

DATED

2021

CONTRACT

between

CESHIRE EAST BOROUGH COUNCIL

and

#####

**AGREEMENT FOR THE MAINTENANCE OF LIFTS AND HOISTS (INCLUDING
TESTING, SERVICING, INSTALLATION, REMOVAL OUTSIDE OF MANUFACTURER'S
WARRANTY)**

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CONTRACT PARTICULARS

Date of the Agreement:	
Supplier:	
Contract title/description of Goods and/or Services:	Agreement for the maintenance of lifts and hoists (including testing, servicing, installation, removal outside of manufacturer's warranty)
Contract Period (duration in weeks/months/years):	3 Years
Commencement Date:	2021
Termination Date:	2024
Option to extend: Y/N	Yes
Extension Period (if applicable):	Up to 24 months in two blocks of 12 months
Contract Price:	As set out in Schedule 5
Payment Terms:	As set out in Clause 14 of Schedule 1 and Clause 19 of Schedule 2
Invoice address:	The Council reserves the right to withhold payment of up to 20% of the amount due for under performance against the Key Performance Indicators detailed in Schedule 4 All invoices should be sent, quoting a valid purchase order number (PO Number), to: [supplier@ecwip.co.uk] or [Cheshire East Council, Cheshire Shared

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	Services, Payments Section, Purchasing & Exchequer, PO Box 3655, Chester, CH1 9PPJ.
Contract Managers (names/contact details):	For the Supplier: For the Council: Steve Clews- Contracts & Quality Cheshire East Council, 1st Floor, Westfields, Middlewich Road, Sandbach, CW11 1HZ stephen.clews@cheshireeast.gov.uk

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This Contract is made the day of 2021

BETWEEN

- 1 **CHESHIRE EAST BOROUGH COUNCIL** of Westfields, Middlewich Road, Sandbach, Cheshire c/o Municipal Buildings, Earle Street, Crewe CW1 2BJ (**“the Council”**)
2. ##### incorporated and registered in England and Wales with company number whose registered office is at #####(**“the Supplier”**)

ARTICLES OF AGREEMENT

- (A) The Council is the local authority for the administrative area of Cheshire East and is under a statutory duty to provide disabled facilities grants for the installation of lifts and hoists in the homes of eligible disabled persons.
- (B) As a best value Council the Council has determined that it is desirable and necessary to service and maintain lifts and hoists installed under such disabled facilities grants.
- (C) The Council has undertaken a tender to procure a supplier to supply such services throughout Cheshire East as defined in the Service Specification at Schedule 3.
- (D) On the Council placed a Notice in the United Kingdom contract finder portal reference seeking bids from potential suppliers to be appointed as eligible suppliers of the Services (as defined in this Contract.)
- (E) The Council has selected the Supplier to supply the Services and the Supplier has agreed to supply the Services subject to, and in accordance with the terms and conditions of this Contract.

NOW IT IS AGREED

1. That the Supplier shall provide the Services in accordance with the terms of the Contract during the Term of this Contract.
2. That so long as the Supplier provides the Services in accordance with the terms of the Contract and to the reasonable satisfaction of the Council the Council shall make payment to the Supplier as set out in the Contract.

FORM OF CONTRACT

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This Contract is made up of these Articles of Agreement and the following Schedules only:

- Schedule 1 -Terms And Conditions Of Contract
- Schedule 2 - Special Terms And Conditions Of Contract
- Schedule 3 - Specification
- Schedule 4 - Performance Regime
- Schedule 5 - Pricing Schedule
- Schedule 6 - Change Control Procedures
- Schedule 7 - Supplier's Tender
- Annex A - Draft Mobilisation Plan
- Annex B - TUPE
- Annex 1 - Details of Processing of Council Personal Data
- Annex 2 - Details of Information held by the Supplier on behalf of the Council (for FOIA purposes)

COMMENCEMENT DATE OF CONTRACT: 2021

EXPIRY DATE OF CONTRACT: 2024

OPTION TO EXTEND: 24 MONTHS (AS DETAILED IN SCHEDULE 2)

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EXECUTION/SEALING

For and on behalf of Cheshire East
Borough Council

Authorised signatory:

Name:

Title:

Date:

For and on behalf of the Supplier

Authorised signatory:

Name:

Title:

Date:

I hereby witness and attest this
signature of the above named
Director/Authorised Signatory

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:

THE COMMON SEAL OF
CHESHIRE EAST BOROUGH COUNCIL

was hereunto affixed in the presence of

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AUTHORISED SIGNATORY

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SCHEDULE 1 – TERMS AND CONDITIONS

Clause	Heading
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	PART A – OPERATIVE PROVISIONS
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1	DEFINITIONS
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2	HEADINGS
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3	NOTICES
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4	ENTIRE AGREEMENT
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	PART B – PROVISION OF SERVICES
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5	TERM
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6	SUPPLIER TO HAVE SATISFIED ITSELF
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8	NOMINATED COUNCIL REPRESENTATIVE
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10	TITLE TO GOODS
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11	MONITORING AND REPORTING
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13	SUPPLIER'S STAFF AND KEY PERSONNEL
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	PART C – PRICE AND PAYMENT
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14	PRICE AND PAYMENT
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	PART D – TERMINATION AND CONSEQUENCES OF TERMINATION
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15	TERMINATION
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16	CONSEQUENCES OF TERMINATION
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17	DISPUTE RESOLUTION PROCEDURE
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18	SURVIVAL
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	PART E – INSURANCE AND LIABILITIES
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19	INSURANCE
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20	INDEMNITY AND LIABILITY
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	PART F – PROTECTION OF INFORMATION
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21	INTELLECTUAL PROPERTY
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22	CONFIDENTIALITY AND PUBLICITY
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23	PROCESSING OF PERSONAL DATA
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24	FREEDOM OF INFORMATION
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25	RECORD KEEPING, MONITORING AND ASSISTANCE
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	PART G – STATUTORY OBLIGATIONS
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26	HEALTH AND SAFETY
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27	LAW AND CHANGE IN LAW
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	PART H – GENERAL PROVISION
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41	OBLIGATION TO MITIGATE

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PART A – OPERATIVE PROVISIONS

1. DEFINITIONS

The terms and expressions used in these Terms and Conditions shall have the meanings set out below:

“Authorised Officer”	The person duly appointed by the Council act as the representative of the Council for the purpose of the Order and notified in writing to the Supplier on the Order Form
“Bribery Act”	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.
“Business Day”	Any day other than a Saturday or Sunday or a public or bank holiday in England
“Change Control Procedures”	the procedures for control of change as set out in Schedule 6.
“Change in Law”	The coming into effect or repeal (without re-enactment or consolidation) in England of any Law, or any amendment or variation to any Law, or any judgement of a relevant court of law which changes binding precedent in England in each case after the date of this Order
“Commencement Date”	2021
“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 relates to the Services, the business, affairs, properties, assets, trading practices, developments, trade

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	secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either party, all personal data and sensitive personal data (within the meaning of the DPA) and commercial sensitive information
“Contract”	<p>the agreement in respect of the provision of the Tasks consisting of the following listed documents which shall be read as one document. In the event of ambiguity, conflict or contradictions between these documents the conflict will be resolved according to the following order of priority:</p> <ol style="list-style-type: none"> 1. the Order Form; 2. these Conditions of Contract 3. the Written Brief/the Specification including the Service Schedule 4. the Supplier’s Written Submission.
“Contract Manager”	the person named in clause 9 as the contract manager and any replacement from time to time.
“Control”	Control as defined by section 1124 of the Corporation Tax Act 2010.
“Council”	Cheshire East Borough Council.
“Client”	the disabled owner of the Client Premises
“Client Premises”	the property where the Services are to be provided.
“DPA”	The Data Protection Act 2018
“Default”	any breach of obligations of either party (including but not limited to a fundamental breach or breach of a fundamental term) or any default, act omission, negligence or statement of either party, its employees, agents or sub-Suppliers in connection with or in relation to the subject matter of this

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	Contract and in respect of which such party is liable to the other.
“Council Data”	means any data processed by a Contracted Processor on behalf of the Council pursuant to or in connection with this Agreement;
“Council Personal Data”	means any Personal Data Processed by a Contracted Processor on behalf of the Council pursuant to or in connection with this Agreement;
“Data Protection Laws”	means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time; (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
“Equipment”	The equipment described in the Specification and the Order Form to be removed, refurbished, stored, re-installed and/or serviced and maintained by the Supplier in accordance with this Contract.
“Employee”	means any person employed by the Supplier to perform the Contract which will also include the Supplier’s servants, agents, voluntary and unpaid workers and sub-Suppliers and representatives employed by the Supplier in the performance of the Tasks.
“DPA 2018”	means the Data Protection Act 2018;

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“Employee Liability Information”

means:

the information that a transferor is obliged to notify to a transferee under regulation 11 (2) of TUPE:

- (a) the identity and age of the employee;
- (b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996);
- (c) 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;
- (d) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against the Supplier arising out of the employee's employment with the transferor;
- (e) information about any collective agreement that will have effect after the Effective Date or the Service Transfer Date, as the case may be, in relation to the employee under regulation 5 (a) of TUPE;

“EEA”

means the European Economic Area;

“Force Majeure”

any cause materially affecting the performance by a party of its obligations under this Contract arising from any act beyond its reasonable control and affecting either party, including without limitation: acts of God, war, industrial action (subject to clause 34.3), protests, fire, flood, storm, tempest, epidemic, explosion, acts of terrorism and national emergencies.

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“Good Industry Practice”

the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced Supplier engaged in the supply of services similar to the Tasks under the same or similar circumstances as those applicable to this Contract.

“Instructions”

The instructions provided in the Specification, Order Form, Written Brief and any other information that the Council considers appropriate to the provision of the Tasks.

“Intellectual Property Rights”

patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“Key Performance Indicators”

the Key Performance Indicators referred to in the Specification and Schedule 4.

“Key Personnel”

those persons agreed (in writing) between the Council and the Supplier as being key personnel under Clause 13 of Schedule 1 and Schedule 2 .

