

DATED

1st November 2022

THE DISTRICT COUNCIL OF FOLKESTONE & HYTHE

and

GREEN GNOMES LTD

**CONTRACT FOR THE PROVISION OF
PAS2035 RETRO-FIT COORDINATOR SERVICES**

Legal Services
The District Council of Folkestone and Hythe
Civic Centre,
Castle Hill Avenue
Folkestone,
Kent CT20 2QY

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Articles of Agreement

This Contract is made the 1st day of November 2022

between

THE DISTRICT COUNCIL OF FOLKESTONE AND HYPHE of the Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY (hereinafter "**the Council**") of the one part

and

GREEN GNOMES LTD registered number 13640409, whose registered office is at 1-4 Buxhall Business Park, Buxhall, Stowmarket, Suffolk, England, IP14 3BW (hereinafter "**the Provider**") of the other part

(hereinafter collectively "**the Parties**" and independently "**the Party**")

WHEREAS

- A. The Council is a local authority as defined by section 270 of the Local Government Act 1972 and has a duty under section 3 of the Local Government Act 1999 to make arrangements to secure continuous improvements in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.
- B. The Provider acknowledges that the Council is subject to the Best Value duty and that the Provider shall throughout the Contract Period assist the Council in discharging the Best Value duty by actively promoting, supporting and assisting the Council in meeting its Best Value duty in respect of the Services.
- C. By this Contract the Council seeks to procure the provision of specific services and/or supplies from the Provider.

NOW THEREFORE IT IS HEREBY AGREED BETWEEN the parties as follows:

1. This Contract commences on **1st of November 2022** ("**the Commencement Date**").
2. This Contract is for the period from the Commencement Date until **30th of June 2023** unless terminated earlier by either Party in accordance with the terms of this Contract or extended at the sole discretion of the Council in accordance with **Condition 3 (the Contract Period)**.
3. The Provider irrevocably undertakes it will provide the Services in accordance with this Contract, the Specification and any other documents attached to this Contract, with due skill, care and diligence and in utmost good faith.
4. Subject to the Services and/or Supplies having been rendered in accordance with each of the terms of this Contract, the Council will pay the Provider the Contract Price in accordance with the provisions of this Contract.

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1. DEFINITIONS AND INTERPRETATION

1.1 In this Contract the following expressions shall (save where the context may otherwise require) have the following meanings:

“2000 Act”

means the Freedom of Information Act 2000 (as amended) and any subordinate legislation made thereunder from time to time together with any guidance and codes of practice issued by the Information Commissioner in relation thereto;

“Authorised Officer”

shall include the person or persons notified by the Council to the Provider pursuant to **Condition 8**;

“Best Value”

means the Council’s duty to ensure continuous improvement in the way in which its functions are exercised having regard to:

- economy, efficiency and effectiveness as that duty is defined in the Local Government Act 1999, all subsidiary legislation and Government guidance made thereunder and relevant Technical Releases of the Audit Commission; and
- the Council’s independent objectives including (but not limited to) performance of equality, environmental welfare and regeneration; each of which shall be considered and assessed with regard to every element of the Services;

“Confidential Information”

Means all confidential information (however recorded or preserved) disclosed by a Party or its Representatives to the other party and that Party's Representatives in connection with this agreement, including but not limited to:

- a) any information that would be regarded as confidential by a reasonable business person relating to:
 - (i) the business, affairs, customers, suppliers or plans of the disclosing party; (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;
- b) any information developed by the parties in the course of carrying out this agreement;
- c) Personal Data;
- d) any Commercially Sensitive Information.

“Contract”

means the agreement concluded between the Council and the Provider comprising of the Articles of Agreement, these Conditions of Contract and the Schedules attached hereto;

“Contract Manager”

shall include the person appointed as contract manager by the Provider in accordance with **Condition 9** (Contract Manager) or (in the event of the Contract Manager's temporary absence from work) that person's deputy also appointed in accordance with **Condition 9** (Contract Manager);

“Contract Period”

means the period referred to in **Condition 3** (Contract Period);

“Contract Price”

means the sum to be paid to the Provider for the delivery of the Services as detailed in Schedule 2 (Pricing);

“Controller”, “Processor”, “Data Subject”, “Personal Data”, “Personal Data Breach”

have the meanings given in Data Protection Legislation;

“Council's Guidelines”

shall include relevant rules, procedures, guidelines, policies, codes of practice, standing orders, financial regulations and standards of the Council (including but not limited to the Constitution of the Council) as set out or referred to in the Specification or being reasonably notified to the Provider by the Council or the Authorised Officer from time to time, as any of the same may from time to time be reasonably amended by the Council and notified to the Provider;

“Council's Publication Scheme”

shall include the publication scheme adopted by the Council pursuant to section 19 of the 2000 Act and as amended by the Council from time to time;

“Data Protection Impact Assessment”

means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

“Data Protection Legislation”

means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*) as amended;

“Default Notice”

means a notice served on the Provider in accordance with **Condition 20**;

“Directive”

means the European Acquired Rights Directive 77/187;

“Dispute Resolution Procedure”

the procedure set out in **Condition 21**;

“Domestic Law”

the law of the United Kingdom or a part of the United Kingdom;

“DPA 2018”

has the meaning given in the definition of Data Protection Legislation;

“Environmental Information Regulations”

means the Environmental Information Regulations 2004;

“Expert”

means the person appointed by the mutual agreement of the Parties, or in accordance with **Condition 21**, the cost of whose appointment shall be equally borne by each Party subject to the provisions of **Condition 21**;

“Force Majeure”

shall include an event referred to in **Condition 37** of these Conditions;

“GDPR”

takes the meaning referred to in the definition of Data Protection Legislation;

“Health and Safety Guidelines”

means all rules, procedures and requirements concerning health and safety at work notified to the Provider by the Council from time to time;

“Information”

means information as defined in section 84 of the 2000 Act;

“Insurance”

shall include the policies of insurance which the Provider is obliged to take out and maintain under **Condition 25** (Insurance);

“Intellectual Property Rights”

utility models, rights to inventions, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

“Legislation”

shall include all Acts of Parliament, statutory regulations and bye-laws, instruments and orders, court decisions and judgements having the force of law and codes of practice issued thereunder and all applicable European Community legislation, as any of the same may be amended or interpreted from time to time;

“Location(s)”

shall include any premises at which the Services are to be provided including any land and/or premises;

“Personnel”

means the Provider’s directors, officers, consultants, employees and staff who carry out work for Provider, including but not limited to full time, part time, temporary, permanent and voluntary workers and sub-contractors and agents;

“PIDA 1998”

means the Public Interest Disclosure Act 1998;

“Prescribed Rate”

means the rate of interest payable by either Party when in default of its payment obligations hereunder being two percent (2%) above the base rate for the time being of the National Westminster Bank Plc;

“Provider”

means **GREEN GNOMES LTD**

“Regulated Activity”

As defined in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006;

“Regulations”

means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended);

“Representatives”

means, in relation to a Party, its employees, officers, contractors, subcontractors, representatives and advisors;

“Request for Information”

a request for information or an apparent request under the Code of Practice on Access to Government Information, the 2000 Act or the Environmental Information Regulations;

“Schedule”

means a schedule to these Conditions;

“Services”

shall include any or all of the services to be provided by the Provider pursuant to this Contract or such of them as may from time to time remain the subject of this Contract as are more particularly described in the Specification and for the Parties agree that throughout this Contract the term “Services” shall where applicable also refer to relevant goods and/or supplies referred to in the Specification;

“Service Data”

shall include any data and/or information howsoever stored which is compiled in relation to all or any of the Services or part thereof;

“Service User”

shall include any person assessed by the Council as being eligible for the Services or any part thereof;

“Specification”

means the specifications set out in Schedule 1 relating to the provision of the Services as varied by the Council from time to time in accordance with **Condition 7** (Variation of the Services);

“Transferring Employee(s)”

means an employee of any person (including the Council) whose contract of employment becomes, by virtue of the application of the Regulations in relation to what is done for the purposes of carrying out the contract between the Council and the Provider, a contract of employment with someone other than the Council;

“TUPE”

the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246);

“UK GDPR”

has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018;

“Variation”

shall include a variation to the Contract made by notice by the Authorised Officer to the Provider in accordance with **Condition 7** (Variation of Services);

“Warranties”

shall include the warranties, representations, covenants and undertakings made and/or given by the Provider under **Condition 24** (Provider’s Warranties and Liabilities);

“Whistleblowing Policy and Guidelines”

means the policy and guidelines issued and updated from time to time by the Council (which are available on its website) in relation to the issue of whistleblowing including

the Council's 'Whistleblowing Policy for Council Contractors' as amended from time to time;

“Working Day”

means Monday to Friday excluding bank and public holidays in England and Wales.

- 1.2 Unless the context requires otherwise, words in the singular shall include the plural and vice versa.
- 1.3 Where the Provider is more than one person those persons shall be jointly and severally liable under the Contract.
- 1.4 Words importing individuals shall also include reference to incorporated and unincorporated associations and vice versa.
- 1.5 Words importing the masculine gender shall include the feminine gender and vice versa.
- 1.6 The headings in this Contract are for ease of reference only and do not affect its interpretation or construction.
- 1.7 The schedules form part of the Contract and shall have effect as if set out in full in the body of this Contract and any reference to the Contract includes the schedules.
- 1.8 Unless expressly provided otherwise in the Contract, a reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted and includes any subordinate legislation made under it, in each case from time to time.
- 1.9 All stipulations of the Contract as to time shall be of the essence (except any stipulations as to the time of payment by the Council to the Provider).

2. FORM OF CONTRACT

- 2.1 The Parties acknowledge and agree that any Services which may be provided by the Provider to the Council during the Contract Period shall be provided in accordance with these terms and conditions.
- 2.2 Subject to the Council's warranties contained in this Contract, the Council does not warrant the accuracy of any representation or statement of fact or law given to the Provider by the Council, its servants or agents at any time before the execution of this Contract and the Council shall not be liable to the Provider for any loss or damage which the Provider may sustain as a result of relying on any such representation, statement, information or advice whether in contract, tort, under the Misrepresentation Act 1967 or otherwise, save in so far as the relevant representation, statement, information or advice was made or given fraudulently.
- 2.3 Any Intellectual Property Rights in the Contract shall remain the property of the Council; the Provider may obtain or make at its own expense further copies of the Contract exclusively for the use of the Provider for the performance of the Services.
- 2.4 The Contract shall be subject to the Council's Guidelines (including the Constitution of the Council) current from time to time, the contents of which the Provider acknowledges it has had sight of and is fully aware of their contents.

