

Terms & Conditions – Services

Contract for Yeovil Flood Risk Study

DN480904

Between

Somerset County Council

and

[SUPPLIER NAME]

Contents

Agreed terms.....	5
1 Definitions and Interpretation	5
Commencement and Duration	14
2 Term	14
3 Extending the Initial Term	14
4 Due Diligence and Supplier's warranty	15
5 Mobilisation Phase and Implementation Plan	16
6 Supply of Services	17
7 KPIs	17
8 Services Standards	17
9 Compliance.....	18
10 Authority Premises and Assets	19
11 Disaster recovery	19
Charges and Payment	20
12 Payment.....	20
13 [Service Credits].....	Error! Bookmark not defined.
Personnel	21
14 Key Personnel	21
15 Other personnel used to provide the services.....	22
16 Safeguarding children and vulnerable adults	23
17 TUPE	24
Contract Management.....	24
18 Reporting and Meetings.....	24
19 Monitoring	24
20 Change Control [, Benchmarking] and Continuous Improvement.....	Error! Bookmark not defined.
21 Dispute resolution.....	25
22 Sub-Contracting and assignment.....	25
Liability.....	26
23 Indemnities	26
24 Limitation of Liability.....	26
25 Insurance	27
Information.....	28
26 Freedom of Information.....	28
27 Data Protection	29
28 Confidentiality	32
29 Audit.....	33
30 Intellectual Property	35
Termination	35
31 Termination for Cause	35
32 Termination without Cause.....	36
33 Force Majeure	36
34 Prevention of Bribery	37

35	Consequences of Expiry or Termination	38
	General Provisions	39
36	Non-Solicitation.....	39
37	Waiver	39
38	Rights and Remedies.....	39
39	Severability.....	39
40	Partnership or Agency	39
41	Third party rights	39
42	Publicity.....	40
43	Notices	40
44	Entire agreement.....	40
45	Counterparts	41
46	Governing law.....	41
47	Jurisdiction	41
Schedule 1	Specification.....	43
Schedule 2	Performance Regime	44
Schedule 3	Supplier's Tender	47
Schedule 4	Payment Schedule	48
Schedule 5	Contract Management.....	49
Schedule 6	Change Control.....	50
Schedule 7	Business Continuity and Disaster Recovery.....	52
Schedule 8	Benchmarking.....	53
Schedule 9	Exit Management	57
Schedule 10	TUPE.....	62
Schedule 11	Schedule of Processing, Personal Data and Data Subjects.....	70
Schedule 12	Authority Premises and Assets.....	72
Schedule 13	Commercially Sensitive Information	73
Schedule 14	Implementation Plan.....	74

THIS AGREEMENT is dated [DD MMM 20XX]

Parties

- (1) SOMESET COUNTY COUNCIL of County Hall, Taunton, Somerset TA1 4DY (Authority).
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (Supplier).

(each a Party and together the Parties)

Background

- (A) In response to the Authority's [Invitation to Tender], the Supplier submitted a Tender on [DATE] through which it represented to the Authority that it is capable of delivering the Services in accordance with the Authority's requirements as set out in the [Invitation to Tender] and, in particular, the Supplier made representations to the Authority in the Supplier's Tender in relation to its competence, professionalism and ability to provide the Services in an efficient and cost-effective manner.
- (B) On the basis of the Supplier's Tender, the Authority selected the Supplier to provide the Services in accordance with the terms and conditions of this agreement.

Agreed terms

1 Definitions and Interpretation

1.1 The following definitions and rules of interpretation in this clause apply in this agreement:

Achieve	in respect of a Milestone, the completion of that Milestone (and Achieved and Achievement shall be construed accordingly).
Achieved KPIs	in respect of any Service in any measurement period, the standard of performance actually achieved by the Supplier in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the KPI for that Service is calculated and expressed in Schedule 2 (Performance Regime)).
Associated Company	any holding company from time to time of the Supplier and any subsidiary from time to time of the Supplier, or any subsidiary of any such holding company
Authorised Representatives	the persons respectively designated as such by the Authority and the Supplier, the first such persons being set out in Schedule 5 (Contract Management)
Authority	Somerset County Council, alternatively the Council or SCC
Authority Assets	any materials, plant or equipment owned or held by the Authority and provided by the Authority to the Supplier for use in providing the Services as identified in the [Invitation to Tender]] and/or Schedule 12 (Authority Premises and Assets)
Authority Data	all data and other material belonging to the Authority and all media of any nature containing information and data belonging to the Authority or relating to the Services.
Authority Premises	the premises owned, controlled or occupied by the Authority which are made available for use by the Supplier of its Sub-contractors for provision of the Services as identified in the [Invitation to Tender]
BCDR Plan	the business continuity and disaster recovery plan prepared and agreed in accordance with Schedule 7
Best Industry Practice	the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the KPIs, the term, the pricing structure and any other relevant factors
Bribery Act	the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation

Catastrophic Failure	(a) a failure by the Supplier for whatever reason to implement the BCDR Plan successfully and in accordance with its terms on the occurrence of a Disaster. (b) any action by the Supplier, whether in relation to the Services and this agreement or otherwise, which in the reasonable opinion of the Authority's Authorised Representative has or may cause significant harm to the reputation of the Authority.
Change	any change to this agreement including to any of the Services.
Change Control Note	the written record of a Change agreed or to be agreed by the parties pursuant to the Change Control Procedure
Change Control Procedure	the procedure for changing this agreement, as set out in Schedule 6 (Change Control)
Charges	the charges which shall become due and payable by the Authority to the Supplier in respect of the Services in accordance with the provisions of this agreement, as such charges are set out in the Payment Schedule.
Commencement Date	the date of this agreement
Commercially Sensitive Information	the information listed in Schedule 13 comprising the information of a commercially sensitive nature relating to the Supplier which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss
Confidential Information	means all confidential information (however recorded or preserved) disclosed by a party to the other party in connection with this agreement, including but not limited to: <ul style="list-style-type: none"> a) any information which is known by the receiving party to be confidential; b) any information which is marked as or stated to be confidential; c) any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, suppliers or plans of the disclosing party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party; d) any information developed by the parties in the course of carrying out this agreement; e) Personal Data f) any Commercially Sensitive Information.
Consistent Failure	shall have the meaning set out in Schedule 2 (Performance Regime)
Contract Year	a period of 12 months, commencing on the Service Commencement Date.
Controller	takes the meaning given in the GDPR

Data Loss Event	any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this agreement, including any Personal Data Breach.
Data Protection Legislation	(i) the GDPR and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
Data Protection Impact Assessment	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
Data Protection Officer	takes the meaning given in the GDPR.
Data Subject	takes the meaning given in the GDPR
Data Subject Request	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
DBS	the Disclosure and Barring Service
Default Notice	has the meaning given in clause 6.2
Delay	means a delay in the Achievement of a Milestone by its Milestone Date.
Delay Payment	means the amounts payable by the Supplier to the Council in respect of a Delay in respect of a Milestone as specified in the Implementation Plan.
Disaster	the occurrence of one or more events which, either separately or cumulatively, means that the Services or a material part of the Services will be unavailable for a period of [24 hours] or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period [<i>Drafting Note: if a longer period is acceptable before the BCDR Plan will be invoked, amend this definition.</i>]
Dispute	Any dispute, difference or question of interpretation arising out of or in connection with this agreement, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control Procedure or any matter where this agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure
Dispute Notice	A written notice served by either Party on the other stating that the Party serving the notice believes that there is a Dispute
Dispute Resolution Procedure	the procedure set out in clause 21
DPA 2018	Data Protection Act 2018

EIRs	the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations
Exit Plan	the plan produced and updated by the Supplier as set out in Schedule 9 (Exit Management)
FOIA	the Freedom of Information Act 2000, and any subordinate legislation made under the 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	<p>any circumstance not within a party's reasonable control including, without limitation:</p> <ul style="list-style-type: none"> a) acts of God, flood, drought, earthquake or other natural disaster; b) epidemic or pandemic; c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; d) nuclear, chemical or biological contamination or sonic boom; e) any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition; f) collapse of buildings, fire, explosion or accident; and <p>any labour or trade dispute, strikes, industrial action or lockouts (excluding any labour or trade dispute, strike, industrial action or lockout confined to the Supplier's workforce or the workforce of any Subcontractor of the Supplier).</p>
GDPR	the General Data Protection Regulation (Regulation (EU) 2016/679)
Health and Safety Policy	the health and safety policy of the Authority as provided to the Supplier on or before the Commencement Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety
Implementation Plan	the plan provided in the Supplier's Tender, together with any changes agreed by the Parties, and set out in Schedule 3
Information	all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form)

Initial Term	the period commencing on the Commencement Date and ending on the (Date)
Insolvency Event	<p>where:</p> <ul style="list-style-type: none"> a) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 OR (being a partnership) has any partner to whom any of the foregoing apply]; b) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company); d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier (being a company); e) the holder of a qualifying floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver; (i) 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; f) the Supplier (being an individual) is the subject of a bankruptcy petition or order; g) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days; h) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (g) (inclusive);

	<p>i) the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or</p> <p>j) the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation</p>
Intellectual Property Rights	Patents, utility models, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
Key Personnel	those personnel identified Schedule 5 (Contract Management) for the roles attributed to such personnel, as modified pursuant to clause 14
KPIs	the key performance indicators set out in Schedule 2 (Performance Regime)
Law	any law, statute, 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, 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
Losses	means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in agreement, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and Loss shall be interpreted accordingly
Management Reports	the reports to be prepared and presented by the Supplier in accordance with clause 18 and Schedule 5 (Contract Management) o include a comparison of Achieved KPIs with the Target KPIs in the measurement period in question.
Milestone	means an event or task described in the Implementation Plan which, if applicable, must be completed by the relevant Milestone Date