“Law”

any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law,

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	or directives or requirements of any regulatory body of which the Supplier is bound to comply.
“Liabilities”	all costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought.
“Nominated Council Representative”	an Officer either employed by the Council or other representative who has been duly authorised to act on behalf of the Council in accordance with clause 8.
“Order ”	the official order by the Council to the Supplier for the performance of the Tasks specified in a Written Brief in accordance with the Specification and clause 7.
“Mobilisation Date”	means the date set out in Schedule 2.
“Mobilisation Period”	means the period from the Mobilisation Date to the Commencement Date.
“Mobilisation Plan”	means the plan drawn up by the Provider which identifies the actions they intend to achieve in the Mobilisation Period and which meets the requirements of the Specification.
“Necessary Consents”	means all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Services;
“Pricing Schedule”	the prices and rates detailed in Schedule 5.
“Prohibited Act”	the following constitute Prohibited Acts (a) to directly or indirectly offer, promise or give any person working for or engaged by

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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 Agreement

(c) Committing any offence

(i) Under the Bribery Act

(ii) Under legislation creating offences concerning fraudulent acts

(iii) At common law concerning fraudulent acts relating to this Agreement or any other contract with the Council

(d) Defrauding, attempting to defraud or conspiring to defraud the Council

“Request for Information”

a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.

“Replacement Tasks”

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

“Replacement Supplier”

any company, organisation or person who replaces the Supplier following termination or expiry of all or part of this Contract.

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“Services”	the servicing maintenance repair storage and decommissioning as described in the Specification.
“Restricted Transfer”	<p>means:</p> <ul style="list-style-type: none"> i. a transfer of Council Personal Data from the Council to a Contracted Processor; or ii. an onward transfer of Council Personal Data from a Contracted Processor to a Contracted Processor, or between two establishments of a Contracted Processor; <p>in each case, where such transfer would be prohibited by Data Protection Laws (or by the terms of data transfer agreements put in place to address the data transfer restrictions of Data Protection Laws);</p>
“Specification”	the specification of the Tasks as detailed in Schedule 3 and further detailed in the Written Brief in relation to each individual Order.
“Special Terms”	means the special terms and conditions of contract as set out in Schedule 2;
“Subprocessor”	means any person (including any third party, but excluding an employee of the Supplier or any of its sub-contractors) appointed by or on behalf of the Supplier to Process Personal Data on behalf of the Council and/or its Associates in connection with this Agreement;
“Task”	any task necessary or desirable for the full and proper provision of the Services including the supply of Equipment and Works.
“Term”	The period of three (3) years together with the option to extend as set out in clause 5.

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“TUPE”	the Transfer of Undertakings (Protection of Employment) Regulations 2006.
“Staff Vetting Procedures”	means vetting procedures that accord with good industry practice or, where requested by the Council, the Council’s procedures for the vetting of personnel as provided to the Supplier from time to time;
“Works”	The works of removal refurbishment and re-installation of the Equipment as described in the Specification.
“Written Brief”	the detailed description of the Tasks which the Council wishes the Supplier to undertake in accordance with the Specification.
“Written Submission”	the Supplier’s response to the Council’s Written Brief in accordance with the Specification.

1.2 Any reference to a person shall include any natural person, partnership, joint venture, body corporate, incorporated association, government, governmental agency, persons having a joint or common interest, or any other legal or commercial entity or undertakings.

1.3 A reference to any statute, order, regulation or similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

2. HEADINGS

2.1 The index and headings to the clauses and appendices to and schedules of this Contract are for the convenience only and will not affect its construction or interpretation.

3. NOTICES

3.1 Any notice required by this Contract to be given by either party to the other shall be in writing and shall be served personally or by sending it by registered post or recorded delivery to the appropriate address notified to each other as set out in the Order Form.

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- 3.2 Any notice served personally will be deemed to have been served on the day of delivery; any notice sent by post will be deemed to have been served 48 hours after it was posted save where the deemed date of service falls on a day other than a Business Day in which case the date of service will be the following Business Day.

4. ENTIRE AGREEMENT

- 4.1 This Contract together with the Schedules and the Orders called off hereunder constitute the entire agreement between the parties relating to the subject matter of this Contract. This Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause 4 shall not exclude liability in respect of any fraudulent misrepresentation.

PART B – PROVISION OF TASKS

5. TERM

- 5.1 The Contract shall commence on the Commencement Date and (unless terminated in accordance with the provisions of this Contract) will remain in force for a period of three (3) years from the Commencement Date (the **Initial Term**).
- 5.2 The Council may extend this Contract beyond the Initial term by further periods of one (1) year (the **Extension Period**), up to a maximum of two (2) years. If the Council wishes to extend this Contract it will give the Supplier at least three (3) months' written notice of such intention prior to the end of the Initial Term or Extension Period (whichever is relevant).
- 5.3 If the Council gives such notice then the Term shall be extended by the period set out in the notice.

6. SUPPLIER TO HAVE SATISFIED ITSELF

- 6.1 The Supplier acknowledges that it:
- (a) has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by the Council;
 - (b) has raised all relevant due diligence questions with the Council before commencement of this Contract; and
 - (c) has entered into this Contract in reliance on its own due diligence alone.

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- 6.2 The Supplier shall be deemed to have satisfied itself as to the sufficiency and correctness of the Price. Unless otherwise expressly stated in the Contract the Price shall cover all the Supplier's obligations under the Contract and everything necessary for the supply of the Tasks under the Contract.
- 6.3 Unless otherwise expressly stated in the Contract or the relevant Specification and agreed by the parties, no amendment to the Price on the grounds of any matter relating to any document forming part of the Contract or any ambiguity or discrepancy therein on which an experienced Supplier could have satisfied himself by reference to the Council or any other appropriate means may be made by the Supplier.

7. PERFORMANCE OF TASKS

- 7.1 The Supplier performs the Tasks on a non- exclusive basis and the Council does not guarantee Orders for any or all of the Tasks and has the right to employ another person to provide Services and Tasks of the same type as is contemplated by this Contract if it shall at its absolute discretion think fit to do so.
- 7.2 When the Council wishes to call-off the provision of Works and/or Equipment by the Supplier under the Contract the Council will issue a Written Brief.
- 7.3 The Supplier will consider the Written Brief and provide a Written Submission in accordance with the Specification.
- 7.4 The pricing of the Works and/or Equipment will be in accordance with the Pricing Schedule set out in Schedule 3.
- 7.5 The Council shall be entitled at any time during the Term to provide a Written Brief to and place an Order with the Supplier for the Works and/or Equipment.
- 7.6 In the event that the Supplier is unable to fulfil the Written Brief then the Supplier shall notify the Council of its inability to fulfil the Written Brief by telephone or by email within 5 working days of having received the Written Brief followed by written confirmation of the same.
- 7.7 Following receipt of the Supplier's Written Submission the Council may accept or reject it. If the Council accepts the Supplier's response the Council will issue an Order to the Supplier instructing the Supplier to carry out and complete the Works and/or supply and install the Equipment.
- 7.8 The Supplier shall carry out the servicing, inspection and testing of Equipment as detailed in the Specification and in accordance with the Service Schedule.

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- 7.9 The Supplier will carry out breakdown services and service repairs as detailed in the Specification.
- 7.10 The Supplier will carry out the Tasks in accordance in all respects with the terms of this Contract and the terms and conditions of any relevant Order.
- 7.11 Not Used
- 7.12 In the event that the Tasks are being called off urgently the Council may issue alternative instructions to the Supplier as necessary.
- 7.13 For the avoidance of doubt the Council shall not be responsible for any Tasks that are delivered by the Supplier and are not the subject of an Order.
- 7.14 The Council reserves the right to suspend or cancel an Order in circumstances which are further detailed circumstances in the Specification.
- 7.15 The Supplier shall ensure that the Tasks provided pursuant to the Order exceed or meet the requirements of the Specification and, where the purposes for which the Tasks are required is indicated in the Order, either expressly or by implication, shall be fit for that particular purpose.
- 7.16 Without prejudice to any other remedies available if the Supplier seeks to cancel an Order in circumstances detailed in the Specification (or otherwise) or fails to perform the Tasks in accordance with the Specification and the Key Performance Indicators are not met then the Council shall be entitled to a reduction in the Charges in respect of such Tasks calculated in accordance with Schedule 4.
- 7.17 The Supplier warrants that the Tasks to be supplied under this Contract shall comply in all respects with the requirements set out in the Specification and with all relevant requirements of any statute, statutory rule or order or other instrument having the force of law which may be in force at the time when the Tasks are supplied.
- 7.18 The Supplier shall ensure that all Equipment complies with the appropriate specification or code of practice of the British Standard Institution or any European equivalent as set out in the Specification (or with any equivalent standard or code which comes in to force during the Term).
- 7.19 The Supplier shall ensure that they have or have access to sufficient Equipment (including parts, spares and fixings) in accordance with the requirements of the Specification.

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- 7.20 The Supplier (or its sub-Suppliers) shall at all times comply with the requirements of the Specification in relation to the Council's Clients and the Council Client's Premises.
- 7.21 The Council will have the right to observe the Supplier's performance of the Tasks at any time and at the place of performance of the Tasks.
- 7.22 If the Supplier at any time becomes aware of any act or omission, or proposed act or omission by the Council which prevents or hinders, or may prevent or hinder the Supplier from performing the Tasks in accordance with the Contract, the Supplier shall inform the Council and the Council may, at its absolute discretion, extend the period of the Contract accordingly.
- 7.23 If the Supplier at any time becomes aware of any material matter that could affect the performance of the Tasks in accordance with the Contract, the Supplier shall inform the Council immediately.
- 7.24 The Supplier shall operate a complaints procedure in accordance with the requirements of the Council as set out in the Specification from the Commencement Date of the Contract and will continue to operate such complaints procedure until the last Order called-off under this Contract has been completed to the satisfaction of the Council and the last warranty period has expired. The Supplier will make the Council's complaints leaflets available to the Council's Clients should they wish to make a complaint.
- 7.25 If the Supplier has a change in Control, the Supplier shall inform the Council as soon as reasonably practicable.