3. CONTRACT PERIOD

- 3.1 This Contract shall start on the Commencement Date and continue until the expiry of 30th of June 2023, unless terminated earlier by either Party in accordance with the terms of this Contract.
- 3.2 Any extension will be notified by the Council to the Provider at least three (3) months prior to the contract end date and will be for the Contract Price (where applicable on a pro rata basis) unless otherwise agreed between the Parties in writing.
- 3.3 If the Council does not wish to extend the Contract Period then the Contract shall expire in accordance with **Condition 3.1**.

4. THE PROVIDER'S OBLIGATIONS

- 4.1 The Provider shall carry out and complete the Services in compliance with the Contract.
- 4.2 At all times, the Provider shall provide the Services described in the Specification with due skill, care and diligence, in utmost good faith and in accordance with the Specification and any written instructions of the Authorised Officer.
- 4.3 The Provider shall ensure that all files, books, statements and records (whether in paper or electronic form) are kept for a period of not less than six (6) years after expiry of the Contract Period relating to the provision of the Services to the extent:
- 4.3.1 they are required by the Conditions and the Specification and/or law;
 - 4.3.2 they record details of any and all monies collected on behalf of the Council; and
 - 4.3.3 otherwise reasonably required ensuring the Services are provided in a proper and timely fashion.
- 4.4 The Provider shall at all times during the provision of the Services allow the Authorised Officer and such persons as may from time to time be nominated by the Authorised Officer access to:
- 4.4.1 all work places used by the Provider for the purposes of inspecting works being performed for the provision of the Services;
 - 4.4.2 all work places used by the Provider for the purposes of inspecting records and documents in the possession, custody or control of the Provider in connection with the provision of the Services;
 - 4.4.3 any personnel or agent of the Provider for the purposes of interviewing such persons in connection with the provision of the Services; and
 - 4.4.4 technology, resources, systems and procedures used or proposed to be used in connection with the provision of the Services.
- 4.5 The Provider shall by a term in any authorised sub-contract secure a similar right of access for the Council and its auditors for the purpose of conducting any audit investigation of the Contract.

- 4.6 The Provider shall at all times comply with the Constitution of the Council referred to under **Condition** 2.4 and any relevant financial regulations.
- 4.7 If the Provider or its personnel default in complying or fail to comply with this Condition, any costs, expenses, liabilities or damages incurred by the Council as a consequence thereof, including the reasonable cost to the Council of the time spent by its officers (and any third parties employed by the Council) as a result of the default or failure, may be deducted from any sums due or to become due to the Provider under this Contract or shall be recoverable by the Council from the Provider as a debt.
- 4.8 The Provider shall provide each year to the Authorised Officer a copy of its audited accounts within three months of the relevant accounting reference date subsequent to those provided in accordance with any tender requirements.
- 4.9 The Provider shall not advertise the fact that it is providing Services to the Council under this Contract other than with the written permission of the Council.
- 4.10 The Provider shall not in any way whatsoever be, act or hold itself out as an agent of the Council nor make representations or warranties on behalf of the Council and the Provider undertakes to contract with the Council as principal and not as agent.

5. PERFORMANCE OF THE SERVICES AND THE SPECIFICATION

- 5.1 The Provider shall at all times during the Contract Period perform the Services comprehensively with due skill, care and diligence strictly in accordance and in compliance with the Contract, including but not limited to:
- 5.1.1 the Specification
 - 5.1.2 the Council's Guidelines, in particular (but without limitation) those relating to customer care and any other guidelines as may have been approved by the Council and supplied to the Provider;
 - 5.1.3 the instructions issued to the Provider by any Authorised Officer under or in connection with the Contract;
 - 5.1.4 all relevant Legislation;
 - 5.1.5 in an efficient, professional, ethical and courteous manner which shall have regard to the interests and welfare of the Service Users, parents and guardians of Service Users and other occupiers of the Locations and in a manner which shall preserve, promote and enhance and shall not prejudice the reputation and interests of the Council.

6. MONITORING OF THE SERVICES

- 6.1 The Parties shall meet regularly at premises to be agreed between them throughout the Contract Period in order to agree upon any issues which are outstanding and/or require review and to ensure total compliance with by the Provider with the monitoring requirements contained within the Specification, any additional monitoring arrangements or monitoring exercise that may be reasonably instigated or required by the Council.

- 6.2 The Provider shall keep and maintain such necessary data and information and shall provide such assistance as the Council may reasonably require to enable the Council to complete all official returns, including (where applicable) but without limitation (provided the nature of such data and information and the format for the same has been agreed by the Parties at the last meeting convened under **Condition 6.1**):
- 6.2.1 returns to the Department of Health and the Department for Works and Pensions;
 - 6.2.2 returns to the Chartered Institute of Public Finance and Accountancy;
 - 6.2.3 information required by the Audit Commission;
 - 6.2.4 information required for the purposes of compliance with any external audit, Best Value, Best Value performance plans or other inspection; and
 - 6.2.5 information required in order to ensure compliance with the Equality Act 2010 other applicable legislation and generally to ensure conformity with obligations contained in **Condition 23** (Unlawful Discrimination and Equal Opportunities).
- 6.3 The Provider shall provide such data and information as the Council from time to time shall reasonably require to permit the Council to complete management reports (whether of a regular, cyclical or ad hoc nature) on the performance of the Services.
- 6.4 The Provider shall at all times during the currency of the Contract allow the Authorised Officer and such other persons (including representatives of other public bodies or agencies) as may from time to time be reasonably nominated by the Authorised Officer access on reasonable notice (save in the case of emergency or for statutory or audit purposes where no notice shall be required) to all offices and places of work used by the Provider for the purposes of monitoring and inspecting work being performed pursuant to the provision of the Services and any or all records and documents in the possession, custody or control of the Provider in connection with the provision of the Services (including but not limited to the Provider's recruitment practices).
- 6.5 The Provider shall by a term in any authorised sub-contract secure a similar right of access for the Council and its auditors as set out in Condition 6.4 for the purposes of conducting any audit investigation of the Contract.

7. VARIATION OF THE SERVICES

- 7.1 Variations to the Services or the Contract shall only be valid if agreed in writing and signed by both the Council and the Provider.

8. THE COUNCIL'S AUTHORISED OFFICER

- 8.1 The Council shall notify the Provider of the person appointed to be the Authorised Officer (and of any variation of such nominee).
- 8.2 The function of the Authorised Officer shall be to liaise with and give instructions to the Provider and its personnel in relation to all matters concerning the performance by the Provider of its obligations under the Contract and to determine any matters or issue any notices as may be the function of the Authorised Officer under this Contract.

8.3 The Authorised Officer shall have power on behalf of the Council to issue instructions and directions on any matter relating to the performance of the Services and exercise the functions and powers of the Council under this Contract and the Provider shall observe and comply with all such instructions or directions, which the Authorised Officer shall use reasonable endeavours to confirm in writing.

9. CONTRACT MANAGER

9.1 The Provider shall ensure that at all times during the Contract Period there shall be one member of the Provider's Personnel who has been and remains appointed as the Contract Manager with authority to represent the Provider for all purposes, the identity and contract details of whom shall be notified to the Council fourteen (14) days prior to the Commencement Date.

9.2 The Contract Manager shall be appointed subject to his identity having the written approval of the Council and his being available all times throughout the Contract Period.

9.3 The Contract Manager will follow and comply with any instructions or directions given or issued by the Authorised Officer in connection with performance of the Services.

10. THE PROVIDER'S PERSONNEL

10.1 The Provider shall engage sufficient suitably qualified Personnel to ensure that the Services are provided in all respects to the Specification throughout the Contract Period, including (without limitation) during periods of absence of some members of its personnel due to sickness, maternity leave, personnel holidays, personnel training or otherwise.

10.2 Without prejudice to the generality of **Condition 5** (Performance of Services and the Specification) the Provider shall perform the Services in accordance with the arrangements relating to personnel stated in the Specification.

10.3 The Provider shall notify the Authorised Officer of any material amendments to the personnel arrangements during the Contract Period whether or not they fall within the provisions of Condition 10.2 above.

10.4 The Provider shall be responsible for ensuring that Personnel engages in and about the provision of the Services only persons who are honest, skilled, competent, diligent, trained and experienced in the work which they are to perform.

10.5 The Provider shall, for the purposes of enabling the Council and the Authorised Officer to satisfy themselves as to the Provider's compliance with this **Condition 10** maintain at all times accurate and up-to-date records of all Personnel who are and who are likely to have any connection with the performance of the Services including attendance records and shall afford the Council and the Authorised Officer full access to these records upon reasonable notice in writing by the Authorised Officer.

10.6 The Authorised Officer shall, on giving notice together with reasons to the Contract Manager or the relevant Assistant Contract Manager, have the power to require the Provider, (but not unreasonably or vexatiously), to remove from the provision of the Services any individual member of the Provider's Personnel or of its sub-contractors including the Contract Manager or an assistant Contract Manager.

- 10.7 The Council shall under no circumstances be liable either to the Provider or to its Personnel for any cost, expense, liability, loss or damage occasioned by removal under **Condition 10** and subject as aforesaid the Provider shall fully indemnify the Council in respect of any claim made by the personnel.
- 10.8 For the avoidance of doubt, the Provider shall at all times be fully and solely responsible under this Contract for the payment of all income or other taxes, national insurance contributions and levies of every kind, relating to or arising out of its employment of any individual after the Commencement Date and fully indemnifies the Council against any liability arising as a consequence thereof.
- 10.9 The Provider will provide details of employee disciplinary and grievance procedures and other policies, which the Council may request from time to time.
- 10.10 With regard to the Provider's Personnel, including but not limited to full time, part time, temporary, permanent and voluntary personnel and sub-contractors and agents the Provider undertakes as follows:
- 10.10.1 to ensure that all of the Provider's Personnel are Police checked in accordance with Legislation (including but not limited to the Care Standards Act 2000) by ensuring all Personnel have current Disclosure and Barring Service ("**DBS**") checks in accordance with the Safeguarding Vulnerable Groups Act 2006, Part 5 of the Protection of Freedom Act 2012 and/or Protection of Vulnerable Adults Scheme and that checks are carried out in accordance with Legislation and the Secretary of State Code of Practice under section 122 of the Police Act 1997 and any amendment thereof;
 - 10.10.2 to ensure all Personnel (as required) have a current enhanced DBS Certificate of Disclosure including a check against the children's barred list, as appropriate if the Service falls within one of the prescribed purposes under Section 5A of the Police Act 1997 (Criminal Records) Regulations 2002 and the Rehabilitation of Offenders Act Exceptions Order 1975;
 - 10.10.3 DBS checks carried out for the Provider will be accompanied by written confirmation from the DBS that the Provider is registered for the purposes of initiating DBS checks or has used an umbrella body which is registered to undertake DBS checks;
 - 10.10.4 to comply with all the requirements operated by the DBS and ensure that all of the Provider's Personnel with unsupervised access to children and/or vulnerable adults are registered and checked as required;
 - 10.10.5 to ensure that all of the Provider's Personnel who have lived or worked abroad for more than three (3) months in the last five (5) years obtain a Certificate of Good Conduct acceptable to the Council, or similar appropriate document, showing that the individual has not been convicted of any act which would render them inappropriate to work with children and/or vulnerable adults;