Milestone Date	means the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
Mobilisation Phase	the period from the Commencement Date to the Service Commencement Date. [<i>Drafting Note: Delete if there is no mobilisation phase.</i>]
Mobilisation Services	those activities which meet the requirements for mobilisation set out in the Services Specification [<i>Drafting Note: if relevant, ensure that the Services Specification contains the Authority's requirements for mobilisation by the Supplier.</i>]
Necessary Consents	all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary for the performance of the Services
Party	a Party to this agreement
Payment Schedule	Schedule 4 of this agreement
Personal Data	takes the meaning given in the GDPR
Personal Data Breach	takes the meaning given in the GDPR
Processor	takes the meaning given in the GDPR
Prohibited Act	<p>the following constitute Prohibited Acts:</p> <ul style="list-style-type: none"> a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to: <ul style="list-style-type: none"> (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity; b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this agreement; c) committing any offence: <ul style="list-style-type: none"> (i) under the Bribery Act; (ii) under legislation or common law concerning fraudulent acts; (iii) defrauding, attempting to defraud or conspiring to defraud the Authority. d) any activity, practice or conduct which would constitute one of the offences listed under (c) above, if such activity, practice or conduct had been carried out in the UK
Protective Measures:	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data

	can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.
Regulated Activity	in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006
Regulated Activity Provider	shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006
Relevant Transfer	a relevant transfer for the purposes of TUPE
Remediation Notice	a notice served by the Authority in accordance with clause 31.1(a)
Replacement Services	any services that are identical or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Authority internally or by any Replacement Supplier.
Replacement Supplier	any third party supplier of Replacement Services appointed by the Authority from time to time
Request for Information	a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs
Safeguarding Policies	<ul style="list-style-type: none"> a) "Safeguarding Adults Multi-Agency Policy" issued by the Somerset Safeguarding Adults Board, as amended or replaced from time to time and available from the Authority's website; and b) South West Safeguarding and Child Protection Procedures as amended and replaced from time to time and available from the Authority's website
Secure Email	the Authority's secure system, Egress, used to send personal or commercially sensitive information by email
Service Commencement Date	[DATE] <i>[Drafting Note: the date on which the Services are to be provided must be inserted here (note that there may be a mobilisation phase preceding the Service Commencement Date)]</i>
Service Credits	the sums attributable to a Service Failure as specified in Schedule 2
Service Failure	a failure by the Supplier to provide the Services in accordance with any Target KPI
Services	the services to be delivered by or on behalf of the Supplier under this agreement, as more particularly described in the Services Specification
Services Specification	the specification for the Services contained at Schedule 1

Sub-Contract	any contract or agreement (or proposed contract or agreement) between the Supplier (or the Sub-Contractor) and any third party pursuant to which the Supplier agrees to source the provision of any of the Services or any part thereof or necessary for the management, direction or control of the Services or part thereof from that third party
Sub-Contractor	any third party with whom: a) the Supplier enters into a Sub-contract: or b) a third party under (a) above enters into a Sub-contract or the servants or agents of that third party
Sub-Processor	any third Party appointed to process Personal Data on behalf of that Processor related to this agreement
Supplier Equipment	the hardware, computer and telecoms devices and equipment used by the Supplier or its Sub-contractors (but not hired, leased or loaned from the Authority) for the provision of the Services
Supplier Personnel	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-Contractor and/or Sub-Processor engaged in the performance of its obligations under this agreement
Supplier's Tender	the tender submitted by the Supplier and other associated documentation set out in Schedule 3
Target KPI	the minimum level of performance for a KPI which is required by the Authority as set out against the relevant KPI in Schedule 2 (Performance Regime)
Term	the period of the Initial Term as may be varied by: a) any extensions to this agreement which are agreed pursuant to clause 3; or b) the earlier termination of this agreement in accordance with its terms
Termination Date	the date of expiry or termination of this agreement
Termination Payment Default	has the definition set out in the Payment Schedule
TUPE	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246)
Working Day	any day other than a Saturday, Sunday or public holiday in England and Wales

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- 1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
- 1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to any other gender.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.9 A reference to writing or written includes secure e-mail.
- 1.10 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 Where there is any conflict or inconsistency between the provisions of the agreement, such conflict or inconsistency shall be resolved according to the following order of priority:
- (a) the clauses of the agreement;
 - (b) the Services Specification;
 - (c) the remaining schedules to this agreement [other than the Supplier's Tender;
 - (d) the Supplier's Tender.] *[Drafting Note: the square bracketed wording should be deleted if the contract has been directly awarded and the Supplier has not submitted a tender.]*

Commencement and Duration

2 Term

- 2.1 This agreement shall take effect on the Commencement Date and shall continue for the Term.

3 Extending the Initial Term

[Drafting Note: extension period(s) and notice period to be inserted where highlighted.]

- 3.1 The Authority may extend this agreement beyond the Initial Term by a further period or periods of up to [NUMBER] years (Extension Period). If the Authority wishes to extend this agreement, it shall give the Supplier at least [NUMBER] months' written notice of such intention before the expiry of the Initial Term or Extension Period.

- 3.2 If the Authority gives such notice then the Term shall be extended by the period set out in the notice.
- 3.3 If the Authority does not wish to extend this agreement beyond the Initial Term this agreement shall expire on the expiry of the Initial Term and the provisions of clause 35 shall apply.

4 Due Diligence and Supplier's warranty

- 4.1 The Supplier acknowledges and confirms that:
- (a) the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this agreement;
 - (b) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied or made available to it by or on behalf of the Authority pursuant to clause 4.1(a);
 - (c) it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Commencement Date) of all relevant details relating to the performance of its obligations under this agreement (including without limitation the suitability of Authority Premises); and
 - (d) it has entered into this agreement in reliance on its own due diligence.
- 4.2 Save as provided in this agreement, no representations, warranties or conditions are given or assumed by the Authority in respect of any information which is provided to the Supplier by the Authority and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.
- 4.3 The Supplier:
- (a) warrants and represents that all information and statements made by the Supplier as a part of the procurement process, including without limitation the Supplier's Tender, remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the agreement; and
 - (b) shall promptly notify the Authority in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Authority during such due diligence which materially and adversely affects its ability to perform the Services or meet any Target KPIs.
- 4.4 The Supplier shall not be entitled to recover any additional costs from the Authority which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Authority by the Supplier in accordance with clause 4.3(b) save where such additional costs or adverse effect on performance have been caused by the Supplier having been provided with fundamentally misleading information by or on behalf of the Authority and the Supplier could not reasonably

have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Supplier shall be entitled to recover such reasonable additional costs from the Authority or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.

- 4.5 Nothing in this clause 4 shall limit or exclude the liability of the Authority for fraud or fraudulent misrepresentation.

5 Mobilisation Phase and Implementation Plan

[Drafting Note: delete this clause if there is no mobilisation phase or implementation plan]

- 5.1 The Supplier shall provide to the Authority the Mobilisation Services during the Mobilisation Phase.
- 5.2 The Supplier shall provide the Mobilisation Services so that they comply with and meet all the requirements of this agreement, the Services Specification, the Supplier's Tender, Best Industry Practice, Guidance and all applicable Law.
- 5.3 The Supplier shall:
- (a) comply with the Implementation Plan; and
 - (b) ensure that each Milestone is Achieved on or before its Milestone Date.
- 5.4 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay:
- (a) it shall:
 - (i) notify the Authority; and
 - (ii) comply with all reasonable requests of the Authority in order to address the impact of the Delay or anticipated Delay; and
 - (iii) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and
 - (b) if the Delay or anticipated Delay relates to a Milestone in respect of which a Delay Payment applies, the provisions of clauses 5.5, 5.6, and 5.7 shall apply.
- 5.5 If a Milestone has not been Achieved on or before the relevant Milestone Date, the Supplier shall pay the applicable Delay Payment to the Authority in respect of that Milestone.
- 5.6 The Parties agree that Delay Payments are in each case a genuine pre-estimate of the Losses which the Authority will incur as a result of any failure by the Supplier to Achieve the relevant Milestone by the Milestone Date. Delay Payment are stated exclusive of VAT.

- 5.7 The Supplier shall, within ten (10) Working Days of notification by the Authority, pay to the Authority as a debt a sum equal to the total amount of the Delay Payments in respect of the Milestone.

6 Supply of Services

- 6.1 The Supplier shall provide the Services to the Authority with effect from the Service Commencement Date and for the Term in accordance with the provisions of this agreement.
- 6.2 In the event that the Supplier does not comply with the provisions of clause 6.1 in any way, the Authority may serve the Supplier with a notice in writing setting out the details of the Supplier's default (a Default Notice).

7 KPIs

- 7.1 Where any Service is stated in Schedule 2 (Performance Regime) to be subject to a specific KPI, the Supplier shall provide that Service in such a manner as will ensure that the Achieved KPI in respect of that Service is equal to or higher than such specific Target KPI.
- 7.2 In the event that existing Services are varied and new Services are added, Target KPIs for the same will be determined and included within Schedule 2 (Performance Regime).
- 7.3 The Supplier shall provide records of and Management Reports summarising the Achieved KPIs as provided for in clause 18.
- 7.4 [In the event that any Achieved KPI falls short of the relevant Target KPI, without prejudice to any other rights the Authority may have, the provisions of clause 13 shall apply.] *[Drafting Note: Delete this clause if Service Credits are not applicable to the contract]*

8 Services Standards

- 8.1 Without prejudice to clause 7, the Supplier shall provide the Services:
- (a) with reasonable skill and care;
 - (b) in accordance with Best Industry Practice; and
 - (c) so that they comply with and meet all the requirements of:
 - (i) this agreement;
 - (ii) the Services Specification;
 - (iii) the Supplier's Tender;
 - (iv) Best Industry Practice;
 - (v) the Authority's policies set out or referred to in the Services Specification; and
 - (vi) all applicable Laws.

9 Compliance

- 9.1 The Supplier shall ensure that all Necessary Consents are in place to provide the Services and the Authority shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 9.2 Where there is any conflict or inconsistency between the provisions of the agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Supplier has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services.
- 9.3 The Supplier shall perform its obligations under this agreement (including those in relation to the Services) in accordance with:
- (a) all applicable Law regarding health and safety; and
 - (b) the Health and Safety Policy whilst at the Authority Premises.
- 9.4 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of this agreement. The Supplier shall instruct the Supplier Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.
- 9.5 The Supplier shall (and shall procure that the Supplier Personnel shall):
- (a) perform its obligations under this agreement (including those in relation to the Services) in accordance with:
 - (i) all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - (ii) the Authority's equality and diversity policy as provided to the Supplier from time to time; and
 - (iii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality law; and
 - (b) take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).
 - (c) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Supplier shall also undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998.