8. NOMINATED COUNCIL REPRESENTATIVE

- 8.1 The officer appointed by the Council to act on behalf of the Council for the purposes of the Contract, full details of whom shall be given to the Supplier prior to the Commencement Date

9. CONTRACT MANAGER

- 9.1 The Supplier shall employ a competent and authorised Contract Manager empowered to act on behalf of the Supplier for all purposes connected with this Contract.
- 9.2 The Supplier shall forthwith give notice in writing to the Council of any change in the identity, address and telephone numbers of the person appointed as Contract Manager. The Supplier shall give maximum possible notice to the Council before changing its Contract Manager.

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10. TITLE TO EQUIPMENT AND GOODS

- 10.1 Title in any Equipment or other goods provided as part of the Tasks shall pass to the Council upon delivery or early payment without prejudice to any rights of rejection which may accrue to the Council under this Contract or otherwise.

11. MONITORING AND REPORTING

- 11.1 The Supplier shall:

- (a) appropriately manage its provision under all Orders in accordance with the reasonable requests of the Council;
- (b) be required to provide the Council with accurate and up to date management information as detailed in the Specification in relation to the Contract at the required frequency through the Term. Such information shall include but not be limited to the volume and value of the Orders, the Equipment supplied, the Works performed and Services provided;
- (c) on reasonable notice grant to the Council and/or the Council's external and internal auditors access to any relevant data or documentation relating to the Contract and the supply of the Tasks for the purpose of carrying out an audit.

- 11.2 The Supplier shall hold quarterly performance review meetings in respect of the Contract with the Council. This meeting shall include a review of information and data on performance of the Tasks, Council enquiries and complaints and the volume and value of Orders and the Key Performance Indicators. The Supplier shall co-operate fully in providing this and any other financial and statistical information required by the Council during the course of each review.

12. WARRANTY

- 12.1 The Supplier warrants to the Council that the Tasks will be provided:

- 12.1.1 in a proper, skilful and workmanlike manner;
- 12.1.2 by a sufficient number of appropriately qualified, trained and experienced personnel with a high standard of skill, care and due diligence and in accordance with Good Industry Practice;
- 12.1.3 in accordance with this Contract and any descriptions provided by the Supplier;
- 12.1.4 to the reasonable satisfaction of the Authorised Officer;

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- 12.1.5 in a way that the Supplier takes every reasonable precaution to safeguard the Premises and the Client's property entrusted to the care of the Supplier.
- 12.2 The Supplier warrants to the Council that to the extent that Equipment will be provided they will:
 - 12.2.1 fit for purpose as required by the Written Brief;
 - 12.2.2 be free from defects in design, material and workmanship; and
 - 12.2.3 provided in accordance with the Contract, correspond with the Written Brief and any drawings, samples or descriptions provided by the Supplier;
 - 12.2.4 be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health.
- 12.3 The Supplier shall ensure that all refurbished equipment is provided with a full parts and labour warranty which meets the requirements of the Specification (including in respect of the length of the warranty) and will provide the Council with a Certificate of Warranty.
- 12.4 The Contractor will carry out the Works in a proper and workmanlike manner in accordance with the Specification, Written Brief, Written Submission, current buildings regulations and statutory requirements.
- 12.5 If any defects, shrinkages or other faults in the Works appear within 12 months of completion of the Works, due to materials, Equipment or Workmanship not in accordance with the Specification, Written Brief, Written Submission, current building regulations and other statutory requirements the Contractor shall make good such defects, shrinkages or other faults entirely at his own cost.
- 12.6 The Supplier will supply (to the Client) the Documentation with the Equipment upon installation of the Equipment.
- 12.7 The Supplier warrants that it has full capacity and authority and all necessary consents (including but not limited to where its procedures so require the consent of its parent Company) to enter into and perform the Contract and that the Contract is executed by the duly authorised representatives of the Supplier;
- 12.8 Without prejudice to the Council's rights to terminate under clause 15 (Termination). If any of the Tasks supplied are not in accordance with this Contract, the Council shall be entitled to:

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12.8.1 require the Supplier to provide Replacement Tasks in accordance with this Contract as soon as reasonably practicable and in any event within fourteen (14) days of a request to do so.

12.8.2 should the Supplier fail to provide Replacement Tasks in accordance with paragraph 12.8.1 then the Council may at its absolute discretion appoint a Replacement Supplier to supply Replacement Tasks

12.8.3 subject to clause 20 (Indemnity and Liability) require repayment of the proportion of the Price which has been paid in respect of such Tasks together with payment of any additional expenditure over and above the price reasonably incurred by the Council in obtaining Replacement Tasks.

13. SUPPLIER'S STAFF AND KEY PERSONNEL

13.1 If the Council reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Contract, it may, by giving written notice to the Supplier:

13.1.1 refuse admission to the relevant person(s) to the Client Premises;

13.1.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s); and/or

13.1.3 require that the Supplier replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Council to the person removed is surrendered;

and the Supplier shall comply with any such notice.

13.2 The Supplier shall ensure that:

13.2.1 each of the Staff is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;

13.2.2 there is an adequate number of Staff to provide the Services properly;

13.2.3 only those people who are authorised by the Supplier (under the authorisation procedure to be agreed between the Parties) are involved in providing the Services;

13.2.4 all of the Staff comply with all of the Council's policies including those that apply to persons who are allowed access to the Premises;

13.2.5 all Staff are vetted in accordance with the Staff Vetting Procedures and if requested, comply with the Council's Staff Vetting Procedures as supplied from time to time;

13.2.6 if requested to do so, it shall provide the Council with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Premises in connection with the Contract; and

13.2.7 it procures that all Staff comply with any rules, regulations and

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requirements reasonably specified by the Council.

- 13.3 The Council may refuse to grant access to, and remove, any of the Staff who do not comply with any such policies, or if they otherwise present a security threat.
- 13.4 The Supplier shall replace any of the Staff who the Council reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Staff for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
- 13.5 The Supplier shall maintain up-to-date personnel records on the Staff engaged in the provision of the Services and, on request, provide reasonable information to the Council on the Staff. The Supplier shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.
- 13.6 The Supplier shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good as the prevailing industry norm for similar services, locations and environments.
- 13.7 The Supplier shall appoint the Key Personnel to be responsible for the matters allocated to such Key Personnel. The Key Personnel are key to the success of the implementation and/or operation of the Services and shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of the Supplier on the matters for which they are expressed to be responsible.
- 13.8 The Supplier shall not remove or replace any of the Key Personnel unless:
- 13.8.1 requested to do so by the Council, in consultation with its Associates;
 - 13.8.2 the person is on long-term sick leave;
 - 13.8.3 the element of the Services in respect of which the individual was engaged has been completed to the Council's satisfaction;
 - 13.8.4 the person resigns from their employment with the Supplier;
 - 13.8.5 the Supplier obtains the prior written consent of the Council.
- 13.9 The Supplier shall inform the Council of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified. The Council shall be entitled to interview any such person and may object to any such proposed appointment within 20 Working Days of being informed of or meeting any such replacement if, in its reasonable opinion, it considers the proposed replacement to be unsuitable for any reason.
- 13.10 The Supplier shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than 5 Working Days. Any replacement shall be as, or more, qualified and experienced as the previous

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incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Supplier or the Council becoming aware of the role becoming vacant.

- 13.11 The Council may require the Supplier to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities.
- 13.12 If the Supplier replaces the Key Personnel as a consequence of this clause 13, the cost of effecting such replacement shall be borne by the Supplier.
- 13.13 Any Key Personnel shall not be released from supplying the Services without the agreement of the Council, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.
- 13.14 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Council (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 13.15 The Supplier will provide the Council on demand, at no cost to the Council and within such reasonable time which the Council may stipulate, with such Employee Liability Information regarding the terms and conditions of its Staff involved in the provision of the Services as the Council may reasonably require in order for the Council to decide whether TUPE will apply upon expiry or termination of this Contract and/or so that the Council can make appropriate provision in any future tender documentation for the Services and or related services. Information disclosed to the Council pursuant to the clause shall not be used for any other purpose without the consent of the Supplier.

PART C – PRICE AND PAYMENT

14. PRICE AND PAYMENT

- 14.1 The Charges for the Services shall be as set out in Schedule 5 (Pricing Schedule) and shall be the full and exclusive remuneration of the Supplier in respect of the provision of the Services. Unless otherwise agreed in writing by the Council, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services, including but not limited to the costs of packaging, insurance, delivery, unloading, stacking and carriage.
- 14.2 The Supplier shall invoice the Council monthly in arrears as specified in the Contract. Each invoice shall include such supporting information required by the

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Council to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services provided in the invoice period.

- 14.3 The Council shall accept and process for payment an electronic invoice submitted for payment by the Supplier where the invoice is undisputed and where it complies with the standard on electronic invoicing. For these purposes an electronic invoice complies with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.
- 14.4 Where the Supplier submits an invoice in accordance with clause 14.2 the Council will consider and verify that invoice in a timely fashion.
- 14.5 In consideration of the supply of the Services by the Supplier, the Council shall pay the Supplier the invoiced amounts no later than 30 days after the Council has received and determined that the invoice (which includes a valid Purchase Order Number) is valid and undisputed. The Council may, without prejudice to any other rights and remedies under the Contract, withhold or reduce payments in the event of unsatisfactory performance.
- 14.6 Where the Council fails to comply with clause 14.4 and there is undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of clause 14.5 after a reasonable time has passed and in any event after 60 days have passed.
- 14.7 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Council shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Services.
- 14.8 If there is a dispute between the Parties as to the amount invoiced, the Council shall pay the undisputed amount. The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate the Contract for a failure to pay undisputed sums in accordance with clause 15.9 . Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 17.
- 14.9 If a Party fails to make any undisputed payment due to the other Party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 2% per annum above the base lending rate of the Bank of England from time to time. The Parties agree that this clause 14.9 provides each of them with a substantial remedy in respect of any late payment of sums due for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998. Such interest shall accrue on a daily basis from the due date until the actual date of payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments that the defaulting party disputes in good faith.
- 14.10 If any sum of money is contractually recoverable from or payable by the Supplier under the Contract (including any sum which the Supplier is liable to pay to the Council in respect of any breach of the Contract), that sum may be

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deducted unilaterally by the Council from any sum then due, or which may come due, to the Supplier under the Contract or under any other Contract or contract with the Council. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Council in order to justify withholding payment of any such amount in whole or in part.

