|  |  |  |  |
| --- | --- | --- | --- |
| **Between** | **Cheshire East Borough Council (“Council”)****Westfields****C/O Municipal Buildings****Earle Street****CREWE****CW1 2BJ****For the benefit the Council and its Affiliates together the Council** | **and** | **[Supplier Name] (“Supplier”)****[Supplier Address]** |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Start Date** |  | **End Date** |  | **Ref:** |  |
| **Extension Permitted** | Yes / No | **Maximum Number of Extensions** | [n] | **Extension Period** | [n] months / years |

|  |
| --- |
| **SOFTWARE** |
| **Software** | **Restrictions** | **Charges****(Excl. VAT)** |
|
| **Name of application software / hosted software being provided** | **Restrictions e.g. Number of users** |  |

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| --- |
| **SUPPORT AND MAINTENANCE** |
| **Software Application** | **Charges (Excl. VAT)** |
| **Per Annum Support Charge**  | **Total Support Charge****(Excl. VAT)** |
| Name of software being supported |  |  |

|  |
| --- |
| **SERVICES** |
| **Type of Service** | **No of Days** | **Daily Rate****(Excl. VAT)** | **Total Service Charges****(Excl. VAT)** |
| Description of services to be provided e.g.on-boarding, implementation, configuration, training |  |  |  |

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| --- |
| **CHARGES & PAYMENT PROFILE** |
|  | **Payment Profile** | **Year 1 Charges** | **Per Annum Charges for subsequent year(s)** | **Total Charges (Excl. VAT)** |
| **Software** Name of software being supplied | On acceptance or first use in a live environment [and each anniversary thereafter] |  |  |  |
| **Support & Maintenance**Name of software being supported | Annually in advance on acceptance or first use in a live environment and each anniversary thereafter |  |  |  |
| **Services**Description of services to be provided | Monthly in arrears from delivery of the Services  |  |  |  |
| TERMS AND CONDITIONS BELOW | **Total Charges** |  |

|  |  |  |
| --- | --- | --- |
| Signed for and on behalf of: **CHESHIRE EAST BOROUGH COUNCIL** |  | Signed for and on behalf of:**[Insert Supplier name]** |
| **Authorised Signatory:** |  |  | **Authorised Signatory:** |  |
| **Name:** |  |  | **Name:** |  |
| **Title:** |  |  | **Title:** |  |
| **Date:** |  |  | **Date:** |  |

1. Specification
2. Specification

[Insert Specification or document containing Specification e.g. RFQ / ITT Guidance document, Response document, Supplier Response document]

1. Security Questionnaire

[Insert Security Questionnaire completed by Supplier]

1. Services
2. **Services**

[Insert details of Services to be provided]

1. **Service Levels**

[Insert Service Levels]

1. **Support and Maintenance Services**

[Insert details of Supplier’s Support and Maintenance Services]

1. Licence Terms

**Supplier Licence Terms**

[Insert Supplier Licence Terms]

**Third Party Licence Terms**

[Insert Third Party Licence Terms]

Interpretation

## The definitions and rules of interpretation in this clause apply in this agreement.

|  |  |
| --- | --- |
| Acceptance Criteria | the acceptance criteria agreed between the parties. |
| Acceptance Tests | the acceptance tests to be prepared by the Supplier to test that the Software and Services operate in accordance with the Specification. |
| Affiliates | any entity that is owned or controlled by the Council, where control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise |
| "Applicable Data Protection Laws" | means (a) European Union or Member State laws with respect to any Council Personal Data in respect of which the Council is subject to GDPR; and (b) any other applicable law with respect to any Council Personal Data in respect of which the Council is subject to any other Data Protection Laws; |
| Charges | the charges payable to the Supplier, as specified above. |
| Commercially Sensitive Information | means the information of a commercially sensitive nature relating to the Supplier, its Intellectual Property Rights or its business or which the Supplier has indicated to the Council that, if disclosed by the Council, would cause the Supplier significant commercial disadvantage or material financial loss. |
| Confidential Information | information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in Clause 8.5 or Clause 8.6. |
| Contracted Processor | means the Supplier or a Subprocessor |
| Council | means a) Cheshire East Borough Council and its Affiliates and/or b) Cheshire East Borough Council and Cheshire West and Chester Council. |
| Council Data | (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Supplier by or on behalf of the Council; or (ii) which the Supplier is required to generate, process, store or transmit pursuant to this agreement; or (b) any Personal Data for which the Council is the data controller. |
| Council Personal Data | means any Personal Data Processed by the Supplier on behalf of the Council pursuant to or in connection with this Agreement; |
| Council’s Project Manager | The employee, sub-contractor or representative of the Council notified to the Supplier from time to time. |
| CWaC | means Cheshire West and Chester Council who are permitted, in accordance with the Notice, to access this agreement. |
| Data Protection Legislation | means GDPR and, to the extent applicable, the data protection or privacy laws of any other country; |
| Deliverable(s) | means  |
| EEA | means the European Economic Area |
| Environmental Information Regulations | the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations. |
| FOIA | 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. |
| GDPR | Means EU General Data Protection Regulation 2016/679 and laws implementing or supplementing the GDPR |
| Good Industry Practice | the exercise of 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 within the relevant industry or business sector; |
| Intellectual Property Rights | patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world. |
| Law | any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply. |
| Maintenance and Support | any error corrections, updates and upgrades that the Supplier may provide or perform with respect to the Software and Services, as well as any other support or training services provided to the Council under this agreement, all as described in Schedule 2.  |
| Normal Business Hours | 7.00 am to 7.00 pm local UK time, each Working Day. |
| Notice | means the notice issued in accordance with the Public Contracts Regulations 2015 and/or the Councils Contract Procedure Rules as amended from time to time. |
| Personal Data | has the same meaning as set out in the Data Protection Act 2018. |
| Project Plan | the plan agreed between the parties to be developed by the Supplier. |
| Restricted Transfer | means:a transfer of Council Personal Data from the Council to a Contracted Processor; oran onward transfer of Council Personal Data from a Contracted Processor to a Contracted Processor, or between two establishments of a Contracted Processorin each case, where such transfer would be prohibited by Data Protection Laws (or by the terms of data transfer agreements put in place to address the data transfer restrictions of Data Protection Laws); |
| Service Levels  | the service levels set out in Schedule 2 |
| Services | Services and/or Support and Maintenance as set out above and Schedule 2and all other obligations of the Supplier.  |
| Specification | the functionality and performance specifications for the Software and/and Services, as set out at Schedule 1.  |
| Sub-Contractor | Means any supplier selected, appointed and managed by the Supplier. The terms “**Sub-Contract**” and “**Sub-Contractor**” shall be similarly construed. |
| Subprocessor | means any person (including any third party, but excluding an employee of the Supplier or any of its sub-contractors) appointed by or on behalf of the Supplier to Process Personal Data on behalf of the Council in connection with this Agreement |
| Supplier Personnel | means all employees, agents, consultants and contractors of the Supplier and/or any Sub-Contractor. |
| Supplier's Project Manager | the Supplier's project manager as notified to and agreed by the Council. |
| Term | the term of this agreement commencing on the Start Date and terminating on the End Date. |
| Virus**:** | any thing or device (including any software, code, file or programme) which may:prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device;prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by rearranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices. |
| Working Day | a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business. |
|  |  |