10 Authority Premises and Assets

- 10.1 The Authority shall, subject to clause 8.1(c)(vi) and clause 15, provide the Supplier (and its Sub-Contractors) with access to such parts of the Authority Premises as the Supplier reasonably requires for the purposes only of properly providing the Services.
- 10.2 The Authority shall provide the Supplier with such accommodation and facilities in the Authority Premises as is specified in Schedule 12 or which is otherwise agreed by the parties from time to time.
- 10.3 Subject to the requirements of clause 35 and the Exit Plan, in the event of the expiry or termination of the agreement, the Authority shall on reasonable notice provide the Supplier with such access as the Supplier reasonably requires to the Authority Premises to remove any of the Supplier's equipment. All such equipment shall be promptly removed by the Supplier.
- 10.4 The Supplier shall ensure that:
- (a) where using the Authority Premises and any Authority Assets they are kept properly secure and it will comply and cooperate with the Authority's Authorised Representative's reasonable directions regarding the security of the same;
 - (b) only those of the Supplier Personnel that are duly authorised to enter upon the Authority Premises for the purposes of providing the Services, do so;
 - (c) any Authority Assets used by the Supplier are maintained (or restored at the end of the Term) in the same or similar condition as at the Commencement Date (fair wear and tear excepted) and are not removed from Authority Premises unless expressly permitted under this agreement or by the Authority's Authorised Representative.
- 10.5 The Authority shall maintain and repair the Authority Assets, however, where such maintenance or repair arises directly from the act, omission, default or negligence of the Supplier or its representatives (fair wear and tear excluded) the costs incurred by the Authority in maintaining and repairing the same shall be recoverable from the Supplier.
- 10.6 The Supplier shall notify the Authority immediately on becoming aware of any damage caused by the Supplier Personnel to any property of the Authority, to any of the Authority Premises or to any property of any other recipient of the Services in the course of providing the Services.

11 Disaster recovery

- 11.1 On and from the Service Commencement Date the Supplier shall have in place the BCDR Plan.
- 11.2 The Supplier warrants that the BCDR Plan;
- (a) has been prepared in accordance with Good Industry Practice;
 - (b) is sufficient to ensure:

- (i) continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Goods and/or Services;
- (ii) the recovery of the Services in the event of a Disaster.
- (iii) that the Goods and/or Services are provided in accordance with this agreement at all times during and after the invocation of the BCDR Plan;
- (iv) that the adverse impact of any Disaster, service failure, or disruption on the operations of the Council is minimal as far as reasonably possible.

11.3 The Supplier shall comply at all times with the relevant provisions of the BCDR Plan.

11.4 Following the declaration of a Disaster in respect of any of the Services, the Supplier shall:

- (a) implement the BCDR Plan;
- (b) continue to provide the affected Services to the Authority in accordance with the BCDR Plan; and
- (c) restore the affected Services to normal within the period laid out in the BCDR Plan.

11.5 To the extent that the Supplier complies fully with the provisions of this clause 11 (and the reason for the declaration of a Disaster was not breach of any of the other terms of this agreement on the part of the Supplier), the KPIs to which the affected Services are to be provided during the continuation of the Disaster shall not be the KPIs as referred to in clause 7 but shall be the KPIs set out in the BCDR Plan or (if none) the best service levels which are reasonably achievable in the circumstances.

Charges and Payment

12 Payment

12.1 In consideration of the provision of the Services by the Supplier in accordance with the terms and conditions of this agreement, the Authority shall pay the Charges to the Supplier in accordance with the pricing and payment profile and invoicing procedure in the Payment Schedule.

12.2 The Authority shall pay the Charges which have become payable in accordance with the Payment Schedule within thirty (30) days of receipt of an undisputed invoice from the Supplier.

12.3 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 21. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of ten (10) Working Days after resolution of the dispute between the parties.

12.4 Subject to clause 12.3, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this agreement in accordance with the Late Payment

of Commercial Debts (Interest) Act 1998. The Supplier shall not suspend the supply of the Services if any payment is overdue unless it is entitled to terminate this agreement under clause 31.4 for failure to pay undisputed Charges.

- 12.5 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice. The Supplier shall indemnify the Authority against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for, or to pay, any VAT relating to payments made to the Supplier under this agreement.
- 12.6 The Supplier shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Authority pursuant to this agreement. Such records shall be retained for inspection by the Authority for 6 years from the end of the Contract Year to which the records relate.
- 12.7 Where the Supplier enters into a Sub-Contract, it shall cause a term to be included in such Sub-Contract that requires payment to be made of undisputed sums by the Supplier to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the Sub-Contract requirements.
- 12.8 The Authority may retain or set off any sums owed to it by the Supplier which have fallen due and payable against any sums due to the Supplier under this agreement or any other agreement pursuant to which the Supplier or any Associated Company of the Supplier provides goods or services to the Authority.
- 12.9 The Supplier shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Supplier.

Personnel

13 Key Personnel

- 13.1 Each party shall appoint the persons named as such in Schedule 5 (Contract Management) as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each party as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of their respective party on the matters for which they are expressed to be responsible.
- 13.2 The Supplier shall not remove or replace any of the Key Personnel unless:
 - (a) requested to do so by the Authority;
 - (b) the person is on long-term sick leave;

- (c) the element of the Services in respect of which the individual was engaged has been completed to the Authority's satisfaction;
- (d) the person resigns from their employment with the Supplier; or
- (e) the Supplier obtains the prior written consent of the Authority.

13.3 The Supplier shall inform the Authority of the identity and employment background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified. The Authority shall be entitled to interview any such person and may object to any such proposed appointment within ten (10) Working Days of being informed of or interviewing (whichever is the later) any such replacement if, in its reasonable opinion, it considers the proposed replacement to be unsuitable for any reason.

13.4 Each party shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than twenty (20) Working Days. Any replacement shall be as, or more, qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Supplier or the Authority becoming aware of the role becoming vacant.

13.5 The Authority may require the Supplier to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities.

13.6 If the Supplier replaces the Key Personnel as a consequence of this clause 14, the cost of effecting such replacement shall be borne by the Supplier.

14 Other personnel used to provide the services

14.1 At all times, the Supplier shall ensure that:

- (a) each of the Supplier Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
- (b) there is an adequate number of Supplier Personnel to provide the Services properly;
- (c) only those people who are authorised by the Supplier (under the authorisation procedure to be agreed between the parties) are involved in providing the Services; and
- (d) all of the Supplier Personnel comply with all of the Authority's policies including those that apply to persons who are allowed access to the applicable Authority Premises.

14.2 The Authority may refuse to grant access to, and remove, any of the Supplier Personnel who do not comply with any such policies, or if they otherwise present a security threat.

- 14.3 The Supplier shall replace any of the Supplier Personnel who the Authority reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Supplier Personnel for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
- 14.4 The Supplier shall maintain up-to-date personnel records on the Supplier Personnel engaged in the provision of the Services and shall provide information to the Authority as the Authority reasonably requests on the Supplier Personnel. The Supplier shall ensure at all times that it has the right to provide these records in compliance with the GDPR and the DPA 2018.
- 14.5 The Supplier shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good at the prevailing industry norm for similar services, locations and environments.

15 Safeguarding children and vulnerable adults

- 15.1 The Supplier shall comply with the Safeguarding Vulnerable Groups Act 2006 and, in the case of Regulated Activity, the Supplier will be a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
- 15.2 The Supplier shall comply with the Safeguarding Policies.
- 15.3 The Supplier shall:
- (a) ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service (DBS);
 - (b) monitor the level and validity of the checks under this clause 16.3 for each member of staff; and
 - (c) not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users.
- 15.4 The Supplier warrants that at all times for the purposes of this agreement it has no reason to believe that any person who is or will be employed or engaged by the Supplier in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 15.5 The Supplier shall immediately notify the Authority of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 16 have been met.

- 15.6 The Supplier shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to children or vulnerable adults.

16 TUPE

- 16.1 The parties agree that the provisions of Schedule 10 (TUPE) shall apply to any Relevant Transfer of staff under this agreement.

Contract Management

17 Reporting and Meetings

- 17.1 The Supplier shall provide the Management Reports in the form and at the intervals set out in Schedule 5 (Contract Management).
- 17.2 The Authorised Representatives and relevant Key Personnel shall meet in accordance with the details set out in Schedule 5 (Contract Management) and the Supplier shall, at each meeting, present its previously circulated Management Reports in the format set out in that Schedule.

18 Monitoring

- 18.1 The Authority may monitor the performance of the Services by the Supplier.
- 18.2 The Supplier shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Authority in carrying out the monitoring referred to in clause 19.1 at no additional charge to the Authority.
- 18.3 Any requirement for a Change shall be subject to the Change Control Procedure.
- 18.4 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services. As part of this obligation the Supplier shall identify and report to the Authority's Authorised Representative once every six (6) months on:
- (a) the emergence of new and evolving relevant technologies which could improve the Services;
 - (b) new or potential improvements to the Services;
 - (c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or in reduction of operational risk; and
 - (d) changes in ways of working that would enable the Services to be delivered at lower costs and/or bring greater benefits to the Authority.
- 18.5 Any potential Changes highlighted as a result of the Supplier's reporting in accordance with clause 20.3 shall be addressed by the parties using the Change Control Procedure.

19 Dispute resolution

- 19.1 If a Dispute arises out of or in connection with the performance, validity or enforceability of this agreement then, except as expressly provided in this agreement, the parties shall follow the procedure set out in this clause:
- (a) either party shall give to the other a Dispute Notice, setting out its nature and full particulars, together with relevant supporting documents. On receipt of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;
 - (b) if the Authorised Representatives are for any reason unable to resolve the Dispute within thirty (30) days of receipt of the Dispute Notice, the Dispute shall be referred to the Authority's [SENIOR OFFICER TITLE] and the Supplier's [SENIOR OFFICER TITLE] who shall attempt in good faith to resolve it; and [*Drafting Note: Authority's senior officer to be inserted*]
 - (c) if the Authority's [SENIOR OFFICER TITLE] and the Supplier's [SENIOR OFFICER TITLE] are for any reason unable to resolve the Dispute within thirty (30) days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than twenty (20) days after the date of the ADR notice.
- 19.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 46 which clause shall apply at all times.

20 Sub-Contracting and assignment

- 20.1 Subject to clause 22.3, neither party shall assign, novate or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the other party, neither may the Supplier sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of the Authority.
- 20.2 In the event that the Supplier enters into any Sub-Contract in connection with this agreement it shall:
- (a) remain responsible to the Authority for the performance of its obligations under the agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;
 - (b) 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; and

- (c) provide a copy, at no charge to the Authority, of any such Sub-Contract on receipt of a request for such by the Authority's Authorised Representative.
- 20.3 The Authority shall be entitled to novate the agreement to any other body which substantially performs any of the functions that previously had been performed by the Authority.

