

**Conditions of Contract**

**FORM OF AGREEMENT**

**REF: P4587**

**Footpath surfacing at Wetley Moor Common**

**Between**

**Staffordshire Moorlands District Council**

**and**

**[SUPPLIER]**



## **P4587 Footpath surfacing at Wetley Moor Common**

### **Conditions of Contract**

#### **FORM OF AGREEMENT**

This Agreement is made the \_\_\_\_\_ day of \_\_\_\_\_ 2021 **BETWEEN** the **Staffordshire Moorlands District Council** of Moorlands House, Stockwell Street, Leek, Staffordshire ST13 6HQ of the one part and <<Name of Company>> of <<Address of Company>> (hereinafter called 'the Supplier') of the other part

#### **RECITALS**

- (1) The Client wishes the Supplier to provide Services for the Client for the purpose of Foot path surfacing at Wetley Moor Common
- (2) The Supplier is qualified and experienced in the provision of these Services
- (3) The Supplier is willing to provide these Services and the Client wishes the Supplier to provide them, all subject to the provisions of this Agreement

NOW it is agreed as follows:

- 1 In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to
- 2 The following documents shall be deemed to form and be read and construed as part of this Agreement:
  - a) the Specification and Contract Conditions
  - b) the Tender submission
  - c) the Tender Prices (Appendix A)
- 3 The Supplier shall provide the Service in an efficient and safe manner to the complete satisfaction of the Council and in such manner as shall promote and enhance the image and reputation of the Council from the date hereof 1<sup>st</sup> March 2021 and terminating on 16<sup>th</sup> April 2021. ('the Contract period').
- 4 In consideration of the payments to be made by the Client to the Supplier as hereinafter mentioned the Supplier hereby covenants with the Client to perform the Services in complete compliance with the provisions of the contract
- 5 The Client hereby covenants to pay to the Supplier in consideration of the performance of the Services the Contract Price at the times and in the manner prescribed by the Contract

**IN WITNESS** whereof the parties hereto have caused their respective signatures to be hereunto affixed

Signed \_\_\_\_\_

Name \_\_\_\_\_ (print)

**On behalf of XXXXX (COMPANY)**

Witnessed by:

Name \_\_\_\_\_ (print)

Address \_\_\_\_\_

\_\_\_\_\_

Date \_\_\_\_\_

Signed \_\_\_\_\_

Name \_\_\_\_\_ (print)

**On behalf of Staffordshire Moorlands District Council**

Witnessed by:

Name \_\_\_\_\_ (print)

Address \_\_\_\_\_

\_\_\_\_\_

Date \_\_\_\_\_

## **Conditions of Contract**

### **1 Definition and General Interpretations**

In the Conditions of Contract save where the context otherwise requires the following expressions shall have the following meanings assigned to them.

‘the Agreement’ means the Agreement between the Client and the Supplier and attached hereto

“Bank” means National Westminster Bank Plc or such other clearing bank as the Client may utilise from time to time.

“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.

“Commencement Date” means the date from which the Supplier commences to provide the services being a date to be advised.

“Conditions” mean these General Conditions of Contract and any supplementary conditions or any modifications thereof.

“Contract” means any formal Contract document entered into by and between the Supplier and the Client including this Agreement

“Supplier” means the person, persons or company whose tender is accepted by the Client.

“Contract Price” means the total charge made by the Supplier to the Client over the term of the contract in accordance with the tender.

‘Contract Period’ means the period set out in these Conditions of Contract

“Client” means Staffordshire Moorlands District Council or any respective successor authority and any other body which has joined the contract for the supply of goods or services to it.

‘Default Notice’ means a notice issued in accordance with the relevant clause in these Conditions of Contract

“Prohibited Act” the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Client a financial or other advantage to:
  - (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) committing any offence:

- (i) under the Bribery Act;
- (ii) under legislation creating offences concerning fraudulent acts;
- (iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Client; or
- (iv) defrauding, attempting to defraud or conspiring to defraud the Client.

“Services” means the services as detailed in the Specification provided pursuant to the Contract from time to time by the Supplier to and for the Client.

‘The Specification’ means the specification which formed part of the contract documentation on which the Supplier based its Tender and a copy of which specification is attached to the Agreement

“Sub-Contract” any contract or agreement, or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Services or any part of the Services, or facilities or services necessary for the provision of the Services or any part of the Services, or necessary for the management, direction or control of the Services or any part of the Services.

