

Dated 20 [---]

**(1) BATH & NORTH EAST SOMERSET COUNCIL**

**-and-**

**(2) [THE CONTRACTOR]**

**AGREEMENT**

relating to the supply of

[…………………………………………………]

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A. GENERAL PROVISIONS

# A1 Definitions and Interpretation

A1.1 In this Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:

**“Agreement”** means this Contract.

“**Approval**” means the written consent of the Council.

“**Council**” means Bath & North East Somerset Council

“**Commencement Date**” means the date of the Contract.

“**Commercially Sensitive Information**” means the information listed in the Commercially Sensitive Information Schedule comprised of information:

(a) which is provided by the Contractor to the Council in confidence for the period set out in that Schedule; and/or

(b) that constitutes a trade secret.

“**Confidential Information**” means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA 2018. Confidential Information shall not include information which:

(a) was public knowledge at the time of disclosure (otherwise than by breach of clause E3 (Confidential Information));

(b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;

(c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or

(d) is independently developed without access to the Confidential Information.

“**Contract**” means this written agreement between the Council and the Contractor consisting of these clauses and any attached Schedules.

“**Contracting Authority**” means any contracting authority as defined in Part 1 of the Public Contracts Regulations 2015.

“**Contractor**” means the person, firm or company with whom the Council enters into the Contract.

“**Contract Period**” means the period from the Commencement Date to:

(a) the date of expiry set out in clause A2 (Initial Contract Period), or

(b) following an extension pursuant to clause F8 (Extension of Initial Contract Period), the date of expiry of the extended period,

or such earlier date of termination or partial termination of the agreement in accordance with the Law or the provisions of the Contract.

“**Contract Price**” means the price (exclusive of any applicable VAT), payable to the Contractor by the Council under the Contract, as set out in the Pricing Schedule, for the full and proper performance by the Contractor of its obligations under the Contract but before taking into account the effect of any adjustment of price in accordance with clause C4 (Price Adjustment on Extension of Initial Contract Period).

**“DPA 2018”** means Data Protection Act 2018

“**Default**” means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other.

“**Environmental Information Regulations**” means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

“**Equipment**” means the Contractor’s equipment, plant, materials and such other items supplied and used by the Contractor in the performance of its obligations under the Contract.

“**Fees Regulations**” means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

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

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

(a) any industrial action occurring within the Contractor’s or any sub-contractor’s organisation; or

(b) the failure by any sub-contractor to perform its obligations under any sub-contract.

“**Fraud**” means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the Crown.

**“GDPR”** means the General Data Protection Regulation (Regulation (EU) 2016/679)

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

“**Information**” has the meaning given under section 84 of the FOIA.

“**Initial Contract Period**” means the period from the Commencement Date to the date of expiry set out in clause A2 (Initial Contract Period), or such earlier date of termination of the Contract in accordance with the Law or the provisions of the Contract.

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

“**Key Personnel**” means those persons named in the Specification as being key personnel.

“**Law**” means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the Contractor is bound to comply.

“**Monitoring Schedule**” means the Schedule containing details of the monitoring arrangements.

“**Month**” means calendar month.

“**Party**” means a party to this Agreement;

“**Premises**” means the location where the Services are to be supplied, as set out in the Specification.

“**Pricing Schedule**” means the Schedule containing details of the Contract Price.

“**Property**” means the property, other than real property, issued or made available to the Contractor by the Council in connection with the Contract.

**“Provider Personnel”** means all directors, officers, employees, agents, consultants and contractors of the Provider and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement;

“**Quality Standards**” means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification Schedule.

“**Receipt**” means the physical or electronic arrival of the invoice at the address of the Council detailed at clause A5.3 or at any other address given by the Council to the Contractor for the submission of invoices.

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

“**Replacement Contractor**” means any third party service provider appointed by the Council to supply any services which are substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract.

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

"**Relevant Convictions**" means a conviction that is relevant to the nature of the Services or as listed by the Council and/or relevant to the work of the Council

“**Schedule**” means a schedule attached to, and forming part of, the Contract.

“**Services**” means the services to be supplied as specified in the Specification.

“**Specification**” means the description of the Services to be supplied under the Contract as set out in the Specification Schedule including, where appropriate, the Key Personnel, the Premises and the Quality Standards.

“**Specification Schedule**” means the Schedule containing details of the Specification.

“**Staff**” means all persons employed by the Contractor to perform its obligations under the Contract together with the Contractor’s servants, agents, suppliers and sub-contractors used in the performance of its obligations under the Contract.

“**Staff Vetting Procedure**” means the Council’s procedures for the vetting of personnel and as advised to the Contractor by the Council.

**“Sub-processor”** means any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement

“**Tender**” means the document(s) submitted by the Contractor to the Council in response to the Council’s invitation to suppliers for formal offers to supply it with the Services.

“**Variation**” has the meaning given to it in clause F3.1 (Variation).

“**VAT**” means value added tax in accordance with the provisions of the Value Added Tax Act 1994.

“**Working Day**” means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

A1.2 The interpretation and construction of this Contract shall be subject to the following provisions:

(a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;

(b) words importing the masculine include the feminine and the neuter;

(c) reference to a clause is a reference to the whole of that clause unless stated otherwise;

(d) reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

(e) reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

(f) the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and

(g) headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

**A2 Initial Contract Period**

The Contract shall take effect on the Commencement Date and shall expire automatically on [……… 20--], unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or extended under clause F8 (Extension of Initial Contract Period).

**A3 Contractor’s Status**

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

## A4 Council’s Obligations

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

**A5 Notices**

A5.1Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.

A5.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, first class post, recorded delivery or special delivery), or by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in clause A5.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given [2] Working Days after the day on which the letter was posted, or [4] hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

A5.3 For the purposes of clause A5.2, the address of each Party shall be:

(a) For the Council:

[Address: ]

[ ]

For the attention of:

Tel: [ ]

Email: [ ]

(b) For the Contractor:

[Name ]

[Address: ]

[ ]

For the attention of:

Tel: [ ]

Email: [ ]

A5.4 Either Party may change its address for service by serving a notice in accordance with this clause.

**A6 Mistakes in Information**

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

#### A7 Conflicts of Interest

A7.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff is placed in a position where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Council under the provisions of the Contract. The Contractor will disclose to the Council full particulars of any such conflict of interest which may arise.

A7.2 The Council reserves the right to terminate the Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Council under the provisions of the Contract. The actions of the Council pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

B. SUPPLY OF SERVICES

B1 The Services

B1.1 The Contractor shall supply the Services during the Contract Period in accordance with the Council’s requirements as set out in the Specification and the provisions of the Contract in consideration of the payment of the Contract Price. The Council may inspect and examine the manner in which the Contractor supplies the Services at the Premises during normal business hours on reasonable notice.

B1.2 If the Council informs the Contractor in writing that the Council reasonably believes that any part of the Services does not meet the requirements of the Contract or differ in any way from those requirements, and this is other than as a result of a Default by the Council, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Council.

B1.3 Subject to the Council providing written consent in accordance with clause B2.2 (Provision and Removal of Equipment), timely supply of the Services shall be of the essence of the Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.

**B2 Provision and Removal of Equipment**

B2.1 The Contractor shall provide all the Equipment necessary for the supply of the Services.

