the Service Provider to assess the variation and consider whether any changes to the prices set out in its Pricing Schedule are necessary, including but not limited to:
 - (i) the title of the Variation;
 - (ii) the originator and date of the request for the Variation;
 - (iii) the reason for the Variation;
 - (iv) full details of the Variation, including any specifications;
 - (v) the price, if any, of the Variation;
 - (vi) a timetable for implementation of the Variation;
 - (vii) a schedule of payments if appropriate;
 - (viii) details of the likely impact, if any, of the Variation on other aspects of this Contract including:
 - (ix) the timetable for the provision of the Variation;
 - (x) the personnel to be provided;
 - (xi) the Charges;
 - (xii) the documentation to be provided;
 - (xiii) the training to be provided;
 - (xiv) working arrangements; and
 - (xv) other contractual issues.
- (b) the date of expiry of validity of the Variation;

- (c) the date by which the Council should respond in writing, such period of time should not be unreasonable; and
- (d) provision for signature by the Council and the Service Provider.

50.158 On receipt of the Request notice, the Council shall consider the proposed Variation and shall provide the Service Provider with a response in a timely manner.

50.159 Where the Council requires further information in order to evaluate the proposed Variation, the Service Provider shall participate in discussions, attend any meetings, or provide any further information as reasonably requested by the Council

50.160 Where the Council has no objections to the proposed Variation, the Council may then serve the Service Provider with an agreement document detailing the Variation (Variation Agreement) to be signed and returned by the Service Provider within [NUMBER] days of receipt.

2.6 On receipt of a signed Variation Agreement from the Service Provider, the Council shall notify the Service Provider in writing of the commencement date of the Variation.

2.7 The Service Provider shall carry out any Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

7. CHANGES TO THE PRICING SCHEDULE

50.161 Where the Service Provider can demonstrate that a variation would result in a change to the prices set out in its Pricing Schedule, the Council may require further evidence from the Service Provider that any additional costs to the Service Provider will be kept to a minimum.

50.162 The Council may require the Service Provider to meet and discuss any proposed changes to the Pricing Schedule that would result from a variation.

50.163 Where a change to the Service Provider's Pricing Schedule is agreed by the Council, the Council shall notify its acceptance of the change to the Service Provider in writing.

4. Rejection of Variation

4.1 If the Service Provider is unable to provide the Variation to the Services or where the Parties are unable to agree a change to the Contract Price, the Council may:

- (a) agree that the Parties continue to perform their obligations under the Contract without the Variation; or
- (b) propose an amendment to the Variation; or
- (c) terminate the Contract with immediate effect in accordance with **clause 47**.

4.2 If the Council is unable to approve a request for Variation made by the Service Provider, the Service Provider may:

- (d) agree that the Parties continue to perform their obligations under the Contract without the Variation; or
- (e) propose an amendment to the Variation; or
- (f) refer the matter to the dispute resolution procedure..

8. VARIATIONS THAT ARE NOT PERMITTED

Either Party may not propose any Variation that:

- (a) may prevent the Service Provider from performing its obligations under the Contract; or
- (b) is in contravention of any Law.

SCHEDULE 7: PERFORMANCE

PART 1: SCHEDULE 7

THE KEY PERFORMANCE INDICATORS

The KPIs which the Parties have agreed shall be used to measure the performance of the Services by the Service Provider are contained in the below table.

KPI Description	Method of calculating service delivery/ measurement period	Target KPI	KPI category (Red/ green)
		[NUMBER]%	
		[NUMBER]%	
		[NUMBER]%	

The Service Provider shall monitor its performance against each Target KPI and shall send the Council a report detailing the Achieved KPIs.

PART TWO: SCHEDULE 7

[CALCULATION OF SERVICE CREDITS]

Service Credits, shall accrue for any default ("Service Failure") and shall be calculated in accordance with this Schedule.

If the level of performance of the Service Provider during a measurement period achieves the Target KPI, no service points shall accrue to the Service Provider in respect of that KPI.

If there is a Service Failure in the relevant measurement period:

- (c) the number of service points that shall accrue to the Service Provider in respect of a Service Failure shall be the applicable number as set out in the table below depending on whether the Service Failure is a Minor Failure, a Serious Failure or a Severe Failure. Service credits shall be calculated in accordance with the following formula:

Service credit payable per month = (Total number of service points/100) x Charges payable by the Council for the period.

[OR[INSERT OTHER FORMULA]]

- (d) The number of Service Credits payable shall be the applicable number set out in the table below depending on the Achieved KPI.