Liability

21 Indemnities

- 21.1 Subject to clause 23.2, the Supplier shall indemnify and keep indemnified the Authority against all Losses incurred by the Authority arising out of or in connection with:
- (a) the Supplier's breach or negligent performance or non-performance of this agreement;
 - (b) any claim made against the Authority arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Supplier or Supplier Personnel;
 - (c) the enforcement of this agreement.
- 21.2 The indemnity under clause 23.1 shall apply except insofar as the Losses incurred by the Authority are directly caused (or directly arise) from the negligence or breach of this agreement by the Authority.

22 Limitation of Liability

- 22.1 Subject to clause 24.4, neither party shall be liable to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with this agreement.
- 22.2 Notwithstanding the provisions of clause 24.1, but subject to clause 24.4, the Supplier assumes responsibility for and acknowledges that the Authority may, amongst other things, recover:
- (a) sums paid by the Authority to the Supplier pursuant to this agreement, in respect of any services not provided in accordance with the agreement;
 - (b) wasted expenditure;
 - (c) additional costs of procuring and implementing replacements for, or alternatives to, the Services, including consultancy costs, additional costs of management time and other personnel costs and costs of equipment and materials;
 - (d) Losses incurred by the Authority arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third party (including any Subcontract, Supplier's Personnel, regulator or customer of the Authority) against the Authority caused by the act or omission of the Supplier;

(e) any anticipated savings.

22.3 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this agreement.

22.4 Subject to clause 24.6, the Supplier's total aggregate liability:

(a) is unlimited in respect of:

(i) the indemnities in Schedule 10 (TUPE);

(ii) any breach of clauses 16, 27 and 33.6 and;

(iii) the Supplier's wilful default

(b) in respect of Service Credits, is limited, in each Contract Year, to [PERCENTAGE]% of the Charges that are payable by the Authority in the applicable Contract Year; and [*Drafting Note: any cap on the Supplier's liability to pay Service Credits will need to be determined on a case by case basis.*]

(c) in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this agreement, shall in no event exceed the higher of [£[AMOUNT]] or, [PERCENTAGE]% of the aggregate Charges paid or payable under or pursuant to this agreement] [*Drafting Note: the formula for determining the supplier aggregate liability cap will need to be determined on a case by case basis.*]

22.5 Subject to clause 24.6, the Authority's maximum aggregate liability to the Supplier for all claims (other than a failure to pay any of the Charges that are properly due and payable and for which the Authority shall remain fully liable) shall not in any circumstances exceed £[AMOUNT]. [*Drafting note: Authority's liability cap to be inserted.*]

22.6 Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:

(a) fraud or fraudulent misrepresentation;

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

(c) breach of any obligation as to title implied by statute; or

(d) any other liability for which may not be limited under any applicable law.

23 Insurance

23.1 The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance (the Required Insurances) providing as a minimum the following levels of cover:

- (a) [public liability insurance with a limit of indemnity of not less than £[INSERT AMOUNT] in relation to any one claim or series of claims;]
- (b) [employer's liability insurance with a limit of indemnity of not less than £[INSERT AMOUNT] OR in accordance with any legal requirement for the time being in force in relation to any one claim or series of claims;]
- (c) [professional indemnity insurance with a limit of indemnity of not less than £[INSERT AMOUNT] in relation to any one claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover;]
- (d) [product liability insurance with a limit of indemnity of not less than £[INSERT AMOUNT] in relation to any one claim or series of claims.]]

- 23.2 The cover shall be in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of the agreement, 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 Supplier.
- 23.3 The Supplier shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 23.4 If, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 23.5 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the agreement.
- 23.6 The Supplier shall hold and maintain the Required Insurances for a minimum of six (6) years following the expiration or earlier termination of the agreement.

Information

24 Freedom of Information

- 24.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
 - (b) transfer to the Authority all Requests for Information relating to this agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - (c) provide the Authority with a copy of all Information belonging to the Authority requested in the Request For Information which is in its possession or control

in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and

- (d) not respond directly to a Request For Information unless authorised in writing to do so by the Authority.

- 24.2 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.
- 24.3 Notwithstanding any other term of this agreement, the Supplier consents to the publication of this agreement in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA and EIRs.
- 24.4 The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decisions in its absolute discretion. The Supplier shall assist and co-operate with the Authority to enable the Authority to publish this agreement.

25 Data Protection

- 25.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor unless otherwise specified in Schedule 11. The only processing that the Processor is authorised to do is listed in Schedule 11 by the Controller and may not be determined by the Processor.
- 25.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 25.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
 - (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and

- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

25.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this agreement:

- (a) process that Personal Data only in accordance with Schedule 11, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that:
 - (i) the Processor Personnel do not process Personal Data except in accordance with this agreement (and in particular Schedule 11);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (in accordance with GDPR Article 46) as determined by the Controller;

- (ii) the Data Subject has enforceable rights and effective legal remedies;
- (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
- (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the agreement unless the Processor is required by Law to retain the Personal Data.

25.5 Subject to clause 27.6, the Processor shall notify the Controller immediately if it:

- (a) receives a Data Subject Request (or purported Data Subject Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this agreement;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

25.6 The Processor's obligation to notify under clause 27.5 shall include the provision of further information to the Controller in phases, as details become available.

25.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 27.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

- (a) the Controller with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Controller following any Data Loss Event;

- (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 25.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the processing is not occasional;
 - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 25.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 25.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 25.11 Before allowing any Sub-processor to process any Personal Data related to this agreement, the Processor must:
- (a) notify the Controller in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Controller;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 27 such that they apply to the Sub-processor; and
 - (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 25.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 25.13 The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this agreement).
- 25.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

26 Confidentiality

- 26.1 Subject to clause 28.2, each party shall keep the other party's Confidential Information confidential and shall not:

- (a) use such Confidential Information except for the purpose of performing its rights and obligations under or in connection with this agreement; or
- (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 28.

26.2 The obligation to maintain confidentiality of Confidential Information does not apply to any Confidential information:

- (a) which the other party confirms in writing is not required to be treated as Confidential Information;
- (b) which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
- (c) which a party is required to disclose by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the FOIA or the EIRs;
- (d) which is in or enters the public domain other than through any disclosure prohibited by this agreement;
- (e) which a party can demonstrate was lawfully in its possession prior to receipt from the other party; or
- (f) which is disclosed by the Authority on a confidential basis to any central government or regulatory body.

26.3 A party may disclose the other party's Confidential information to those of its Representatives who need to know such Confidential Information for the purposes of performing or advising on the party's obligations under this agreement, provided that:

- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
- (b) it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to this agreement,
- (c) and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this clause 28.3.

26.4 The provisions of this clause 28 shall survive for a period of six (6) years from the Termination Date.

27 Audit

27.1 During the Term and for a period of six (6) years after the Termination Date, the Authority may conduct an audit for the following purposes:

- (a) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all suppliers (including Sub-Contractors) of the Services;

- (b) to review the integrity, confidentiality and security of any data relating to the Authority or any service users;
 - (c) to review the Supplier compliance with the GDPR and the DPA, the FOIA, in accordance with clause 27 (Data Protection) and clause 26 (Freedom of Information) and any other legislation applicable to the Services;
 - (d) to review any records created during the provision of the Services;
 - (e) to review any books of account kept by the Supplier in connection with the provision of the Services;
 - (f) to carry out the audit and certification of the Authority's accounts;
 - (g) to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
 - (h) to verify the accuracy and completeness of the Management Reports delivered or required by this agreement.
- 27.2 Except where an audit is imposed on the Authority by a regulatory body, the Authority may not conduct an audit under this clause 29 more than twice in any calendar year.
- 27.3 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.
- 27.4 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- (a) all information requested by the above persons within the permitted scope of the audit;
 - (b) reasonable access to any sites controlled by the Supplier and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
 - (c) access to the Supplier Personnel.
- 27.5 The Authority shall endeavour to (but is not obliged to) provide at least 15 days' notice of its intention or, where possible, a regulatory body's, intention to conduct an audit.
- 27.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this agreement in any material manner by the Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.
- 27.7 If an audit identifies that:

- (a) the Supplier has failed to perform its obligations under this agreement in any material manner, the parties shall agree and implement a remedial plan. If the Supplier's failure relates to a failure to provide any information to the Authority about the Charges, proposed Charges or the Supplier's costs, then the remedial plan shall include a requirement for the provision of all such information;
- (b) the Authority has overpaid any Charges, the Supplier shall pay to the Authority the amount overpaid within 20 days. The Authority may deduct the relevant amount from the Charges if the Supplier fails to make this payment; and
- (c) the Authority has underpaid any Charges, the Authority shall pay to the Supplier the amount of the under-payment less the cost of audit incurred by the Authority if this was due to a default by the Supplier in relation to invoicing within 20 days.

28 Intellectual Property

- 28.1 In the absence of prior written agreement by the Authority to the contrary, all Intellectual Property Rights created by the Supplier or Supplier's Personnel:
- (a) in the course of performing the Services; or
 - (b) exclusively for the purpose of performing the Services,
- shall vest in the Authority on creation.
- 28.2 The Supplier shall indemnify the Authority against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Authority's acts or omissions.

Termination

29 Termination for Cause

- 29.1 The Authority may terminate this agreement in whole or part with immediate effect by the service of written notice on the Supplier in the following circumstances:
- (a) if the Supplier is in breach of any material obligation under this agreement provided that if the breach is capable of remedy, the Authority may only terminate this agreement under this clause 31.1 if the Supplier has failed to remedy such breach within fourteen (14) days of receipt of a notice from the Authority (a "Remediation Notice") to do so;
 - (b) if a Consistent Failure has occurred;
 - (c) if a Catastrophic Failure has occurred;
 - (d) if there is an Insolvency Event;
 - (e) if there is a change of control of the Supplier within the meaning of section 1124 of the Corporation Tax Act 2010;

- (f) the Authority reasonably believes that the circumstances set out in Regulation 73(1) of the Public Contracts Regulations 2015 apply.

- 29.2 The Authority may terminate this agreement in accordance with the provisions of clause 33 and clause 33.6.
- 29.3 If this agreement is terminated by the Authority pursuant to this clause or at common law, such termination shall be at no loss or cost to the Authority and the Supplier hereby indemnifies the Authority against any such losses or costs which the Authority may suffer as a result of any such termination for cause.
- 29.4 The Supplier may terminate this agreement in the event that the Authority commits a Termination Payment Default by giving 30 days' written notice to the Authority. In the event that the Authority remedies the Termination Payment Default in the 30-day notice period, the Supplier's notice to terminate this agreement shall be deemed to have been withdrawn.