B2.2 The Contractor shall not deliver any Equipment nor begin any work on the Premises without obtaining prior Approval.

B2.3 All Equipment brought onto the Premises shall be at the Contractor’s own risk and the Council shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Council’s Default. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor.

B2.4 The Contractor shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.

B2.5 The Contractor shall, at the Council’s written request, at its own expense and as soon as reasonably practicable:

(a) remove from the Premises any Equipment which in the reasonable opinion of the Council is either hazardous, noxious or not in accordance with the Contract; and

(b) replace such item with a suitable substitute item of Equipment.

B2.6 On completion of the Services the Contractor shall remove the Equipment together with any other materials used by the Contractor to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any Staff.

# B3 Manner of Carrying Out the Services

B3.1 The Contractor shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of Services has not been specified in the Contract, the Contractor shall agree the relevant standard of the Services with the Council prior to the supply of the Services and, in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

B3.2 The Contractor shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.

###### B4 Key Personnel

B4.1 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Council. [The Key Personnel shall be responsible for . . . ].

B4.2 The Key Personnel shall not be released from supplying the Services without the agreement of the Council, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances.

B4.3 Any replacements to the Key Personnel shall be subject to the agreement of the Council. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

B4.4 The Council shall not unreasonably withhold its agreement under clauses B4.2 or B4.3. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

**B5 Contractor’s Staff**

B5.1 The Council may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Premises:

(a) any member of the Staff; or

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

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

B5.2 At the Council’s written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Council may reasonably request.

B5.3 The Contractor’s Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Premises.

B5.4 The Contractor shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Services. The Contractor confirms that all persons employed or engaged by the Contractor were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.

B5.5 The Council may require the Contractor to ensure that any person employed in the provision of the Services has undertaken a Disclosure & Barring Service (DBS) check as per the Staff Vetting Procedures. The Contractor shall ensure that no person who discloses that he/she has a Relevant Conviction, or is found by the Contractor to have a Relevant Conviction (whether as a result of a police check or through the DBS check or otherwise) is employed or engaged in the provision of any part of the Services.

B5.6 If the Contractor fails to comply with clause B5.2 within [2] Months of the date of the request and in the reasonable opinion of the Council, such failure may be prejudicial to the interests of the Crown, then the Council may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

B5.7 The decision of the Council as to whether any person is to be refused access to the Premises and as to whether the Contractor has failed to comply with clause B5.2 shall be final and conclusive.

**B6 Inspection of Premises**

Save as the Council may otherwise direct, the Contractor is deemed to have inspected the Premises before submitting its Tender and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

###### B7 Licence to occupy Premises

B7.1 Any land or Premises made available from time to time to the Contractor by the Council in connection with the Contract, shall be made available to the Contractor on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.

B7.2 The Contractor shall limit access to the land or Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Contractor shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Council may reasonably request.

B7.3 Should the Contractor require modifications to the Premises, such modifications shall be subject to prior Approval and shall be carried out by the Council at the Contractor’s expense. The Council shall undertake approved modification work without undue delay. Ownership of such modifications shall rest with the Council.

B7.4 The Contractor shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Council, and the Contractor shall pay for the cost of making good any damage caused by the Contractor or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

B7.5 The Parties agree that there is no intention on the part of the Council to create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Council retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

**B8 Property**

B8.1 Where the Council issues Property free of charge to the Contractor such Property shall be and remain the property of the Council and the Contractor irrevocably licences the Council and its agents to enter upon any premises of the Contractor during normal business hours on reasonable notice to recover any such Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property and the Contractor shall at all times possess the Property as fiduciary agent and bailee of the Council. The Contractor shall take all reasonable steps to ensure that the title of the Council to the Property and the exclusion of any such lien or other interest are brought to the notice of all sub-contractors and other appropriate persons and shall, at the Council’s request, store the Property separately and ensure that it is clearly identifiable as belonging to the Council.

B8.2 The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Council otherwise within 5 Working Days of receipt.

B8.3 The Contractor shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without prior Approval.

B8.4 The Contractor shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Council’s reasonable security requirements as required from time to time.

B8.5 The Contractor shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Council’s Default. The Contractor shall inform the Council within [2] Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

## B9 Offers of Employment

For the duration of the Contract and for a period of 12 months thereafter neither the Council nor the Contractor shall employ or offer employment to any of the other Party’s staff who have been associated with the procurement and/or the contract management of the Services without that other Party’s prior written consent.

C PAYMENT AND CONTRACT PRICE

**C1 Contract Price**

C1.1In consideration of the Contractor’s performance of its obligations under the Contract, the Council shall pay the Contract Price in accordance with clause C2 (Payment and VAT).

C1.2 The Council shall, in addition to the Contract Price and following Receipt of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

**C2 Payment and VAT**

C2.1 The Council shall pay all sums due to the Contractor within 30 days of Receipt of a valid invoice, submitted monthly in arrears.

C2.2 The Contractor shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation reasonably required by the Council to substantiate the invoice.

C2.3 Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.

C2.4 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable.

##### C2.5 The Contractor shall indemnify the Council on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Council at any time in respect of the Contractor’s failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this clause C2.5 shall be paid by the Contractor to the Council not less than 5 Working Days before the date upon which the tax or other liability is payable by the Council.

C2.6 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract under clause H2.3 (Termination on Default) for failure to pay undisputed sums of money. Interest shall be payable by the Council on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

**C3 Recovery of Sums Due**

C3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Council in respect of any breach of the Contract), the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Contract or under any other agreement or contract with the Council.

C3.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

C3.3 The Contractor shall make all payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Contractor.

C3.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

C4 Price adjustment on extension of the Initial Contract Period

C4.1 The Contract Price shall apply for the Initial Contract Period. In the event that the Council agrees to extend the Initial Contract Period pursuant to clause F8 (Extension of Initial Contract Period) the Council shall, in the 6 month period prior to the expiry of the Initial Contract Period, enter into good faith negotiations with the Contractor (for a period of not more than 30 Working Days) to agree a variation in the Contract Price.

C4.2 If the Parties are unable to agree a variation in the Contract Price in accordance with clause C4.1, the Contract shall terminate at the end of the Initial Contract Period.

C4.3 If a variation in the Contract Price is agreed between the Council and the Contractor, the revised Contract Price will take effect from the first day of any period of extension and shall apply during such period of extension.

C4.4 Any increase in the Contract Price pursuant to clause C4.1 shall not exceed the percentage change in the Office of National Statistics’ Consumer Prices Index (CPI) (or another such index specified in the Pricing Schedule) between the Commencement Date and the date 6 Months before the end of the Initial Contract Period.

D. STATUTORY OBLIGATIONS AND REGULATIONS

**D1 Prevention of Corruption**

D1.1 The Contractor shall not offer or give, or agree to give, to the Council or any other public body or any person employed by or on behalf of the Council or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Council or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract.

D1.2 The Contractor warrants that it has not paid commission or agreed to pay commission to the Council or any other public body or any person employed by or on behalf of the Council or any other public body in connection with the Contract.

D1.3 If the Contractor, its Staff or anyone acting on the Contractor’s behalf, engages in conduct prohibited by clauses D1.1 or D1.2, the Council may:

(a) terminate the Contract and recover from the Contractor the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the supply of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period; or

(b) recover in full from the Contractor any other loss sustained by the Council in consequence of any breach of those clauses.