KPI achieved	Service Credit payable	Service Provider's performance
[NUMBER]% on target (Target KPI)	None	Contract performing well
[NUMBER]-[NUMBER]% on target	[NUMBER]% of applicable Charges for period	Minor under performance
[NUMBER]-[NUMBER]% on target	[NUMBER]% of applicable Charges for period	Contract under performing. Service Provider to implement recovery programme
[NUMBER]-[NUMBER]% on target	[NUMBER]% of applicable Charges for period	Major under performance. Service Provider to implement recovery programme
Less than [NUMBER]% on target	[NUMBER]% of applicable Charges for period	Service Provider guilty of Consistent Failure and contract potentially subject to termination

[OR]

(a) [OTHER PERFORMANCE REGIME.]

Sums To Be Withheld:

Where the Council, in its sole discretion, withholds a sum in accordance with **clause 34**, in each case equal to the maximum figure of [Five] % of the total Contract value payable in respect of the Month in which the complaint arose.

PART 3: SCHEDULE 7

CONSISTENT FAILURE

In this Contract, **consistent failure** shall mean:

- (b) a failure to meet
 - (i) 5 or more of the Target KPIs labelled ["Red"] in a rolling [INSERT NUMBER] month period; or

(ii) 10 or more Target KPIs labelled ["Green"] in a rolling [INSERT NUMBER] month period.]

(iii) **OR**

(iv) [[INSERT NUMBER] or more Target KPIs in a rolling [INSERT NUMBER] month period.]]

(v) **[AND/OR]**

(c) [the Service Provider being liable to pay £[INSERT NUMBER] to the Council in Service Credits in respect of [two consecutive months].]

[AND/OR]

(d) [the Council serving [INSERT NUMBER] Default Notices in a rolling [INSERT NUMBER] period.]

[AND/OR]

(e) [the Service Provider repeatedly breaching any of the terms of this Contract 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 Contract.]

SCHEDULE 8: TUPE

1. Definitions and Interpretation
2. Transfer Of Transferring Employees From The Previous Service Provider
To The Service Provider On The Effective Date
3. Relevant Transfer Provisions
4. Pensions.....
5. Admitted Body Status To The Local Government Pension Scheme.....
6. Service Provider Pension Scheme.....
7. Third Party Rights And Amendments.....

Annexes

- Annex A Part A: List of Transferring Employees
 [Part B: Third Party Employees]
- Annex B [Admission Agreement]
- Annex C [Bond]

1. DEFINITIONS AND INTERPRETATION

The definitions and rules of interpretation in this paragraph apply in this Contract:

Admission Agreement: the agreement to be entered into in accordance with regulation 3 of the Local Government Pension Scheme Regulations 2013, as amended, by [the administering authority,] the Council and the Service Provider or Sub-Contractor, as appropriate [in the Administering Authority's standard form OR in the form attached at Annex B].

Appropriate Pension Provision: in respect of Eligible Employees, either:

- (a) membership, continued membership or continued eligibility for membership of their Legacy Scheme; or
- (b) membership or eligibility for membership of a pension scheme, which is certified by the Government Actuary's Department (GAD) as being broadly comparable to the terms of their Legacy Scheme.

[Bond: the bond to be executed in the Council's standard form [the form set out in Annex C to the value of [VALUE] under paragraph 5.16.]

Data Protection Legislation: All legislation and regulatory requirements in force relating to the use of personal data and the privacy of electronic communications, including, without limitation (i) any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation, as well as (ii) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to data protection and privacy (for so long as and to the extent that the law of the European Union has legal effect in the UK).

Effective Date: the date specified in Paragraph 2.4 of this Schedule, on which the Services (or any part of the Services), transfer from the Previous Service Provider to the Service Provider or the Service Provider's appointed Sub-Contractor, and a reference to the Effective Date shall be deemed to be the date on which the Transferring Employees transferred or will transfer to the Service Provider or Sub-Contractor in accordance with this Contract.

Eligible Employees

- (a) the Transferring Employees who are active members of (or are eligible to join) the LGPS on the Effective Date or a Relevant Transfer Date; and/or
- (b) the Transferring Employees who are former employees of the Council and who were active members of (or who were eligible to join) the LGPS on the date of a previous Relevant Transfer of the Services; or
- (c) The Transferring Employees who are active members of a Workplace Pension prior to the Effective Date.