- 10.10.6 to undertake that the Provider complies with the Council's Recruitment and Selection and Safer Recruitment policies which are available on the Council's website as updated from time to time; and
- 10.10.7 to undertake that the Provider keeps clear records of every member of the Provider's Personnel, including their employment histories, medical clearances, proof of enhanced DBS checks disclosures, notes of face to face meetings, records of checked references and identity in accordance with the Council's Recruitment and Section and Safer Recruitment policies.
- 10.11 In relation to previous and spent convictions if the Provider's Personnel are exempt from the application of Section 4 (2) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions in Section 3 and Schedule 1 and 2 of the Rehabilitation of Offenders Act 1974 Exception (Amendment) Order 1975 or the Offender Rehabilitation Act 2014, the Provider undertakes it will ensure that all the Provider's Personnel shall provide information in accordance with the said Acts and Order in relation to convictions which would otherwise be spent under the provisions of the said Acts.
- 10.12 The Provider warrants that at all times for the purpose of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Provider in the provision of Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereafter, as amended from time to time
- 10.13 The Provider shall immediately notify the Contract Manager of any information that is reasonably requests to enable it to be satisfied that the obligations of **Condition 10** have been met.
- 10.14 The Provider shall not employ anyone who is barred from, or previous conduct or records indicate that he/she would not be suitable to carry out a Regulated Activity or may otherwise pose a risk to Users.
- 10.15 The Council (at its own discretion) may refer any information about any individual to the DBS if the conditions of section 77 of the Safeguarding Vulnerable Groups Act 2006 are met.
- 10.16 The Provider acknowledges that the Council is under a duty to assist and provide such information it holds to the DBS where the DBS considers the Council holds relevant information.
- 10.17 The Provider shall indemnify the Council against all claims, proceedings, liabilities, losses, costs, damages and expenses howsoever incurred by the Council as a result of any breach of this **Condition 10** by the Provider and the Provider's Personnel.
- 10.18 Throughout the Contract Period the Provider undertakes it will:
- 10.18.1 comply with relevant Safeguarding Adults Board (SAB) and Safeguarding Children's Board (SCB) and Safeguarding Children's Board Multi Agency Procedures or equivalent from time to time in place;

- 10.18.2 have in place its own safeguarding procedures acceptable to the Council which will be made available to the Council and Service Users on demand;
- 10.18.3 ensure the Provider's Personnel are trained and work in accordance with the Provider's safeguarding procedures at all times including, where required, attendance at SAB and SCB training sessions; and
- 10.18.4 ensure that all the Provider's staff that will be responsible for children on a one to one basis are trained in a method of restraint approved by the Council and receive up-to-date training every three years.
- 10.18.5 The Provider shall adhere to and comply with any guidelines and/or codes of practice issued by the Council (including but not limited to the Council's Recruitment and Selection and Safer Recruitment policies) when selecting and/or recruiting employees and volunteers who may have substantial and unsupervised access to children and adults at risk.
- 10.19 The Provider shall take all reasonable steps to ensure that all persons involved in providing the Service on behalf of the Provider understand and follow relevant Safeguarding Children Board's guidance and protocols for safeguarding children and young people.
- 10.20 All persons involved in providing the Service on behalf of the Provider shall co-operate fully with any investigation by the Council or with any person authorised by the Council to conduct an investigation into any allegations of abuse against the Provider's staff.
- 10.21 All allegations, suspicions and incidents of abuse by the Provider's staff must be followed up promptly. In the event that immediate danger is reasonably likely, urgent action must be taken and emergency services contacted. Details of concerns and actions taken must be recorded and reported to the Council, and if appropriate, the Police and any regulatory body.
- 10.22 The Provider shall ensure that there are robust procedures for responding to and reporting such concerns and that all staff receive appropriate awareness training regarding Safeguarding Children which comply the Council's Safeguarding Children and Child Protection Policy. The Provider shall also ensure that they follow the Councils Whistle Blowing Policy to protect staffs who wish to raise such concerns.
- 10.23 The Council reserves the right to require the Provider at no cost to the Council to remove from performing the Services any Provider personnel allocated to the performance of the Services by the Provider who in the reasonable opinion of the Council is detrimental to the provision of the Services.

11. NOT USED

12. COMPLAINTS

- 12.1 The Provider shall have in operation a complaint policy/procedure and shall keep a record of all complaints.
- 12.2 The Provider's record of complaints should include:
- 12.2.1 the nature of the complaint;
 - 12.2.2 the name of the complainant;
 - 12.2.3 the date and time the complaint was received;
 - 12.2.4 the action taken to remedy the complaint;
 - 12.2.5 the date and time the complaint was remedied;
 - 12.2.6 the names of the Provider's Personnel involved in the complaint and the remedy.
- 12.3 The record of complaints referred to in **Condition** 12.2 shall be available at all times for inspection on reasonable notice by the Council and any other party who has the legal power/authority to request this.

13. NOT USED

14. CERTIFICATES AND PAYMENTS

- 14.1 In consideration of the provision of the Services by the Provider, the Council shall pay the Provider sums due within thirty (30) days of receipt of an invoice for Services previously rendered strictly in accordance with this Contract and subject to satisfactory performance of the Services. The Council shall only make payments against VAT invoices correctly submitted for Services properly performed in accordance with the Contract. Save as otherwise expressed in this Contract, in the event of failure by the Council to pay sums due within the said period, interest shall be payable on the sums due at the Prescribed Rate calculated on a daily basis which the Parties agree shall be a sufficiently substantial remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998 (as amended by the Late Payment of Commercial Debts Regulations 2013).
- 14.2 The Council shall accept and process for payment an electronic invoice submitted for payment by the Provider where the invoice is undisputed and where it complies with the standard on electronic invoicing.
- 14.3 For the purposes of **Condition** 14.2 an electronic invoice complies with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in the UK version of Commission Implementing Decision (EU) 2017/1870 as it forms part of English law under the European Union (Withdrawal) Act 2018.
- 14.4 The element of the Contract Price due relating to the unit rates for work executed shall be requested by the Provider by means of an application for payment and shall relate only to those Services correctly performed during the preceding calendar month.
- 14.5 Such applications for payment shall comprehensively detail the Services for which payment is requested and the Provider shall supply such additional information as the

Council requires to verify the accuracy of such application. The Council will use such means as it considers appropriate to verify the application for payment including but not limited to enquiries with third parties.

- 14.6 Unless otherwise agreed by the Council in writing, the Contract Price shall be fixed throughout the Contract Period and in the event that the Contract Period is extended the Council, at its sole discretion, may agree to an adjustment of the Contract Price with the Provider.

15. RECOVERY OF MONIES ON BEHALF OF THE COUNCIL

- 15.1 The Provider will collect payment on behalf of the Council (where applicable) and be responsible for the security and handling of any transactions or funds, but shall not bank any monies, other than directly into an account nominated by the Council or to transfer cash and cheque payments to the Council's collection service unless otherwise stated in the Specification.

16. RIGHT OF SET OFF AND RECOVERY OF SUMS DUE

- 16.1 Whenever under the Contract any sum of money shall be recoverable from or payable by the Provider to the Council the same may be deducted from any sum then due or which at any time thereafter may become due to the Provider under this Contract or any other contract with the Council.

- 16.2 Where the Authorised Officer considers that an overpayment has been made to the Provider or that any other sum is due to the Council from the Provider under the terms of this Contract due to:

16.2.1 an error in any account which has been subject to certification for payment;

16.2.2 an error in any invoice; or

16.2.3 arising from any other cause,

he or she shall serve a notice on the Provider indicating the amount or amounts he or she considers to have been overpaid or to be due to the Council and the grounds upon which he or she relies upon for considering that the relevant amount or amounts should be recovered from the Provider.

- 16.3 If the Provider is of the opinion that the Council has either failed to make a payment due under this Contract or made a payment in error, then the Provider shall within not more than twenty-eight (28) days of such payment either being due or made in error as the case may be give to the Council written notice specifying the said error or failure made, the sum due to the Provider (or the Council, as the case may be) to correct such error or failure and information as to the unpaid Services undertaken by the Provider to which it is of the opinion that such non-payment or incorrect payment has been made. In the event such sum is properly due to the Provider, the Council shall pay to the Provider such sum in accordance with this Contract within fourteen (14) days of receipt of such written notice.

17. VALUE ADDED TAX

- 17.1 All payments made by either Party to the other Party under the terms of this Contract shall be exclusive of any Value Added Tax chargeable in respect of the supply of goods or services for which payment is consideration and in so far as such payments are to be made under this Contract such Value Added Tax shall be added to the amount thereof and paid in addition thereto upon production of a proper Value Added Tax invoice.

18. BEST VALUE

- 18.1 The Provider shall demonstrate to the Council's satisfaction throughout the duration of the Contract Period that there has been continuous improvement in the delivery of the Services in accordance with the principles of Best Value.

19. NOT USED

20. DEFAULTS

- 20.1 If at any time after the Commencement Date:

20.1.1 the Council (or its Authorised Officer) determines that the Services or any part of them have not been carried out in accordance with the Contract; or

20.1.2 the Provider has failed to comply with any requirement made by the Council (or its Authorised Officer) within the terms of the Contract; or

20.1.3 the Council (or its Authorised Officer) deems that Provider has adversely affected the image or reputation of the Council; or

20.1.4 the Provider is in breach of any part of this Contract

then without prejudice to any other right or remedy available to the Council, the Council or its Authorised Officer may issue Default Notices and deduct sums of money in accordance with the procedures set out below.

- 20.2 Any or all of the following procedures may be used upon issue of notice in writing to the Provider and the Authorised Officer shall have sole and entire discretion as to which is most appropriate:

20.2.1 the Council may make such deduction from the payment due to the Provider as the Authorised Officer shall reasonably calculate as compensation to the Council in respect of the Provider's failure;

20.2.2 without terminating the Contract, the Council may itself provide or procure the provision of any part of the Service until such time as the Contract Manager shall have demonstrated to the reasonable satisfaction of the Authorised Officer that the Provider is able to perform the Contract to a standard acceptable to the Council;

20.2.3 without terminating the whole Contract, the Council may determine that part of the Services shall no longer be provided by the Provider and itself provide or procure a third party to provide that part of the Services;

20.2.4 without terminating the Contract, the Council may require the Provider to remedy the default within a specified timescale at the discretion of the Council; and

20.2.5 the Council may terminate the whole of the Contract in accordance with **Condition 28** (Termination).