14.11 The Provider shall not be eligible for any payments in respect of the Mobilisation Period.

PART D – TERMINATION AND CONSEQUENCES OF TERMINATION

15. TERMINATION

15.1 The Council may terminate this Contract by giving the Supplier not less than 3 months' notice in writing of such termination.

15.2 The Council may at any time by notice in writing terminate this Contract as from the date of service of such notice if;

- (a) The Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 **or** (being a partnership) has any partner to whom any of the foregoing apply; or
- (b) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of that other party; or
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier; or
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier (being a company); or
- (e) the holder of a qualifying floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver; or

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- (f) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier; or
 - (g) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within 14 days; or
 - (h) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.2 (a) to clause 15.2 (h) (inclusive); or
 - (i) the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
 - (j) there is a change of control of the Supplier (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 15.3 The Council may at any time by notice in writing terminate this Contract or an Order called off under the terms of this Contract forthwith, if the Supplier is in Default of any obligation under the Contract and:
- (a) The Default is capable of remedy and the Supplier shall have failed to remedy the Default within thirty (30) days of written notice to the Supplier specifying the Default and requiring its remedy; or
 - (b) The Default is not capable of remedy.
- 15.4 The Council reserves the right to perform the Tasks at any time in whole or part itself where the Supplier is in breach of this Contract.
- 15.5 This Contract may be terminated in accordance with the Force Majeure termination rights as specified in clause 34.
- 15.6 The Council may terminate this Contract in accordance with clause 35 if the Supplier, or any sub-Supplier, commits a Prohibited Act.
- 15.7 The Council has relied on the information provided by the Supplier contained in the Tender and any presentation made to the Council prior to its acceptance and the Council entering into the Contract including information as to Price and any material misrepresentation contained therein shall entitle the Council to terminate this Contract immediately.
- 15.8 Following termination of this Contract the Supplier shall at the absolute discretion of the Council continue to fulfil such Order/s that may be continuing

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or outstanding or that it may receive in accordance with this Contract up to the date of termination.

- 15.9 In addition to the Supplier's statutory rights, the Supplier may terminate the Contract by written notice to the Council if the Council has not paid any undisputed amounts within 90 days of them falling due.
- 15.10 Following termination of this Contract the Council may at its absolute discretion decide to terminate any continuing or outstanding Order/s
- 15.11 Save as set out in clause 15.8 termination of any individual Order shall not affect any other Order.

16. CONSEQUENCES OF TERMINATION

- 16.1 If this Contract is terminated in whole or in part the Council shall:
- 16.1.1 be liable to pay to the Supplier such elements of the Price, if any, that have properly accrued in accordance with this Contract or the affected part of this Contract up to the time of the termination; and/or
 - 16.1.2 except for termination under clause 16.5 be liable for any sum or sums which would have been due to the Council under this Contract or any other contract and to pay as a debt any sum in respect of any loss or damage to the Council resulting from or arising out of the termination of this Contract. Such loss or damage shall include the reasonable cost to the Council of the time spent by its officers in terminating this Contract and in making alternative arrangements for the supply of the Replacement Services or any parts of them in accordance with clause 16.6 and any reasonable costs incurred by the Council in accordance with clause 16.3.
- 16.2 Where the Supplier engages in conduct prohibited by clauses 35.1 and 35.2 in relation to this or any other contract with the Council, the Council has the right to:
- 16.2.1 terminate this Contract and recover from the Supplier the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the provision of the Services and any additional expenditure incurred by the Council throughout the remainder of the Term; or

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- 16.2.2 recover in full from the Supplier any other loss sustained by the Council in consequence of any breach of this clause whether or not this Contract has been terminated.
- 16.3 Upon the termination of this Contract for any reason, subject as otherwise provided in this Contract and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under this Contract.
- 16.4 Where termination arises under clause 16.5, the terminating party shall pay to the other party any reasonable, direct and quantifiable costs reasonably incurred by the other party due to early termination.
- 16.5 If this Contract is terminated in accordance with clause 34 neither party will have any liability to the other except that any rights and liabilities which accrued prior to termination will continue to exist.
- 16.6 The Council may, upon termination of this Contract, at its absolute discretion appoint a Replacement Supplier to supply Replacement Tasks.
- 16.7 The Supplier shall co-operate fully with the Council to ensure an orderly migration of the Tasks to the Council or, at the request of the Council, a Replacement Supplier

17. DISPUTE RESOLUTION PROCEDURE

- 17.1 If any dispute or difference of any kind whatsoever shall arise between the Council and the Supplier in connection with or arising out of this Contract or the carrying out of the Tasks and/or an Order called off under this Contract including an dispute as to a decision, opinion, instruction, direction, certificate or valuation given under this Contract (whether before or after the termination, abandonment or breach of this Contract) it shall be referred in the first instance to the Council's Contract Manager. The Council's decision in any such matter shall be provided in writing to the Supplier.
- 17.2 If the Supplier does not accept the Council's decision it shall within fourteen (14) days of receipt of the written decision refer it to an officer of suitable seniority or an appropriate nominated officer of each party for resolution and such officers shall meet for discussion within 14 days or longer as the parties may agree.
- 17.3 A dispute not resolved in accordance with clauses 17.1 to 17.2, shall next be referred at the request of either party to a mediator appointed by agreement between the parties and such appointment shall be made not later than 28 days or longer period as the parties may agree after service of a request in writing

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by either party to do so. The parties shall contribute equally to the costs of mediation.

- 17.4 Where one party refuses to agree or appoint a mediator, or fails to do so within the time specified, in accordance with clause 17.3 the other party, may give notice in writing to the party in default that it proposes to appoint a mediator to act as sole mediator and if the party in default does not within 7 clear days of that notice being given agree an arbitrator or make the required appointment, and notify the other party that it has done so, the other party may appoint a mediator as sole mediator. The parties shall contribute equally to the costs of mediation.
- 17.5 Where parties fail to reach an agreement to resolve the dispute through the mediation procedure detailed in clauses 17.3 and 17.4, either party may pursue any other available remedy in accordance with this Contract. For the avoidance of any doubt where parties fail to reach an agreement both parties shall contribute equally to the costs of mediation.
- 17.6 Nothing in this clause shall preclude either party from applying at any time to the English courts for such interim or conservatory measures as may be considered appropriate.

18. SURVIVAL

- 18.1 The following clauses will survive termination or expiry of this Contract: Clause 10 (Title to the Goods), Clause 16 (Consequences of termination), Clause 21 (Intellectual Property), Clause 22 (Confidentiality and Publicity), Clause 23 (Processing of Personal Data), Clause 24 (Freedom of Information), Clause 25 (Record Keeping, Monitoring and Assistance), Clause 28 (TUPE), Clause 32 (Severance), Clause 38 (Non Solicitation and Offers of Employment) and Clause 40 (Law and Jurisdiction)

PART E – INSURANCE AND LIABILITIES

19. INSURANCE

- 19.1 The Supplier shall effect and maintain at all times during the continuance of this Contract and for twelve months thereafter (or such longer period as, depending on the basis of the claims covered by the insurance, will effect cover for the minimum period applicable to any relevant claim) and in respect of any one claim, and without limit, in respect of the number of claims made in any twelve (12) month period of insurance:
- (a) Employer's Liability Insurance of not less than ten (10) million pounds,
 - (b) Public Liability Insurance of not less than five (5) million pounds, and

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- (c) Professional Indemnity Insurance of not less than two (2) million pounds.
- (d) Product Liability Insurance of not less than five (5) million pounds.
- (e) Contents insurance of sufficient level to cover replacement of Equipment stored on the Supplier's premises from time to time.

such insurance to be effected with a reputable insurance company.

- 19.2 The Supplier shall prior to the Commencement Date and on each anniversary of the Commencement date and/or upon request provide evidence that all premiums relating to such insurances have been paid.
- 19.3 If the Supplier does not maintain the necessary insurances under this Contract the Council may insure against any risk in respect of the default and may charge the Supplier the cost of such insurance together with a reasonable administration charge.

20. INDEMNITY AND LIABILITY

- 20.1 Neither party seeks to exclude or limit its liability for:

- 20.1.1 death or personal injury caused by its negligence (but will not be liable for death or personal injury caused by the other party's negligence);
- 20.1.2 fraudulent misrepresentation; or
- 20.1.3 any other matter in respect of which, as a matter of law, liability cannot be excluded or limited.

- 20.2 Except as specifically provided, neither party shall in any event be liable to the other for any indirect or consequential loss (including loss of profit, loss of business opportunity, loss of business, loss of goodwill, loss of production and pure economic loss) however caused.
- 20.3 The Supplier shall indemnify the Council in full without limit of liability for any direct loss of or damage to the real or personal property of the Council or any third party, including Intellectual Property Rights, or injury claimed by any third party and against all Liabilities awarded against or incurred by the Council (including legal expenses on an indemnity basis) arising from the Supplier's negligence, any defect or fault in the Services or any act or omission of the Supplier in delivering the Services.

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PART F – PROTECTION OF INFORMATION

21. INTELLECTUAL PROPERTY

21.1 All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:

21.1.1 provided to the Supplier by the Council shall remain the property of the Supplier;

21.1.2 prepared by or for the Supplier specifically for the use, or intended use, in relation to the performance of this Contract shall belong to the Council subject to any exceptions set out in the Order.

21.2 The Supplier shall obtain necessary approval before using any material, in relation to the performance of this Contract which is or may be subject to any third party Intellectual Property Rights. The Supplier shall procure that the owner of the Intellectual Property Rights grant to the Council a non-exclusive licence, or if the Supplier is itself a licensee of those rights, the Supplier shall grant to the Council an authorised sub-licence, to use, reproduce, and maintain the Intellectual Property Rights. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-license, transfer, novate or assign to other Councils, the Replacement Supplier or to any other third party providing services to the Council, and shall be granted at no cost to the Council.