Employee Liability Information: the information in relation to all persons identified on the Service Provider's Provisional Personnel List or Service Providers Final Personnel List, as the case may be, that a transferor (which shall be interpreted to mean either the Previous Service Provider in respect of the Transferring Employees or the Service Provider in respect of Relevant Employees where there is a Relevant Transfer) is obliged to notify to a transferee (which shall be interpreted to mean either the Service Provider in respect of Transferring Employees or a Replacement Service Provider where there is a Relevant Transfer) under regulation 11(2) of TUPE and which the Council may reasonably request (subject to all applicable provisions of the DPA 1998), but including in an anonymised format:

- (d) their ages, dates of commencement of employment or engagement and gender;
- (e) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;
- (f) the identity of the employer or relevant contracting party;
- (g) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996);
- (h) the employee's relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (i) their wages, salaries and profit sharing arrangements as applicable;
- (j) 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;
- (k) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (l) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (m) information about any disciplinary action taken against the employee and any grievances raised by the employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years of the provision of information;
- (n) information about any court or tribunal case, claim or action either brought by the employee against the Service Provider within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against the Service Provider arising out of the employee's employment with the transferor;
- (o) information about any collective agreement that will have effect after the Relevant Transfer Date in relation to the employee under regulation 5(a) of TUPE;

- (p) 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
- (q) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations.

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:

- (r) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (s) unfair, wrongful or constructive dismissal compensation;
- (t) 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;
- (u) compensation for less favourable treatment of part-time workers or fixed term employees;
- (v) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- (w) employment claims whether in tort, contract or statute or otherwise;
- (x) 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;

Legacy Scheme: the pension scheme of which the Eligible Employees are members, or are eligible for membership of, or are in a waiting period to become a member of, prior to the Effective Date.

LGPS: Local Government Pension Scheme.

LGPS Regulations: the Local Government Pension Scheme Regulations 2013 (SI 2013/2356).

Previous Service Provider: the service provider supplying the Services to the Council immediately before the Effective Date, those services being the same as or substantially similar to the Services (or any part of the Services) that are to be continued by the Service Provider under this Contract, and shall include any sub-contractor of the Previous Service Provider (or any sub-contractor of any such sub-contractor);

Relevant Employees: those employees whose contracts of employment transfer will be subject to a Relevant Transfer with effect from a Relevant Transfer Date to a Replacement Service Provider by virtue of the application of TUPE.

Relevant Transfer: a transfer of employment of Relevant Employees to which the Employment Regulations apply;

Relevant Transfer Date: in relation to a Relevant Transfer, the date upon which the Services (or any part of the Services), transfer from the Service Provider to the Council, or Replacement Service Provider or Sub-Contractor is when Relevant Transfer takes place;

Replacement Services: any services that are the same or fundamentally the same as any of the Services provided by the Service Provider and which the Council receives in substitution for any of the Services provided by the Service Provider, following the expiry, termination or partial termination of this Contract whether those Services are provided by the Council internally or by any Replacement Service Provider.

Replacement Service Provider: any third party service provider of Replacement Services appointed by the Council from time to time, or where the Council is providing the Replacement Services for its own account, the Council

Service Provider's Personnel: all directors, officers, employees, agents, consultants and contractors engaged wholly or mainly by the Service Provider and/or any Sub-contractor in the performance of the Service Provider's obligations under the Contract;

Service Provider's Final Personnel List: a final list prepared by the Service Provider and provided upon request to the Council by the Service Provider of all Service Provider's 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 a Relevant Transfer Date will no longer be provided by the Service Provider together with Employee Liability Information in respect of each employee identified on the Service Provider's Final Personnel List;

Service Provider's Provisional Personnel List: a list prepared, updated from time to time and provided to the Council, by the Service Provider of all Service Provider 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 a Service Transfer Date will no longer be provided by the Service Provider together with Employee Liability Information in respect of each employee identified on the Service Provider's Provisional Personnel List;

Sub-Contractor: the contractors engaged by the Service Provider to provide goods, services or works to, for or on behalf of the Service Provider for the purposes of providing the Services to the Council

Transferring Employees: those employees of the Previous Service Provider and/or the Previous Service Provider's Sub-Contractor to whom TUPE apply on the Effective Date, and whose contracts of employment will transfer with effect from the Effective Date to the Service Provider. [A list of the Transferring Employees, as at the date of execution of the Contract, is attached at Annex A.]

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246), as amended.

Workplace Pension: also may be known as an “occupational or company pension”, where the employee, the employer and the government contribute under the Pensions Act 2008.