**D2 Prevention of Fraud**

D2.1 The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Contractor (including its shareholders, members, directors) in connection with the receipt of monies from the Council.

D2.2 The Contractor shall notify the Council immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

D2.3 If the Contractor or its Staff commits Fraud in relation to this or any other contract with the Crown (including the Council) the Council may:

(a) terminate the Contract and recover from the Contractor the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the supply of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period; or

(b) recover in full from the Contractor any other loss sustained by the Council in consequence of any breach of this clause.

**D3 Discrimination**

D3.1 The Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, gender identity including gender reassignment, religion or belief, or age and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 and the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

D3.2 The Contractor shall take all reasonable steps to secure the observance of clause D3.1 by all Staff and the staff of its sub-contractors if appointed.

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**D4 The Contracts (Rights of Third Parties) Act 1999**

A person who is not a Party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

#### D5 Environmental Requirements

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

**D6 Health and Safety**

D6.1 The Contractor shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Council shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Premises and which may affect the Contractor in the performance of its obligations under the Contract.

D6.2 While on the Premises, the Contractor shall comply with any health and safety measures implemented by the Council in respect of Staff and other persons working there.

D6.3 The Contractor shall notify the Council immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

D6.4 The Contractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Contract.

D6.5 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Council on request.

**D7** **Modern Slavery Act 2015**

D7.1 The Contractor shall prepare a slavery and human trafficking statement for each financial year in accordance with Section 54[[1]](#footnote-1) of the Modern Slavery Act 2015 showing:

(a) a statement of the steps the Contractor has taken during the financial year to ensure that slavery and human trafficking is not taking place

(i) in any of its supply chains, and

(ii) in any part of its own business, or

(b) a statement that the Contractor has taken no such steps.

D7.2 The Contractor:

a) shall not use, or allow its Subcontractors to use, forced, bonded or involuntary prison labour;

b) shall not require any of its employees or Subcontractor’s employees to lodge deposits or identity papers or deny its employees’ freedom to leave their employment after reasonable notice;

c) warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world.

d) warrants that to the best of its knowledge it is not currently under investigation, inquiry, or enforcement proceedings in relation to any allegation of slavery or human trafficking offenses anywhere around the world.

e) shall make reasonable enquiries to ensure that its officers, employees and Subcontractors have not been convicted of slavery or human trafficking offences anywhere around the world.

f) shall have and maintain throughout the term of the Contract its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and shall include in its contracts with its Subcontractor’s anti-slavery and human trafficking provisions;

g) shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under the Contract;

h) shall prepare and deliver to the Customer (if requested) within 2 months from the date of a request, a report, pertaining to the Contract, demonstrating its approach to modern slavery and human trafficking, including, workforce conditions, working/employment practices, its recruitment practices, evidence of risk management and monitoring processes and details of its ongoing supply chain monitoring and updates on any action plans it puts in place with its supply chain;

I) shall not use, or allow its employees or Subcontractors to use, physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Subcontractors;

j) shall not use, or allow its Subcontractors to use, child or slave labour;

k) shall report the discovery or suspicion of any slavery or trafficking by it or its Subcontractors to the Customer and Modern Slavery Helpline.

The "Modern Slavery Helpline" refers to the point of contact for reporting suspicion, seeking help or advice and information on the subject of modern slavery available online at https://www.modernslaveryhelpline.org/report or by telephone on 08000 121 700.

D7.3 The Contractor shall ensure that its subcontractors are contractually bound by the same terms as themselves in relation to modern slavery and human rights issues and terms are cascaded throughout the supply chain.

D7.4 The Customer shall approve all sub-contractors, and any changes to subcontractors, who are to carry out services as part of the Contract.

D7.5 The Contractor may terminate a sub-contract if the sub-contractor is in breach of any of the terms of the sub-contract relating to modern slavery and human rights issues.

D7.6 The Customer reserves the right to carry out unannounced inspections of the Contractor’s premises themselves or a through a third-party auditor, at the Contractor’s expense, and maintain the right to speak directly to Contractor’s employees.

D7.7 The Customer reserves the right to require the Contractor to submit, agree and deliver an action plan to remedy any modern slavery issues identified by the Customer or a third party. The action plan and the timeline for delivery of the action plan will be agreed between the Customer and the Contractor and, if necessary, the Contract will be varied in accordance with the action plan. Failure to comply with D7.7 may result in the termination of the Contract with immediate effect.

E PROTECTION OF INFORMATION

E1 Data Protection

***NOTE: THIS IS THE RELEVANT WORDING WHERE THE COUNCIL IS THE DATA CONTROLLER AND THE PROVIDER IS THE DATA PROCESSOR – IF THIS ISN’T THE CASE THE SCHEDULE AND CLAUSE E WILL NEED AMENDMENT***

E1.1 The Parties have entered into the Data Processing Agreement included in the Data Processing Schedule.

E2 Confidential Information

E2.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

1. treat the other party's Confidential Information as confidential and safeguard it accordingly; and
2. not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

E2.2 Clause E2.1 shall not apply to the extent that:

(a) such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause E4 (Freedom of Information);

(b) such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

(c) such information was obtained from a third party without obligation of confidentiality;

(d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or

(e) it is independently developed without access to the other party's Confidential Information.

E2.3 The Contractor may only disclose the Council's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

E2.4 The Contractor shall not, and shall procure that the Staff do not, use any of the Council's Confidential Information received otherwise than for the purposes of this Agreement.

E2.5 At the written request of the Council, the Contractor shall procure that those members of the Staff identified in the Council's notice signs a confidentiality undertake ng prior to commencing any work in accordance with this Agreement.

E2.6 Nothing in this Agreement shall prevent the Council from disclosing the Contractor's Confidential Information:

(a) to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;

(b) to any consultant, contractor or other person engaged by the Council or any person conducting an Office of Government Commerce gateway review;

(c) for the purpose of the examination and certification of the Council's accounts; or

(d) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources.

E2.7 The Council shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause E2.6 is made aware of the Council's obligations of confidentiality.

E2.8 Nothing in this clause E2 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.

E3 Freedom of Information

E3.1 The Contractor acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.

E3.2 The Contractor shall and shall procure that any sub-contractors shall transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within [two] Working Days of receiving a Request for Information;

(a) provide the Council with a copy of all Information in its possession, or power in the form that the Council requires within [five] Working Days (or such other period as the Council may specify) of the Council's request; and

(b) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

E3.3 The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations

E3.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Council.

E3.5 The Contractor acknowledges that (notwithstanding the provisions of Clause E4) the Council may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (**“the Code”**), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services in certain circumstances:

1. without consulting the Contractor; or
2. following consultation with the Contractor and having taken their views into account;

provided always that where E3.5(a) applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor’s attention after any such disclosure.

E3.6 The Contractor shall ensure that all Information is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

E3.7 The Contractor acknowledges that the Commercially Sensitive Information listed in the Commercially Sensitive Information Schedule is of indicative value only and that the Council may be obliged to disclose it in accordance with this clause E3.

E4 Publicity, Media and Official Enquiries

E4.1 Without prejudice to the Council’s obligations under the FOIA, neither Party shall make any press announcement or publicise the Contract or any part thereof in any way, except with the written consent of the other Party.