21. DISPUTE RESOLUTION

21.1 If a dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it, then the parties shall follow the procedure set out in this **Condition 21**.

21.2 Authorised representatives of each of the Council and the Provider agree to discuss and attempt to resolve any dispute or difference between themselves relating to this Contract prior to the appointment of an Expert.

21.3 If any dispute is incapable of resolution between the Parties, the Council and the Provider shall on request promptly supply to the Expert all such assistance, documents and information as he may require for the purpose of his determination and both the Council and the Provider shall use all reasonable endeavours to procure the prompt determination of the reference.

21.4 The Expert shall be deemed to act as an expert and not as an arbitrator.

21.5 The costs of the Expert appointed under this **Condition 21** shall be equally apportioned between the Parties or as may otherwise be directed by the Expert.

21.6 If the Parties are unable to agree the identity of the individual to act as the Expert then the Expert shall either be chosen from the Registry of Independent Experts maintained by the Law Society or be nominated by an Institute agreed upon between the Parties with the intent that by agreement or nomination the Expert be appointed and the dispute referred to the Expert within seven days.

21.7 Nothing in this Contract shall prevent either the Council or the Provider at any time from seeking any interim or interlocutory relief from the Court.

21.8 Either Party may, within ninety (90) days after receipt of the determination of the Expert, refer any matter comprised in the dispute to the Court for determination and the Court shall have jurisdiction to determine the rights of the parties in respect of such matters.

21.9 Until the time that a dispute between the Provider and the Council is resolved the Provider shall continue to perform the Services and be paid by the Council in accordance with this Contract.

22. HEALTH AND SAFETY

22.1 The Provider shall in performing the Services ensure that its Personnel and any sub-contractors, Council personnel or any other person acting on behalf of the Provider comply with all statutory and other legal requirements in relation to the safety and health of its employees, of sub-contractors, of any other persons in or near the Locations and of the members of the public. The Provider shall in particular comply with all Legislation in the field of health and safety at work and in performance of the Services and

generally perform the Services in accordance with the Provider's health and safety policy statements and the Provider's health and safety codes of practice and/or the Health and Safety Guidelines (where applicable). In the event of any inconsistency between the Provider's health and safety policy statements and codes of practice and the Health and Safety Guidelines, the Health and Safety Guidelines shall prevail.

- 22.2 For the guidance of the Provider the regulatory framework requiring compliance by the Provider includes but is not limited to:

The Health and Safety at Work etc. Act 1974;
The Control of Substances Hazardous to Health Regulations 2002;
The Occupiers' Liability Acts 1957 and 1984;
The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995;
The Health and Safety (First Aid) Regulations 1981;
The Workplace (Health, Safety and Welfare) Regulations 1992;
The Management of Health and Safety at Work Regulations 1999;
The Personal Protective Equipment at Work Regulations 1992;
The Provision and Use of Work Equipment Regulations 1998;
The Health and Safety (Display Screen Equipment) Regulations 1992;
The Health and Safety Information for Employees Regulations 1989;
Manual Handling Operations Regulations 1992;
The Electricity at Work Regulations 1989;
The Control of Noise at Work Regulations 2005;
Health and Safety (Safety, Signs and Signals) Regulations 1996; and
The Equality Act 2010

- 22.3 The Authorised Officer shall be empowered to suspend the provision of the Services in the event of non-compliance by the Provider with the health and safety requirements of the Contract. The Provider shall not resume provision of the Services until the Authorised Officer is satisfied that the non-compliance has been rectified.

- 22.4 No payment will be made for any part of the Services omitted as result of a cessation of the Services required by the Council due to breach of any health and safety requirement and neither will any additional payment be made for steps which the Authorised Officer requires the Provider to take to remedy the breach of the health and safety requirement.

- 22.5 The Provider shall:

22.5.1 keep its health and safety policy, health and safety codes of practice and risk assessments under review and make any amendments necessary, particularly where there has been a change to current legislation or working practices or the introduction of new equipment (including vehicles) and shall notify the Council in writing of any changes made; and

22.5.2 comply with any changes, amendments or further instructions reasonably requested or issued by the Council in connection with the Provider's health and safety procedures or the Health and Safety Guidelines (where applicable).

23. UNLAWFUL DISCRIMINATION AND EQUAL OPPORTUNITIES

- 23.1 In the performance of the Services the Provider shall comply and shall ensure that its employees, agents and sub-contractors comply with the best professional practice in

relation to equal opportunities in particular (but not limited to) all relevant Legislation including the Equality Act 2010, as well as statutory and other official guidance and codes of practice.

- 23.2 The Provider acknowledges that the Council has a general duty under the Equality Act 2010 (“the Act”) to have due regard to the need to eliminate unlawful discrimination and promote equality of opportunity carrying out their functions.
- 23.3 The Provider shall be considered to have the same obligations as the Council under the Act when providing the Services under this Contract. The Provider shall comply with the general duty under the Act as set out in **Condition 23.2** above and any Codes of Practice issued by the Equality and Human Rights Commission including (but not limited to) the Statutory Code of Practice on Racial Equality in Employment (2006). The Provider shall be considered to be in breach of this Condition in the event of any non-compliance with the Act and any Codes of Practice.
- 23.4 The Provider shall adopt the Council’s own equal opportunities policies and procedures (as the same may be adopted and amended from time to time as notified to the Provider) to comply with the statutory requirements of the Act and accordingly shall not, when employing persons for the purpose of performing the Services, discriminate on the grounds of race directly, indirectly or by victimisation.
- 23.5 The Provider shall indemnify the Council in respect of any costs and legal expenses incurred in defending any action brought by the Equality and Human Rights Commission and/or any third party against the Council for non-compliance with the Act and/or any Codes of Practice as a result of the breach of this Condition by the Provider.
- 23.6 The Provider shall inform the Authorised Officer as soon as becoming aware of any legal proceedings (whether civil or criminal) brought against the Provider under the Equality legislation or of any judgements, awards, convictions (not spent or exempted under the Rehabilitation of Offenders Act 1974), or settlements arising therefrom, and shall provide the Authorised Officer with such further information and documentation as may be required in relation thereto.

24. PROVIDER’S WARRANTIES AND LIABILITIES

- 24.1 The Provider from the date hereof and throughout the Contract Period warrants, represents and undertakes to the Council as follows:
- 24.1.1 it will perform all of the Services in accordance with the this Contract with due skill, care and diligence, in utmost good faith and within the times stated in the Specification, which times shall be of the essence.
- 24.1.2 all information, representations and other matters of fact communicated (whether in writing or otherwise) to the Council by the Provider in connection with this Contract or arising out of the Providers submission or tender to carry out the Services, are true, complete and accurate in all respects;
- 24.1.3 it has full power and authority to enter into the Contract and thereafter to perform the Services;

- 24.1.4 it has made arrangements to ensure that it will have sufficient working capital, skilled personnel, equipment, machinery and other resources available to it in order to carry out the Services in accordance with the Specification; and
- 24.1.5 it has or has made arrangements to ensure that it will obtain all necessary consents, licences and permissions to enable it to carry out the Services and will throughout the Contract Period obtain and maintain all further and other necessary consents, licences and permissions to enable it to carry out the Services.
- 24.2 The Provider shall be liable for and shall fully and promptly indemnify and hold harmless the Council, its officers, employees and agents against all liabilities, damages, costs, losses, claims, demands and proceedings incurred or suffered whatsoever and howsoever arising, be it directly or indirectly, out of or in connection with the Provider's obligations under the Contract in respect of:
- 24.2.1 any claims, demands or proceedings brought against the Council by any third party by reason either directly or indirectly of any default or breach by the Provider of any provision of the Contract other than one for which a remedy is provided under any other provision of these Conditions or any additional conditions agreed in writing between the Parties;
- 24.2.2 any fraudulent or negligent act or omission by the Provider (including, without limitation, any misappropriation of monies properly due to the Council);
- 24.2.3 any liability of the Council to pay compensation to a Customer arising out of the Provider's default in respect of repairs or failure to perform the Services in accordance with the Contract; and
- 24.2.4 any failure by the Provider to perform the Services in accordance with all and any terms of the Contract (including but not limited to the Specification).
- 24.3 The Provider's liability to the Council under **Condition** 24.2 shall be without prejudice to any other right or remedy available to the Council.
- 24.4 Except as provided by this Contract, the Council shall not under any circumstances be liable to the Provider whether in contract, tort or otherwise, for any loss, damage or injury howsoever caused or arising out of, in the course of or in connection with the provision by the Provider of the Services or the access to or use of the Council's premises or facilities by the Provider or the Provider's Personnel.
- 24.5 **Condition** 24.4 shall not apply in relation to:
- 24.5.1 any failure by the Council to make proper payment to the Provider in accordance with the terms of the Contract; and
- 24.5.2 any deliberate or negligent act or omission of the Council or any of its employees giving rise to death or personal injury.
- 24.6 Except in respect of death or personal injury caused by the negligence (for which no limitation applies) the entire liability of each Party under or in connection with this contract shall not exceed the values of the insurance policies held by the Provider in accordance with **Condition** 25 of this Contract.

25. INSURANCE

- 25.1 The Provider shall at all times maintain in force insurance policies with reputable insurers or underwriters approved by the Council which shall fully insure and indemnify the Provider against its liability under this Contract in the following amounts;
- 25.1.1 employer's liability of at least five million pounds (£5,000,000); and
 - 25.1.2 public liability of at least five million pounds (£5,000,000); and
 - 25.1.3 professional indemnity of at least two million pounds (£2,000,000)
- in respect of any one occurrence or series of occurrences arising out of one event.
- 25.2 The Provider shall during the Contract Period be responsible for contents insurance, buildings and vehicle insurance in respect of any premises occupied and vehicles used for the purposes of the Contract.
- 25.3 The Provider shall before the beginning of the Contract Period and annually thereafter and at such times as the Council may reasonably require supply the Council with certified copies of all insurance policies required by any of the provisions of this **Condition 25**.
- 25.4 In the event that the Provider fails to comply with any of these requirements the Council shall be entitled to effect such insurance itself and recover the proper and reasonable costs of so doing from the Provider together with an administrative charge equal to ten per cent (10%) of the total cost of obtaining such insurance (subject to a maximum administrative charge of £500) and interest on the total outstanding amount at four per cent (4%) above the base rate of the National Westminster Bank Plc in force from time to time.

26. COPYRIGHT AND INTELLECTUAL PROPERTY

- 26.1 The Intellectual Property Rights in all documents, records, data, or other information produced by the Provider as part of the Services shall belong exclusively to the Council and the Provider shall not make or distribute to a third party any copies of this Contract or the documents, records, data or other information produced by it without the written consent of the Authorised Officer, which consent the Authorised Officer shall be absolutely entitled to withhold.
- 26.2 Any and all Intellectual Property Rights developed under this Contract or arising from the provision of the Services by the Provider shall belong to the Council and the Provider agrees that it shall execute or cause to be executed (by personnel if necessary) all deeds, documents and acts required to vest such Intellectual Property Rights in the Council.
- 26.3 The Provider shall indemnify the Council against any claims, demands, actions, costs and expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from any form or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any

Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Council's acts or omissions.