21.3 It is a condition of this Contract that the delivery of the Tasks and/or the Council's Client's possession, use and operation of the Equipment will not infringe any Intellectual Property Rights of any third party and the Supplier shall during and after the Term on written demand indemnify and keep indemnified without limitation the Council against all Liabilities which the Council may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim relates to the act or omission of the Council.

21.4 At the termination of this Contract the Supplier shall at the request of the Council immediately return to the Council all materials, work or records held in relation to the Services, including any back-up media.

22. CONFIDENTIALITY AND PUBLICITY

22.1 Each party:

22.1.1 shall treat all Confidential Information belonging to the other party as confidential and safeguard it accordingly; and

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- 22.1.2 shall not disclose any Confidential Information belonging to the other party to any other person without prior written consent of the other party, except to such persons and to such extent as may be necessary for the performance of the Contract or except where disclosure is otherwise expressly permitted by the provisions of this Contract.
- 22.2 The Supplier shall take all necessary precautions to ensure that all Confidential Information obtained from the Council under or in connection with the Contract:
- 22.2.1 is given only to such of its staff, sub-Suppliers and agents engaged in connection with the Contract and only to the extent necessary for the performance of the Contract;
- 22.2.2 is treated as confidential and not disclosed (without prior approval) or used by any staff, sub-Suppliers or agents otherwise than for the purposes of the Contract.
- 22.3 Where it is considered necessary in the opinion of the Council the Supplier shall ensure that its staff, sub-Suppliers and agents sign a confidentiality undertaking before commencing work in connection with the Contract. The Supplier shall ensure that its staff, sub-Suppliers and agents are aware of the Supplier's confidentiality obligations under this Contract.
- 22.4 The Supplier shall not use any Confidential Information it receives from the Council otherwise than for the purposes of the Contract.
- 22.5 The provisions of Clauses 22.1 to 22.4 shall not apply to any Confidential Information received by one party from the other:
- 22.5.1 which is or becomes public knowledge (otherwise than by breach of this Clause);
- 22.5.2 which was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party;
- 22.5.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- 22.5.4 is independently developed without access to the Confidential Information; or
- 22.5.5 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, or the EIR.
- 22.6 Nothing in this Clause shall prevent the Council from:

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22.6.1 disclosing any Confidential Information for the purpose of the examination, audit and certification of the Council's or the Council' accounts; or

22.6.2 disclosing any Confidential Information obtained from the Supplier to any person engaged in providing any services to the Council for any purpose relating to or ancillary to the Contract;

Provided that in disclosing information under 22.6.2 the Council discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence.

22.7 The Supplier shall not without the prior written consent of the Council divulge the existence of the Contract or disclose any information relating to or contained in the Contract to any person who is not engaged in the performance of the Contract.

22.8 In the event that the Supplier fails to comply with this Clause 22, the Council reserves the right to terminate this Contract by notice in writing with immediate effect.

22.9 The provisions of this Clause 22 shall apply notwithstanding termination of this Contract.

23. PROCESSING OF PERSONAL DATA

23.1 The Supplier warrants and represents that, before any Sub-processor, Processes any Council Personal Data on behalf of the Council, the Supplier shall enter into an agreement with the Sub-processor that is compliant with applicable Data Protection Laws for the Processing of any Council Personal Data.

23.2 The Supplier shall:

23.2.1 comply with all applicable Data Protection Laws in the Processing of Council Personal Data;

23.2.2 not Process Council Personal Data other than on the Council's documented instructions unless Processing is required by Applicable Laws to which the relevant Contracted Processor is subject, in which case the Supplier shall to the extent permitted by Applicable Laws inform the relevant Council of that legal requirement before the relevant Processing of that Personal Data; and

23.2.3 not make or permit any Sub-processor to make any Restricted Transfers.

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- 23.3 The Council instructs the Supplier (and authorises the Supplier to instruct each Sub-processor) to Process Council Personal Data, as reasonably necessary for the provision of the Services pursuant to this Agreement.
- 23.4 Annex 1 to Schedule 2 of this Agreement sets out certain information regarding the Contracted Processors' Processing of Council Personal Data as required by article 28(3) of the GDPR (and, possibly, equivalent requirements of other Data Protection Laws). The Council may make reasonable amendments to Annex 1 by written notice to the Supplier from time to time as the Council reasonably considers necessary to meet those requirements. Nothing in Annex 1 (including as amended pursuant to this clause 23.4) confers any right or imposes any obligation on any party to this Agreement.
- 23.5 The Supplier shall take reasonable steps to ensure the reliability of any employee, agent or contractor of any Contracted Processor who may have access to Council Personal Data, ensuring in each case that access is strictly limited to those individuals who need to know / access the relevant Council Personal Data, as strictly necessary for the purposes of this Agreement, and to comply with Applicable Laws in the context of that individual's duties to the Contracted Processor, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.
- 23.6 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Supplier shall in relation to Council Personal Data implement appropriate technical and organizational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the GDPR.
- 23.7 In assessing the appropriate level of security, the Supplier shall take account in particular of the risks that are presented by Processing, in particular from a Personal Data Breach.
- 23.8 The Council authorises the Supplier to appoint (and permit each Sub-processor appointed in accordance with this clause 23.8 to appoint) Sub-processors in accordance with this clause 23.8.
- 23.9 The Supplier may continue to use those Sub-processors already engaged by the Supplier as at the date of this Agreement, subject to the Supplier in each case as soon as practicable meeting the obligations set out in clause 23.11.
- 23.10 The Supplier shall give the Council prior written notice of the proposed appointment of any new Sub-processor, including full details of the Processing to be undertaken by the Sub-processor. The Supplier shall not appoint (nor disclose any Council Personal Data to) the proposed Sub-processor except with the prior written consent of the Council.
- 23.11 With respect to each Sub-processor, the Supplier shall:

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- 23.11.1 before the Sub-processor first Processes Council Personal Data (or, where relevant, in accordance with clause 23.9), carry out adequate due diligence to ensure that the Sub-processor is capable of providing the level of protection for Council Personal Data required by this Agreement;
 - 23.11.2 ensure that the arrangement between the Supplier, and the Sub-processor, is governed by a written contract including terms which offer at least the same level of protection for Council Personal Data as those set out in this Agreement and meet the requirements of article 28(3) of the GDPR;
 - 23.11.3 ensure that the Sub-processor shall not make a Restricted Transfer of any Council Personal Data; and
 - 23.11.4 provide to the Council for review such copies of the Contracted Processors' agreements with Sub-processors (which may be redacted to remove confidential commercial information not relevant to the requirements of this Agreement) as the Council may request from time to time.
- 23.12 The Supplier shall ensure that each Sub-processor performs the obligations under clauses 23.2, 23.5, 23.13, 23.16, 23.17 and 23.22, as they apply to Processing of Council Personal Data carried out by that Sub-processor, as if it were party to this Agreement in place of the Supplier.
- 23.13 Taking into account the nature of the Processing, the Supplier shall assist the Council by implementing appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Council's obligations, as reasonably understood by the Council, to respond to requests to exercise Data Subject rights under the Data Protection Laws.
- 23.14 The Supplier shall:
- 23.14.1 promptly notify the Council if any Contracted Processor receives a request from a Data Subject under any Data Protection Law in respect of Council Personal Data; and
 - 23.14.2 ensure that the Contracted Processor does not respond to that request except on the documented instructions of the Council or as required by Applicable Laws to which the Contracted Processor is subject, in which case the Supplier shall to the extent permitted by Applicable Laws inform the Council of that legal requirement before the Contracted Processor responds to the request.
- 23.15 The Supplier shall notify the Council without undue delay upon the Supplier or any Sub-processor becoming aware of a Personal Data Breach affecting Council Personal Data, providing the Council with sufficient information to allow the Council to meet any obligations to report or inform Data Subjects of the Personal Data Breach under the Data Protection Laws.

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- 23.16 The Supplier shall co-operate with the Council and take such reasonable commercial steps as are directed by the Council to assist in the investigation, mitigation and remediation of each such Personal Data Breach.
- 23.17 The Supplier shall provide reasonable assistance to the Council with any data protection impact assessments, and prior consultations with Supervising Authorities or other competent data privacy authorities, which the Council reasonably considers to be required of the Council by article 35 or 36 of the GDPR or equivalent provisions of any other Data Protection Law, in each case solely in relation to Processing of Council Personal Data by, and taking into account the nature of the Processing and information available to, the Contracted Processors.
- 23.18 Subject to clauses 23.19 and 23.20 the Supplier shall promptly and in any event within 30 days of the date of cessation of any Services involving the Processing of Council Personal Data (the "Cessation Date"), Delete and procure the Deletion of all copies of those Council Personal Data.
- 23.19 Subject to clause 23.20, the Council may in its absolute discretion by written notice to the Supplier within 30 days of the Cessation Date require the Supplier to (a) return a complete copy of all Council Personal Data to the Council by secure file transfer in such format as is reasonably notified by the Council to the Supplier; and (b) Delete and procure the Deletion of all other copies of Council Personal Data Processed by any Contracted Processor. the Supplier shall comply with any such written request within 30 days of the Cessation Date.
- 23.20 Each Contracted Processor may retain Council Personal Data to the extent required by Applicable Laws and only to the extent and for such period as required by Applicable Laws and always provided that the Supplier shall ensure the confidentiality of all such Council Personal Data and shall ensure that such Council Personal Data is only Processed as necessary for the purpose(s) specified in the Applicable Laws requiring its storage and for no other purpose.
- 23.21 The Supplier shall provide written certification to the Council that it has fully complied with clause 23.18 to 23.20 within 30 days of the Cessation Date.
- 23.22 Subject to clauses 23.23 and 23.24, the Supplier shall make available to the Council on request all information necessary to demonstrate compliance with this Agreement, and shall allow for and contribute to audits, including inspections, by the Council or an auditor mandated by the Council in relation to the Processing of Council Personal Data by the Contracted Processors.
- 23.23 Information and audit rights of the Council only arise under clause 23.22 to the extent that this Agreement does not otherwise give them information and audit rights meeting the relevant requirements of Data Protection Law (including, where applicable, article 28 (3) (h) of the GDPR).
- 23.24 The Council when undertaking an audit shall give the Supplier reasonable notice of any audit or inspection to be conducted under clause 23.22 and shall make (and ensure that each of its mandated auditors makes) reasonable

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endeavours to avoid causing (or, if it cannot avoid, to minimise) any damage, injury or disruption to the Contracted Processors' premises, equipment, personnel and business while its personnel are on those premises in the course of such an audit or inspection. A Contracted Processor need not give access to its premises for the purposes of such an audit or inspection:

23.24.1 to any individual unless he or she produces reasonable evidence of identity and authority;

23.24.2 outside normal business hours at those premises, unless the audit or inspection needs to be conducted on an emergency basis and the Council undertaking an audit has given notice to the Supplier that this is the case before attendance outside those hours begins; or

23.24.3 for the purposes of more than one audit or inspection, in respect of each Contracted Processor, in any calendar year, except for any additional audits or inspections which:

23.24.3.1 the Council when undertaking an audit reasonably considers necessary because of genuine concerns as to the Supplier's compliance with this Agreement; or

23.24.3.2 the Council is required or requested to carry out by Data Protection Law, a Supervisory Authority or any similar regulatory authority responsible for the enforcement of Data Protection Laws in any country or territory,

where the Council when undertaking an audit has identified its concerns or the relevant requirement or request in its notice to the Supplier of the audit or inspection.