## The terms, "**Commission**", "**Controller**", "**Data** **Subject**", "**Member** **State**", "**Personal** **Data**", "**Personal** **Data Breach**", "**Processing**" and "**Supervisory Authority**" shall have the same meaning as in the GDPR.

## Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.

## A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

## A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

## Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

## Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

## A reference to **writing** or **written** includes faxes and email.

## References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.

## A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

## A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

## Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## If there is an inconsistency between any of the provisions in the main body of this agreement and the Schedules, the provisions in the main body of this agreement shall prevail.

# Extension of Agreement to CWaC

## The Parties agree and acknowledge that the Council enters into this agreement for itself and for the benefit of CWaC.

## In addition to the specific Software and/or Services expressly required to be provided to the Council pursuant to this Agreement, CWaC, with the prior written consent of the Council (which consent the Council may in its absolute discretion refuse), may require the provision by the Supplier of any of the Software and/or Services under this Agreement subject to the same or substantially the same terms and conditions contained herein and subject to the additional conditions set out in clause 2.3.

## If and to the extent that any such additional Software and/or Services under this Agreement are required to be provided by the Supplier to CWaC:

### CWaC shall enter into a specific contract with the Supplier for such additional Software and/or Services incorporating by reference or otherwise the same or substantially the same terms and conditions contained in this Agreement (but not the provisions of this clause 2);

### any non-substantial amendments to the terms and conditions in this Agreement agreed between the Supplier and CWaC shall be clearly set out in such specific contract;

### in order to enter into a specific contract with the Supplier CWaC may, in accordance with relevant public procurement regulations, consult the Supplier in writing requesting the Supplier to supplement its tender or proposal as may be necessary.

## The Council does not guarantee that CWaC will require the Supplier to provide any additional Software and/or Services under this Agreement or otherwise and nothing in this Agreement shall give the Supplier a right to receive such requirement for additional Supplies.

## The Council shall not in any circumstances be liable to the Supplier or CWaC for payment or otherwise in respect of any such additional Software and/or Services required to be provided by the Supplier to CWaC.

## It shall be the responsibility of CWaC to satisfy itself that entering into any contract with the Supplier under clause 2.3(a) of this Agreement does not breach any relevant public procurement regulations or the general European Union procurement principles.

# Supplier's obligations

## The Supplier undertakes that it will perform all the Services with all reasonable skill and care, in a timely and efficient manner, using appropriately qualified and experienced staff.

## The Supplier shall provide to the Council the Software and Services in accordance with:

### any agreed timetable and Project Plan; and

### the relevant Service Levels at all times throughout the Term of this agreement.

## The Supplier shall use all reasonable endeavours to liaise, co-operate and/or work with the Council.

## The Supplier shall comply with all applicable laws and regulations with respect to its activities under this agreement.

## In the provision of the Software and Services, should the Supplier become aware of any breach in its provision of the Software and Services, the Supplier shall, where such breach is capable of remedy, at its own expense use all reasonable endeavours to remedy the same as soon as is reasonably practicable.

## The Supplier undertakes that it will at the written request of the Council at any time or times up until three (3) months after termination of this agreement howsoever arising return to the Council without further charge and in the format stipulated by the Council a copy of all Council Data in the possession of the Supplier. The Supplier undertakes to destroy the Council’s data no earlier than one hundred and eighty (180 days after termination of this agreement and no later than two hundred and ten (210) days after termination of this agreement. Evidence of destruction shall be provided to the Council.