E4.2 Both Parties shall take reasonable steps to ensure that their servants, employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with clause E4.1.

E5 Security

E5.1 The Council shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The Contractor shall comply with all security requirements of the Council while on the Premises, and shall ensure that all Staff comply with such requirements.

E5.2 The Council shall provide the Contractor upon request copies of its written security procedures and shall afford the Contractor upon request with an opportunity to inspect its physical security arrangements.

E6 Intellectual Property Rights

E6.1 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "IP Materials"):

(a) furnished to or made available to the Contractor by or on behalf of the Council shall remain the property of the Council; and

(b) prepared by or for the Contractor on behalf of the Council for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall belong to the Council;

and the Contractor shall not, and shall ensure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any Intellectual Property Rights in the IP Materials.

E6.2 The Contractor hereby assigns to the Council, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause E6.1(b). This assignment shall take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor shall execute all documentation necessary to execute this assignment.

E6.3 The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Contract or the performance of the Contract.

E6.4 The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Contract grants to the Council a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Council an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Council to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party supplying services to the Council.

E6.5 The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the Council and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Council or the Crown may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from:

(a) items or materials based upon designs supplied by the Council; or

(b) the use of data supplied by the Council which is not required to be verified by the Contractor under any provision of the Contract.

E6.6 The Council shall notify the Contractor in writing of any claim or demand brought against the Council for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor.

E6.7 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor:

(a) shall consult the Council on all substantive issues which arise during the conduct of such litigation and negotiations;

(b) shall take due and proper account of the interests of the Council; and

(c) shall not settle or compromise any claim without the Council’s prior written consent (not to be unreasonably withheld or delayed).

E6.8 The Council shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Council or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor’s obligations under the Contract and the Contractor shall indemnify the Council for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Contractor shall not, however, be required to indemnify the Council in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in clause E6.5(a) or (b).

E6.9 The Council shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Council or the Contractor in connection with the performance of its obligations under the Contract.

E6.10 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Council and, at its own expense and subject to the consent of the Council (not to be unreasonably withheld or delayed), use its best endeavours to:

(a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutates mutandis to such modified Services or to the substitute Services; or

(b) procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Council,

and in the event that the Contractor is unable to comply with clauses E6.7(a) or (b) within [20] Working Days of receipt of the Contractor’s notification the Council may terminate the Contract with immediate effect by notice in writing.

E6.11 The Contractor grants to the Council a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the Council reasonably requires in order exercise its rights and take the benefit of this Contract including the Services provided.

E7 Audit

The Contractor shall keep and maintain until 6 years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Contractor shall on request afford the Council or the Council’s representatives such access to those records as may be requested by the Council in connection with the Contract.

F. CONTROL OF THE CONTRACT

F1 Transfer and Sub-Contracting

F1.1 Except where F1.4 and 5 applies, the Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.

F1.2 The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.

F1.3 Where the Council has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Council, be sent by the Contractor to the Council as soon as reasonably practicable.

F1.4 Notwithstanding clause F1.1, the Contractor may assign to a third party (“**the Assignee**”) the right to receive payment of the Contract Price or any part thereof due to the Contractor under this Contract (including any interest which the Council incurs under clause C2.6). Any assignment under this clause F1.4 shall be subject to:

(a) reduction of any sums in respect of which the Council exercises it right of recovery under clause C3 (Recovery of Sums Due);

(b) all related rights of the Council under the contact in relation to

the recovery of sums due but unpaid; and

(c) the Council receiving notification under both clauses F1.5 and F1.6.

F1.5 In the event that the Contractor assigns the right to receive the Contract price under clause F1.4, the Contractor or the Assignee shall notify the Council in writing of the assignment and the date upon which the assignment becomes effective.

F1.6 The Contractor shall ensure that the Assignee notifies the Council of the Assignee’s contact information and bank account details to which the Council shall make payment.

F1.7 The provisions of clause C2 (Payment and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Council.

F1.8 Subject to clause F1.10, the Council may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

(a) any Contracting Authority; or

(b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Council; or

(c) any private sector body which substantially performs the functions of the Council,

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

F1.9 Any change in the legal status of the Council such that it ceases to be a Contracting Authority shall not, subject to clause F1.8, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Council.

F1.10 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F1.8 to a body which is not a Contracting Authority or if there is a change in the legal status of the Council such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the **“Transferee”**):

(a) the rights of termination of the Council in clauses H1 (Termination on insolvency and change of control) and H2 (Termination on Default) shall be available to the Contractor in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and

(b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Contractor.

F1.11 The Council may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor’s obligations under the Contract. In such circumstances the Council shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor’s obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

F1.12 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other party the full benefit of the provisions of the Contract.

F2 Waiver

F2.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

F2.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause A6 (Notices).

F2.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

**F3** **Variation**

F3.1 Subject to the provisions of this clause F3, the Council may request a variation to the Specification provided that such variation does not amount to a material change to the Specification. Such a change is hereinafter called a “Variation”.

F3.2 The Council may request a Variation by notifying the Contractor in writing of the “Variation” and giving the Contractor sufficient information to assess the extent of the Variation and consider whether any change to the Contract Price is required in order to implement the Variation. The Council shall specify a time limit within which the Contractor shall respond to the request for a Variation. Such time limits shall be reasonable having regard to the nature of the Variation. If the Contractor accepts the Variation it shall confirm the same in writing.

F3.3 In the event that the Contractor is unable to accept the Variation to the Specification or where the Parties are unable to agree a change to the Contract Price, the Council may;

(a) allow the Contractor to fulfil its obligations under the Contract without the variation to the Specification;

(b) terminate the Contract with immediate effect, except where the Contractor has already delivered all or part of the Services or where the Contractor can show evidence of substantial work being carried out to fulfil the requirements of the Specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed at Clause I2.

F3.4 The Council reserves the right to renegotiate the terms of the Contract in the event of changes in Service(s) demand or policy. Similarly the Council recognises the right of the Provider to request a renegotiation of the Contract terms.

F3.5 Any variation to the terms of the Contract must be recorded in writing and executed by the Council’s Representative and the Provider’s Representative or such other authorised Representatives of the parties. Such record of the variation in question must address all consequential amendments required to be made to the Contract as a result of such variation, including adjustment to the Contract Price.

F3.6 Variations will take effect as from the date specified in the signed record of variation and shall not have retrospective effect unless expressly provided for in such record.

F4 Severability

If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

F5 Remedies in the event of inadequate performance

F5.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Contractor’s obligations under the Contract, then the Council shall notify the Contractor, and where considered appropriate by the Council, investigate the complaint. The Council may, in its sole discretion, uphold the complaint and take further action in accordance with clause H2 (Termination on Default) of the Contract.

F5.2 In the event that the Council is of the reasonable opinion that there has been a material breach of the Contract by the Contractor, then the Council may, without prejudice to its rights under clause H2 (Termination on Default), do any of the following:

(a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Council that the Contractor will once more be able to supply all or such part of the Services in accordance with the Contract;

(b) without terminating the whole of the Contract, terminate theContract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or

(c) terminate, in accordance with clause H2 (Termination on Default), the whole of the Contract.

F5.3 Without prejudice to its right under clause C3 (Recovery of Sums Due), the Council may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Council or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services and provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

F5.4 If the Contractor fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Council shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as the Council may direct.