23.25 The parties acknowledge that nothing in this Agreement relieves the Processor of its own direct responsibilities and liabilities under the Data Protection Laws.

23.26 The Supplier will be liable for the following types of loss which will be regarded as direct and will be recoverable by the Council for any:

23.26.1 regulatory losses or fines arising directly from the Supplier's breach of Data Protection Law; and

23.26.2 additional operational or administrative costs and expenses from any material breach of the Principal Agreement;

23.26.3 wasted expenditure or unnecessary charges the Council pays because of the Supplier's default;

23.26.4 other liabilities suffered by the Council in connection with the loss of, corruption or damage to, or failure to deliver Council Data by the Supplier.

23.27 Notwithstanding the general obligations in clauses 23.1 to 23.26, the Supplier will:

23.27.1 enter into such data sharing agreements with the Council as it

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- requires in such form as may be additionally set out in Schedule 2 Special Terms; and
- 23.27.2 act in accordance with any specific data processing provisions and requirements of the Council as may be additionally set out in Schedule 2 Special Terms.

24. FREEDOM OF INFORMATION

- 24.1 The Supplier acknowledges that the Council and its Associates are subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:
- 24.1.1 provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;
 - 24.1.2 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;
 - 24.1.3 provide the Council with a copy of all Information belonging to the Council requested in the Request for Information which is in its possession or control in the form that the Council requires within 5 Working Days (or such other period as the Council may reasonably specify) of the Council's request for such Information; and
 - 24.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Council.
- 24.2 The Supplier acknowledges that the Council may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Supplier or the Services (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances the Council shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 24.3 Subject to clause 24.4, Annex 2 to Schedule 2 to this Agreement sets out certain information held by the Supplier on behalf of the Council and specific arrangements for the Council to access that information for FOIA requirements. The Council may make reasonable amendments to Annex 2 by written notice to the Supplier from time to time as the Council reasonably considers necessary to meet those requirements.
- 24.4 Notwithstanding any other provision in the Contract, the Council shall be responsible for determining in its absolute discretion whether any Information relating to the Supplier or the Services is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

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25. RECORD KEEPING, MONITORING AND ASSISTANCE

- 25.1 In order to assist the Council in its record keeping and monitoring requirements including auditing and National Audit Office requirements, the Supplier shall keep and maintain for six (6) years (or such longer time period required in accordance with any specific legislation) after this Contract has been completed, full and accurate records of this Contract including the Services supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Supplier shall on request allow the Council or the Council's representatives such access to (and copies of) those records as may be required by the Council in connection with this Contract.
- 25.2 The Supplier will hold performance review meetings at intervals stipulated by the Council.
- 25.3. The Supplier will at its own cost, provide any information that may be required by the Council to comply with the Council's procedures for monitoring of this Contract.
- 25.4 The Supplier will at its own cost, provide any information that may be required by the Local Government Ombudsman.

PART G – STATUTORY OBLIGATIONS

26. HEALTH AND SAFETY

- 26.1 The Supplier will comply with the Council's health and safety requirements as set out in the Specification and Schedule 2.
- 26.2 The Supplier will comply with all relevant health and safety legislation in force, accepted industry best practice and all its own health and safety policies from time to time and the Supplier shall at its own cost provide copies of such policies to the Council upon request by the Council.
- 26.3 All plant, tackle and tools at the Premises provided by or on behalf of the Supplier shall stand at the risk and be in the sole charge of the Supplier.
- 26.4 The Supplier shall be required to remove all such plant, tackle and tools which it brings to the Premises.
- 26.5 The Supplier shall ensure that all such plant, tackle and tools shall meet the minimum safety standards required by law.

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27. LAW AND CHANGE IN LAW

- 27.1 The Supplier shall comply at all times with the Law in its performance of this Contract.
- 27.2 On the occurrence of a Change in Law which has direct effect upon the Price the parties shall meet within fourteen (14) days of the Supplier notifying the Council of the Change in Law to consult and seek to agree the effect of the Change in Law and any change in the Price as a result following the principle that this clause is not intended to create an artificial cushion from market forces for the Supplier. If the parties, within fourteen (14) days of this meeting, have not agreed the occurrence or the impact of the Change of Law, either party may refer the matter to dispute resolution in accordance with clause 17.
- 27.3 Any agreed additional sums payable as a result of the operation of clause 27.2 shall be included in the Price. For the avoidance of doubt nothing in this Contract is intended to allow the Supplier double recovery of any increase in costs.

28 TUPE

- 28.1 Where TUPE applies, the parties agree that clause 13.5 and the provisions of Schedule 2 Annex B shall apply to any Relevant Transfer of staff under this Contract.

PART H – GENERAL PROVISION

29. CONTRACT VARIATION

- 29.1 Subject to clause 29.2, no variation or modification to this Contract or to an Order is valid unless it is in writing and signed by the Council and the Supplier.
- 29.2 The Council shall be entitled to issue to the Supplier in writing or, in case of urgency orally (provided the Council confirms oral instructions in writing as soon as it is practicable), variation orders requiring the addition, suspension, reduction or cessation of provision of Tasks in accordance with revised Instructions.
- 29.3 The Supplier may make reasonable charges for the impact of the variation order in accordance with the rates and prices used to calculate the Price.
- 29.4 Where the Council of the Supplier identify a need for change to this Contract they shall use the procedure for Change Control in Schedule 6.

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30. THIRD PARTY RIGHTS

- 30.1 This Contract is enforceable by the original parties to it, by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Contract pursuant to The Contracts (Rights of Third Parties) Act 1999 are excluded.

31. NO WAIVER

- 31.1 A waiver of any right or remedy under this Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to this Contract 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 preclude or restrict any further exercise of that or any other right or remedy.
- 31.2 No single or partial exercise of any right or remedy provided under this Contract or by law shall preclude or restrict the further exercise of that or any other right or remedy.

32. SEVERANCE

- 32.1 If any court or competent authority finds that any provision of this Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Contract shall not be affected.
- 32.2 If any invalid, unenforceable or illegal provision of this Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

33. ASSIGNMENT, SUB-CONTRACTING AND RESPONSIBILITY

- 33.1 Subject to any express provision of this Contract, the Supplier shall not without the prior written consent of the Council, assign all or any benefit, right or interest under this Contract or sub-contract the delivery of the Tasks.
- 33.2 The Council shall be entitled to:
- 33.2.1 assign, novate or dispose of its rights and obligations under this Contract either in whole or part to any contracting authority (as defined in The Public Contracts Regulations 2015 as amended);
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33.2.2 transfer, assign or novate its rights and obligations where required by Law.

33.3 The Supplier shall remain responsible and liable for the acts and omissions of any other members of a consortium arrangement, sub-Suppliers, servants, agents and Employees as though they were its own.

34. FORCE MAJEURE

34.1 Neither the Council nor the Supplier shall be considered to be in breach of its obligations under this Contract to the extent that the performance of its obligations is prevented by a force majeure event.

34.2 If the effect of a force majeure event continues for more than ninety (90) days then either party may give notice to the other to terminate this Contract in whole or in part forthwith provided that the termination applies only to such part of this Contract as is affected by force majeure. In such circumstances neither party shall have a further liability to the other save for any outstanding liabilities arising prior to the force majeure event.

34.3 Industrial action by, or illness or shortage of the Supplier's Employees, agents, sub-Suppliers, failure or delay by any of the Supplier's own suppliers to supply goods, components, services or materials or the Suppliers warranties set out in clause 12 hereto shall not be regarded as a force majeure event.

34.4 If the Council or the Council's Client's Premises is affected by circumstances of Force Majeure, the Council shall be entitled to, totally or partially, suspend the delivery of the Tasks until the circumstances of the Force Majeure have ceased. The suspension shall not give rise to any claim by the Supplier against the Council nor entitle the Supplier to terminate this Contract.

34.5 If this Contract is terminated in accordance with clause 34.4 neither party will have any liability to the other except that any rights and liabilities which accrued prior to termination will continue to exist.

35. PREVENTION OF CORRUPTION

35.1 The Supplier warrants that in entering the Contract it has not committed any Prohibited Act.

- (a) If the Supplier or any sub-Supplier (or anyone employed by or acting on behalf of any of them) or any of its or their agents or shareholders commits any Prohibited Act, then the Council shall be entitled to act in accordance with paragraphs (b) to (e) below.