## This agreement shall not prevent the Supplier from entering into similar agreements with third parties or from independently developing, using, selling or licensing materials, products or services which are similar to those provided under this agreement.

# Council's obligations

The Council shall:

### provide the Supplier with:

#### all necessary co-operation reasonably required in relation to this agreement; and

#### all necessary access to such information as may reasonably be required by the Supplier;

in order to render the Services, including Council Data, security access information and software interfaces to the Council's other business applications;

### provide such personnel assistance, as may be reasonably requested by the Supplier from time to time. The Supplier shall use all reasonable endeavours to ensure continuity of its personnel assigned to this agreement;

### appoint the Council's Project Manager, who shall have the authority to contractually bind the Council on all matters relating to this agreement;

### comply with all applicable laws and regulations with respect to its activities under this agreement; and

### carry out all other Council responsibilities set out in this agreement or in any of the Schedules in a timely and efficient manner.

# Warranties and representations

## The Supplier warrants and represents that:

### 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 to perform this agreement and that this agreement is executed by a duly authorised representative of the Supplier;

### this agreement shall be performed in compliance with all Laws as amended from time to time;

### it shall perform its obligations hereunder (including the provision of the Services) by using appropriately experienced, qualified and trained personnel and sub-contractors;

### it shall discharge its obligations hereunder (including the provision of the Services) with all due skill, care and diligence including in accordance with good industry practice and its own established internal procedures;

### for the Term, all Supplier Personnel used to provide the Services will be vetted in accordance with Good Industry Practice, the Council’s policies as notified from time to time to the Supplier ;

### it has taken and shall continue to take all steps, in accordance with good industry practice, to prevent the introduction, creation or propagation of any disruptive element (including any Virus) into the Services, systems, data, software or Confidential Information (held in electronic form) owned by or under the control of, or used by, the Council;

### it shall take all measures to avoid any and all data loss and data corruption during the provision of the Services in accordance with good industry practice;

### it shall take all measures to avoid the failure or reduced performance (in whole or in part) of the Services;

### it owns, has obtained or shall obtain valid licences for all Intellectual Property Rights that are necessary for the performance of this agreement and the use of the Software and Services by the Council;

### it has the right to grant to the Council a licence or sub-licence to use the Software as contemplated in this agreement;

### the Software and Services are and will continue to be during the Term:

#### of satisfactory quality;

#### in conformance with the Specification set out in this agreement, and (if applicable) the manufacturer’s specifications and documentation;

#### free from material programming errors and material defects in design, manufacture or materials throughout the Term.

## The Supplier acknowledges that any breach of the warranties in Clause 4.1 shall be remedied as a matter of urgency at no cost to the Council. Failure to remedy (if capable of remedy) such to comply with Clause 4.1 within five (5) Working Days of notification by the Council shall constitute a breach of this agreement entitling the Council to terminate in accordance with Clause 17.2(m).

## Except as expressly stated in this agreement, all warranties and conditions, whether express or implied by statute, common law or otherwise (including fitness for purpose) are hereby excluded to the extent permitted by Law.

## The Council and the Supplier each warrants to the other that it has undertaken all requisite corporate and other action to approve the entering into and performance of this agreement.

# Charges and payment

## The Council shall pay the amounts in accordance with the payment profile set out above.

## All amounts and fees stated or referred to in this agreement are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

## The Supplier shall invoice the Council in accordance with the payment profile set out above.

## In consideration of the supply the Software and/or Services by the Supplier, the Council shall pay the invoiced amounts within 30 days of the date of a correctly rendered valid and undisputed invoice to a bank account nominated in writing by the Supplier.

# Change control

## The Council's Project Manager and the Supplier's Project Manager shall meet as agreed to discuss matters relating to this agreement. If either party wishes to change the scope of the Services (including Council requests for additional Services), it shall submit details of the requested change to the other in writing.

## If the Council requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time, provide a written estimate to the Council of:

### the likely time required to implement the change;

### any variations to the Charges arising from the change;

### the likely effect of the change on the Project Plan; and

### any other impact of the change on the terms of this agreement.

## If the Council wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties including the Council’s ICT Strategy team have agreed in writing the necessary variations to the Charges and any other relevant terms of this agreement to take account of the change.

# Proprietary rights

## The Council acknowledges and agrees that the Supplier and/or its licensors own all Intellectual Property Rights in the Software and the Services. Except as expressly stated herein, this agreement does not grant the Council any rights to, or in, Intellectual Property Rights, or any other rights or licences in respect of the Software, Services or any related documents.

## The Supplier grants to the Council on and subject to the terms and conditions of this agreement a non-exclusive licence to use the Software and Services on the terms set out at Schedule 3.

## The Supplier represents, warrants and undertakes that it has all the rights in relation to the Software and Services that are necessary to grant all the rights it purports to grant and perform all the obligations it agrees to perform under, and in accordance with, the terms of this agreement.

# Confidentiality

## Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not include information that:

### is or becomes publicly known other than through any act or omission of the receiving party;

### was in the other party's lawful possession before the disclosure;

### is lawfully disclosed to the receiving party by a third party without restriction on disclosure;

### is independently developed by the receiving party, which independent development can be shown by written evidence; or

### is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

## Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.

## Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.

## Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

## The Council acknowledges that the Software, the results of any performance tests of the Software and the Services constitute the Supplier's Confidential Information.

## The Supplier acknowledges that the Council Data and the results of the Services are the Confidential Information of the Council.

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

## This Clause 8 shall survive termination of this agreement, however arising.

# Appointment of Sub-Contractors

## The Supplier shall exercise due skill and care in the selection of any Sub-Contractors to ensure that the Supplier is able to:

### manage any Sub-Contractors in accordance with Good Industry Practice;

### comply with its obligations under this agreement in the delivery of the Goods and/or Services; and

### assign, novate or otherwise transfer to the Council or any Replacement Supplier any of its rights and/or obligations under each Sub-Contract that relates exclusively to this agreement.

## Prior to sub-contacting any of its obligations under this agreement, the Supplier shall provide the Council with:

### the proposed Sub-Contractor’s name, registered office and company registration number;

### the scope of any Goods and/or Services to be provided by the proposed Sub-Contractor; and

### where the proposed Sub-Contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Council that the proposed Sub-Contract has been agreed on arm’s-length terms.

## If requested by the Council within ten (10) Working Days of receipt of the Supplier’s notice issued pursuant to Clause 9.2, the Supplier shall also provide:

### a copy of the proposed Sub-Contract; and

### any further information reasonably requested by the Council.

## The Council may, within ten (10) Working Days of receipt of the Supplier’s notice issued pursuant to Clause 9.2 (or, if later, receipt of any further information requested pursuant to Clause 9.3), object to the appointment of the relevant Sub-Contractor they consider that:

### the appointment of a proposed Sub-Contractor may prejudice the provision of the Goods and/or Services or may be contrary to the interests respectively of the Council under this agreement;

### the proposed Sub-Contractor is unreliable and/or has not provided reasonable goods and/or services to its other customers; and/or

### the proposed Sub-Contractor employs unfit persons,

in which case, the Supplier shall not proceed with the proposed appointment.

## If the Council has not notified the Supplier that it objects to the proposed Sub-Contractor’s appointment by the later of ten (10) Working Days of receipt of:

### the Supplier’s notice issued pursuant to Clause 9.2; and

### any further information requested by the Council pursuant to Clause 9.3;

#### the Supplier may proceed with the proposed appointment.

## Where a Sub-Contractor is appointed pursuant to this Clause 9 the Supplier shall impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms.

# Supply chain protection

## The Supplier shall ensure that all Sub-Contracts contain a provision:

### requiring the Supplier to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice; and

### a right for the Council to publish the Supplier’s compliance with its obligation to pay undisputed invoices within the specified payment period.

## The Supplier shall pay any undisputed sums which are due from it to a Sub-Contractor within thirty (30) days from the receipt of a valid invoice.

## Notwithstanding any provision of Clauses 8 (Confidentiality) and 21 (Publicity) if the Supplier notifies the Council that the Supplier has failed to pay an undisputed Sub-Contractor’s invoice within thirty (30) days of receipt, or the Council otherwise discovers the same, the Council shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

# Termination of Sub-Contracts

## The Council may require the Supplier to terminate a Sub-Contract where:

### the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Council's right of termination pursuant any of the termination events in Clause 17 (Term and Termination) except Clause 18 (Termination for convenience / break); and/or

### the relevant Sub-Contractor or its Affiliates embarrassed the Council or otherwise brought the Council into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Council, regardless of whether or not such act or omission is related to the Sub-Contractor’s obligations in relation to the Goods and/or Services or otherwise.

# Retention of legal obligations

## Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 12 (Retention of legal obligations), the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.

# Records and audit

## For the duration of this agreement, and for a period of seven years from termination or expiry of this agreement, the Supplier shall maintain full and accurate records, in accordance with Good Industry Practice and Law, in a form to be approved in writing by the Council, of:

### all charges, prices, costs and expenses associated with and invoiced in respect of the Services; and

### its performance against the Service Levels

and shall, for the duration of this agreement, ensure that monthly management accounts are produced in addition to its annual audited accounts and shall, if requested, promptly provide to the Council copies of such records and accounts and any other financial information reasonably requested by the Council.

## At the Council's request and its expense, the Supplier shall grant access to the Council or its auditors to the premises, records and accounts of the Supplier and its subcontractors where applicable, including its and where applicable their data processing facilities, and to such of its and where applicable their supporting documents and explanations from its and where applicable their staff (including the Supplier's Project Manager and the Supplier Personnel) as is reasonable to ascertain compliance with this agreement.

## The Council has the right to audit the Supplier’s compliance with this agreement on giving seven days written notice to the Supplier. At the Council’s option, this audit may cover documents only or may include onsite audit, subject to notifying the Supplier of the identity of any onsite auditors and giving confirmation that any external auditors have entered into appropriate confidentiality agreements.

## This access shall be granted during Normal Business Hours and subject to reasonable prior notice from the Council.

## If, on examination, the Council determines that any charges, prices, costs or expenses exceed the amounts properly chargeable to, or recoverable from, the Supplier, the Supplier shall, without affecting the Council's other rights, promptly refund to the Council the amount over­charged.