2. TRANSFER OF TRANSFERRING EMPLOYEES FROM THE PREVIOUS SERVICE PROVIDER TO THE SERVICE PROVIDER ON THE EFFECTIVE DATE

- 2.28 It is agreed between the Parties that transfer of the provision of Services from the Previous Service Provider to the Service Provider in accordance with this Contract shall constitute a Relevant Transfer and the contracts of employment of any Transferring Employees shall transfer from the Previous Service Provider to the Service Provider on the Effective Date.
- 2.29 The Service Provider shall comply and procure that each Sub-Contractor shall comply with relevant obligations under TUPE.
- 2.30 The Relevant Transfer of Transferring Employees shall occur on the **Effective Date being [DATE]**.
- 2.31 The Service Provider shall be liable for and indemnify and keep indemnified the Council and the Previous Service Provider against any Employment Liabilities arising from or as a consequence of:
- (a) any proposed changes to terms and conditions of employment the Service Provider or Sub-Contractor may consider making on or after the Effective Date;
 - (b) any of the employees informing the Council and/or the Previous Service Provider they object to being employed by the Service Provider or Sub-Contractor; and
 - (c) any change in identity of the Transferring Employees' employer as a result of the operation of TUPE or as a result of any proposed measures the Service Provider or Sub-Contractor may consider taking on or after the Effective Date.
- 2.32 The Service Provider shall be liable for and indemnify and keep indemnified the Council and Previous Service Provider against any failure to meet all remuneration, benefits, entitlements and outgoings for the Transferring Employees, and any other person who is or will be employed or engaged by the Service Provider or any Sub-Contractor in connection with the provision of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, National Insurance contributions, pension contributions, termination costs and otherwise from and including the Effective Date.
- 2.33 The Service Provider shall immediately on request by the Council and/or Previous Service Provider provide details of any measures that the Service Provider or any Sub-Contractor of the Service Provider envisages it will take in relation to any Transferring Employees, including any proposed changes to terms and conditions of employment. If there are no measures, the Service Provider will give confirmation of that fact, and

shall indemnify the Council and Previous Service Provider against all Employment Liabilities resulting from any failure by it to comply with this obligation.

3. RELEVANT TRANSFER PROVISIONS

- 3.1 This Contract envisages that subsequent to its commencement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this Contract, or part or otherwise) resulting in a transfer of the Services in whole or in part to a Replacement Service Provider.
- 3.1 The Council and the Service Provider agree that where the identity of the provider of any of the Services changes, this shall constitute a Relevant Transfer and the contracts of employment of any Relevant Employees shall transfer to the Replacement Service Provider. The Service Provider shall comply and shall procure that each Sub-Contractor shall comply with their obligations under TUPE.
- 3.1 Where there is a change in service providers and there is a Relevant Transfer then the Replacement Service Provider will inherit liabilities in respect of the Relevant Employees with effect from the Relevant Transfer Date.
- 3.1 The Service Provider shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, National Insurance contributions, pension contributions and otherwise, up to the Relevant Transfer Date.
- 3.1 In the event of a Relevant Transfer, the Service Provider shall and shall procure that any Sub-Contractor shall on receiving notice of termination of this Contract (in whole or part) or on request from the Council and at such times as required by TUPE or for the purposes of procurement of the Services, provide in respect of Service Provider Personnel, the Service Provider's Provisional Personnel List and the Employee Liability Information together with any additional information required by the Council, including information as to the application of TUPE to the Service Provider Personnel;
- (y) The Service Provider shall ensure that the information contained in the Service Provider's Provisional Personnel List and the Employee Liability Information is complete and accurate in all material respects as at the date it is disclosed; and
 - (z) The Service Provider shall, as soon as reasonable practicable to do so, notify the Council of any material changes to this information as and when they occur.
- 5.2 At least 28 days prior to a Relevant Transfer Date, the Service Provider shall and shall procure that any Sub-Contractor shall prepare and provide to the Council and/or, at the direction of the Council, to the Replacement Service Provider, the Service Provider's Final Personnel List, which shall be complete and accurate in all material respects;