30 Termination without Cause

[Drafting Note: client to consider in each case whether SCC should have a right to terminate at will. Client to specify applicable notice period.]

- 30.1 Without affecting any other right or remedy available to it, the Authority may terminate this agreement at any time by giving [NUMBER] months' written notice to the Supplier.

31 Force Majeure

- 31.1 Provided it has complied with the remaining provisions of this Clause 33, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (Affected Party), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations.
- 31.2 The corresponding obligations of the other party will be suspended to the same extent as those of the Affected Party.
- 31.3 The Affected Party shall:
 - (a) as soon as reasonably practicable after the start of the Force Majeure Event but not later than two (2) days from its start], notify the other party in writing of the Force Majeure Event, the date on which it started, its likely potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
 - (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event.
- 31.4 An Affected Party cannot claim relief if the Force Majeure Event is attributable to the Affected Party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event. The Supplier cannot claim relief if the Force Majeure

Event is one which, in accordance with Best Industry Practice, the Supplier should have foreseen and provided for the cause in question.

- 31.5 The Affected Party shall notify the other party in writing as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
- 31.6 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than eight (8) weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving two (2) weeks' notice to the Affected Party.

32 Prevention of Bribery

- 32.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Commencement Date:
- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 32.2 The Supplier shall not during the Term:
- (a) commit a Prohibited Act; and/or
 - (b) do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.
- 32.3 The Supplier shall during the Term:
- (a) establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and
 - (b) keep appropriate records of its compliance with its obligations under clause 34.1(a) and make such records available to the Authority on request.
- 32.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of clause 34.1 and/or clause 34.2, or has reason to believe that it has or any of the Supplier Personnel have:
- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this agreement or otherwise suspects that any person or Party directly or indirectly connected with this agreement has committed or attempted to commit a Prohibited Act.
- 32.5 If the Supplier makes a notification to the Authority pursuant to clause 34.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with clause 29.
- 32.6 If the Supplier is in Default under clause 34.1 and/or clause 34.2, the Authority may by notice:
 - (a) require the Supplier to remove from performance of this agreement any Supplier Personnel whose acts or omissions have caused the Default; or
 - (b) immediately terminate this agreement.
- 32.7 Any notice served by the Authority under clause 34.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this agreement shall terminate).

33 Consequences of Expiry or Termination

- 33.1 On the expiry of the Term or if this agreement is terminated in whole or in part for any reason the provisions of the Exit Plan as set out at Schedule 9 (Exit Management) shall come into effect and the Supplier shall co-operate fully with the Authority to ensure an orderly migration of the Services to the Authority or, at the Authority's request, a Replacement Supplier.
- 33.2 Any provision of this agreement that expressly or by implication is intended to come into or continue force on or after termination or expiry, including clause 7.3 (provision of records), clause 23 (Indemnities), clause 25 (Insurance), clause 26 (Freedom of Information), clause 27 (Data Protection), clause 29 (Audit), clause 31 (Termination for Cause) and this clause 35 (Consequences of termination) shall survive termination or expiry of this agreement.
- 33.3 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the Termination Date.

General Provisions

34 Non-Solicitation

- 34.1 Neither party shall (except with the prior written consent of the other) during the Term, and for a period of one year thereafter, solicit or attempt to solicit or entice away any senior staff of the other party who have been engaged in the provision of the Services or the management of this agreement or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other party.

35 Waiver

- 35.1 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

36 Rights and Remedies

- 36.1 The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

37 Severability

- 37.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.
- 37.2 If any provision or part-provision of this agreement is deemed deleted under clause 39.1, the parties shall negotiate in good faith to agree a replacement provision that to the greatest extent possible, achieves the intended commercial result of the original provision.

38 Partnership or Agency

- 38.1 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, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 38.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

39 Third party rights

- 39.1 Except as expressly provided in Schedule 10 (TUPE) or elsewhere in this agreement, a person who is not a party to this agreement shall not have any rights under the

Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

- 39.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.

40 Publicity

- 40.1 The Supplier shall not:

- (a) make any press announcements or publicise this agreement or its contents in any way; or
- (b) use the Authority's name or logo in any promotion or marketing or announcement of orders,

except as required by law, any government or regulatory authority, any court or other authority of competent jurisdiction, without the prior written consent of the Authority.

41 Notices

- 41.1 Any notice to be given under this agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 43.3, Secure Email to the address of the relevant Party set out in this agreement, or such other address as that Party may from time to time notify to the other Party in accordance with this clause:
- 41.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. A Secure Email shall be deemed delivered when sent unless an error message is received.
- 41.3 Notices under clauses 31 (Termination for Cause), 32 (Termination without Cause), 33 (Force Majeure) may be served by Secure Email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 43.1.

42 Entire agreement

- 42.1 This agreement and the documents referred to 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.
- 42.2 Each party agrees that it shall have no remedies in respect of 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 or negligent misstatement based on any statement in this agreement.

43 Counterparts

- 43.1 This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each party has executed at least one counterpart.

44 Governing law

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

45 Jurisdiction

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

This agreement has been entered into on the date stated at the beginning of it.

Signed by [NAME OF OFFICER] on behalf
of Authorised Signatory (1)
SOMERSET COUNTY COUNCIL

Signed by [NAME OF SUPPLIER OFFICER]
for and on behalf of [NAME OF SUPPLIER] [DIRECTOR/TITLE]

Schedule 1 Specification

[Drafting note: Specification to be inserted at award stage, based on specification contained in the Procurement Document]

Schedule 2 Performance Regime

[Drafting Note: performance regime, including applicable KPIs, to be determined and set out in this schedule.]

The KPIs

1 KPIs

- 1.1 The KPIs which the Parties have agreed shall be used to measure the performance of the Services by the Supplier are contained in the below table

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

- 1.2 The Supplier shall monitor its performance against each Target KPI and shall send the Authority a report detailing the Achieved KPIs in accordance with Schedule 5 (Contract Management)

Service Credits

2 Calculation of the service credits

- 2.1 Service Credits, shall accrue for any Service Failure and shall be calculated in accordance with this Schedule.
- 2.2 If the level of performance of the Supplier during a measurement period achieves the Target KPI, no service points shall accrue to the Supplier in respect of that KPI.
- 2.3 If there is a Service Failure in the relevant measurement period:
- (a) the number of service points that shall accrue to the Supplier in respect of a Service Failure shall be the applicable number as set out in the table below depending on whether the Service Failure is a Minor Failure, a Serious Failure or a Severe Failure. Service credits shall be calculated in accordance with the following formula:

Service credit payable per month = (Total number of service points/100) x Charges payable by the Authority for the period. OR [INSERT OTHER FORMULA]

KPI No.	KPI title	Definition	Frequency of Measurement	Category of Service Failure	Service Points
KPI 1	[NAME]	[DEFINE OR REFER TO DESCRIPTION]	[Monthly/Quarterly/Annually]	Target KPI: [NUMBER]% Minor Failure: [NUMBER]%-[NUMBER]% Serious Failure: [NUMBER]%-[NUMBER]% Severe Failure: [NUMBER]%-[NUMBER]% KPI threshold: [NUMBER]%-[NUMBER]%	0 [1] [2] [3] [4]
KPI 2					
KPI 3					
KPI 4					

(b) The number of service credits payable shall be the applicable number set out in the table below depending on the Achieved KPI:

KPI Achieved	Service Credit Payable	Supplier Performance
[NUMBER]% on target (Target KPI)	none	Contract Performing Well
[NUMBER]-[NUMBER]% on target	[NUMBER]% of applicable Charges for period	Minor under performance
[NUMBER]-[NUMBER]% on target	[NUMBER]% of applicable Charges for period	Contract under performing. Supplier to implement recovery programme

[NUMBER]-[NUMBER]% on target	[NUMBER]% of applicable Charges for period	Major under performance. Supplier to implement recovery programme
Less than [NUMBER]% on target	[NUMBER]% of applicable Charges for period	Supplier guilty of consistent Failure and contract potentially subject to termination

(c) **OR [OTHER PERFORMANCE REGIME]**

Consistent Failure

3 Consistent Failure

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

- (a) a failure to meet
 - (i) 5 or more of the Target KPIs labelled ["Red"] in a rolling [INSERT NUMBER] month period; or
 - (ii) 10 or more Target KPIs labelled ["Green"] in a rolling [INSERT NUMBER] month period.
 - (iii) **OR**
 - (iv) [[INSERT NUMBER] or more Target KPIs in a rolling [INSERT NUMBER] month period.]]
 - (v) **[AND/OR]**
- (b) [the Supplier being liable to pay £[INSERT NUMBER] to the Authority in Service Credits in respect of [two consecutive months].]
[AND/OR]
- (c) [the Authority serving [INSERT NUMBER] Remediation Notices in a rolling [INSERT NUMBER] month period or [INSERT NUMBER] Default Notices in a rolling [INSERT NUMBER] period.]
[AND/OR]
- (d) [the Supplier repeatedly breaching 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.]

Schedule 3 Supplier's Tender

[Drafting note: Supplier's Tender to be inserted at award stage]

Schedule 4 Payment Schedule

1 Calculation of the Charges

- 1.1 The Charges shall be calculated on the basis of the rates and prices set out in this Schedule

2 Menu pricing

Type of Fixed Cost	Charges (£)
[INSERT TYPE OF SERVICE TO BE PROVIDED]	[INSERT FIGURE (EXPRESSED AS UNIST COST OR HOURLY RATE) TO BE CHARGED TO THE AUTHORITY]
[INSERT TYPE OF SERVICE TO BE PROVIDED]	[INSERT FIGURE (EXPRESSED AS UNIST COST OR HOURLY RATE) TO BE CHARGED TO THE AUTHORITY]
[INSERT TYPE OF SERVICE TO BE PROVIDED]	[INSERT FIGURE (EXPRESSED AS UNIST COST OR HOURLY RATE) TO BE CHARGED TO THE AUTHORITY]

3 Payment

- 3.1 All invoices should be sent by email, quoting a valid purchase order number (PO Number), to apinvoices@somerset.gov.uk. You must be in receipt of a valid PO Number before submitting an invoice.

4 Payment Plan

- 4.1 [INSERT DETAILS OF WHEN INVOICES WILL BE SUBMITTED BY THE SUPPLIER AND WHEN THEY WILL BE DUE FOR PAYMENT]

5 Termination Payment Default

- 5.1 In the event that at any time undisputed Charges of £[AMOUNT] have been overdue for payment for a period of [60] days or more, the Authority will have committed a Termination Payment Default.