# Anti-bribery

## The Supplier shall:

### comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including the Bribery Act 2010 (Relevant Requirements);

### not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

### have and shall maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and Clause 14.1(b), and will enforce them where appropriate;

### promptly report to the Council any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this agreement;

### immediately notify the Council (in writing) if a foreign public official becomes an officer or employee of the Supplier and acquires a direct or indirect interest in the Supplier (and the Supplier warrants that it has no foreign public officials as officers or employees or as direct or indirect owners at the date of this agreement); and

### without prejudice to Clause 13.1, Clause 13.2 and Clause 13.4, within two (2) months of the date of this agreement, and annually thereafter, certify to the Council in writing signed by an officer of the Supplier, compliance with this Clause 14 by the Supplier and all persons associated with it and all other persons for whom the Supplier is responsible under Clause 14.1(c). The Supplier shall provide such supporting evidence of compliance as the Council may reasonably request.

## The Supplier shall ensure that any person associated with the Supplier who is performing services [or providing goods] in connection with this agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this Clause 14 (Relevant Terms). The Supplier shall in all circumstances be responsible for the observance and performance by such persons of the Relevant Terms, and shall in all circumstances be directly liable to the Council for any breach by such persons of any of the Relevant Terms.

## Breach of this Clause 14 shall be deemed a material breach, which is irremediable, under Clause 17.

## For the purpose of this Clause 14, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this Clause 14 a person associated with the Supplier includes any subcontractor of the Supplier.

# Indemnity

## The Supplier shall indemnify the Council against all claims, actions, proceedings, liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Council arising out of or in connection with any default, breach of this agreement or any claim made against the Council for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Services, their use or otherwise in relation to them (**IPR Claim**).

## If any third party makes an IPR Claim, or notifies an intention to make an IPR Claim against the Council which may reasonably be considered likely to give rise to a liability under this indemnity, the Council shall:

### as soon as reasonably practicable, give written notice of the IPR Claim to the Supplier, specifying the nature of the IPR Claim in reasonable detail;

### not make any admission of liability, agreement or compromise in relation to the IPR Claim without the prior written consent of the Supplier (such consent not to be unreasonably conditioned, withheld or delayed);

### give the Supplier and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Council, so as to enable the Supplier and its professional advisers to examine them and to take copies (at the Supplier's expense) for the purpose of assessing the IPR Claim; and

### subject to the Supplier providing security to the Council to the Council's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the IPR Claim.

## Without prejudice to Clause 15.2, if any IPR Claim is made, or in the Supplier's reasonable opinion is likely to be made, against the Council, the Supplier may, at its sole option and expense:

### procure for the Council the right to continue using, developing, modifying or maintaining the Software (or any part thereof) in accordance with the terms of this licence;

### modify the Software so that it ceases to be infringing;

### replace the Software with non-infringing software; or

### repay to the Council all sums which the Council has paid to the Supplier under this licence,

provided that if the Supplier modifies or replaces the Software, the modified or replacement Software must comply with the warranties contained in Clause 4.1 and the Council shall have the same rights in respect thereof as it would have had under those clauses had the references to the date of this licence been references to the date on which such modification or replacement was made.

# Limitation of liability

## Neither party excludes or limits liability to the other party for:

### fraud or fraudulent misrepresentation;

### death or personal injury caused by negligence;

### a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

### tangible property or physical damage.

## Subject to Clause 16.1 and Clause 16.3 neither party shall be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:

### any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;

### loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or

### any loss or liability (whether direct or indirect) under or in relation to any other contract.

## Except for any liability of the Supplier under the indemnities given under this agreement and under Clauses 8, 9 and 23 and subject to Clause 16.1 (where in each case liability shall be unlimited), each party's total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement or any collateral contract shall be limited to of 125% of the total charges payable for the Software and Services by the Council to the Supplier during the 12-month period immediately before the date on which the cause of action first arose or, if the cause of action arose during any period before 12 months had elapsed from the Start Date, 125% of the total charges payable during that shorter period.

# Term and Termination

## This agreement shall commence on the Start Date and shall expire on the End Date.

## Without affecting any other right or remedy available to it, the Council may terminate this agreement with immediate effect by giving written notice to the other party if:

### the Supplier commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

### the Supplier repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;

### the Supplier breaches any of Clauses 4, 8, 14 or 23;

### the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

### the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that Supplier with one or more other companies or the solvent reconstruction of that Supplier;

### a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that Supplier with one or more other companies or the solvent reconstruction of that Supplier;

### an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier (being a company);

### the holder of a qualifying floating charge over the assets of that Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;

### a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;

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

### any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 17.2(d) to Clause 17.2(j) (inclusive);

### the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

### fails to remedy a breach of warranties in accordance with the provisions of Clause 4.2.

## On termination of this agreement for any reason:

### each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the Supplier;

### the Supplier shall immediately deliver up to the Council the Council Data and all other relevant data in its most recent form (whether or not backed up) and all other property of the Council then in its possession; and

### any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

# Termination for convenience / break

The Council shall have the right to terminate this agreement at any time by giving 30 days written notice to the Supplier.