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- (b) If a Prohibited Act is committed by the Supplier or by an employee not acting independently of the Supplier, then the Council may terminate this Contract by giving notice to the Supplier.
- (c) If the Prohibited Act is committed by an employee of the Supplier acting independently of the Supplier, then the Council may give notice to the Supplier of termination and this Contract will terminate, unless within 30 days of receipt of such notice the Supplier terminates the employee's employment and (if necessary) procures the performance of such part of the Services by another person.
- (d) If this Contract is committed by a Sub-Supplier or by an employee of that Sub-Supplier not acting independently of that Sub-Supplier, then the Council may give notice to the Supplier of termination and this Contract will terminate, unless within 30 days of receipt of such notice the Supplier terminates the relevant Sub-Contract and procures the performance of such part of the Services by another person.
- (e) If the Prohibited Act is committed by an employee of a Sub-Supplier acting independently of that Sub-Supplier, then the Council may give notice to the Supplier of termination and this Contract will terminate, unless within 30 days of receipt of such notice the Sub-Supplier terminates the employee's employment and (if necessary) procures the performance of such part of the Services by another person.
- (f) If the Prohibited Act is committed by any other person not specified in paragraphs (b) to (e) above, then the Council may give notice to the Supplier of termination and this Contract will terminate unless within 30 days of receipt of such notice, the Supplier procures the termination of such person's employment and of the appointment of their employer (where not employed by the Supplier or the Sub-Suppliers) and (if necessary) procures the performance of such part of the Services by another person.
- (g) Any notice of termination under this Clause shall specify:
 - (i) the nature of the Prohibited Act;
 - (ii) the identity of the party whom the Council believes has committed the Prohibited Act;
 - (iii) the date on which this Contract will terminate, in accordance with the applicable provision of this Clause 35; and

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- 35.2 The decision of the Council shall be final and conclusive in any dispute, difference or question arising in respect of:
- (a) Interpretation of this clause 35; or
 - (b) The right of the Council under this clause 35 to terminate this Contract.

36. COSTS AND EXPENSES

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

37. NO AGENCY OR PARTNERSHIP

- 37.1 Nothing in this Contract is intended to, or shall operate to, create a partnership between its parties, or to authorise either party to act as agent for the other, and neither party to this Contract shall have authority to act in the name or on behalf of or otherwise to bind the other party in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

38. NON SOLICITATION AND OFFERS OF EMPLOYMENT

- 38.1 The Supplier agrees that it will not, without the prior written consent of the Council, whether directly or indirectly, and whether alone or in conjunction with, or on behalf of, any other person and whether as a principal, shareholder, director, Employee, agent, consultant, partner or otherwise during the Term or for a period of 12 months following termination of this Contract:

- 38.1.1 solicit or entice, or endeavour to solicit or entice, away from the Council, any person directly related to the Services employed in a senior capacity in a managerial, supervisory, technical, sales or administrative capacity by, or who is or was a consultant to, the Council at the date of the termination of this Contract or at any time during the period of one month immediately preceding the date of termination; or
- 38.1.2 attempt, or knowingly assist or procure any other person to do the above.

39. INSPECTION OF SUPPLIER'S PREMISES

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- 39.1 The Supplier shall permit the Council to make any inspections or tests which may reasonably be required in respect of the Supplier's premises and the Council's property stored thereon in relation to this Contract.

40. LAW AND JURISDICTION

- 40.1 This Contract shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the English courts.

41. OBLIGATION TO MITIGATE

- 41.1 The rights and remedies of the Supplier and the Council under this Contract are without prejudice to their obligations at common law to mitigate their losses.

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SCHEDULE 2

SPECIAL TERMS AND CONDITIONS OF CONTRACT

For the purposes of the Contract, the Council and the Supplier agree the following Special Terms:

1.Term:	<p>Mobilisation Date: 2021</p> <p>Commencement Date: 2021</p> <p>1.1 The Provider is required to mobilise the Services in accordance with the Draft Mobilisation Plan at Annex A of Schedule 2 (and any revisions made to it in accordance with the terms of the Contract and the requirements of the Specification) during the Mobilisation Period.</p> <p>1.2 The Provider is required to deliver the Mobilisation Services (as detailed in the Specification) from the Mobilisation Date and to deliver all of the Services in accordance with the terms of this Contract and the Specification from the Commencement Date.</p> <p>1.3 Failure by the Provider to deliver some or all of the Services as set out above (including within the timescales specified in the Specification and this Schedule 2) may be regarded as a breach of this Contract resulting in the</p>
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	<p>procedures set out in Schedule 1 clause 21 being invoked.</p> <p>Expiry Date: 2024</p> <p>Council Option to Extend: Yes</p> <p>If YES: The Council may extend the Contract for two periods of up to 12 months each (Extension Period) upon giving not less than 3 months notice in writing to the Provider prior to the Expiry Date.</p> <p>The Terms and Conditions shall apply throughout any such extended period.</p>
<p>2. The Goods</p> <p>The Goods shall be Delivered in accordance with the following instructions:</p> <p>2.1 Delivery Address</p> <p>2.2 Date of Delivery</p> <p>2.3 Packaging Instructions</p> <p>2.4 Additional Delivery Instructions</p> <p>3. The charges for the Goods shall be as set out in:</p> <p>4. The specification of the Goods to be Delivered is as set out in:</p>	<p>Client Premises addresses as set out in the Order</p> <p>As set out in the Order and in accordance with the Specification</p> <p>As set out in the Order and in accordance with the Specification</p> <p>As set out in the Order and in accordance with the Specification</p> <p>The Order and Schedule 5</p> <p>Schedule 3</p>

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<p>5. Installation and Training</p>	<p>5.1 The Supplier shall install the Equipment (“the Installation Works”) in accordance with the requirements of the Specification and the Order.</p> <p>5.2 When the Supplier reasonably believes it has completed the Installation Works it shall notify the Council in writing. Following receipt of such notice, the Council shall inspect the Installation Works and shall, by giving written notice to the Supplier:</p> <ul style="list-style-type: none"> (a) accept the Installation Works, or (b) reject the Installation Works and provide reasons to the Supplier if, in the Council’s reasonable opinion, the Installation Works do not meet the requirements set out in the Specification. <p>5.3 If the Council rejects the Installation Works in accordance with clause 5.2(b), the Supplier shall immediately rectify or remedy any defects and if, in the Client’s reasonable opinion, the Installation Works do not, within 5 Working Days, meet the requirements set out in the Specification, the Council may terminate the Contract with immediate effect by notice in writing.</p> <p>5.4 The Installation Works shall be deemed to be completed when the Supplier receives a notice</p>
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	<p>issued by the Council in accordance with clause 5.2 (a). Notwithstanding acceptance of any Installation Works in accordance with that clause, the Supplier shall remain solely responsible for ensuring that the Equipment and the Installation Works conform to the Specification. No rights of estoppel or waiver shall arise as a result of the acceptance by the Council of the Installation Works.</p> <p>5.5 The Charges shall include the cost of instruction of the Client's personnel in the use and maintenance of the Equipment and such instruction shall be in accordance with the requirements detailed in the Specification.</p>
6. Time of the Essence	Time of Delivery shall be of the essence
7. Warranties and Guarantees	Clause 12 of Schedule 1 applies.
8. The Services Specification:	Schedule 3 (the Specification)
9. Place of Performance/Delivery/Collection	The Services will be provided at the Client Premises in accordance with the Specification and for the purposes of the definitions and Clause 7 of Schedule 1.
10. Key Personnel	The following persons are Key Personnel for the purposes of the Contract:

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<p>11. Conditions Precedent</p>	<p>The Provider shall:</p> <p>11.1 no later than four (4) weeks before the Mobilisation Date provide:</p> <p>11.1.1 a final and definitive Mobilisation Plan in accordance with the principles set out in the draft submitted with the Tender Response and attached as Annex A to this Schedule 2 which evidences, to the satisfaction of the Council, how the Provider will have mobilised the Services by the Commencement Date; and</p> <p>11.1.2 a draft Communications Plan for agreement by the Council.</p> <p>11.2 within 3 months from the Mobilisation Date the Provider shall produce to the Council for inspection an updated Business Continuity Plan.</p> <p>11.3 at least 28 days before the Commencement Date produce to the Council, for inspection, documentary evidence that:</p> <p>11.3.1 that appropriate checks regarding any sub-contractor's requisite skills and accreditations to successfully deliver the Services have been undertaken</p> <p>11.3.2 that appropriate analysis of the workforce required, both in terms of number and requisite skills, to successfully deliver the Services, taking into account any Staff that may have transferred due to the application of TUPE has been undertaken.</p> <p>11.4 at least 14 days before the Commencement Date produce to the Council, for inspection, documentary evidence that:</p> <p>11.4.1 the required insurances are properly in place, adequate and valid.;</p>
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	<p>11.4.2 any required DBS checks are properly in place and valid;</p> <p>11.4.3 any required accreditations for the delivery of the Services are properly in place and valid;</p> <p>11.4.4 any IT systems which are required to enable the Supplier to deliver the Services are properly in place and fit for purpose.</p> <p>11.5 no later than 12 months prior to the end of the Term produce to the Council for inspection an Exit Management and Transition Plan in accordance with the principles set out in the Specification .</p> <p>11.6 within 12 months from the Commencement Date produce to the Council for inspection a Service Development Plan in accordance with the principles set out in the Specification.</p> <p>Failure by the Provider to comply with its obligations under this Schedule 2 clause 5 may be regarded as a breach of this Contract resulting in the procedures set out in Schedule 1 clause 15 being invoked.</p>
12. Charges for the Services shall be as set out in:	Clause 14 of Schedule 1 and Schedule 5 (Pricing Schedule) apply
13. Liability	Clause 20 of Schedule 1 applies
14. Performance Regime	<p>The Services will be subject to the Performance Management Framework which includes the KPIs set out in Schedule 4 (Performance Regime).</p>

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15. Insurance	Clause 19 of Schedule 1 applies
16. The addresses for notices of the Parties are:	<p>Council:</p> <p>Nik Darwin- Senior Commissioning Manager Adult Social Care and Health Cheshire East Borough Council, Westfields, Middlewich Rd, Sandbach CW11 1HZ</p> <p>nik.darwin@cheshireeast.gov.uk</p> <p>Supplier:</p>

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17.TUPE	Annex B of this Schedule 2 applies.
18. Liaison	<p>The parties liaison officers for the purposes of contract management shall be:</p> <p>Council:</p> <p>Supplier:</p>
19. Payment	<p>All invoices should be sent, quoting a valid purchase order number (PO Number), to: [supplier@ecwip.co.uk] or [Cheshire East Council, Cheshire Shared Services, Payments Section, Purchasing & Exchequer, PO Box 3655, Chester, CH1 9PP].</p> <p>To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, and the details (name and telephone number) of your Council contact (i.e. the person named in 8 above (Liaison)). Non-compliant invoices will be sent back to you, which may lead to a delay in payment. If you have a query regarding an outstanding payment please contact our Accounts Payable section either by email to [supplier@ecwip.co.uk] or by telephone [01244 972 511] between 09:00-17:00 Monday to Friday.</p>
20. Processing of Personal Data (clause 17.4)	See Annex One: Details of Processing of Council Personal Data