- 26.4 Subject to **Condition** 26.5, the Provider shall notify the Council of and conduct any litigation arising from (including all negotiations in connection with) any claims, demands and actions in respect of any infringement or alleged infringement of any Intellectual Property Rights. The Council shall at the request of the Provider, afford the Provider all reasonable assistance for the purpose of contesting any such claims, demands and actions. The Provider shall reimburse the Council for all costs and expenses (including, but not limited to legal costs and disbursements on a full indemnity basis) incurred in so doing.
- 26.5 If so requested by the Council, the Provider shall either:
- 26.5.1 take all such steps as may be necessary to avoid the infringement or the alleged infringement of any Intellectual Property Rights; or
- 26.5.2 procure such licence as may be necessary to continue the carrying out of the Services without infringement, on terms which are reasonably acceptable to the Council.
- 26.6 The Provider shall keep any Service Data which may at any time be in the Provider's possession or under its control and shall store such Service Data safely and separately from any data not relating to the Services and in a manner which makes it readily identifiable as Service Data relating to each of the Services and the Provider shall at all times comply with the Data Protection Legislation and the Computer Misuse Act 1990 and shall give the Authorised Officer (and/or persons nominated by him) right of access to premises used by the Provider to monitor performance of the Services and compliance with the Legislation.

27. CONFIDENTIALITY AND PUBLICITY

Confidentiality

- 27.1 Subject to **Conditions** 27.3, 27.6 and 27.8, each Party undertakes to the other Party as follows:
- 27.1.1 to treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly both during the Contract Period and following expiry or termination of the Contract;
- 27.1.2 not to disclose any Confidential Information belonging to the other Party without the prior written consent of that Party, except to such persons and to such extent as may be strictly necessary for the performance of the Contract or except where such disclosure is otherwise expressly permitted by the provisions of this Contract;
- 27.1.3 not use any Confidential Information received from the other Party otherwise than for the purposes of or in connection with this Contract; and

- 27.1.4 not to use photographs or images of Service Users without the written consent of the Service User's parents and/or legal guardians and the written agreement of the Authorised Officer.
- 27.2 The Parties shall use of all reasonable endeavours to procure that their employees, agents and sub-contractors keep confidential and do not make any disclosure of Confidential Information to any third Party in breach of **Condition** 27.1 above and only use such Confidential Information in connection with the performance of the Contract.
- 27.3 **Condition** 27.1 shall not apply to any disclosure of Confidential Information:
- 27.3.1 which a Party confirms in writing is not required to be treated as Confidential Information;
- 27.3.2 which a Party can demonstrate has become or will become generally available to the public and in the public domain otherwise than through the act or default of (or on behalf of) the relevant Party;
- 27.3.3 which was in the possession of the receiving Party without restriction as to its disposal, before receiving it from the disclosing Party;
- 27.3.5 which is received from a third Party who lawfully acquired it and who is under no obligation restricting its disclosure;
- 27.3.5 which is required by law, any judicial or administrative process, the rules of any stock exchange or governmental or regulatory authority having the force of law;
- 27.3.6 to enable a determination to be made under the Dispute Resolution Procedure referred to under **Condition** 21;
- 27.3.6 by either Party to any department, office or agency of the Government;
- 27.3.7 which is for the purpose of:
- 27.3.7.1 the examination and certification of the Council's or the Provider's accounts (including any External Audit of the accounts); or
- 27.3.7.2 any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has utilised its resources;
- 27.3.8 which is independently developed without access to the confidential Information;
- 27.3.9 by the Council to any third party insofar as this may be necessary to the performance or provision by that party of any services or works whatsoever for or to the Council;
- 27.3.10 by the Council to an arms length management organisation relating to Council residential or non residential properties and further disclosure by the said arms length management organisation insofar as this is reasonably necessary for the

proper discharge of the Council's functions which have been or may be delegated by the Council to the arms length management organisation; or

- 27.3.11 by the Council or the arms length management organisation in service monitoring reports to the Council's Executive or other member body or to the arms length management organisation board, sub-boards or committees.
- 27.4 The Provider shall not make use of this Contract or other information issued or provided by the Council in connection with this Contract otherwise than for the purpose of this Contract, except with the prior written consent of the Council.
- 27.5 When the Provider, in carrying out its obligations under this Contract, is provided with Confidential Information or other information relating to users or potential customers of the Services the Provider shall not disclose or make use of any such Confidential Information or other information otherwise than for the purpose for which it was provided, unless the Provider has sought and obtained the prior written consent of that person or the Council.
- 27.6 At the request of the Council, the Provider shall facilitate the Council's compliance with the Code of Practice on Access to Government Information (second edition) or the Environmental Information Regulations and in the event that the Council is required to provide information to a person as a result of a request made to it under such Code or regulations, the Provider shall provide such information relating to the Contract, the Services or itself to enable the Council to adhere to the requirements of the Code or regulations.
- 27.7 Nothing in this **Condition 27** shall prevent either Party from using any ideas, know-how or techniques gained during the performance of this Contract in the course of its normal business, to the extent that this does not result in the disclosure of Confidential Information or an infringement of Intellectual Property Rights.
- 27.8 The Provider acknowledges to the Council that nothing in this **Condition 27** shall fetter or affect the Council's obligations under the Data Protection Legislation, the 2000 Act or the Environmental Information Regulations.

PUBLICITY

- 27.9 Subject to **Condition 27.11**, the Provider shall not and shall procure that any member of the Provider's personnel or sub-contractor shall not make any public statement or issue any press releases or any other form of publicity document relating to, connected with or arising out of this Contract or the matters contained in this Contract without obtaining the Council's prior written approval as to its contents and manner and timing of its presentation and publication.
- 27.10 The Provider shall not and shall procure that any member of the Provider's personnel, shall not communicate with, or provide information to any representatives of the press, television, radio or other media on any matter concerning or arising out of this Contract without the prior written approval of the Council.
- 27.11 Either Party may make a public statement or announcement concerning the completion of this Contract is required by:

27.11.1 law; or

27.11.2 any regulatory or Government body to which either Party is subject or submits, wherever situated, whether or not the requirement has the force of law PROVIDED THAT any such statement does not contravene the duty of confidentiality contained in **Condition 27.1**

27.12 Subject to the provisions of **Condition 27.1** the Council reserves the right to publish or disseminate information about this Contract and the provision of the Services as it may deem appropriate from time to time.

28. TERMINATION

28.1 The Council shall be entitled upon the happening of any of the following events to terminate the Contract ("Termination"), without prejudice to any accrued rights or remedies under the Contract, forthwith by written notice having immediate effect:

- a) if the Provider commits a breach of any term of the Contract which breach is capable of being remedied and the Provider has failed to remedy the said breach within fourteen (14) days after issue of a written request from the Council that the Provider should do so;
- b) a material breach by the Provider of any condition and/or of its obligations under the Contract;
- c) if the Authorised Officer shall certify in writing to the Council that in his opinion the Provider has abandoned the Contract;
- d) if the Authorised Officer shall certify in writing to the Council that the Provider without reasonable excuse has failed to commence the Services on the Commencement Date or has suspended the performance of the Services or a substantial part thereof for seven days after receiving from the Authorised Officer written notice to proceed;
- e) the Provider shall have offered or given or agreed to give to any person any gift or consideration of any kind, as an inducement or reward for doing or forbearing to do or for having done or forborne to do, any act in relation to the obtaining or execution of the Contract with the Council; or for showing or forbearing to show favour or disfavour, to any person in relation to the Contract, or any other contract with the Council, or if the like acts shall have been done by any person employed by the Provider or acting on its behalf, (whether with or without the knowledge of the Provider);
- f) if in relation to any contract with the Council, the Provider or any person employed by it or acting on its behalf shall have committed an offence or anything contrary to Legislation;
- g) if the Provider is a registered charity at the Commencement Date, if the Provider ceases to be a registered charity within the meaning of the Charities Act 2006;
- h) if the Charity Commission have:

- i) opened an enquiry into the activities of the Provider; or
- ii) have intervened with the running of the Provider due to misconduct or mismanagement;
- i) if the Provider has possession taken, by or on behalf of the holders or any legal charge of the Provider's property;
- j) the Provider suffering an execution to be levied on his goods;
- k) if the Provider consists of one or more individuals, any such individual dying, entering into a composition or arrangement for the benefit of his creditors or becomes bankrupt or is the subject of similar procedures under the law of any other state;
- l) if the Provider consists of a body corporate, the Provider having a receiver or manager or administrator, provisional liquidator or liquidator appointed or has a proposal in respect of its company for a voluntary arrangement for a composition of debts or scheme of arrangement approved in accordance with the Insolvency Act 1986 or being subject to similar procedures under the law of any other state provided that an amalgamation or reconstruction of a limited company shall be deemed not to be a breach of this Condition;
- m) if the Provider has an application made under the Insolvency Act 1986 to the Court for the appointment of an administrative receiver or has an administrative receiver appointed or is the subject of similar procedures under the law of any other state;
- o) the Provider has possession taken, by or on behalf of the holders of any debenture secured by a floating charge, of any property comprised in, or subject to, the floating charge or is the subject of similar procedures under the law of any other state;
- p) the Provider is in circumstances which entitle the Court or a creditor to appoint, or have appointed, a receiver, or manager, or administrator, or administrative receiver or to begin similar procedures under the law of any other state; or which entitle the Court to make a winding up order or a similar order under the law of any other state.

28.2 Upon such Termination and in addition to such consequences as are set out in these Conditions of Contract:

- a) the Provider shall forthwith cease to perform the Services;
- b) the Council shall cease to be under any obligation to make further payments to the Provider and shall be entitled to retain any payments which may have fallen due to the Provider before termination until the costs, losses and/or damages resulting from or arising out of the Termination of the Contract shall have been calculated; where the Parties agree that such calculation shows a sum or sums due to the Provider, the Council shall pay the Provider such sums forthwith and in

any event within 10 (ten) Working Days of the calculation being agreed between the Parties;

- c) the Council shall be entitled to repossess any of its premises, materials, equipment or other goods loaned or hired to the Provider and to exercise lien over any of the materials, equipment or other goods belonging to the Provider for any sum due hereunder or otherwise due from the Provider to the Council;
- d) the Council shall be entitled to deduct, retain or set off from any sum or sums which would but for paragraph b) of this Condition have been due from the Council to the Provider under this Contract or any other Contract or be entitled to recover the same from the Provider as a debt, any loss or damage to the Council resulting from or arising out of the termination of the contract. Such loss or damage shall include reasonable cost to the Council of the time spent by its officers in terminating the contract and in making alternative arrangements for the provision of the Services or any part thereof;
- e) when the total costs, losses and/or damages resulting from or arising out of the Termination of the Provider's employment have been calculated and deducted insofar as is practicable from any sum or sums which would but for paragraph b) of this Condition have been due to the Provider, any balance shown as due to the Council shall be recoverable as a debt, or alternatively, the Council shall pay to the Provider any balance shown as due to the Provider.