- (a) The Service Provider's Final Personnel List shall identify which of the Service Provider's Personnel are Relevant Employees in accordance with TUPE; and
 - (b) The Service Provider's Final Personnel List shall confirm all Employee Liability Information in respect of all Relevant Employees.
- 5.3 The Council shall be permitted to use and disclose the Service Provider's Provisional Personnel List, the Service Provider's Final Personnel List and the Employee Liability Information for informing any tenderer or other prospective Replacement Service Provider for any services that are substantially the same type of services as the Services (or any part of the Services).
- 5.4 The Service Provider warrants to the Council and the Replacement Service Provider that the Service Provider's Provisional Personnel List, the Service Provider's Final Personnel List and the Employee Liability Information will be true and accurate in all material respects as at the date that it is disclosed and that all Service Provider Personnel are included on the Service Provider's Final Personnel List.
- 5.5 The Service Provider shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the Employee Liability Information under Data Protection Legislation.
- 5.6 The Council regards compliance with this paragraph 5.163(e)3 as fundamental to the Contract. In particular, failure to comply with paragraph 3 and paragraph 4 in respect of the provision of accurate information about the Relevant Employees shall entitle the Council to suspend all or part payments due to the Service Provider under the Contract with immediate effect until such information is provided by the Service Provider, or withhold payment indefinitely in the event that the information is not provided to the Council;
 - (a) The maximum sum that may be retained by the Council under this paragraph 8 shall not exceed an amount equivalent to the payments due to the Service Provider that would be payable in the three month period following the Service Provider's failure to comply with paragraph 3 or paragraph 4, as the case may be.
- 5.7 Any change to the Employee Liability Information which would increase the total employment costs of the Relevant Employees during any notice period prior to termination of the Contract or in the 12 months prior to the natural expiry of this Contract shall not (so far as reasonably practicable) take place without the Council's prior written consent, unless such changes are required by law;
 - (a) The Service Provider shall and shall procure that any Sub-contractor shall supply to the Council full particulars of such proposed changes and the Council shall be afforded reasonable time to consider them.
- 5.8 During any notice period prior to termination of the Contract or in the 12 months prior to the natural expiry of this Contract, the Service Provider shall not and shall procure

that any Sub-Contractor shall not materially increase or decrease the total number of employees listed on the Service Provider's Provisional Personnel List, their remuneration, or make any other change in the terms and conditions of those employees without the Council's prior written consent.

5.9 The Service Provider shall indemnify and keep indemnified the Council and Replacement Service Provider against any losses, except indirect losses, incurred by the Council or any Replacement Service Provider in connection with any claim or demand by any Relevant Employee arising out of the employment of any Relevant Employee. This indemnity shall apply provided that it arises from any act, fault or omission of the Service Provider in relation to any Relevant Employee prior to the Relevant Transfer Date (except where such act, fault or omission arises as a result of the Council's or Replacement Service Provider's failure to comply with regulation 13 of TUPE) and any such claim is not in connection with the transfer of the Services by virtue of TUPE on the Relevant Transfer Date.

5.10 The Service Provider shall indemnify and keep indemnified in full the Council and each and each Replacement Service Provider against all Employment Liabilities relating to:

(a) any person who is or has been employed or engaged by the Service Provider or any Sub-Contractor in connection with the provision of any of the Services; or

(b) any trade union or staff association or employee representative,

arising from or connected with any failure by the Incoming Service Provider and/or any Sub-Contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Relevant Transfer Date.

5.11 The Parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer will be fulfilled.

4. **PENSIONS**

5.12 The Service Provider shall or shall procure that any relevant Sub-Contractor shall ensure that all Eligible Employees are offered Appropriate Pension Provision with effect from the Effective Date.

5.13 The provisions of this paragraph 50.163(e)4, paragraph 50.163(e)5 and paragraph 50.163(e)6 shall be directly enforceable by Eligible Employees against the Service Provider or any relevant Sub-Contractor and the Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to the extent necessary to ensure that any Eligible Employees shall have the right to enforce any obligation owed to such employee by the Service Provider or Sub-Contractor under those paragraphs in his own right under section 1(1) of the Contracts Rights of Third Parties Act 1999.