Schedule 5 Contract Management

[Drafting note: contract management details to be inserted at award stage]

1 Authorised representatives

1.1 The Authority's initial Authorised Representative: [INSERT DETAILS]

1.2 The Supplier's initial Authorised Representative: [INSERT DETAILS]

2 Key personnel

Name	Title/Role
[INSERT DETAILS]	Contract Manager

3 Meetings

3.1 Type

3.2 Quorum

3.3 Frequency

3.4 Agenda

4 Reports

4.1 Type

4.2 Contents

4.3 Frequency

4.4 Circulation list

Schedule 6 Change Control

1 General principles

- 1.1 Where the Authority or the Supplier sees a need to change this agreement, the Authority may at any time request, and the Supplier may at any time recommend, such Change only in accordance with the Change Control Procedure set out in clause 2 of this Schedule 6.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Authority and the Supplier shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the Authority and the Supplier in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 1.4 Any work undertaken by the Supplier and the Supplier's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 6, shall be undertaken entirely at the expense and liability of the Supplier.

2 Procedure

- 2.1 Discussion between the Authority and the Supplier concerning a Change shall result in any one of the following:
 - (a) no further action being taken; or
 - (b) a request to change this agreement by the Authority; or
 - (c) a recommendation to change this agreement by the Supplier.
- 2.2 Where a written request for an amendment is received from the Authority, the Supplier shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Supplier to the Authority within three weeks of the date of the request.
- 2.3 A recommendation to amend this agreement by the Supplier shall be submitted directly to the Authority in the form of two copies of a Change Control Note signed by the Supplier at the time of such recommendation. The Authority shall give its response to the Change Control Note within three weeks.
- 2.4 Each Change Control Note shall contain:
 - (a) the title of the Change;
 - (b) the originator and date of the request or recommendation for the Change;
 - (c) the reason for the Change;
 - (d) full details of the Change, including any specifications;
 - (e) the price, if any, of the Change;

- (f) a timetable for implementation, together with any proposals for acceptance of the Change;
- (g) a schedule of payments if appropriate;
- (h) details of the likely impact, if any, of the Change on other aspects of this agreement including:
 - (i) the timetable for the provision of the Change;
 - (ii) the personnel to be provided;
 - (iii) the Charges;
 - (iv) the Documentation to be provided;
 - (v) the training to be provided;
 - (vi) working arrangements;
 - (vii) other contractual issues;
 - (viii) the date of expiry of validity of the Change Control Note; and
 - (ix) provision for signature by the Authority and the Supplier.

2.5 For each Change Control Note submitted by the Supplier the Authority shall, within the period of the validity of the Change Control Note:

- (a) allocate a sequential number to the Change Control Note; and
- (b) evaluate the Change Control Note and, as appropriate:
 - (i) request further information;
 - (ii) accept the Change Control Note by arranging for two copies of the Change Control Note to be signed by or on behalf of the Authority and return one of the copies to the Supplier; or
 - (iii) notify the Supplier of the rejection of the Change Control Note.

2.6 A Change Control Note signed by the Authority and by the Supplier shall constitute an amendment to this agreement.

Schedule 7 Business Continuity and Disaster Recovery

[Drafting Note: Supplier's BCDR Plan to be inserted at award stage.]

Schedule 8 Benchmarking – Not Used

1 Interpretation

1.1 In this Schedule capitalised expressions shall have the meanings set out in the table below:

Benchmark Review	shall have the meaning in paragraph 2
Benchmarked Services	the Services taken as a whole
Benchmarker	the independent third party appointed by the Authority following discussions with the Supplier under paragraph 4 of this Schedule 8
Benchmarking Report	the report produced by the Benchmarker following a Benchmark Review
Comparison Sample	a sample of organisations providing Equivalent Services identified in accordance with paragraph 5.1(d) of this Schedule 8
Equivalent Services	services that are identical, or similar in all material respects, to the Services (including in terms of scope, specification, volume and quality of performance) that are generally available within the UK and are supplied to a customer similar in size and nature to the Authority over a similar period
Median Price	in relation to the Equivalent Services provided by a Comparison Sample, the median price of the relevant services over the previous 12-month period. In the event that there are an even number of organisations in the Comparison Sample then the Median Price will be the arithmetic mean of the middle two prices

2 Benchmark Review

- 2.1 The Authority may, by written notice, require a Benchmark Review of the Services in accordance with the provisions of this Schedule 8. The first Benchmark Review may not take place until at least [18] months after the Commencement Date and each subsequent Benchmark Review must be at least [12] months after the previous one.
- 2.2 Subject to paragraph 2.4, if any Benchmark Review determines that the Charges do not represent Good Value (as defined in paragraph 3.2), then the Supplier shall, in accordance with Schedule 8 (Change Control) and within [three months] of completion of the Benchmark Review, make a proposal for changes to the Services, with Charges representing Good Value in accordance with the recommendations of the Benchmarker under paragraph 6.1(c), under which there will be a new Initial Term, and modifications may be made to the Services and the KPIs.
- 2.3 On receipt of the proposal from the Supplier under paragraph 2.2 the Authority shall have the option to:
- (a) accept the new proposal in which case the Parties shall record the change in accordance with Schedule 8;

- (b) reject the proposal and elect to continue to receive the Services on the existing basis; or
- (c) reject the proposal and terminate this agreement on [three months] notice in writing to the Supplier without cost other than the Charges up to the date of such termination (if the agreement is terminated under this paragraph 2.3(c) the provisions of clause 35 shall apply).

2.4 If the Supplier reasonably believes the Benchmarker has not complied with the provisions of this Schedule 8 in any material respects, or that the Benchmarker has made a manifest error in determining the results of the Benchmark Review, the Supplier may dispute the Benchmark Report and the matter shall be dealt with in accordance with the Dispute Resolution Procedure.

3 Purpose and scope of benchmark review

- 3.1 The purpose of the Benchmark Review shall be to establish whether the Services as a whole are Good Value.
- 3.2 The Benchmarked Services as a whole shall be Good Value if the Charges attributable to the Services are, having regard to the KPIs, less than or equal to [10]% more than the Median Price for Equivalent Services provided by a Comparison Sample.

4 Appointment of Benchmarker

- 4.1 Each Benchmark Review shall be performed by an independent third party appointed by agreement between the parties. [If the parties cannot agree on the independent third party within [NUMBER] days of receipt by the Supplier of the Authority's written request, then the Benchmarker shall be [INSERT CONSULTANTS].
- 4.2 The Authority has the right at any time to require the Benchmarker to enter into an appropriate and reasonable confidentiality undertaking directly with it.
- 4.3 Each party shall bear its own costs relating to a Benchmark Review, save that the costs and expenses of the Benchmarker shall be shared equally by the parties.
- 4.4 The Benchmarker shall conduct the Benchmark Review by applying the following general principles and criteria:
 - (a) benchmarking shall be carried out in an independent and objective manner;
 - (b) the Benchmarker shall be jointly instructed by the parties;
 - (c) benchmarking shall be truly comparative in respect of the technology, services and KPIs;
 - (d) benchmarking shall be structured and undertaken in a way that causes the minimum disruption possible; and
 - (e) immediately following selection of the Benchmarker, the parties and the Benchmarker shall agree the general principles and method of benchmarking.
- 4.5 The Supplier shall not be deemed to be in breach for any failure to perform any obligation under this agreement (nor will it be liable for Service Credits) where such

failure results from any disruption to the Supplier's performance as a result of disruption caused by the Benchmarker.

5 Benchmarking process

- 5.1 The Authority's instructions to the Benchmarker shall require the Benchmarker to produce, and to send to each party for approval, a draft plan for the Benchmark Review within [NUMBER] days after the date of appointment of the Benchmarker. The plan shall include:
- (a) a proposed timetable for the Benchmark Review (including for delivery of the Benchmarking Report);
 - (b) a description of the information that the Benchmarker requires each party to provide;
 - (c) a description of the benchmarking methodology to be used; and
 - (d) details of any organisations providing Equivalent Services which the Authority proposes, having consulted with the Supplier (and including any organisations providing Equivalent Services reasonably proposed by the Supplier), are included within the Comparison Sample.
- 5.2 In carrying out the benchmarking analysis, the Benchmarker shall have regard to the following matters when performing a comparative assessment of the Benchmarked Services:
- (a) the contractual and business environment under which the Equivalent Services are being provided;
 - (b) any front-end investment and development costs;
 - (c) the Supplier's risk profile, including the financial, performance or liability risk (including any limitation or exclusion or limitation of the Supplier's liability under this agreement) associated with the provision of the Equivalent Services as a whole; and
 - (d) any other factors reasonably identified by the Supplier which, if not taken into consideration, could unfairly cause the Supplier's pricing to appear non-competitive.
- 5.3 Each party shall give notice in writing to the Benchmarker and to the other party within [NUMBER] days after receiving the draft plan, advising whether it approves the draft plan or, if it does not approve the draft plan, suggesting amendments to that plan. Neither party may unreasonably withhold its approval of the draft plan and any suggested amendments shall be reasonable.
- 5.4 Where a party suggests amendments to the draft plan under paragraph 5.3, the Benchmarker shall, if it believes the amendments are reasonable, produce an amended draft plan. Paragraph 5.4 shall apply to any amended draft plan. If the Benchmarker believes that the suggested amendments are not reasonable then the Benchmarker shall discuss the amendments with the parties to reach a resolution. If

the parties are unable to agree a resolution within [NUMBER] days of the matter first being referred to each of them by the Benchmarker for discussion, then such matter shall be resolved in accordance with the Dispute Resolution Procedure.

- 5.5 Failure by a party to give notice under paragraph 5.3 shall be treated as approval of the draft plan by that party.
- 5.6 Once the plan is approved by both parties, the Benchmarker shall carry out the Benchmark Review in accordance with it. Each party shall, to the extent it is not precluded from doing so by confidentiality obligations owed to third parties, provide the information described in the plan, together with any additional information reasonably required by the Benchmarker.
- 5.7 The Benchmarker shall share with the parties, in an even-handed manner, all data relating to the Benchmarking and the Benchmarking Report to the extent that it is lawfully able to do so.
- 5.8 In conducting the Benchmark Review, the Benchmarker shall apply correction factors to the information to take account of reasons for difference in accordance with his professional judgement. Such normalisation information shall be available for approval by the parties before the production of the Benchmarking Report.
- 5.9 The Benchmarker shall perform the Benchmark Review in a fully transparent and open manner and shall promptly provide the Authority and the Supplier with full details of all data and methodologies employed at all stages of the Benchmark Review.