F5.5 In the event that:

(a) the Contractor fails to comply with clause F5.4 above and the failure is materially adverse to the interests of the Council or prevents the Council from discharging a statutory duty; or

(b) the Contractor persistently fails to comply with clause F5.4 above,

the Council may terminate the Contract with immediate effect by notice in writing.

F6 Remedies Cumulative

Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

F7 Contract Management

The Contractor shall comply with the management arrangements set out in the Contract Management Schedule including, but not limited to, providing such data and information as the Contractor may be required to produce under the Contract.

F8 Extension of Initial Contract Period

Subject to clause C4, (Price adjustment on extension of the Initial Contract Period), the Council may, by giving written notice to the Contractor not less than [ ] Month(s) prior to the last day of the Initial Contract Period, extend the Contract for a further period of up to [ ] Month(s). The provisions of the Contract will apply (subject to any Variation or adjustment to the Contract Price pursuant to clause C4 (Price adjustment on extension of the Initial Contract Period)) throughout any such extended period.

**F9 Entire Agreement**

F9.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

F9.2 In the event of, and only to the extent of, any conflict between the clauses of the Contract, any document referred to in those clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:

(a) the clauses of the Contract;

(b) the Schedules; and

(c) any other document referred to in the clauses of the Contract.

**F10 Counterparts**

This Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

G LIABILITIES

G1 Liability, Indemnity and Insurance

G1.1 Neither Party excludes or limits liability to the other Party for:

(a) death or personal injury caused by its negligence; or

(b) Fraud; or

(c) fraudulent misrepresentation; or

(e) any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

G1.2 Subject to clauses G1.3 and G1.4, the Contractor shall indemnify the Council and keep the Council indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.

G1.3 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Council or by breach by the Council of its obligations under the Contract.

G1.4 Subject always to clause G1.1, the liability of either Party for Defaults shall be subject to the following financial limits:

(a) the aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with the Contract shall in no event exceed five million pounds in respect of any one incident or series of connected incidents.

G1.5 Subject always to clause G1.1, in no event shall either Party be liable to the other for any:

(a) loss of profits, business, revenue or goodwill; and/or

[(b) loss of savings (whether anticipated or otherwise); and/or]

[(b)/(c)] indirect or consequential loss or damage.

G1.6 The Contractor shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Contractor.

G1.7 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor’s performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.

G1.8 The Contractor shall hold employer’s liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.

G1.9 The Contractor shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker’s verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

G1.10 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

G1.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in clause G1.2.

G2 Professional Indemnity

The Contractor shall effect and maintain appropriate professional indemnity insurance cover during the Contract Period and shall ensure that all agents, professional consultants and sub-contractors involved in the supply of the Services do the same. To comply with its obligations under this clause and as a minimum, the Contractor shall ensure professional indemnity insurance held by the Contractor and by any agent, sub-contractor or consultant involved in the supply of the Services has a limit of indemnity of not less than [ ] (aggregate limit) [or such higher limit as the Council may reasonably require (and as required by law) from time to time]. Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.

## G3 Warranties and Representations

The Contractor warrants and represents that:

(a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Contractor;

(b) in entering the Contract it has not committed any Fraud;

(c) as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the Contract;

(d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;

(e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;

(f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor’s assets or revenue;

(g) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;

(h) in the three 3 years prior to the date of the Contract:

(i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;

(ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and

(i) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

**H DEFAULT, DISRUPTION AND TERMINATION**

H1 Termination on insolvency and change of control

H1.1 The Council may terminate the Contract with immediate effect by notice in writing where the Contractor is a company and in respect of the Contractor:

(a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or

(b) a shareholders’ meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or

1. a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors’ meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
2. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or

(e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or

(f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or

(g) being a “small company” within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

(h) any event similar to those listed in H1.1(a)-(g) occurs under the law of any other jurisdiction.

H1.2 The Council may terminate the Contract with immediate effect by notice in writing where the Contractor is an individual and:

(a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor’s creditors; or

(b) a petition is presented and not dismissed within 14 days or order made for the Contractor’s bankruptcy; or

(c) a receiver, or similar officer is appointed over the whole or any part of the Contractor’s assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or

(d) the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or

(e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor’s assets and such attachment or process is not discharged within 14 days; or

(f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or

(g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

H1.3 The Contractor shall notify the Council immediately if the Contractor undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 (**“change of control”**). The Council may terminate the Contract by notice in writing with immediate effect within six months of:

(a) being notified that a change of control has occurred; or

(b) where no notification has been made, the date that the Council becomes aware of the change of control,

but shall not be permitted to terminate where an Approval was granted prior to the change of control.

H2 Termination on Default

H2.1 The Council may terminate the Contract by written notice to the Contractor with immediate effect if the Contractor commits a Default and if:

(a) the Contractor has not remedied the Default to the satisfaction of the Council within 25 Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the Default and requesting it to be remedied; or

(b) the Default is not, in the opinion of the Council, capable of remedy; or

(c) the Default is a material breach of the Contract.

#### H2.2 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the Council in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

#### H2.3 If the Council fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify the Council in writing of such failure to pay. If the Council fails to pay such undisputed sums within 90 Working Days of the date of such written notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Council exercising its rights under clauses C3.1 (Recovery of Sums Due).

H3 Break

The Council shall have the right to terminate the Contract at any time by giving [3] Months’ written notice to the Contractor.

H4 Consequences of Expiry or Termination

H4.1 Where the Council terminates the Contract under clause H2 (Termination on Default) and then makes other arrangements for the supply of Services, the Council may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Council throughout the remainder of the Contract Period. The Council shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clause H2 (Termination on Default), no further payments shall be payable by the Council to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Council), until the Council has established the final cost of making the other arrangements envisaged under this clause.

H4.2 Subject to clause H1, where the Council terminates the Contract under clause H3 (Break), the Council shall indemnify the Contractor against any commitments, liabilities or expenditure which represent an unavoidable direct loss to the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Council shall only indemnify the Contractor for those unavoidable direct costs that are not covered by the insurance available. The Contractor shall submit a fully itemised and costed list of unavoidable direct loss which it is seeking to recover from the Council, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under clause H3 (Break).

H4.3 The Council shall not be liable under clause H4.2 to pay any sum which:

(a) was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;

(b) when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the Contract had not been terminated prior to the expiry of the Contract Period; or

(c) is a claim by the Contractor for loss of profit, due to early termination of the Contract.

H4.4 Save as otherwise expressly provided in the Contract:

(a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

(b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Council or the Contractor under clauses C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Corruption), E1 (Data Protection Act), E2 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), E3 (Confidential Information), E4 (Freedom of Information), E7 (Intellectual Property Rights), E8 (Audit), F6 Remedies Cumulative), G1 (Liability, Indemnity and Insurance), G2 (Professional Indemnity), H4 (Consequences of Expiry or Termination), H6 (Recovery upon Expiry or Termination) and I1 (Governing Law and Jurisdiction).

H5 Disruption

H5.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Council, its employees or any other contractor employed by the Council.

H5.2 The Contractor shall immediately inform the Council of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.

H5.3 In the event of industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Contract.

H5.4 If the Contractor’s proposals referred to in clause H5.3 are considered insufficient or unacceptable by the Council acting reasonably, then the Contract may be terminated with immediate effect by the Council by notice in writing.