“Sub-Contractor” the third parties that enter into a Sub-Contract with the Supplier

“Supervising Officer” shall mean the <<enter name>> for the time being of the Client or any person duly authorised by that person in writing to act on their behalf or any person similarly notified fulfilling the like role.

“Supplier Party” means the Supplier's agents and contractors, including each Sub-Contractor.

“Supplier Personnel” mean all employees, agents, consultants and contractors of the Supplier or of any Sub-Contractor.

“Supplier’s Representative” shall mean the person duly authorised by the Supplier in writing to act on their behalf or any person similarly notified fulfilling the like role.

“Tender” means the offer made by the Supplier to enter into the Contract constituted by submission of the form of Tender.

“Termination Date” means the date when the Supplier is to cease provision of the Services.

“Week” shall mean seven consecutive days starting on Monday and ending on the following Sunday.

“Working Days” means any Monday, Tuesday, Wednesday, Thursday, Friday or Saturday which is not a bank or public holiday.

## **2 General Interpretation**

In this Agreement unless the context otherwise requires:

- 2.1 words importing any gender include every gender;
- 2.2 words importing the singular number include the plural number and vice versa;
- 2.3 words importing persons include firms, companies and corporations and vice versa;

- 2.4 references to numbered clauses and schedules are references to the relevant clause in or schedule to this Agreement;
- 2.5 references in any schedule to this Agreement to numbered paragraphs relate to the numbered paragraphs of that schedule;
- 2.6 any obligation on any party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
- 2.7 the headings to the clauses, schedules and paragraphs of this Agreement are not to affect the interpretation;
- 2.8 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;
- 2.9 where the word 'including' is used in this Agreement, it shall be understood as meaning 'including without limitation'.
- 2.10 References to the Client and the Supplier shall include their respective successors in title and their permitted assigns.
- 2.11 Time shall not be of the essence unless otherwise stated.
- 2.12 Any requirements in the Contract for the Client to give its consent or agreement means the agreement or consent must be given in writing by an Officer of the Client who has the necessary delegated authority.
- 2.13 Where any party comprises more than one person/organisation the obligations and liabilities of that party under this Agreement shall be joint and several obligations and liabilities of those persons/organisations.

### **3 The Supervising Officer**

- 3.1 The functions, rights and powers conferred by this Contract upon the Client shall be exercised by the Supervising Officer. The Supplier shall not be entitled to question the existence or extent of the authority of the Supervising Officer or any person that the Supervising Officer indicates is entitled to act on their behalf.

### **4 Sufficiency of Tender**

- 4.1 The Supplier shall be deemed to have satisfied itself as to the correctness and sufficiency of its Tender and that the Tender addresses all its obligations to the Client in the Contract.

### **5 Contract Period**

- 5.1 The Contract shall extend for the period as detailed in the Specification from the Commencement Date and shall not be terminable by either party within that period except in accordance with these Conditions. A written period of three months notice is required to be served before the end of the Contract Period

### **6 Performance of Services**

- 6.1 During the Contract Period the Supplier shall perform the Services (and any other such modifications thereof authorised under the Conditions) in a manner totally consistent with the Conditions hereof and the Tender to the entire satisfaction of the Supervising Officer.

- 6.2 During the Contract Period the Supervising Officer or any person authorised by them will conduct a performance monitoring meeting with the Supplier at a frequency of not less than every three months subject to the discretion of the Supervising Officer, and the Supplier shall ensure that a suitable member of staff is available to attend all such meetings.
- 6.3 During the Contract Period, the Supplier shall provide the Services in a proper, skilful and workmanlike manner and to the entire satisfaction of the Supervising Officer.
- 6.4 The Supplier shall ensure that neither its employees nor its agents shall do any act or thing at any location owned or occupied by the Client other than the proper performance of the Services.
- 6.5 The Supplier must not any time during the Contract Period park any vehicles at any location which cause nuisance disturbance or annoyance to the Client's employees, members of the public or occupiers of adjoining or neighbouring premises.
- 6.6 The Supplier shall ensure that no damage is caused to any equipment of the Client used in or during the performance of the Agreement and shall reimburse the Client for the cost of repair of any damage caused to the Client's equipment or property by the Supplier his employees or agents.

## **7 Variation of the Contract**

- 7.1 This Agreement may only be amended in writing signed by the duly authorised representatives of the Parties.