6 Benchmark report

- 6.1 The Benchmarker shall prepare a Benchmark Report setting out its findings. Those findings shall:
 - (a) include a finding as to whether or not the Benchmarked Services as a whole are Good Value;
 - (b) include other findings regarding the quality and competitiveness or otherwise of the Services; and
 - (c) if the Benchmarked Services as a whole are not Good Value, specify the changes that would be required to the Services, and in particular to the Charges, that would be required to make the Benchmarked Services Good Value.
- 6.2 If the Benchmark Report states that the Services, Charges or KPIs (or any part of them) that are benchmarked are not Good Value then paragraph 2.2 shall apply.

Schedule 9 Exit Management

1 Interpretation

- 1.1 In this Schedule capitalised expressions shall have the meanings set out in the table below:

Exit Information	has the meaning given in paragraph 3.1
Register	the register referred to in paragraph 2.1
Relevant Employees	as defined in Schedule 10 (TUPE)
Replacement Suppliers	as defined in Schedule 10 (TUPE)

2 Obligations During the Term to Facilitate Exit

- 2.1 During the Term, the Supplier shall create and maintain a register of all Authority Assets and at all times keep the register up to date (in particular in the event that Authority Assets are added to or removed from the Services).

3 Exit Information

- 3.1 On reasonable notice at any point during the Term, the Supplier shall provide to the Authority and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:
- (a) details of the Services;
 - (b) a copy of the Register, updated by the Supplier up to the date of delivery of such Register;
 - (c) an inventory of Authority Data in the Supplier's possession or control;
 - (d) a list of on-going and/or threatened disputes in relation to the provision of the Services;
 - (e) to the extent permitted by applicable Law, all information relating to the Relevant Employees required to be provided by the Supplier under this agreement; and
 - (f) such other material and information as the Authority shall reasonably require, (together, the Exit Information).
- 3.2 The Supplier acknowledges that the Authority may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the

Authority may not under this paragraph 3.2 disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-contractors' prices or costs).

3.3 The Supplier shall:

- (a) notify the Authority within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the potential transfer and/or continuance of any Services and shall consult with the Authority regarding such proposed material changes; and
- (b) provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within 10 Working Days of a request in writing from the Authority (the Supplier may charge the Authority for its reasonable additional costs to the extent the Authority requests more than four (4) updates in any six (6) month period).

3.4 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:

- (a) prepare an informed offer for those Services; and
- (b) not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

4 Exit Plan

4.1 The Supplier shall, within three (3) months after the Commencement Date, deliver to the Authority an Exit Plan which:

- (a) sets out the Supplier's proposed methodology for achieving an orderly transition of the Services from the Supplier to the Authority and/or its Replacement Supplier on the expiry or termination of this agreement;
- (b) complies with the requirements set out in paragraph 4.3; and
- (c) is otherwise reasonably satisfactory to the Authority.

4.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

4.3 The Exit Plan shall set out, as a minimum:

- (a) how the Exit Information is obtained;
- (b) the management structure to be employed during both transfer and cessation of the Services;
- (c) the management structure to be employed during the Termination Assistance Period;

- (d) a detailed description of both the transfer and cessation processes, including a timetable;
- (e) how the Services will transfer to the Replacement Supplier and/or the Authority, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components operated by the Supplier or its Sub-contractors (where applicable);
- (f) proposals for the return of all Authority Assets and Authority Data in the possession and/or control of the Supplier or any third party (including any Sub-Contractor);
- (g) a timetable and critical issues for providing the Termination Services;
- (h) how the Termination Services will be provided during the Termination Assistance Period;
- (i) procedures to deal with requests made by the Authority and/or a Replacement Supplier for Staffing Information pursuant to Schedule 10 (TUPE); and
- (j) how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period.

4.4 The Supplier shall ensure that the Exit Plan is kept up-to-date at all times.

4.5 The Supplier shall comply with all of its obligations contained in the Exit Plan.

5 Termination Obligations

5.1 Notwithstanding any other provision of this agreement, the Supplier shall give all reasonable assistance to the Authority and/or the Replacement Supplier in order to facilitate the transition of the Services from the Supplier to the Authority and/or the Replacement Supplier.

5.2 Upon termination or expiry, the Supplier shall:

- (a) cease to use the Authority Data;
- (b) provide the Authority and/or the Replacement Supplier with a complete and uncorrupted version of the Authority Data in electronic form (or such other format as reasonably required by the Authority);
- (c) erase from any computers, storage devices and storage media that are to be retained by the Supplier all Authority Data and promptly certify to the Authority that it has completed such deletion;
- (d) return to the Authority such of the following as is in the Supplier's possession or control:
 - (i) all materials created by the Supplier under this agreement in which the IPRs are owned by the Authority;

- (ii) all Authority Assets. Such Authority Assets shall be handed back to the Authority in good working order (allowance shall be made only for reasonable wear and tear);
 - (e) vacate any Authority Premises and leave the Authority Premises in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Authority Premises or any objects contained thereon (other than fair wear and tear) which is caused by the Supplier and/or its Sub-Contractors;
- 5.3 The Supplier shall provide access during normal working hours to the Authority and/or the Replacement Supplier for up to twelve (12) months after expiry or termination to:
- (a) such information relating to the Services as remains in the possession or control of the Supplier; and
 - (b) such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Authority and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this paragraph 1.1(b).
- 5.4 Upon termination or expiry, each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or for statutory compliance purposes.
- 5.5 Except where this agreement provides otherwise, all licences, leases and authorisations granted by the Authority to the Supplier in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.

6 Supplier Personnel

- 6.1 The Authority and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Services or part of them for any reason, Schedule 10 (TUPE) shall apply.
- 6.2 The Supplier shall not take any step (expressly or implicitly or directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Authority and/or the Replacement Supplier.
- 6.3 The Supplier shall:
- (a) give the Authority and/or the Replacement Supplier reasonable access to the Supplier Personnel to present the case for transferring their employment to the Authority and/or the Replacement Supplier and/or to discuss or consult on

any measures envisaged by the Authority and/or Replacement Supplier in respect of persons expected to be Relevant Employees;

- (b) co-operate with the Authority and the Replacement Supplier to ensure an effective consultation process and smooth transfer in respect of the Relevant Employees in line with good employee relations and the effective continuity of the Services.

- 6.4 The Supplier shall immediately notify the Authority or, at the direction of the Authority, the Replacement Supplier of any period of notice given by the Supplier or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
- 6.5 The Supplier shall not for a period of twelve (12) months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-Contractors whose employment or engagement is transferred to the Authority and/or the Replacement Supplier, except that this paragraph shall not apply where the employee, supplier or Sub-contractor applies in response to a public advertisement of a vacancy.

Schedule 10 TUPE – Not Used

1 Interpretation

1.1 The definitions and rules of interpretation in this paragraph apply in this agreement:

Admission Agreement	the agreement to be entered into in accordance with regulation 3 of the Local Government Pension Scheme Regulation 2013, by the administering authority, the Authority and the Supplier or Sub-Contractor, as appropriate in the administering authority's standard form
Appropriate Pension Provision	in respect of Eligible Employees, either: <ul style="list-style-type: none"> a) Membership, continued membership or continued eligibility for membership of their Legacy Scheme; or b) Membership or eligibility for membership of a pension scheme, which is certified by the Government Actuary's Department (GAD) as being broadly comparable to the terms of their Legacy Scheme.
Effective Date	the date(s) on which the Services (or any part of the Services), transfer from the Former Supplier to the Supplier or Sub-Contractor, and a reference to the Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to the Supplier or Sub-Contractor
Eligible Employees	The Transferring Employees who are active members of (or are eligible to join) the LGPS on the date of a Relevant Transfer including the Effective Date
Employee Liability Information	the information that a transferor is obliged to notify to a transferee under regulation 11(2) of TUPE: <ul style="list-style-type: none"> a) The identity and age of the employee; b) The employee's written statement of employment particulars; c) Information about any disciplinary action taken against the employee and any grievances raised by the employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years; d) Information about or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against the Supplier arising out of the employee's employment with the transferor;

	e) Information about any collective agreement that will have effect after the Effective Date or the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of TUPE.
Employment Liabilities	All claims, including claims without limitation for redundancy payments, unlawful deduction of wages, unfair, wrongly or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses.
Former Supplier	a Supplier engaged by the Authority to provide services to the Authority before the Effective Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such subcontractor) and whose employees will transfer to the Supplier on the Effective Date.
Legacy Scheme	the pension scheme of which the Eligible Employees are members, or are eligible for membership of, or are in a waiting period to become a member of, prior to the Relevant Transfer.
LGPS	Local Government Pension Scheme
LGPS Regulations	the Local Government Pension Scheme Regulations 2013
Relevant Employees	those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Authority or a Replacement Supplier by virtue of the application of TUPE
Relevant Transfer	a relevant transfer of the Services for the purposes of TUPE
Replacement Services	any services that are fundamentally the same as any of the Services and which the Authority receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Authority internally or by any Replacement Supplier
Replacement Supplier	any third-party supplier of Replacement Services appointed by the Authority from time to time
Service Transfer Date	the date on which the Services (or any part of the Services), transfer from the Supplier or Sub-Contractor to the Authority or any Replacement Supplier

Staffing Information	in relation to all persons detailed on the Supplier's Provisional Staff List, in any anonymised format, such information as the Authority may reasonable request including the Employee Liability information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of Services
Sub-Contractor	the contractors or Suppliers engaged by the Supplier to provide goods, services or works to, for or on behalf of the Supplier for the purposes of providing the Services to the Authority
Supplier's Final Staff List	the list of all the Supplier's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services at the Service Transfer Date
Supplier's Provisional Staff List	the list prepared and updated by the Supplier of all the Supplier's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list
Transferring Employees	employees of the Former Supplier whose contracts of employment transfer with effect from the Effective Date to the Supplier by virtue of the application of TUPE.
TUPE	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (<i>SI 2006/246</i>), as amended.