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21. Supplier to comply with the Council's Staff Vetting Procedures in accordance with clause 13 of the Terms and Conditions (Schedule 1)	Required to comply
22. Supplier required to comply with Disclosure and Barring Service checks	<p>The Council requires the Supplier to ensure that any person employed in the supply of the Services has undertaken a Disclosure and Barring Service check. The Supplier shall ensure that no person who discloses that he/she has a conviction that is relevant to the nature of the Contract, relevant to the work of the Council, or is of a type otherwise advised by the Council (each such conviction a "Relevant Conviction"), or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the supply of the Services.</p>
23. Supplier acknowledges and agrees to Safeguarding Children and Vulnerable Adults provisions:	<p>SAFEGUARDING CHILDREN AND VULNERABLE ADULTS PROVISIONS:</p> <p>For the purpose of this clause the following expressions shall have the following meanings:</p> <p>"Regulated Activity": in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.</p> <p>"Regulated Activity Provider": shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.</p>

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	<p>23.1 The Parties acknowledge that the Supplier is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006</p> <p>23.2 The Supplier shall:</p> <ul style="list-style-type: none"> (i) ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service (DBS); and (ii) monitor the level and validity of checks under this clause for each member of staff; (iii) not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users. <p>23.3 The Supplier warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Supplier in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.</p>
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	<p>23.4 The Supplier shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause have been met.</p> <p>23.5 The Supplier shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to service users or children or vulnerable adults.</p>
24. Social Value Requirements	<p>The following provisions in relation to social value shall apply:</p> <p>The Supplier shall comply with the targets and KPIs in respect of environment, economic and social aspects of Social Value as set out in the Supplier's Tender</p>
25. Additional Special Terms and Conditions of Contract: Health and Safety.	<p>25.1 The Supplier shall promptly notify the Council of any health and safety hazards, which may arise in connection with the performance of the Services. The Council shall promptly notify the Supplier of any health and safety hazards that may exist or arise at the Client Premises and that may affect the Supplier in the performance of the Services.</p>

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	<p>25.2 While on the Client Premises, the Supplier shall comply with any health and safety measures implemented by the Council in respect of staff and other persons working on the Client Premises.</p> <p>25.3 The Supplier shall notify the Council immediately in the event of any incident occurring in the performance of the agreement on the Client Premises where that incident causes any personal injury or damage to property that could give rise to personal injury.</p> <p>25.4 The Supplier 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 Client Premises in the performance of the agreement.</p> <p>25.5 The Supplier 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.</p>
<p>26. Additional requirements for Clause 17 for Processing of Personal Data:</p> <p>Clause 17.27.1(Data Sharing Agreement):</p>	<p>The Supplier is <u>not</u> required to enter into a data sharing agreement with the Council.</p>

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<p>Clause 17.27.2 (The Supplier as Data Controller/Joint Data Controller):</p>	<p>The Supplier is required to comply/not required to comply as follows:</p> <p>The parties acknowledge that:</p> <p>in relation to Personal Data processed by the Supplier for the purpose of delivering the Services the Supplier will be the sole Data Controller; and</p> <p>in relation to Personal Data required by the Council for the purposes of quality assurance, performance management and contract management, that the Council and the Supplier will be joint Data Controllers.</p> <p>The Supplier must ensure that all Personal Data processed by the Supplier in the course of delivering the Goods and or Services is processed in accordance with the relevant parties' joint obligations under the GDPR.</p>
<p>27. Information held by the Supplier on behalf of the Council (for FOIA purposes) (clause 16.3)</p>	<p>See Annex 2: Details of Information held by the Supplier on behalf of the Council for FOIA purposes</p>

ANNEX A – DRAFT MOBILISATION PLAN

ANNEX B – TUPE

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ANNEX 1

DETAILS OF PROCESSING OF COUNCIL PERSONAL DATA

This Annex 1 includes certain details of the Processing of Council Personal Data as required by Article 28(3) GDPR.

Contract Title	Agreement for the maintenance of lifts and hoists (including testing, servicing, installation, removal outside of manufacturer's warranty)
Subject matter and duration of the Processing of Council Personal Data	The subject matter and duration of the Processing of Council Personal Data are set out in this Agreement
The nature of the Processing of Council Personal Data	<p>-Details of the equipment serviced/repaired/installed or uninstalled and the client this took place for.</p> <p>-Site survey information. This would include address of property and client name together with proposed description of work required to install a lift of hoists</p>
The purpose of the Processing of Council Personal Data	<p>-So that the Council can verify that work claimed for by the Provider has taken place.</p> <p>-In order for a Social Care Assessor or Occupational Therapist to understand the status of the equipment item in a client's home. For instance, if an item of equipment was not functioning a change might have to be made to their respective care package.</p> <p>-A site survey would be used to establish whether a property/client</p>

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	was suitable for the installation of a lift/hoist.
The categories of Council Personal Data to be Processed	Name of Client, address of Client, reason for Client receiving Client disability related information,
The categories of Data Subject to whom Council Personal Data relates	Clients
The obligations and rights of the Council	The obligations and rights of the Council are set out in this Agreement.

ANNEX 2

DETAILS OF INFORMATION HELD BY THE SUPPLIER ON BEHALF OF THE COUNCIL

This Annex 2 includes certain details of information held by the Supplier on behalf of the Council for the purposes of FOIA.

Contract Title	Agreement for the maintenance of lifts and hoists (including testing, servicing, installation, removal outside of manufacturer's warranty)
The categories of certain information which the Council has placed in the custody of the Supplier	None
The categories of certain information held by the Supplier on behalf of the Council	None
Specific arrangements for the Council to access certain information in the custody of the Supplier if a request is made under FOIA	n/a

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<p>Supplier information that the Supplier has identified to the Council as being Commercially Sensitive Information</p>	<p>Pricing Information + ITT and SQ responses</p>
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SCHEDULE 3
SPECIFICATION

SCHEDULE 4
PERFORMANCE REGIME

SCHEDULE 5
PRICING SCHEDULE

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SCHEDULE 6

Change Control Procedures

1. Principles

- 1.1 Where the Council or the Supplier see a need to change the Contract the Council may at any time request, and the Supplier may at any time recommend, such change only in accordance with the formal Change Control Procedure (CCP) as set out at paragraph 2.
- 1.2 Neither the Council nor the Supplier shall unreasonably withhold its agreement to any change.
- 1.3 Until such time as a change to the Contract is made in accordance with the Change Control Procedure, the Supplier shall, unless otherwise agreed in writing, continue to supply the Services specified in any Order as if the request or recommendation had not been made.
- 1.4 Any discussions which may take place between the Council, and the Supplier in connection with a request or recommendation before the authorisation of a resultant change to the Contract shall be without prejudice to the rights of either party.
- 1.5 Any work undertaken by the Supplier, its sub-Suppliers or agents which has not been authorised in advance by a change to the Contract and which has not been otherwise agreed in accordance with the provisions of paragraph 1.3 shall be undertaken entirely at the expense and liability of the Supplier.

2. Procedures

- 2.1 All requests shall be considered by appropriate representatives of the Council and the Supplier.
- 2.2 Discussion between the representatives of the Council and the Supplier concerning a change to the Contract shall result in any one of the following:
 - 2.2.1 no further action being taken;
 - 2.2.2 a request to change the Contract by the Council, or
 - 2.2.3 a recommendation to change the Contract by the Supplier.

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- 2.3 Where a written request for a change is received from the Council the Supplier shall, unless otherwise agreed, submit two copies of a Change Control Note (CCN) signed by the Supplier to the Council within two weeks of the date of the request.
- 2.4 A recommendation to change by the Supplier shall be submitted direct to the Council in the form of two copies of a CNN signed by the Supplier at the time of such recommendation.
- 2.5 Each CNN shall contain:
- 2.5.1 the title of the change;
 - 2.5.2 the originator and date of the request or recommendation for the change;
 - 2.5.3 the reason for the change;
 - 2.5.4 full details of the change including any specifications;
 - 2.5.5 the price, if any, of the change;
 - 2.5.6 a timetable for implementation together with any proposals for acceptance of the change;
 - 2.5.7 a schedule of payments if appropriate;
 - 2.5.8 details of the likely impact, if any, of the change on other aspects of the Contract including but not limited to:
 - 2.5.8.1 the timetable for the provision of the Services;
 - 2.5.8.2 the period of this Agreement;
 - 2.5.8.3 the personnel to be provided;
 - 2.5.8.4 the Price;
 - 2.5.8.5 the payment profile;
 - 2.5.8.6 performance levels;
 - 2.5.8.7 working arrangements;

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- 2.5.8.8 other contractual issues;
 - 2.5.9 the date of expiry of validity of the CCN; and
 - 2.5.10 provision for signature by the Council and by the Supplier.
- 2.6 For each CCN submitted the Council shall, within the period of the validity of the CCN:
 - 2.6.1 allocate a sequential number to the CCN;
 - 2.6.2 evaluate the CCN and, as appropriate:
 - 2.6.2.1 request further information, or
 - 2.6.2.2 arrange for the two copies of the CCN to be signed by or on behalf of the Council and return one of the copies to the Supplier; or
 - 2.6.2.3 notify the Supplier of the rejection of the CCN.
- 2.7 If the Supplier considers that the preparation of a CCN, requested by the Council would necessitate significant allocation of resources over and above those stated in the Contract the Supplier will notify the Council accordingly and on agreement by the Council the Supplier will make a proposal for a paid study of the cost and implications of producing the required CCN. Pending the Council's acceptance of that proposal the Supplier will be relieved of his obligations to produce such CCN.
- 2.8 A CCN signed by the Council and by the Supplier shall constitute an amendment to the Contract.

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SCHEDULE 7

Tender Response

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