5. ADMITTED BODY STATUS TO THE LOCAL GOVERNMENT PENSION SCHEME

- 5.14 Where the Service Provider or Sub-Contractor wishes to offer the Eligible Employees membership of the LGPS, the Service Provider shall or shall procure that it and/or each relevant Sub-Contractor shall enter into an Admission Agreement to have effect from and including the Effective Date or, if a Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer;
- (a) The Service Provider or Sub-Contractor will bear the cost of any actuarial assessment required in order to assess the employer's contribution rate [and Bond value] in respect of any Eligible Employee who elects to join the LGPS on or after the Effective Date.
- 5.15 The Service Provider shall indemnify and keep indemnified the Council and any Replacement Service Provider and, in each case, their Sub-Contractors, from and against all direct losses suffered or incurred by it or them, which arise from any breach by the Service Provider or Sub-Contractor of the terms of the Admission Agreement, to the extent that such liability arises before or as a result of the termination or expiry of this Contract.
- 5.16 The Service Provider shall and shall procure that it and any Sub-Contractor shall prior to the Effective Date obtain any indemnity or Bond required in accordance with the Admission Agreement;
- (a) The Service Provider or Sub-Contractor will bear the cost of any actuarial assessment required in order to assess the value of the Bond or guarantee.
- 5.17 The Service Provider shall and shall procure that any relevant Sub-Contractor shall award benefits (where permitted) to the Eligible Employees under the LGPS Regulations in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council:
- (a) The Service Provider shall be responsible for meeting all costs associated with the award of such benefits.
- 5.18 The Council's actuary shall determine the terms for bulk transfers from the LGPS to the Service Provider's scheme following the Effective Date and any subsequent bulk transfers on termination or expiry of this Contract.

6. SERVICE PROVIDER PENSION SCHEME

- 5.19 Where the Service Provider or Sub-Contractor does not wish to or is otherwise prevented from offering all or some of the Eligible Employees membership or continued membership of the LGPS, the Service Provider shall or shall procure that any relevant Sub-Contractor shall offer the Eligible Employees membership of a Workplace Pension scheme with effect from the Effective Date. Such a Workplace Pension scheme must be:

- (a) Unless otherwise agreed by the Council, established no later than three months prior to the date of the Effective Date; and
 - (b) certified by the Government Actuary Department as providing benefits that are broadly comparable to those provided by the Legacy Scheme,
- and the Service Provider shall produce evidence of compliance with this paragraph 50.163(e)6 to the Council prior to the date of the Effective Transfer.

- 5.20 The Service Provider shall and shall procure that each relevant Sub-Contractor shall:
- (a) maintain such documents and information as will be reasonably required to manage the pension rights of and aspects of any onward transfer of any Relevant Employee upon a Relevant Transfer;
 - (b) promptly provide to the Council such documents and information mentioned in paragraph 5.20(a) which the Council may reasonably request in advance of the expiry or termination of this Contract; and
 - (c) fully cooperate (and procure that the trustees of the Service Provider's scheme shall fully cooperate) with the reasonable requests of the Council relating to any administrative tasks necessary to deal with the pension rights of and aspects of any onward transfer of any person engaged or employed by the Service Provider or any Sub-Contractor in the provision of the Services on expiry or termination of the Contract.

7. THIRD PARTY RIGHTS AND AMENDMENTS

- 5.21 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply from paragraph -2051123120.3.1 to paragraph 12, to the extent necessary to ensure that any Replacement Service Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Service Provider by the Service Provider or the Council in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 5.22 Despite paragraph 7.1, it is expressly agreed that the Parties may by agreement rescind or vary any terms of this Contract 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.

Annex A. PART A:List of Transferring Employees

DRAFT

Annex B. [PART B:List of Third Party Employees]

DRAFT

Annex C. Admission Agreement

DRAFT

Annex C. [BOND]

DRAFT

SCHEDULE 9: PREMISES AND ASSETS

**[DETAILS OF COUNCIL PREMISES AND ANY APPLICABLE LEASES OR
LICENCES TO BE INSERTED
PLUS IDENTIFY COUNCIL ASSETS]**

[INSERT]

DRAFT

SCHEDULE 10: DATA PROTECTION

DATA PROTECTION SCHEDULE

1. The Data Processor shall comply with any further written instructions with respect to processing by the Data Controller.
2. Any such further instructions shall be incorporated into this Schedule and this Schedule may be amended at any time during the Contract Period by agreement in writing between the Data Controller and the Data Processor to ensure that the description and detail set out in this Schedule with regard to the processing of personal data reflects the arrangements between the Parties, is accurate and is compliant against the Data Protection Legislation.

No	Description	Details
1	Subject matter of the processing	<i>Who will the data be about</i>
2	Duration of the processing	<i>How long will the data be processed for</i>
3	Nature and purposes of the processing	<i>What is the contract for and why is data processing required to perform the service</i>
4	Type of Personal Data	<i>Name, address, date of birth, telephone number, email address and 'Council System' number.</i>

5	Categories of Data Subject	<i>Will parents, family members, employees also be part of the data?</i>
6	Plan for return and destruction of the data, once the processing is complete UNLESS requirement under the law to preserve that type of data	

DRAFT