## **8 Alterations and Omissions**

- 8.1 Order Variations - The Supervising Officer may order any variation to any part of the Services that are in their opinion necessary for the proper performance of the Services.
- 8.2 Order Variations made in Writing - No variations shall be made by the Supplier without an order by the Supervising Officer. All such orders shall be given in writing, provided that if for any reason the Supervising Officer shall find it necessary to give such order orally in the first instance, the Supplier shall comply with such oral order and such oral order shall be confirmed in writing by the Supervising Officer as soon as practically possible in the circumstances.
- 8.3 No variation ordered in writing in accordance with this Clause shall in any way vitiate or invalidate the Contract but the Value (if any) of all such variations shall be taken into account in ascertaining the amount of the payments payable to the Supplier.

## **9 Valuation**

- 9.1 A price for any variation ordered shall be agreed in advance by the Client and the Supplier.

## **10 Method of Payment**

- 10.1 Provided the Supplier shall have performed the Services in accordance with the Contract the Client shall pay to the Supplier the due amount within thirty days by direct debit/standing order/invoice. Any additional services shall be paid at the rates and prices agreed between the parties. Statements shall be submitted quarterly by the Supplier to the Client in accordance with the Specification

## **11 Additions and Deductions**



The Supervising Officer shall have power to amend the amount due on any monthly invoice submitted by the Supplier in respect of:

11.1 The deduction of any monies for work not carried out or work not done to a satisfactory standard by the Supplier and for which Default Notices have been issued by the Client in accordance with this Agreement.

11.2 Correction by the addition or deduction of the value of any additional work or omission which has been duly agreed by the parties in accordance with these Conditions.

## **12 Value Added Tax**

12.1 Sums charged by the Supplier pursuant to this Contract shall be exclusive of Value Added Tax (VAT) which shall also be paid by the Client to the Supplier at the rate and in the manner for the time being prescribed by law.

## **13 Assignment, joining etc**

13.1 The Client shall be entitled to assign the benefit of the Contract or any part thereof to a statutory or other public body and shall give written notice of any assignment to the Supplier.

13.2 The Supplier shall not assign the Contract or any part thereof or any benefit or interest therein or thereunder without the prior written consent of the Client provided that any assignment occurring as a result of any internal reorganisation of a Supplier which is a limited company shall be deemed not to be a breach of this condition. Any such internal reorganisation shall be notified to the Client forthwith, and, where reasonably practicable, in advance and all appropriate details shall be provided so that the Client can be certain as to the exact identity of the new legal entity performing the obligations of the Supplier under the Contract.

13.3 The Supplier shall not sublet the whole or any part of the Services except where otherwise provided by the Contract without the prior written consent of the Supervising Officer, and in any event such consent, if given, shall not relieve the Supplier from liability or obligation under the Contract and it shall be and remain responsible for the acts defaults and neglects of any sub-contractor, its agents, servants or workmen as fully as if they were acts defects or neglects of the Supplier, or their agents, servants or workmen.

13.4 Provided both the Client and the Supplier agree this Agreement may be extended to include additional parties to whom the Supplier will provide the Services provided that any additional or joining party must enter into a Deed of Adherence under which it undertakes to comply with the provisions of this Agreement.

## **14 Persons working for the Supplier**

14.1 The Supplier shall at all times during the Contract period employ sufficient persons of sufficient abilities and skills for the proper performance of the Services including but not limited to knowledge of and training for the work or operations to be carried out.

14.2 The Supplier shall at all time during the Contract period employ sufficient persons of sufficient abilities and skills to supervise and administer the performance of the Services in a proper and continuous manner.

14.3 The Supplier shall notify the Supervising Officer of the names, address and telephone number of the persons who will be in charge of the Contract.

14.4 The Supplier shall at all times take such precautions as are necessary to protect the health and safety of all persons working with it to ensure compliance with all and any

legislation, regulations or orders having the force of law relating to the health or safety of employed persons.

- 14.5 The Supplier shall, in addition to the obligations above, have regard to the Client's Health & Safety Policy and safe working practices when preparing statements copies of which shall have been supplied to the Client prior to the commencement of the Contract. The Supplier shall nominate a person to be responsible for health and safety matters as required by the legislation and supply the Client with full contact details for that person. Whilst on Client owned premises the Supplier shall require persons working with it to comply with the lawful requirements of the Client's safety advisers through the Supervising Officer.
- 14.6 The Supplier shall at all times be fully responsible for the deduction and/or payment of all income or other taxes National Insurance contributions or levies of any kind relating to or arising out of the employment of any person employed by the Supplier and shall further and effectively indemnify the Client in respect of any liability which arises from the default howsoever and wheresoever of the Supplier.
- 14.7 The Supervising Officer shall be entitled to require the Supplier by notice in writing to remove anybody working with it from the performance of the Services and/or to recommend to the Supplier that it should discipline anybody working with it specified in such notice. The Client shall in no circumstances be liable either to the Supplier or the body working with it in respect of any liability loss or damage occasioned by such removal or disciplinary action and the Supplier shall fully indemnify the Client against any claim which may be made by such a body.