28.3 Notwithstanding anything to the contrary contained herein, the Council may terminate this Contract by giving thirty (30) days notice in writing to the Provider in the event any grant from Central Government or a recognised third party to fund the Services is withdrawn, reduced or delayed.

28.4 The Provider may terminate this Contract by serving notice on the Council at least sixty (60) days prior to termination of the Contract if any sums remain unpaid for thirty (30) days after receipt by the Council of an invoice for Services previously rendered in accordance with this Contract and the Provider has given the Council prior written notice stating sum(s) remaining unpaid and its intention to terminate the Contract and such sum(s) remain unpaid for thirty (30) days following service of the notice Provided Always that the Provider shall not exercise this right of termination where the sum(s) outstanding is/are the subject of a genuine dispute.

28.5 Without affecting any other right or remedy available to it, the Council shall have the right to terminate the Contract without obligations to pay for any Services not yet rendered by giving not less than 3 (three) months notice in writing or such other period as it considers reasonable under the circumstances.

29. ASSIGNMENT AND SUB-CONTRACTING

29.1 The Council shall with the Provider's consent (not to be unreasonably withheld or delayed) be entitled to assign the benefit of the Contract or any part thereof and shall give reasonable written notice of any such assignment to the Provider.

29.2 The Provider shall not:

29.2.1 assign the Contract or any part thereof or the benefit or advantage of the Contract or any part thereof;

29.2.2 sub-contract the provisions of the Services or any part thereof to any person without the previous written consent of the Authorised Officer which consent shall be at the absolute discretion of the Authorised Officer. This shall not relieve the Provider from any liability or obligation under the Contract, and the Provider shall be responsible for the acts, defaults or neglect of any sub-Providers, its employees and agents in all respects as if they were the acts, defaults or neglect of the Provider itself.

29.3 The Provider undertakes that the terms and conditions of any sub-contract it enters into with a sub-contractor shall comply with section 113 of the Public Contracts Regulations 2015 and result in payments being made not later than thirty (30) days from the date of receipt of a relevant invoice from the sub-contractor.

30. NOTICES

30.1 Notices under this Contract shall be given by sending them by pre-paid registered post, fax (with a confirmatory copy by post), electronic mail or personal delivery to the other Party at its address set out in the description of the Parties or to such other address notified in writing to the sender. Notices sent by registered post shall be deemed to have been received 48 hours after sending (as evidenced by the sender's receipt), notices sent by fax and electronic mail shall be deemed to have been received on the first working day after sending (in the case of notices by fax as shown by the timed print out on or with the sender's copy) and notices sent by personal delivery shall be deemed to have been received at the time delivery is acknowledged.

31. ANTI-BRIBERY AND ANTI-CORRUPTION

31.1 The Council may terminate this contract and recover all its losses if the Provider (or its Personnel):

- (a) fails to comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti corruption including but not limited to the Bribery Act 2010; and
- (b) engages in any activity, practice or conduct which would constitute an offence under, section 1, 2, and 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK; or
- (c) engages in any activity, practice or conduct which would constitute an offence under Section 117(2) of the Local Government Act 1972 and any amendment thereto or any subsequent legislation or under Legislation creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Council; or
- (d) defraud or attempt to defraud or conspire to defraud the Council.

32. COMPLIANCE WITH ANTI-SLAVERY AND HUMAN TRAFFICKING LAWS

32.1 In performing its obligations under the agreement, the Supplier shall:

- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and
- (b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;
- (c) include in contracts with its direct sub-contractors and suppliers provisions which are at least as onerous as those set out in this Clause 16.
- (d) notify the Council as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this agreement.
- (e) maintain a complete set of records to trace the supply chain of all Goods and Services provided to the Council in connection with this agreement; and permit the Council and its third party representatives to inspect the Supplier's premises, records, and to meet the Supplier's personnel to audit the Supplier's compliance with its obligations under this Clause 16.

32.2 The Supplier represents and warrants that it has not been convicted of any offence involving slavery and human trafficking; nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

32.3 The Council may terminate the agreement with immediate effect by giving written notice to the Supplier if the Supplier commits a breach of this Clause 16.

33. GRATUITIES TIPS AND CHARGES

33.1 The Provider shall not whether itself or by any of the Provider's Personnel engaged in the provision of the Services solicit or accept any gratuity, tip or any form of money taking or reward, collection or charge for the provision of any part of the Services other than bona fide charges approved by the Council.

34. ENTIRE AGREEMENT AND SURVIVAL OF PROVISIONS

34.1 This Contract supersedes all prior agreements and arrangements of whatever nature and sets out the entire agreement and understanding between the Parties relating to the Services. Unless otherwise stated herein, this Contract applies in place of and prevails over any other terms, conditions and prior representations, whether contained in correspondence or implied by custom or law. Nothing in this Contract shall limit or otherwise exclude liability for fraudulent statements or misrepresentations made by either Party.

34.2 The rights and obligations which expressly or by their nature are intended to survive the expiry or termination of this Contract shall so survive and bind the Parties and their legal representatives, successors and assigns.

35. THE PROVIDER'S WHISTLEBLOWING OBLIGATIONS

- 35.1 The Provider hereby takes notice of and agrees to comply in all respects with the Council's Whistleblowing Policy and Guidelines and PIDA 1998. In particular (but without limitation) the Provider agrees:
- 35.1.1 to accept and adopt the Council's Whistleblowing Policy for Providers as a procedure for the purposes of s.43C(2) of PIDA and the Provider agrees and acknowledges that its employees are authorised to use and rely upon the said procedure;
 - 35.1.2 that to the extent that the Whistleblowing Policy and Guidelines impose duties on or grant rights, protections or immunities to Council employees or agents, the Provider agrees and irrevocably undertakes to impose similar duties and grant similar rights, protections or immunities to the Provider's employees and agents and to any sub-contractors.
- 35.2 Without limiting the generality of **Condition** 35.1, the Provider agrees to report to the Council in accordance with the Whistleblowing Policy and Guidelines any circumstances relating to or arising out of the Contract (including the entering into thereof and procurement of goods, services and supplies for the implementation thereof) and the supply of the Works/Services/Supplies, which give rise to a reasonable belief that one or more of the following matters (referred to in this Condition as "instances of malpractice") has occurred, is occurring or is likely to occur:
- 35.2.1 a criminal offence (including any form of child abuse, or the abuse of other vulnerable individuals);
 - 35.2.2 a breach or failure to comply with any lawful duty (including, without limitation, negligence and/or breach of statutory, contractual, fiduciary, administrative law or other duty);
 - 35.2.3 miscarriage of justice;
 - 35.2.4 danger to health and safety;
 - 35.2.5 damage to the environment;
 - 35.2.6 any other matter designated as malpractice in the Whistleblower Policy and Guidelines;
 - 35.2.7 concealment of any of the above
- 35.3 Without limiting the generality of **Condition** 35.1, in the event that any employee, agent or sub-contractor of the Provider should make a report to the Council (or to any other person authorised by law) pursuant to this Condition, the Provider warrants that it shall use its best endeavours to ensure that such person does not suffer any form of retribution, victimisation or detriment as a consequence of having made such report.
- 35.4 The Provider agrees to indemnify the Council in respect of any loss or damage caused by or arising out of a failure on the part of the Provider to report, within a reasonable time, any instances of malpractice in accordance with this Condition, the Whistleblowing Policy and Guidelines and/or PIDA 1998.
- 35.5 Where the Provider acting reasonably and in good faith makes a report pursuant to this Condition, and the Council subsequently undertakes or omits to undertake a course of

action wholly in reliance upon such report the Council accepts such liability as the Provider may incur as a direct consequence of such report.

36. WAIVER

36.1 Failure by either Party at any time or for any period to enforce any one or more of the provisions of the Contract or to require performance by the other Party of any of the provisions of the Contract shall not:

36.1.1 constitute or be construed as a waiver of any such provision or the right at any time subsequently to enforce all terms and conditions of the Contract; nor

36.1.2 affect the validity of the Contract or any part thereof or the right of the Council to enforce any provision in accordance with its terms.

37. FORCE MAJEURE

37.1 If a Force Majeure event arises on or following the date of this Contract (irrespective of the fact that this Contract may then be conditional) which directly causes the Provider to be materially unable to comply with any of its obligations hereunder, the Provider and the Council may agree such terms as are appropriate for the continued performance of the Contract. If no such terms are agreed within one month of the commencement of the said event, and such event is continuing or its consequence remains such that the Provider is materially unable to comply with its obligations, the Parties hereby agree that the Contract shall thereupon terminate, subject to the provisions of **Condition 28** (Termination). Failure by the Provider to comply with its contractual obligations by reason of a Force Majeure event shall not constitute a breach of contract.

37.2 The events which are to be classified as Force Majeure events shall include each of the following:

- a) war, civil war, conflict or terrorist attack arising within and affecting the United Kingdom;
- b) nuclear, chemical or biological contamination of the Provider's property arising from any of the events at (a) above;
- c) riot, flood or earthquake;
- D) epidemic of pandemic; or
- d) any circumstances beyond the reasonable control of either of the Parties.

38. FREEDOM OF INFORMATION

38.1 The Provider acknowledges that the Council is subject to the requirements of the Environmental Information Regulations and the 2000 Act and agrees to use all reasonable endeavours to assist the Council (at the Provider's expense) to comply with its obligations imposed under those provisions.