2 Transfer of Employees to the Supplier on the Effective Date

- 2.1 The Authority and the Supplier agree that where the identity of the provider of the Services changes, this shall constitute a Relevant Transfer and the contracts of employment of any Transferring Employees shall transfer to the Supplier or Sub-Contractor. The Supplier shall comply and shall procure that each Sub-Contractor shall comply with their obligations under TUPE.
- 2.2 The Authority shall procure that the Former Supplier shall perform and discharge all its obligations in respect of the Transferring Employees including the payment of all remuneration, benefits, entitlements and outgoings, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, National Insurance contributions, pension contributions and otherwise, up to the Effective Date. The Authority shall procure that the Former Supplier provides and, where necessary, updates the Employee Liability Information for the Transferring Employees to the Supplier as required by TUPE. The Authority shall procure that the Former Supplier warrants that such information is complete and accurate as it is aware or should reasonably be aware as at the date it is disclosed.
- 2.3 Subject to paragraph 2.4, the Authority shall procure that the Former Supplier indemnifies and keeps indemnified the Supplier against any losses, except indirect losses, incurred by the Supplier or any relevant Sub-Contractor in connection with any claim or demand by any Transferring Employee arising out of the employment of any

Transferring Employee. This indemnity shall apply provided that it arises from any act, fault or omission of the Former Supplier in relation to any Transferring Employer prior to the Commencement Date (except where such act, fault or omission arises as a result of the Supplier or any relevant Sub-Contractor's failure to comply with regulation 13 of TUPE) and any such claim is not in connection with the transfer of Services by virtue of TUPE on the Commencement Date.

- 2.4 The Supplier shall be liable for and indemnify and keep indemnified the Authority and the Former Supplier against any Employment Liabilities arising from or as a consequence of:
- (a) any proposed changes to terms and conditions of employment the Supplier or Sub-Contractor may consider making on or after the Commencement Date;
 - (b) any of the Employees informing the Authority and/or Former Supplier that they object to being employed by the Supplier or Sub-Contractor; and
 - (c) any change in identity of the Transferring Employee's employer as a result of the operation of TUPE or as a result of any proposed measures the Supplier or Sub-Contractor may consider taking on or after the Commencement Date.
- 2.5 The Supplier shall be liable for and indemnify and keep indemnified the Authority and the Former Supplier against any failure to meet all remuneration, benefits, entitlements and outgoings for the Transferring Employees and any other person who is or will be employed or engaged by the Supplier or any Sub-Contractor in connection with the provision of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, National Insurance contributions, pension contributions, termination costs and otherwise from and including the Effective Date.
- 2.6 The Supplier shall immediately on request by the Authority and/or the Former Supplier provide details of any measures that the Supplier or any Sub-Contractor envisages it will take in relation to any Transferring Employees, including any proposed changes to terms and conditions of employment. If there are no measures, the Supplier will give confirmation of that fact, and shall indemnify the Authority and the Former Supplier against all Employment Liabilities resulting from any failure by it to comply with this obligation.
- 2.7 Notwithstanding any other provisions of this Schedule, where in this paragraph 2 the Authority accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Former Supplier contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

3 Employment Exit Provisions

- 3.1 This agreement envisages that subsequent to its commencement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this agreement, or part or otherwise) resulting in a transfer of the Services in whole or in part ("Subsequent Transfer"). If a Subsequent Transfer is a Relevant Transfer then the Authority or Replacement Supplier will inherit liabilities in respect of the Relevant Employees with effect from the Service Transfer Date.
- 3.2 The Supplier shall and shall procure that any Sub-Contractor shall on receiving notice of termination of this agreement or otherwise, on request from the Authority and at such times as required by TUPE, provide in respect of any person engaged or employed by the Supplier or any Sub-Contractor in the provision of the Services, the Supplier's Provisional Staff List and the Staffing Information together with any additional information required by the Authority, including information as to the application of TUPE to the employees. The Supplier shall notify the Authority of any material changes to this information as and when they occur.
- 3.3 At least 28 days prior to the Service Transfer Date, the Supplier shall and shall procure that any Sub-Contractor shall prepare and provide to the Authority and/or, at the direction of the Authority, to the Replacement Supplier, the Supplier's Final Staff List, which shall be complete and accurate in all material respects. The Supplier's Final Staff List shall identify which of the Supplier's and Sub-Contractor's personnel named are Relevant Employees.
- 3.4 The Authority shall be permitted to use and disclose the Supplier's Provisional Staff List, the Supplier's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Supplier for any services that are substantially the same type of services as the Services (or any part of the Services).
- 3.5 The Supplier warrants to the Authority and the Replacement Supplier that the Supplier's Provisional Staff List, the Supplier's Final Staff List and the Staffing Information (TUPE Information) will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Supplier's Final Staff List.
- 3.6 The Supplier shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.
- 3.7 The Authority regards compliance with this Paragraph 3. as fundamental to the agreement. In particular, failure to comply with Paragraph 3.2 and Paragraph 3.3 in respect of the provision of accurate information about the Relevant Employees shall entitle the Authority to suspend payment of the Charges until such information is provided, or indefinitely.
- 3.8 Any change to the TUPE Information which would increase the total employment costs of the staff in the six months prior to termination of this agreement shall not (so far as reasonably practicable) take place without the Authority's prior written consent, unless such changes are required by law. The Supplier shall and shall procure that any

Sub-contractor shall supply to the Authority full particulars of such proposed changes and the Authority shall be afforded reasonable time to consider them.

- 3.9 In the six months prior to termination of this agreement, the Supplier shall not and shall procure that any Sub-Contractor shall not materially increase or decrease the total number of staff listed on the Supplier's Provisional Staff List, their remuneration, or make any other change in the terms and conditions of those employees without the Authority's prior written consent.
- 3.10 The Supplier shall indemnify and keep indemnified in full the Authority and each and every Replacement Supplier against all Employment Liabilities relating to:
- (a) any person who is or has been employed or engaged by the Supplier or any Sub-Contractor in connection with the provision of any of the Services; or
 - (b) any trade union or staff association or employee representative,
- arising from or connected with any failure by the Supplier and/or any Sub-Contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.
- 3.11 The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.
- 3.12 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply from Paragraph 3.2 to Paragraph 3.10 of this schedule, to the extent necessary to ensure that any Replacement Supplier shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Supplier by the Supplier or the Authority in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

4 Pensions

- 4.1 The Supplier shall or shall procure that any relevant Sub-Contractor shall ensure that all Eligible Employees are offered Appropriate Pension Provision with effect from the Effective Date.
- 4.2 The provisions of paragraphs 4, 5 and 6 shall be directly enforceable by an affected employee against the Supplier or any relevant Sub-Contractor and the parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to the extent necessary to ensure that any affected employee shall have the right to enforce any obligation owed to such employee by the Supplier or Sub-Contractor under those paragraphs in his own right under section 1(1) of the Contracts Right of Third Parties 1999.

5 Admitted Body Status to the Local Government Pension Scheme

- 5.1 Where the Supplier or Sub-Contractor wishes to offer the Eligible Employees membership of the LGPS, the Supplier shall or shall procure that it and/or each relevant Sub-Contractor shall enter into an Admission Agreement to have effect from and including the Effective Date.
- 5.2 [For the purposes of calculating the employer's contribution rate, any termination payment, and any other sums due to the administering authority under the Admission Agreement, the Authority shall ensure that the Eligible Employees' past service benefits accrued prior to the Effective Date are fully funded as at the Effective Date, as determined by the Fund's actuary.]
- 5.3 The Supplier shall indemnify and keep indemnified the Authority and/or any Replacement Supplier and, in each case, their sub-contractors, from and against all direct losses suffered or incurred by it or them, which arise from any breach by the Supplier or Sub-Contractor Admission Agreement, to the extent that such liability arises before or as a result of the termination of expiry of this agreement.
- 5.4 The Supplier shall and shall procure that it and any Sub-Contractor shall prior to the Effective Date obtain any indemnity or Bond required in accordance with the Admission Agreement.

6 Supplier Pension Scheme

- 6.1 Where the Supplier or Sub-Contractor does not wish or is otherwise prevented from offering the Eligible Employees membership or continued membership of the LGPS, the Supplier shall or shall procure that any relevant Sub-Contractor shall offer the Eligible Employees membership of an occupational pension scheme with effect from the Effective Date. Such an occupational pension scheme must be:
 - (a) established no later than three months prior to the Effective Date; and
 - (b) certified by the GAD as providing benefits that are broadly comparable to those provided by the Legacy Scheme,and the Supplier shall produce evidence of compliance with this paragraph 6 to the Authority prior to the date of the Relevant Transfer
- 6.2 The Authority's actuary shall determine the terms of the bulk of transfers from the LGPS to the Supplier's scheme following the Effective Date and any subsequent bulk transfers on termination or expiry of this agreement.
- 6.3 The Supplier shall and shall procure that each relevant Sub-Contractor shall:
 - (a) maintain such documents and information as will be reasonably required to manage the pension rights of and aspects of any onward transfer of any person engaged by the Supplier or any Sub-Contractor in the provision of the Services on the expiry or termination of this agreement.

- (b) promptly provide to the Authority such documents and information mentioned in paragraph 6.3(a) which the Authority may reasonably request in advance of the expiry or termination of this agreement; and
- (c) fully cooperate (and procure that the trustees of the Supplier's scheme shall fully cooperate) with the reasonable requests of the Authority relating to any administrative tasks necessary to deal with the pension rights of and aspects of any onward transfer of any persona engaged or employed by the Supplier or any Sub-Contractor in the provision of the Services on expiry or termination of the agreement.

Schedule 11 Schedule of Processing, Personal Data and Data Subjects

[Drafting Note: this Schedule will need to be completed with the relevant details applicable to the Services being purchased]

This Schedule shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

1. The contact details of the Controller's Data Protection Officer are: **[Insert Contact details]**
2. The contact details of the Processor's Data Protection Officer are: **[Insert Contact details]**
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor in accordance with Clause 27.1.
Subject matter of the processing	<i>[This should be a high level, short description of what the processing is about i.e. its subject matter of the contract. Example: The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a service to members of the public.]</i>
Duration of the processing	<i>[Clearly set out the duration of the processing including dates]</i>
Nature and purposes of the processing	<i>[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.</i>

	<i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i>
Type of Personal Data being Processed	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i>
Categories of Data Subject	<i>[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]</i>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<i>[Describe how long the data will be retained for, how it be returned or destroyed]</i>

Schedule 12 Authority Premises and Assets

[Drafting note: details of Authority Premises and Assets being provided to the Supplier to be inserted at ITT/RFQ stage]

Schedule 13 Commercially Sensitive Information

[Drafting note: Supplier Commercially Sensitive Information to be inserted at award stage]

No.	Date	Item(s)	Duration of Confidentiality

Schedule 14 Implementation Plan

[Drafting Note: the Supplier's Implementation Plan approved by the Authority to be inserted in this Schedule 14]