## **15 Identification**

- 15.1 When requested to do so or when communicating with other persons as a representative of the Supplier all persons employed by the Supplier in the performance of the Service shall disclose their identity and shall not attempt to avoid doing so.

## **16 Agency etc...**

- 16.1 This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

## **17 Liability of the Supplier**

- 17.1 The Supplier shall fully and promptly indemnify the Client against any liability to any person whatsoever arising out of or connected with the execution of the Contract or any act or omission of any employee of the Supplier howsoever such liability may arise.
- 17.2 The Supplier shall fully indemnify the Client in respect of any damage caused to any land, building or chattel in the ownership, occupation or possession of the Client by any employee or agent of the Supplier (whether such damage be caused by negligence or in any other way whatsoever) arising out of or connected with the execution of the Contract.
- 17.3 The Supplier shall fully indemnify the Client and any persons concerned in respect of any personal injury caused to any such employee of the Client by any employee or agent of the Supplier (whether such injury is caused by negligence or any other way whatsoever) arising out of or connected with the execution of the Contract.

## **18 Insurance**

- 18.1 The Supplier shall maintain public liability insurance in the sum of ten million pounds and professional indemnity insurance covering (without limitation) all its liability hereunder whether for breach of contract negligence or otherwise in respect of defects or insufficiency in design upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers licensed to carry on such insurance business in the United Kingdom such insurance to be first approved by the Client.
- 18.2 The Supplier shall be liable for and indemnify the Client against and cause any sub-contractor who may be authorised by the Supervising Officer to similarly insure against any expense, liability, loss, claim, action or proceedings in respect of any damage whatsoever to private property real or personal insofar as such damage arises out of or in the course of or by reason of carrying out the Services and are due to any negligence, omission or default of the Supplier or any person for whom the Supplier or sub-contractor is responsible.
- 18.3 The Supplier shall, prior to the commencement of the Contract and thereafter annually, and at any such other times as the Supervising Officer may require, supply the Supervising Officer with copies of all insurance policies, cover notes, premium receipts and other documents necessary to comply with this Clause.
- 18.4 The Supervising Officer shall be entitled to notify the Supplier in writing that in the opinion of the Supervising Officer any such policy of insurance does not effect sufficient cover to comply with the conditions and to require the Supplier to effect such insurance as will so comply. Upon receipt of such a notice, the Supplier shall immediately obtain and effect such insurance as the Supervising Officer shall require and in default the Supervising Officer may himself cause such insurance to be effected whereupon the Supplier shall pay to the Client as liquidated damages such sum as the Supervising Officer shall certify as being the cost of effecting such insurance.

## **19 Liability of the Client**

- 19.1 The Client shall not be liable for any loss or damage howsoever caused or arising except for loss or damage directly arising from negligent acts or omissions of the Client, its servants or agents. Damages arising from such negligent acts or omissions shall be limited to direct and unavoidable losses and the Supplier shall take all reasonable steps to mitigate such losses.

## **20 Default and Performance**

- 20.1 The Supervising Officer may investigate each case where the Supplier has failed to perform the Services completely in accordance with the provisions of the Contract and/or Specification.
- 20.2 Where the Supervising Officer is satisfied that in any particular case the Supplier has failed to perform the Services completely in accordance with the provisions of the Contract including the Specification he will be entitled to issue a written Default Notice to the Supplier.
- 20.3 The issue of a Default Notice shall not release the Supplier from its obligation to comply with the terms of the Contract and/or Specification and any subsequent failure to comply with the same may be the subject of a further Default Notice.
- 20.4 A 10% deduction shall be made by the Supervising Officer from the monthly payment referred to in the Conditions in respect of each Default Notice in the month

- 20.5 In accordance with any deductions which may be made where more than [1] Default Notices are recorded in any twenty eight day period or more than [2] in any eighty four day period or more than [3] in the Contract Period the Client may terminate the Contract.
- 20.6 For the purposes of this condition a failure to perform the requirements of each or any task described in the Specification can be the subject of a Default Notice.