# Consequences of expiry or termination

## Subject to Clause (a), where the Council terminates the Contract pursuant to Clause 17 and then makes other arrangements for the supply of the Services:

### the Council may recover from the Supplier the cost reasonably incurred in making those other arrangements and any additional expenditure incurred by the Council in securing the Contract Services in accordance with the requirements of the Contract;

### the Council shall take all reasonable steps to mitigate such additional expenditure; and

### no further payments shall be payable by the Council to the Supplier until the Council has established the final cost of making those other arrangements, whereupon the Council shall be entitled to deduct an amount equal to the final cost of such other arrangements from the further payments then due to the Supplier.

## Clause 19.1 shall not apply where the Council terminates the Contract solely pursuant to Clause 18.

## Where the Council terminates the Contract under Clause 18, the Council shall indemnify the Supplier against any reasonable and proven commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Supplier by reason of the termination of the Contract, provided that the Supplier takes all reasonable steps to mitigate such loss. The Supplier shall submit a fully itemised and costed list, with supporting evidence, of losses reasonably and actually incurred by the Supplier. Where the Supplier holds insurance, the Supplier shall reduce its unavoidable costs by any insurance sums available.

# Extension of the term of the contract

## Subject to satisfactory performance of its obligations under this agreement by the Supplier during the Term, the Council may extend this agreement by the Extension Period up to the Maximum Number of Extensions, by giving the Supplier not less than 30 days notice in writing prior to the End Date or subsequent anniversary of the End Date where this agreement has been extended pursuant to this Clause 20.1.

# Publicity

## The Supplier shall not:

### make any press announcements or publicise this agreement in any way; or

### use the Council’s name or brand in any promotion or marketing or announcement of this agreement, without the Council’s prior written consent. The Supplier shall ensure the observance of the provisions of this Clause 21 by all Supplier Personnel.

## The Council shall be entitled to publicise this agreement in accordance with any legal obligation upon the Council, including any examination of this agreement by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

## The Supplier acknowledges to the Council that nothing in this agreement either expressly or by implication constitutes an endorsement of any goods and/or services of the Supplier and the Supplier agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

# Insurance

## During the Term and for a period of twelve (12) years following expiry of termination of this agreement the Supplier shall take out and maintain or procure the maintenance of the following minimum insurances:

### £5 million public liability insurance is required in respect of each and every claim;

### £10 million employers liability insurance is required in respect of each and every claim (\*this would not be required if sole trader or business that only employs members of the family);

### £1 million professional indemnity insurance is required in respect of each and every claim;

### £5 million cyber liability insurance is required in respect of each and every claim.

## The Supplier shall produce to the Council within five (5) working days of request, brokers letters for all insurance policies referred to in Clause 22.1 or such other evidence as agreed between the Council and the Supplier that will confirm the extent of the cover given by those policies, together with receipts or other evidence of payment of the latest premiums due under those policies.

## The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under this agreement. It shall be the responsibility of the Supplier to ensure that the amount of insurance cover is adequate to enable it to satisfy all its potential liabilities subject to the limit of liability specified in Clause 16.

## If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by this agreement the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

# Protection of personal data

## The Supplier warrants and represents that, before any Subprocessor, Processes any Council Personal Data on behalf of the Council, the Supplier shall enter into an agreement with the Subprocessor that is compliant with Applicable Data Protection Laws for the Processing of any Council Personal Data.

## The Supplier shall:

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

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

### not make or permit any Subprocessor to make any Restricted Transfers.

## The Council instructs the Supplier (and authorises the Supplier to instruct each Subprocessor) to Process Council Personal Data, as reasonably necessary for the provision of the Services pursuant to this Agreement.

## Annex 1 to this Agreement sets out certain information regarding the Contracted Processors' Processing of Council Personal Data as required by article 28(3) of the GDPR (and, possibly, equivalent requirements of other Data Protection Laws). The Council may make reasonable amendments to Annex 1 by written notice to the Supplier from time to time as the Council reasonably considers necessary to meet those requirements. Nothing in Annex 1 (including as amended pursuant to this clause [23.4](#_Ref482964294)) confers any right or imposes any obligation on any party to this Agreement.

## The Supplier shall take reasonable steps to ensure the reliability of any employee, agent or contractor of any Contracted Processor who may have access to Council Personal Data, ensuring in each case that access is strictly limited to those individuals who need to know / access the relevant Council Personal Data, as strictly necessary for the purposes of this Agreement, and to comply with Applicable Data Protection Laws in the context of that individual's duties to the Contracted Processor, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

## Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Supplier shall in relation to Council Personal Data implement appropriate technical and organizational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the GDPR.

## In assessing the appropriate level of security, the Supplier shall take account in particular of the risks that are presented by Processing, in particular from a Personal Data Breach.

## The Council authorises the Supplier to appoint (and permit each Subprocessor appointed in accordance with this clause [23.8](#_Ref472956474) to appoint) Subprocessors in accordance with this clause [23.8](#_Ref472956474).

## The Supplier may continue to use those Subprocessors already engaged by the Supplier as at the date of this Agreement, subject to the Supplier in each case as soon as practicable meeting the obligations set out in clause [23.11](#_Ref478107174).

## The Supplier shall give the Council prior written notice of the proposed appointment of any new Subprocessor, including full details of the Processing to be undertaken by the Subprocessor. The Supplier shall not appoint (nor disclose any Council Personal Data to) the proposed Subprocessor except with the prior written consent of the Council.