- 38.2 The Provider shall process Information produced in the performance of the Contract or relating to the Contract in accordance with a records management system which complies with the Lord Chancellor's code of practice for the keeping and management of records under section 46 of the 2000 Act.
- 38.3 Subject to **Condition** 38.6, the Provider shall and shall procure that its sub-contractors shall:
- 37.3.1 transfer any Request for Information received by the Provider or its sub-contractors to the Council promptly and, in any event, within two Working Days of its receipt;
 - 38.3.2 provide the Council with a copy of all Information belonging to the Council in its possession or power, which has been requested in the Request for Information in the form that the Council requires within 5 Working Days of the Council's request for such Information (or such other period as the Council may reasonably specify), including such information as the Council may require in order to comply with the Council's Publication Scheme;
 - 38.3.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance prescribed by section 10 of the 2000 Act;
 - 38.3.4 not respond directly to a Request for Information or disclose or release Information without the prior written authority of the Council.
- 38.4 Subject to **Condition** 38.6, the Council shall be responsible for determining, in its absolute discretion, whether:
- 38.4.1 Information relating to a Request for Information is exempt from disclosure under the 2000 Act or the Environmental Information Regulations;
 - 38.4.2 any Information is to be disclosed in response to a Request for Information.
- 38.5 The Provider acknowledges that the Council may be obliged under the 2000 Act or the Environmental Information Regulations to disclose Information:
- 38.5.1 without consulting the Provider; or
 - 38.5.2 following consultation with the Provider and having taken its views into account.
- 38.6 Where the 2000 Act applies to the Provider (by virtue of an order made under section 5 of the 2000 Act or otherwise), the Provider shall:
- 38.6.1 comply with the 2000 Act and any associated Legislation and codes of practice (including (without limitation) the Secretary of State's and Lord Chancellor's codes of practice issued under sections 45 and 46 of the 2000 Act); and
 - 38.6.2 where the Provider receives a Request for Information from a third Party under the 2000 Act which relates to the Council and / or this Contract:

- 38.6.2.1 inform the Council about the Request for Information and the nature of the Information being sought as soon as reasonably possible;
 - 38.6.2.2 consider and apply all lawful exemptions provided under the 2000 Act to withhold Information sought in terms of the Request for Information;
 - 38.6.2.3 consult with the Council prior to the disclosure of any such Information; and
 - 38.6.2.4 keep the Council informed about the Provider's progress in dealing with any Request for Information and where requested by the Council, provide the Council with copies of any correspondence and documents relating to the Request for Information.
- 38.7 The Provider shall indemnify the Council against all claims and proceedings and all liabilities, losses, costs and expenses incurred in connection therewith by the Council as a result of any breach of this **Condition** 38 by the Provider, the Provider's personnel, sub-contractors or agents.
- 38.8 The Provider acknowledges that the definition of Confidential Information is indicative only and that the Council may be obliged to disclose Confidential Information pursuant to the Environmental Information Regulations or the 2000 Act.

39. TUPE

- 39.1 The Provider accepts and undertakes that when it tendered for (and entered into) this Contract it has taken into consideration the provisions of the Directive and the Regulations and has considered the application or otherwise of those provisions to this Contract and has taken the appropriate action required under the Directive and/or the Regulations.
- 39.2 The Council and the Provider agree that the transfer of the Services (where applicable) to be effected by this Contract is governed by the Regulations and accordingly:
- 39.2.1 the Council shall use reasonable endeavours to request that the existing Provider of services similar to the Services transfers, on the Transfer Date, the contract of employment for each of the Transferring Employees to the Provider (save insofar as such contracts relate to any occupational pension schemes);
 - 39.2.2 on termination of the Contract for whatever reason or expiry of the Contract Period, the Provider shall discharge all wages salaries and honoraria excluding accrued holiday remuneration (if any) of the Transferring Employees and all other costs and expenses relating to the Transferring Employees for the period from and including the Transfer Date) and will pay over all deductions properly made therefrom to the relevant authority (including but not limited to taxation and national insurance); and

39.2.3 subject to the Data Protection Legislation, the Council shall provide to the Provider such information as may be reasonably required to comply with the Regulations, including without limitation:

- (a) the number of personnel, including supervisory and administrative personnel employed by the Council in the provision of the Services;
- (b) the terms and conditions of employment of those personnel; and
- (c) any other information in relation to those personnel as may properly be required by the Provider under this Condition.

39.3 The Provider shall at its own cost undertake all liability for and shall fully indemnify the Council against:

39.3.1 all losses, claims, damages and costs which may be brought against the Council as a consequence of the Provider's failure to consider fully the application of the Directive and Regulations to this Contract and/or have taken the appropriate action required under the Directive and Regulations and arising from the letting of this Contract; and

39.3.2 all reasonable costs, expenses, damages, compensation, fines and other liabilities in connection with any claim arising from a cause of action occurring on or subsequent to the Transfer Date by all or any of the Transferring Employees as a result of their employment with the Provider.

39.4 On the termination of the Contract for whatever reason or on the expiry of the Contract Period, the Provider shall supply within seven (7) days of demand by the Council all such information as the Council shall consider to be required as a result of the Directive and the Regulations, including without limitation:

39.4.1 the number of personnel, including supervisory and administrative personnel, employed by the Provider and any sub-contractor employed in the provision of the Services;

39.4.2 the terms and conditions of employment of those personnel; and

39.4.3 any other information in relation to those personnel as may properly be required by the Council under this Condition.

The Provider shall indemnify the Council against any liability in law which the Council may incur by reason of a failure to supply such information within a reasonable time, or by reason of any inaccuracies in such information.

39.5 Prior to the termination of this Contract (or any part of this Contract) for whatever reason, the Provider shall comply with any applicable provisions of the Regulations and the Directive including (but not limited to) the requirements with regard to consultation of affected employees pursuant to Directive Article 6 and Regulation 10 of the Regulations in respect of any transfer of an undertaking (which maybe so held by any Court or Tribunal) arising at the end of the Contract Period or on any earlier termination of the Contract (or any part of the Contract) for whatever reason. The Provider shall indemnify and hold harmless the Council against all claims whatsoever and howsoever

arising which may at any time arise out of the failure on the part of the Provider to comply with the requirements of this Condition.

- 39.6 If at the termination of the Contract for whatever reason (apart from cause for termination being a result of a material breach of the Contract by the Provider) the Services cease to be provided by the Provider and are neither taken back in-house nor transferred to a third party Provider, then the Provider shall use its best endeavours to re-deploy employees previously engaged in the performance of the Contract. If having taken all such steps the Provider dismisses exclusively on the grounds of redundancy any of the employees previously employed by the Council in the provision of the Services, the Council shall (subject to the Provider consulting and obtaining the written consent of the Council before making such employees redundant, such consent not to be unreasonably withheld) reimburse the Provider that amount of an employee's redundancy payments which have been properly incurred and are exclusively attributable to that employee's period of employment with the Council.
- 39.7 In addition to the provisions contained in **Condition** 39.5 above, the Parties agree that if during the Contract Period staffing levels are reduced exclusively as a consequence of redundancy of employees, the Council shall (subject to the Provider consulting and obtaining the written consent of the Council before making such employees redundant, such consent not to be unreasonably withheld) reimburse the Provider such amount of an employee's redundancy payments which have been properly incurred and are exclusively attributable to that employee's period of employment by the Council. The Provider accepts liability for all redundancy payments pertaining to the length of service of the relevant employee with the Provider.
- 39.8 The Provider shall undertake to include in any sub-contract specific provisions which provide equivalent obligations upon each sub-contractor to those accepted by the Provider under this Contract and which provide for enforcement by:
- (a) Transferring Employees; and/or
 - (b) the Council
- directly against the sub-contractor and preserving their rights under the Contracts (Rights of Third Parties) Act 1999. Copies of all sub-contracts (un-priced) shall be provided to the Council upon sub-contract award. The Provider shall indemnify and hold harmless the Council against all claims, whatsoever and howsoever arising, which may at any time arise out of the failure on the part of the Provider to comply with the requirements of this Condition.
- 39.9 The Provider shall not during the final twelve (12) months of the Contract Period or during the final twelve months of any extension to this Contract:
- (a) Undertake a reorganisation of staff employed in the performance of this contract or working methods other than in accordance with a scheme that has been submitted to and approved in writing by the Council.
 - (b) Award any pay rise which exceeds the annual rate of inflation without first having obtained the written consent of the Council.
 - (c) Agree or implement any alteration to the terms and conditions on which staff are employed on the Contract without first having obtained the written consent of the Council.

40. DATA PROCESSING

- 40.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This **Condition 40** is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under the Data Protection Legislation.
- 40.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council **is the Controller and the Provider is the Processor**. Schedule 3 sets out the scope, nature and purpose of processing by the Provider, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 40.2 Without prejudice to the generality of **Condition 40.1**, the Council will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Provider for the duration and purposes of this Contract.
- 40.3 Without prejudice to the generality of **Condition 40.1**, the Provider shall, in relation to any Personal Data processed in connection with the performance by the Provider of its obligations under this Contract:
- (a) process that Personal Data only on the documented written instructions of the Council which are set out in Schedule 3, unless the Provider is required by Domestic Law to otherwise process that Personal Data. Where the Provider is relying on Domestic Law as the basis for processing Personal Data, the Provider shall promptly notify the Council of this before performing the processing required by Domestic Law unless the Domestic Law prohibits the Provider from so notifying the Customer;
 - (b) ensure that it has in place appropriate technical and organisational measures (as defined in the Data Protection Legislation), reviewed and approved by the Council, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - (c) not transfer any Personal Data outside of the UK unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
 - (i) the Council or the Provider has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective remedies;

- (iii) the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Provider complies with the reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
- (d) notify the Council immediately if it receives:
- (i) a request from a Data Subject to have access to that person's Personal Data;
 - (ii) a request to rectify, block or erase any Personal Data;
 - (iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
- (e) assist the Council in responding to any request from a Data Subject and in ensuring compliance with the Council's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Council without undue delay on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this Contract;
- (g) at the written direction of the Council, delete or return Personal Data and copies thereof to the Customer on termination or expiry of the Contract unless required by Domestic Law to store the Personal Data;
- (h) maintain complete and accurate records and information to demonstrate its compliance with this **Condition** 40 and allow for audits by the Council or the Council's designated auditor and immediately inform the Customer if, in the opinion of the Provider, an instruction infringes the Data Protection Legislation.

40.4 The Provider shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:

- (i) a systematic description of the envisaged processing operations and the purpose of the processing;
- (j) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (k) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (l) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

40.5 The Provider shall indemnify the Council against any losses, damages, cost or expenses incurred by the Council arising from, or in connection with, any breach of the Provider's obligations under this **Condition 40**.

40.6 Where the Provider intends to engage a Sub-Contractor and intends for that Sub-Contractor to process any Personal Data relating to this Contract, it shall:

- (m) notify the Council in writing of the intended processing by the Sub-Contractor;
- (n) obtain prior written consent from the Council to the processing;
- (o) enter into a written agreement incorporating terms which are substantially similar to those set out in this **Condition 40**.

40.7 The provisions of this clause shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

41. INFORMATION ON RE-TENDERING

41.1 If requested to do so by the Council, the Provider shall provide to the Council at no additional charge any and all relevant information in its possession to permit the Council to prepare the necessary documentation in respect of any subsequent tendering or re-tendering of the Services. The information required shall be sufficient to enable the Council to meet its legal obligations and to obtain the best value for money reasonably obtainable in a tendering exercise.