H5.5 If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business of the Council, the Contractor may request a reasonable allowance of time and in addition, the Council will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

H6 Recovery upon Termination

H6.1 On the termination of the Contract for any reason, the Contractor shall:

(a) immediately return to the Council all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or sub-contractors, which was obtained or produced in the course of providing the Services;

(b) immediately deliver to the Council all Property (including materials, documents, information and access keys) provided to the Contractor under clause B8. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);

(c) assist and co-operate with the Council to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress.

(d) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Council for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Council or the Replacement Contractor to conduct due diligence.

H6.2 If the Contractor fails to comply with clause H6.1 (a) and (b), the Council may recover possession thereof and the Contractor grants a licence to the Council or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or sub-contractors where any such items may be held.

H6.3 Where the end of the Contract Period arises due to the Contractor’s Default, the Contractor shall provide all assistance under clause H6(c) and (d) free of charge. Otherwise, the Council shall pay the Contractor’s reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to mitigate such costs.

H7 Force Majeure

H7.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of 6 Months, either Party may terminate the Contract with immediate effect by notice in writing.

H7.2 Any failure or delay by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Contractor.

H7.3 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in clause H7.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

I DISPUTES AND LAW

I1 Governing Law and Jurisdiction

Subject to the provisions of clause I2, the Council and the Contractor accept the exclusive jurisdiction of the English courts and agree that the Contract and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

I2 Dispute Resolution

I2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the [finance director (or equivalent)] of each Party.

I2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

I2.3 If the dispute cannot be resolved by the Parties pursuant to clause I2.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause I2.5 unless

(a) the Council considers that the dispute is not suitable for resolution by mediation; or

(b) the Contractor does not agree to mediation.

I2.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Contractor and the Staff shall comply fully with the requirements of the Contract at all times.

I2.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

(a) a neutral adviser or mediator (the **“Mediator”**) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the President of the Law Society of England to appoint a Mediator.

(b) The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from an appropriate mediation provider to provide guidance on a suitable procedure.

(c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

(d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.

(e) If the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts [unless the dispute is referred to arbitration pursuant to the procedures set out in clause I2.6].

I2.6 Subject to clause I2.2, the Parties shall not institute court proceedings until the procedures set out in clauses I2.1 and I2.3 have been completed save that:

(a) the Council may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause I2.7.

(b) if the Contractor intends to commence court proceedings, it shall serve written notice on the Council of its intentions and the Council shall have 21 days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause I2.7.

(c) the Contractor may request by notice in writing to the Council that any dispute be referred and resolved by arbitration in accordance with clause I2.7, to which the Council may consent as it sees fit.

I2.7 In the event that any arbitration proceedings are commenced pursuant to clause I2.6:

### (a) the arbitration shall be governed by the provisions of the Arbitration Act 1996;

(b) the Council shall give a written notice of arbitration to the Contractor (the **“Arbitration Notice”**)stating:

(i) that the dispute is referred to arbitration; and

(ii) providing details of the issues to be resolved;

### (c) the London Court of International Arbitration (“LCIA”) procedural rules in force at the date that the dispute was referred to arbitration in accordance with I2.7(b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;

(d) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;

(e) if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Council under clause I2.7 (b) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;

(f) the arbitration proceedings shall take place in London and in the English language; and

(g) the arbitration proceedings shall be governed by, and interpreted in accordance with, English law.

**IN WITNESS** of which this Agreement has been duly executed by the parties.

**SIGNED** for and on behalf of **Bath & North East Somerset Council**

**Signature……………………………**

**Name………………………………..**

**Position……………………………..**

**Date…………………………………**

**SIGNED** for and on behalf of **[*Contractor*]**

**Signature……………………………**

**Name………………………………...**

**Position………………………………**

**Date………………………………….**

SPECIFICATION SCHEDULE

*[insert description of the Services to be supplied including, where appropriate, the Key Personnel, the Premises and the Quality Standards]* PRICING SCHEDULE

*[insert pricing provisions as appropriate]*

CONTRACT MANAGEMENT SCHEDULE

*[insert monitoring provisions as appropriate]*

**DATA PROCESSING SCHEDULE**

***NOTE: THIS IS THE RELEVANT DATA PROCESSING AGREEMENT WHERE THE COUNCIL IS THE DATA CONTROLLER AND THE PROVIDER IS THE DATA PROCESSOR – IF THIS ISN’T THE CASE THE SCHEDULE AND CLAUSE E WILL NEED AMENDMENT***



**Introduction**

When contracting a supplier for services which will involve the processing of personal data or access to personal data on behalf of a data controller, the contractual clauses must reference certain specific requirements in accordance with the General Data Protection Regulation (GDPR).

Data protection legislation specifically requires the data controller to instruct the data processor regarding the use of personal data used and gathered on behalf of the controller.

**Structuring Contracts**

Whether or not the contract is written by the data controller or the data processor, the relationship must be clarified, and the instruction clearly set out. This document contains the relevant content that should be included in a contract.

Some aspects may not be specifically relevant and should be tailored to meet the needs of the data controller these may include the types of data used or the nature of the required retention period. These details may be included in the schedule attached to the contract (Appendix A). Both parties must sign the agreement at the end of Appendix A.

**1. Definitions and Interpretation**

* 1. In this agreement, the following terms shall have the meaning set out below:

**Contractor** means the service provider.

**Customer** means the contracting organisation, in this case Bath and North East Somerset Council.

**Data** means any ‘information’ provided by, obtained or created on behalf of the customer in delivering the services specified in this contract; and in the case of Personal Data, any data processed on behalf of the customer where the customer is the data controller.

**Data Protection Act 2018 (DPA)** means the Data Protection Act 2018 (DPA).

**Data Protection Officer (DPO)** means the role as defined under Chapter IV, Articles 37 – 39 of GDPR.

**Environmental Information Regulations 2004 (EIR)** means the Environmental Information Regulations 2004 (EIR) as amended or re-enacted from time to time and any Act substantially replacing the same.

**Freedom of Information Act 2000 (FOIA)** means the Freedom of Information Act 2000 (FOIA) as amended or re-enacted from time to time and any Act substantially replacing the same.

**Good Industry Practice** means the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor engaged in the same type of undertaking under the same or similar circumstances as are contemplated by this agreement.

**General Data Protection Regulation (GDPR)** means the UK General Data Protection Regulation, as amended or re-enacted from time to time and any United Kingdom Act substantially replacing the same.

**Information** has the meaning given under Section 84 of the Freedom of Information Act 2000 (FOIA), which shall include (but is not limited to) information in any form whether relating to the past, present or future and may in particular consist of data, documentation, programs, (including the source code of any programs which the customer has the right to use), computer output, voice transmissions, correspondence, calculations, plans, reports, graphs, charts, statistics, records, projections, maps, drawings, vouchers, receipts and accounting records and may consist of or be stored in any form including paper, microfilm, microfiche, photographic negative, computer software and any electronic medium and references herein to Information shall include reference to the medium in which it is stored.

**Information Legislation** means the DPA, FOIA, GDPR and the EIR.

**Information Governance Requirements** means the documented set of additional information governance requirements which the customer applies within itself and requires of its Contractors and of which it has furnished a copy to the Contractor via [information governance](http://thewire.wiltshire.council/index/staff-policies/information-governance.htm).