## With respect to each Subprocessor, the Supplier shall:

### before the Subprocessor first Processes Council Personal Data (or, where relevant, in accordance with clause [23.9](#_Ref472933585)), carry out adequate due diligence to ensure that the Subprocessor is capable of providing the level of protection for Council Personal Data required by this Agreement;

### ensure that the arrangement between the Supplier, and the Subprocessor, is governed by a written contract including terms which offer at least the same level of protection for Council Personal Data as those set out in this Agreement and meet the requirements of article 28(3) of the GDPR;

### ensure that the Subprocessor shall not make a Restricted Transfer of any Council Personal Data; and

### provide to the Council for review such copies of the Contracted Processors' agreements with Subprocessors (which may be redacted to remove confidential commercial information not relevant to the requirements of this Agreement) as the Council may request from time to time.

## The Supplier shall ensure that each Subprocessor performs the obligations under clauses [23.2](#_Ref471379220), [23.5](#_Ref482964795), [5](#_Ref482964888), [23.13](#_Ref479246263), [23.16](#_Ref482964994), [23.17](#_Ref464575757) and [23.22](#_Ref482970378), as they apply to Processing of Council Personal Data carried out by that Subprocessor, as if it were party to this Agreement in place of the Supplier.

## Taking into account the nature of the Processing, the Supplier shall assist the Council by implementing appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Council’s obligations, as reasonably understood by the Council, to respond to requests to exercise Data Subject rights under the Data Protection Laws.

## The Supplier shall:

### promptly notify the Council if any Contracted Processor receives a request from a Data Subject under any Data Protection Law in respect of Council Personal Data; and

### ensure that the Contracted Processor does not respond to that request except on the documented instructions of the Council or as required by Applicable Data Protection Laws to which the Contracted Processor is subject, in which case the Supplier shall to the extent permitted by Applicable Data Protection Laws inform the Council of that legal requirement before the Contracted Processor responds to the request.

## The Supplier shall notify the Council without undue delay upon the Supplier or any Subprocessor becoming aware of a Personal Data Breach affecting Council Personal Data, providing the Council with sufficient information to allow the Council to meet any obligations to report or inform Data Subjects of the Personal Data Breach under the Data Protection Laws.

## The Supplier shall co-operate with the Council and take such reasonable commercial steps as are directed by the Council to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

## The Supplier shall provide reasonable assistance to the Council with any data protection impact assessments, and prior consultations with Supervising Authorities or other competent data privacy authorities, which the Council reasonably considers to be required of the Council by article 35 or 36 of the GDPR or equivalent provisions of any other Data Protection Law, in each case solely in relation to Processing of Council Personal Data by, and taking into account the nature of the Processing and information available to, the Contracted Processors.

## Subject to clauses [23.19](#_Ref479850356) and [23.20](#_Ref475523583) the Supplier shall promptly and in any event within 30 days of the date of cessation of any Services involving the Processing of Council Personal Data (the "Cessation Date"), Delete and procure the Deletion of all copies of those Council Personal Data.

## Subject to clause [23.20](#_Ref475523583), the Council may in its absolute discretion by written notice to the Supplier within 30 of the Cessation Date require the Supplier to (a) return a complete copy of all Council Personal Data to the Council by secure file transfer in such format as is reasonably notified by the Council to the Supplier; and (b) Delete and procure the Deletion of all other copies of Council Personal Data Processed by any Contracted Processor. the Supplier shall comply with any such written request within 30 days of the Cessation Date.

## Each Contracted Processor may retain Council Personal Data to the extent required by Applicable Data Protection Laws and only to the extent and for such period as required by Applicable Data Protection Laws and always provided that the Supplier shall ensure the confidentiality of all such Council Personal Data and shall ensure that such Council Personal Data is only Processed as necessary for the purpose(s) specified in the Applicable Data Protection Laws requiring its storage and for no other purpose.

## The Supplier shall provide written certification to the Council that it has fully complied with clause 23.18 to 23.21 within 30 days of the Cessation Date.

## Subject to clauses [23.23](#_Ref483162686) and 23.24, the Supplier shall make available to the Council on request all information necessary to demonstrate compliance with this Agreement, and shall allow for and contribute to audits, including inspections, by the Council or an auditor mandated by the Council in relation to the Processing of Council Personal Data by the Contracted Processors.

## Information and audit rights of the Council only arise under clause [23.22](#_Ref482970378) to the extent that this Agreement does not otherwise give them information and audit rights meeting the relevant requirements of Data Protection Law (including, where applicable, article 28(3)(h) of the GDPR).

## The Council when undertaking an audit shall give the Supplier reasonable notice of any audit or inspection to be conducted under clause [23.22](#_Ref482970378) and shall make (and ensure that each of its mandated auditors makes) reasonable endeavours to avoid causing (or, if it cannot avoid, to minimise) any damage, injury or disruption to the Contracted Processors' premises, equipment, personnel and business while its personnel are on those premises in the course of such an audit or inspection. A Contracted Processor need not give access to its premises for the purposes of such an audit or inspection:

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

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

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

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

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

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

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

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

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

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

### wasted expenditure or unnecessary charges the Council pays because of the Supplier’s default;

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

# Freedom of information

## The Supplier 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.

## The Supplier shall and shall procure that its Sub-Contractors shall:

### transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;

### provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five (5) Working Days (or such other period as the Council may specify) of the Council’s request; and

### 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.

## 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.

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

## The Supplier acknowledges that (notwithstanding the provisions of this Clause 23.1 the Council may, acting in accordance with the Department of 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 Supplier or the Services:

### in certain circumstances without consulting the Supplier; or

### following consultation with the Supplier and having taken their views into account, provided always that where Clause 24.5(a) applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier’s attention after any such disclosure.