42. LAW AND JURISDICTION

42.1 The Contract shall be governed by and construed in accordance with the Laws of England and the Parties submit to the exclusive jurisdiction of the English courts.

42.2 The express terms and conditions of this Contract shall apply in place of all warranties, conditions, terms, representations, statements, undertakings and obligations, whether expressed or implied by statute, common law, custom, usage or otherwise, all of which are excluded to the fullest extent permitted by law.

42.3 References to any statutory provision, enactment, order, regulation or other similar instrument shall be construed as a reference to the statutory provision, enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted from time to time and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under it.

43. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

43.1 Unless expressly stated nothing in this Contract or any agreement referred to herein will create rights pursuant to the Contracts (Rights of Third Parties) Act 1999 in favour of anyone other than the Parties to this Contract.

44. SEVERABILITY

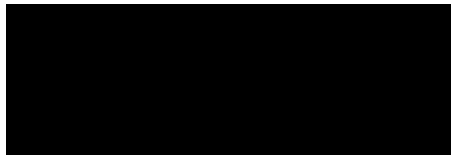
- 44.1 If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Contract.
- 44.2 If any provision or part-provision of this Contract is deemed deleted under **Condition 44.1**, the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

45. PARTNERSHIP OR AGENCY

- 45.1 Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties.
- 45.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

IN WITNESS WHEREOF the parties have executed this Contract in accordance with their respective constitutions on the day and year first above written

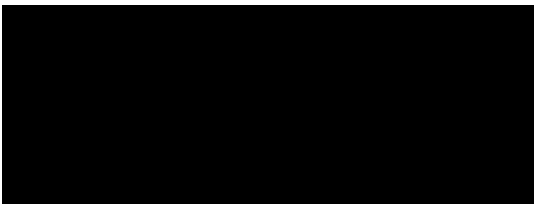
For and on behalf of
THE DISTRICT COUNCIL OF FOLKESTONE AND HYPHE





(Name of Authorised Signatory)

For and on behalf of
GREEN GNOMES LTD



(Name of Authorised Signatory)

SCHEDULE 1

SPECIFICATION

SPECIFICATION

PAS2035 RETRO-FIT COORDINATOR SERVICES (FOR 91 HOMES)

PAS 2035 requires that all domestic retrofit projects incorporate a Retrofit Coordinator whose job is to oversee the management and design of all retrofit measures. To carry out this role, it is necessary for bidders to demonstrate the attainment of the Level 5 Diploma in Retrofit Coordination and Risk Management.

The role will perform retrofit coordinator services in support of the delivery of energy efficiency retrofit measures in 91 social houses in the Folkestone area. The programme is delivered through the social housing decarbonisation fund (SHDF) to improve the energy efficiency in each of the 91 homes to EPC Band C and reduce energy use to 90kWh/m²/pa through a fabric-first, whole-house approach to prepare for the next stages of low carbon heating.

Background

Folkestone & Hythe District Council (F&HDC) as a landlord have a programme of domestic retrofit projects across 91 homes in the district. The programme is focused on installing fabric-first, no-regret energy efficiency measures in 91 of our worst performing social homes. The performance targets are by property and include raising the measured energy efficiency performance to EPC Band C, achieving a satisfactory energy usage, air tightness targets and adequate ventilation. The material systems will be defined by PAS2035 Assessors and Designers and installed by a Trustmark lead contractor, with tenant engagement delivered by existing FHDC Resident Liaison Officers and works overseen by an FHDC Clerk of Works.

Current target portfolio of 91 homes

The homes are typically houses and bungalows with detached, semi-detached and terraced archetypes each requiring on average an estimated 4.9 measures per home to achieve the EPC Band C. There are no heritage nor pre-1919 homes. The predominant measures identified by the EPC recommendations are fabric-related and include internal, external and cavity wall insulation, loft insulation, external doors and double glazing, underfloor insulation, low-energy lighting and draughtproofing.

Many of the homes are in non-gas grid areas and approx. 50% are heated by oil/lpg.

Performance criteria

The funding for the predominately fabric-related improvements is from the Social Housing Decarbonisation Fund wave 1 and improvements will need to demonstrate that the home meets the specific performance criteria and funding conditions alongside PAS2035 compliance and lodgement of documents.

The role

The Council wish to appoint a PAS2035 Retro-fit Co-ordinator service that will, for each home, oversee and lead the compliance including the:

1. Preliminary appraisal and provide engagement advice and instruction for measures at each property, including highlighting preliminary works (e.g., water ingress, treatment for condensation) that may come to light as a part of the appraisal process
2. Full risk path appraisal and coordination of the work of the external PAS2035 assessors and designers, the FHDC Clerk of Works and Trustmark installation bodies
3. Receive and review the Retrofit assessment (including ventilation and air tightness considerations) and liaise with the PAS 2034 Designer and the Trustmark lead installer
4. Prepare the improvement options evaluation, the medium-term plan, undertaking the significance appraisal, and confirming that the deliverables required under the SHDF wave 1 funding conditions have been met
5. Providing advice and oversight on the post-works monitoring and evaluation; and
6. Assembling and lodging the complete and compliant documentation pack

Considerations

It is expected that the price will include

1. The provision of the full service Retrofit Coordinator
2. Four on-site visits in Folkestone during the contract period at times to be agreed and monthly remote meetings with the programme steering group,
3. The provision of high-quality advice and guidance to FHDC
 - a. To develop and maintain an effective and efficient compliant PAS programme for each of the 91 homes within the programme; and
 - b. The provision of high-quality advice to FHDC to meet the additional performance requirements of the SHDF wave 1 performance criteria.
4. Lodgement and ancillary costs to be detailed separately and clearly within the quote
5. Collaboration with all the stakeholders in creating the final specification for each home as the detailed design specification will be developed and completed in phases throughout the programme,
6. The role will require a start no later than 5th September 2022, that will include a remote briefing to the PAS Assessors, Designers, Lead Installer and F&HDC to specify your expectations of each of the stakeholders, the working practices, information exchange and communications pathways to be adopted

SCHEDULE 2

PRICING

Price Schedule

Project: Provision of PAS2035 RETRO-FIT COORDINATOR SERVICES

TABLE A :

Suppliers are asked to submit a **fixed fee** quote for the fulfilment of the requirements.

Prices submitted must be **exclusive** of Value Added Tax.

Total cost for evaluation will be taken from **CELL G20**

No	Activity Schedule				
	Detail and cost all activities in this stage.				
	ACTIVITY	UNIT OF MEASURE	TOTAL NUMBER	UNIT RATE (£)	SUBTOTAL (£)
1	Retrofit Co-ordination services fee (<i>assume 5 measures per dwelling</i>)	per dwelling	91	£	£
2	TrustMark Lodgement fee (<i>assume 5 measures per dwelling</i>)	per dwelling	91	£	£
3	Site visits (<i>dates & times to be agreed</i>)	in person visit to FHDC Civic Centre	4	£	£

TOTAL COST	£ 21,010.00
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TABLE B : Additional Pricing

This table is not evaluated, but will be included in the Price Schedule of the contract, upon award

Prices must be presented EXCLUSIVE of VAT.

	Additional services you may offer:	UNIT OF MEASURE	UNIT RATE (£)
	EPC Assessment and lodgement Fee	per dwelling	£

SCHEDULE 3

DATA PROCESSING

1. Processing by the Supplier

(a) Scope

The scope of the service is to provide PAS2035 retrofit co-ordination services to the level 5 Diploma in Retrofit Coordination and Risk Management. The scope will also include: advising the Council and supply chain partners on PAS2035 and PAS2030(2019) Trustmark compliance matters, confirming the risk pathway, and advising on achieving the contracted performance standards in the home.

The works will be undertaken with the permission of the existing tenant and the Council will undertake the initial contact and maintain contact. The existing FHDC tenants in the qualifying homes will be contacted by FHDC Resident Liaison Officer to confirm that they wish to be a part of the scheme and at that time provided with a Data Sharing Agreement and details of the FHDC data sharing policy to be signed.

FHDC will act as the Data Coordinator and share the personal information with the appointed service provider who will be a signatory to the FHDC DSA.

(b) Nature

The role within the programme is to define and instal Trustmark compliant energy efficiency retrofit measures across 91 social homes where the Council is the landlord. The homes represent the worst energy performing homes owned by the Council. The programme anticipates an average of 4.5 fabric related measures per home, to be evaluated, delivered, lodged and completed by 31st March 2023.

The programme is funded by social housing decarbonisation fund wave 1 that has defined contracted performance standards for each home that includes: air testing (where required), ventilation, energy efficiency measures to achieve a space heating energy use of 90kWh/m²/pa and EPC Band C, managing the documentation of evidence, and the timely lodgement of relevant certificates.

The role is not expected to have direct contact with individual tenants or require the sharing of personal data.

(c) Purpose of processing

The primary purpose of the role is to confirm that each of the measures in each of the homes are: compliant with PAS2035 and the PAS2030(2019) Trustmark process, meets the social housing decarbonisation fund performance

measures, are properly evidenced, recorded and lodged with the appropriate authorities. The role will include:

- Preliminary appraisal and provide engagement advice and instruction for measures at each property, including highlighting preliminary works (e.g. water ingress, treatment for condensation) that may come to light as a part of the appraisal process
- Full risk path appraisal and coordination of the work of the external PAS2035 assessors and designers, the FHDC Clerk of Works and Trustmark installation bodies
- Receipt and review of the Retrofit assessment (including ventilation and air tightness considerations) and liaise with the PAS 2035 Assessor, Designer and the Trustmark lead installer to ensure a whole-house, fabric-first, no regrets approach has been followed
- Prepare the improvement options evaluation, the medium-term plan, undertaking the significance appraisal, and confirming that the deliverables required under the SHDF wave 1 funding conditions have been met
- Providing advice and oversight on the post-works monitoring and evaluation; and
- Assembling and lodging the complete and compliant documentation pack

The Council as a social landlord has the obligation to meet the ENERGY CONSERVATION, ENGLAND AND WALES The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015, 26th March 2015. The Council is aware of future minimum energy efficiency standards in the UK.

(d) Duration of processing

The contract requires the delivery of the 91 homes, commencing on 5th September 2022 to the relevant standard and will conclude on the 31st March 2023.

The 91 homes will be delivered to an agreed programme schedule, with an average of around 20-25 homes per month.

2. Types of Personal Data

- **Personal data:** The names, contact details (phone and email) and address of individual tenants
- **Special Category Data:** No
- **Criminal Offence Data:** No
- **Children's Data:** No

3. Categories of Data Subject

The personal and works data will be collected by F&HDC and provided only for the purpose of delivering the project at each home. On conclusion of the programme of 91 homes the Council requires a statement that any personal data not related to the PAS compliance process and lodgment has been removed and deleted. All personal data related to the PAS compliance process and lodgment will be held securely and not used for any other purpose.