**Legislation** for the avoidance of doubt includes all Law in particular the Information Legislation.

**Personal Data** means personal data as defined in Sections 3(2) and (3) of the DPA and Article 4(2) of the GDPR, which is supplied to the contractor by the customer or obtained by the contractor in the course of performing the services.

**Subject Access Request** means a request for personal data falling within the provisions of Articles 12 and 15 of the GDPR.

**2. Resolution of Inconsistency**

2.1 The contractor shall immediately upon becoming aware of the same notify the customer of any inconsistency between its practices and the provisions of information legislation, including related regulation, standards, guidance and policies applicable under this schedule and compliance statements made by the contractor during the contract procurement process.

2.2 Where notified or it otherwise becomes aware of inconsistency the customer, as soon as practicable, shall advise the contractor which provision the contractor shall be required to comply with (but not so as to place the contractor in breach of any legislation) by means of an action plan which:

2.2.1 specifies the inconsistency and articulates the resulting risks posed to the customer’s compliance with legislation,

2.2.2 explains how the requirement to resolve the inconsistency meets the contractual requirements and the statements of compliance made during the tender process,

2.2.3 specifies the time period which in the customer’s opinion is reasonable in which to resolve the inconsistency,

2.2.4 explains the means by which the customer intends to satisfy itself that the inconsistency is resolved and specifies the steps the contractor is required to take to facilitate any assessment, and

2.2.5 takes into account the opinion of the contractor on the level of resource required to resolve the inconsistency.

2.3 Where inconsistencies are not resolved within the expectations set out in paragraph 2.2, the customer may use the dispute resolution provisions of this contract

**3. Protection of Information**

3.1 The contractor acknowledges that the confidentiality, integrity and availability of information and on the security provided in relation to Information is a material element of this agreement.

3.2 The contractor shall and at all times provide a level of security which:

3.2.1 is in accordance with legislation and this contract,

3.2.2 is in accordance with compliance regimes representing good industry practice which the customer may specify,

3.2.3 complies with the information governance requirements, and

3.2.3 meets any specific security threats identified from time to time by the customer.

3.3 The contractor shall ensure that it provides comparable technical and policy coverage of security to information as if it were being processed directly by the customer. This shall include but not limited to the following:

3.3.1 All mobile storage systems and hardware shall be encrypted to at least industry standards.

3.3.2 When data is to be sent out, every effort should be made to use electronic transfer methods, via a secure email portal, for example .psn or Egress.

3.3.3 When data is being emailed, every effort should be made to reply to an email, rather than free-typing an email address.

3.3.4 Where electronic transfer is not possible, personal data must sent using Royal Mail recorded delivery, with the recipient address checked by at least two individuals prior to posting.

3.3.5 All employees shall be appropriately vetted before use in the services which are the subject of this agreement.

3.3.6 All employees shall receive adequate information governance training which shall be refreshed over a period of no longer than every two years, and assurances will be provided to the customer in this regard.

3.3.7 the customer reserves the right to see evidence of training completion for all employees subject to this agreement.

3.3.8 All buildings and physical environments shall be subject to appropriate physical security and protection.

3.3.9 When handling NHS data, the contractor shall apply safe haven usage to at least NHS standard and comply with the requirements of the Caldicott Principles.

3.3.10 The contractor shall permit access to information by employees of the customer only.

3.3.11 The contractor shall securely destroy all information provided or created under this agreement, which is no longer required to be retained in accordance with this agreement.

3.4 The contractor will have in place fully tested and effective disaster recovery and business continuity plans.

3.5 The contractor shall observe the following principles when handling personal data for the purpose of carrying out the contractor’s obligations under this agreement.

3.5.1 Every proposed processing of personal data within or outside the contractor’s organisation should be clearly defined and regularly risk assessed and approved by an appropriate information governance role holder.

3.5.2. Personal data must not be processed unless it is absolutely necessary. Personal data should not be used unless there is no alternative.

3.5.3 The minimum necessary personal data is to be used. Where use of personal data is considered necessary, each individual item of information should be justified with the aim of reducing the need for processing personally identifiable information.

3.5.4 Access to personal data should be on a strict need to know basis. Employees should only have access to the data that they need to see, and should only receive the access and functionality permissions required to undertake their roles.

3.5.5 The contractor must ensure that its employees are aware of their responsibility to comply with the common law duty of confidentiality.

3.5.6 All persons handling personal data must understand and comply with the DPA and GDPR. All processing of personal data must be lawful.

3.6 Any information received by the contractor from the customer under this agreement or generated by the contractor pursuant to this agreement shall remain at all times the property of the customer. It shall be identified, clearly marked and recorded as such by the contractor on all media and in all documentation.

3.7 The contractor shall not, save as required by this agreement, without the prior written consent of the customer disclose to any other person any information provided by the customer under this agreement.

3.8 Where processing personal data, the contractor shall not procure the services of any other agent or subcontractor in connection with this agreement without the explicit written consent of the customer.

3.9 The contractor shall observe and comply with the customer’s security classification/ protective marking scheme as defined within its information governance requirements.

3.10 The contractor shall take all necessary precautions to ensure that all information obtained from the customer under or in connection with this agreement, is given only to such of the contractor’s employees and professional advisors or consultants engaged to advise the contractor in connection with this agreement as is strictly necessary for the performance of this agreement, and is treated as confidential and not disclosed (without prior written approval) or used by any such employees or such professional advisors or consultants otherwise than for the purposes of this agreement.

3.11 The contractor shall not use any information it receives from the customer otherwise than for the purposes of this agreement.

3.12 With regard to authority data:

3.12.1 The contractor shall not delete or remove any proprietary notices contained within or relating to the customer data.

3.12.2 The contractor shall not store, copy, disclose, or use the customer data except as necessary for the performance by the contractor of its obligations under this agreement or as otherwise expressly authorised in writing by the customer.

3.12.3. To the extent that authority data is held and/or processed by the contractor, the contractor shall supply that authority data to the customer as requested by the customer in the format it is held.

3.12.4. The contractor shall take responsibility for preserving the integrity of authority data and preventing the corruption or loss of authority data.

3.12.5 The contractor shall perform secure back-ups of all authority data and shall ensure that up-to-date back-ups are stored off-site in accordance with the business continuity and disaster recovery plan. The contractor shall ensure that such back-ups are available to the customer at all times upon request and are delivered to the customer at no less than monthly intervals.

3.12.6 The contractor shall ensure that any system on which the contractor holds any authority data, including back-up data, is a secure system that complies with the customer’s information governance requirements.

3.12.7 If the customer data is corrupted, lost or sufficiently degraded as a result of the contractor's default so as to be unusable, the customer may:

3.12.7.1 require the contractor (at the contractor's expense) to restore or procure the restoration of authority data in full and in not later than three days (subject to any agreed business continuity and disaster recovery plan); and/or

3.12.7.2 in default thereof itself restore or procure the restoration of authority data, and shall be repaid by the contractor any reasonable expenses incurred in doing so.

3.12.8 If at any time the contractor suspects or has reason to believe that authority data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the contractor shall notify the customer immediately and inform the customer of the remedial action the contractor proposes to take.