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

## The Supplier acknowledges that the Commercially Sensitive Information is of indicative value only and that the Council may be obliged to disclose it in accordance with Clause 24.5.

# Transparency requirements

## The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this agreement is not Confidential Information. The Council shall be responsible for determining at its absolute discretion whether any of the content of this agreement is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this agreement, the Supplier hereby gives their consent for the Council to publish this agreement in its entirety, (but with any information which is exempt from disclosure in accordance with the provision of the FOIA redacted) including from time to time agreed changes to this agreement, to the general public.

## The Council may consult the Supplier to inform its decision regarding any redactions but the Council shall have the final decision in its absolute discretion.

## The Supplier shall assist and cooperate with the Council to enable the Council to publish this agreement.

# Recovery of sums due

## The Council shall be permitted to deduct and withhold from any sum due to the Supplier under this agreement any sum of money due from the Supplier under this agreement.

# Legislative Change

## The Supplier shall bear the cost of ensuring that the Software and/or Services comply with all Laws and any amendments thereto, except where any such amendment could not reasonably have been foreseen by the Supplier at the Start Date.

## Where such reasonably unforeseeable amendments are necessary the Supplier shall use all reasonable endeavours to keep any additional costs to a minimum and shall apportion such increase in costs across the Supplier’s customer base for the relevant Software.

# Force majeure

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control, including strikes; lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party); failure of a utility service or transport or telecommunications network or the internet; act of God; war; riot; civil commotion; malicious damage; compliance with any law or governmental order, rule, regulation or direction; accident; breakdown of plant or machinery; fire, flood, or storm; or default of suppliers or sub-contractors. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for six months, the party not affected may terminate this agreement by giving 30 days' written notice to the other party.

# Waiver

## A waiver of any right under this agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.

## Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

# Rights and remedies

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to and not exclusive of, any rights or remedies provided by law.

# Severance

## If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

## If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

# Entire agreement

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

## Each party acknowledges that in entering into this agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

## Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.

## Nothing in this clause shall limit or exclude any liability for fraud.

# Assignment

## The Council may at any time assign, transfer, mortgage, charge or deal in any other manner with any or all of its rights and obligations under this agreement. The Council may subcontract or delegate in any manner any or all of its obligations under this agreement to any third party or agent.

## This agreement is personal to the Supplier and the Supplier shall not assign, transfer, mortgage, charge, subcontract, declare a trust of or deal in any other manner with any or all of its rights and obligations under this agreement without the prior written consent of the Council (such consent not to be unreasonably withheld or delayed).

## Notwithstanding Clause 8, a party assigning any or all of its rights under this agreement may disclose to a proposed assignee any information in its possession that relates to this agreement or its subject matter, the negotiations relating to it and the other party which is reasonably necessary to disclose for the purposes of the proposed assignment, provided that no disclosure under this Clause 33 shall be made until notice of the identity of the proposed assignee has been given to the other party.

# No partnership or agency

Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

# Variation

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

# Third party rights

This agreement does not confer any rights on any person or party (other than the parties to this agreement and (where applicable) their successors and permitted assigns) pursuant to the agreements (Rights of Third Parties) Act 1999.

# Notices

## Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in this agreement.

## A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

# Disputes

If any difference shall arise between the Council and the Supplier as to the interpretation or operation of this agreement as to the rights, duties, obligations or liabilities of either party hereto which cannot be resolved amicably between the parties within a reasonable time then the Council shall refer the dispute to senior members of staff. During this time neither party will resort to litigation. If the dispute is not resolved in that way within two months then either party may exercise any remedy it may have.

# Governing law

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

# Jurisdiction

The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims)

# Counterparts

## This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

## Transmission of the executed signature page of a counterpart of this agreement by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this agreement. If this method of delivery is used, without prejudice to the validity of the delivery method, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

## No counterpart shall be effective until each party has executed and delivered at least one counterpart.

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**ANNEX 1: DETAILS OF PROCESSING OF COUNCIL PERSONAL DATA**

DN: Annex 1 only required where Supplier processing personal data on behalf of the Council.

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

|  |  |
| --- | --- |
| **Contract Title** | [Insert contract title here] |
| **Subject matter and duration of the Processing of Council Personal Data** | The subject matter and duration of the Processing of Council Personal Data are set out in this Agreement |
| **The nature and purpose of the Processing of Council Personal Data** | [Include description here]*[Please be as specific as possible, but make sure that you cover all intended purposes.* *The* ***nature*** *of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.**The* ***purpose*** *might include: employment processing, statutory obligation, recruitment assessment etc.]* |
| **The categories of Council Personal Data to be Processed** | [Include list of data categories here]*[Examples include: Pension details, benefit details, disability details, ethnicity, employment history, bank details, annual leave details, pay details, qualifications, lifestyle information]* |
| **The categories of Data Subject to whom Council Personal Data relates** | [Include categories of data subjects here]*[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc.]* |
| **The obligations and rights of the Council** | The obligations and rights of the Council are set out in this Agreement. |

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