**4. Data Protection**

4.1 The customer is and will remain the data controller in relation to the personal information processed under this agreement, and that the contractor will act as data processor with respect to such personal information. As such, the contractor must follow the direction of the customer as to how personal data is processed.

4.2 All personal data acquired by the contractor from the customer shall only be used for the purposes of this agreement and shall not be further processed or disclosed without the prior written consent of the customer.

4.3 The contractor shall comply with the GDPR requirements with regard to appointing a Data Protection Officer.

4.4 The contractor warrants that it has complied with its notification requirements under the DPA to undertake the subject matter of this agreement. Where notification is required, the contractor is operating under registration number [number].

4.5 The contractor shall comply with all relevant codes of practice issued under the DPA and GDPR.

4.6 The contractor shall assist the customer in safeguarding the legal rights of the data subject.

4.7 The contractor will have in place at all times appropriate technical and organisational security measures to safeguard authority data in compliance with DPA and National Cyber Security Centre (NSNC) guidance (and the GDPR when in force).

4.8 The Contractor shall indemnify the customer against loss, destruction or processing contrary to information legislation by itself, its employees, contractors or agents.

4.9 The contractor shall ensure the reliability and ongoing training of all its relevant employees to ensure awareness of and compliance with the contractor’s obligations under the DPA and the GDPR.

4.10 the customer shall respond to all Subject Access Requests (SAR), whether received by the contractor or the customer.

4.10.1 On receipt of a SAR made directly to them, the Contractor will forward the request immediately, and no later than two working days after receipt, to [data\_protection@bathnes.gov.uk](mailto:data_protection@bathnes.gov.uk)

4.10.2 If requested by the customer, the Contractor shall provide to the customer the personal data requested by the data subject (as defined in the DPA) within 10 working days of receipt of instruction by the customer for supply of the data.

4.10.3 The information shall be supplied to the customer in pdf form in full, with any proposed redactions highlighted.

4.11 The contractor shall immediately and no later than two working days after receipt, forward to [data\_protection@bathnes.gov.uk](mailto:data_protection@bathnes.gov.uk):

4.11.1 a request from any person whose personal data it holds to access his or her personal data; or

4.11.2 a complaint or request relating to the customer’s obligations under the DPA and the GDPR

4.12 The contractor will assist and co-operate with the customer in relation to any complaint or request received, including:

4.12.1 providing full details of the complaint or request,

4.12.2 providing the customer with any information relating to a SAR within 10 working days of receipt of the request,

4.12.3 promptly providing the service manager with any personal data and other information requested by him, and

4.12.4 respond to any further requests from the customer’s Data Protection Officer when investigating information security incidents.

4.13 In addition to the obligation undertaken in paragraph 3.8, the contractor shall not further process information outside of the EEA as defined by the DPA and GDPR without full prior written consent from the customer.

4.14 The contractor shall cooperate with data protection compliance audits as and when requested.

4.15 The contractor shall comply with GDPR requirements for maintaining accurate, current and comprehensive Records of Processing Activities.

**5. ~~Caldicott Principles~~ – NOT APPLICABLE**

**6. Disclosures by the Provider**

6.1 Nothing in this agreement shall prevent the customer disclosing any Information:

6.1.1 for the purpose of the examination and certification of the customer’s accounts; or

6.1.2 any examination pursuant to Section 6 (1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the customer has used its resources; or

6.1.3 to any government department or any other contracting authority (as defined in The Public Contracts Regulations 2006). All government departments or contracting authorities receiving such confidential information shall be entitled to further disclose the confidential information to other government departments or other contracting authorities on the basis that the information is confidential and is not to be disclosed to a contractor which is not part of any government department or any contracting authority; or

6.1.4 to any person engaged in providing any services to the customer for any purpose relating to or ancillary to this agreement provided that in disclosing information the customer discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

**7. Accessibility of data**

Where the contractor is undertaking work on behalf of the customer to develop new systems, practices or documentation in processing of data, the contractor shall ensure that there remains the ability to extract data in a format accessible to and useable by the customer (with regard to paragraph 11.3) supported by an Impact Assessment which is approved by the customer.

**8. Know-how**

Nothing in this agreement shall prevent either party from using any techniques, ideas or know-how gained during the performance of this agreement in the course of its normal business, to the extent that this does not result in a disclosure of Information the subject of this agreement.

**9. Information breaches**

9.1 The contractor shall ensure all losses or breaches of security or information are reported to the customer within 24 hours whether actual, potential or attempted, in order for the customer to notify the regulator and, where necessary, the data subjects, as required by GDPR.

9.2 The contractor will ensure all breaches are internally investigated, and appropriate remedial action taken, along with supporting the customer and the Information Commissioner’s Office in any investigation by it. A copy of the investigation report must be provided to the customer.

9.3 The contractor will immediately take all reasonable steps to remedy such breaches and to protect the integrity of both parties against any actual, potential or attempted breach or threat and any equivalent attempted breach in the future.

**10. Breach, termination and continuance**

10.1 The contractor shall indemnify the customer for any breach of the requirements of this schedule which renders the customer liable for any costs, fines, claims or expenses under legislation howsoever arising.

10.2 Failure on the part of the contractor to comply with the provisions of this schedule shall amount to a breach of this contract and shall give the customer the right to exercise any and all of the remedies in this contract and recover all costs incurred as a consequence of the contractor’s breach.

10.3 On termination of this agreement howsoever arising the contractor shall when directed to do so by the customer, and instruct all its agents and subcontractors to:

10.3.1 transfer to the customer the whole or any part of the personal data and other Information received or acquired by the contractor for the purposes of or in the course of the delivery of the services the subject of this agreement; and

10.3.2 ensure the data is supplied in an agreed usable format; and

10.3.3 ensure that such a transfer is made securely in a manner specified by the customer and the data complies with the requirement at paragraph 7; and

10.3.4 securely destroy or erase the whole or any part of such personal data and other Information retained by the contractor and provide to the customer such proof of destruction as the customer may reasonably specify.

10.4 The provisions of this paragraph shall continue in effect notwithstanding termination of this agreement.

COMMERCIALLY SENSITIVE INFORMATION SCHEDULE

*[insert commercially sensitive information as appropriate and if known the dates that the information will remain commercially sensitive]*

APPENDIX A

**[Contract Reference]**

[**Contract Title]**

**VARIATION TO CONTRACT FORM**

|  |  |
| --- | --- |
| **TO:** | **VARIATION NUMBER: X**  **DATE: XX/XX/XXXX** |
| **FROM:**  **DEPARTMENT:** | |

1. The Contract is varied as follows:

|  |
| --- |
| **ALL OTHER SCHEDULES, TERMS AND CONDITIONS REMAIN AS PER THE CURRENT CONTRACT** |

2. Words and expressions in this Variation shall have the meanings given to them in the Contract.

3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

**SIGNED** for and on behalf of **Bath & North East Somerset Council**

**Signature……………………………**

**Name………………………………..**

**Position……………………………..**

**Date…………………………………**

**SIGNED** for and on behalf of **[*Contractor*]**

**Signature……………………………**

**Name………………………………...**

**Position………………………………**

**Date………………………………….**

1. Section 54 requires commercial organisations with a turnover of more than £36m to prepare an annual Modern Slavery statement. See the Modern Slavery Act 2015 for full details [↑](#footnote-ref-1)