## **21 Works in Default**

- 21.1 If by reason of any inability or unwillingness on the part of the Supplier during the performance of the Services or any other times, any remedial or other work shall in the opinion of the Supervising Officer be urgently necessary and the Supplier is unable or unwilling at once to do such work then the Client may by its own or other personnel do such work as the Supervising Officer may consider necessary. If the work so done by the Client is work which in the opinion of the Supervising Officer the Supplier was liable to do at the Supplier's own expense under Contract, all costs and charges incurred by the Client in so doing on an indemnity basis shall be paid by the Supplier to the Client or may be deducted by the Client from monies due or which may become due to the Supplier. These costs will be deducted over and above any Default Notice deductions. In the event of this Clause being invoked, the Supervising Officer shall notify the Supplier thereof in writing.

## **22 Termination**

- 22.1 The Client shall be entitled forthwith upon the happening of any of the following events to terminate this Contract, which termination shall become effective by service upon the Supplier of a "Termination Notice" , such events being :
- 22.1.1 Any of the events referred to in this Agreement concerning default in performance.
- 22.1.2 Any breach by the Supplier of any other provision of the Contract including (but not limited to) breach of any element of the Specification.
- 22.1.3 The Supplier having failed to complete the whole of the services expected for a continuous period of two weeks.
- 22.1.4 The Supplier is subjected to a legal claim against its possessions which would adversely affect the performance of the Supplier or makes a composition or arrangement with its creditors, or becomes bankrupt, or being a company, makes a proposal for a voluntary arrangement for a composition of debts or scheme of arrangement to be approved in accordance with the Companies Act 1985 or the Insolvency Act 1986 as the case may be or any amendment or re-enactment thereof, or has a provisional liquidator appointed, or has a winding-up, passes a resolution for voluntary winding-up (except for the purposes of amalgamation or reconstruction) or, under the Insolvency Act 1986 or any amendment or re-enactment thereof, has an administrator or an administrative receiver appointed
- 22.1.5 The Termination Notice will be served in writing by the Supervising Officer for breach of any of the above events.
- 22.2 Upon such termination and the receipt of a Termination Notice in addition to any such consequences as are set out in other provisions of the Contract
- 22.2.1 The Supplier shall forthwith cease to provide or perform the Services.
- 22.2.2 The Supplier shall fully and promptly indemnify the Client in respect of the costs or causing to perform such services as would be performed by the Supplier during the remainder of the Contract period to the extent that such costs exceed such sums as

would have been lawfully payable to the Supplier for performing such services. The Client shall be at liberty to have such services performed by any persons (whether or not servants of the Client) as the Client shall in its entire discretion think fit and shall be under no obligation to employ the least expensive method of having such services performed.

- 22.2.3 The Client shall be under no obligation to make any further payment to the Supplier and shall be entitled to retain in its hands any payment which may have fallen due to the Supplier before termination until the Supplier has paid in full to the Client all sums due under this Contract or to deduct therefrom any sum due from the Supplier to the Client under this Contract.

## **23 Giving of Notice**

- 23.1 No notice to be served upon the Client shall be valid or effective unless it is sent by pre-paid post or delivered by hand to the Supervising Officer at Staffordshire Moorlands District Council, Moorlands House Stockwell Street Leek Staffs ST13 6HQ or to such other address as the Supervising Officer may notify the Supplier in writing.
- 23.2 Any notice to be served upon the Supplier shall be valid and effective if it is sent by pre-paid post or delivered by hand to the registered office or principal place of business or to the premises referred to in the Tender documents or is delivered by hand to a Director, Company Secretary, Proprietor or other responsible representative of the Supplier.

## **24 Arbitration**

- 24.1 Any dispute arising out of or in connection with this Agreement will in the first instance be referred to the Supervising Officer and the Supplier's Representative for discussion and resolution at or by the next progress meeting or at an earlier date if so requested by either party. If the dispute is not resolved at that meeting, the dispute will be referred to the next management level of the Client and the Supplier who must meet within 3 working days of the reference to attempt to resolve the dispute. If the unresolved dispute is having a material effect on the Agreement, the parties will use their respective reasonable endeavours to reduce the elapsed time in reaching a resolution of the dispute.
- 24.2 If any of the above is unable to attend a meeting, a substitute may attend, provided that such substitute has at least the same seniority and is authorised to settle the unresolved dispute.
- 24.3 Each party will use all reasonable endeavours to reach a negotiated resolution through the above dispute resolution procedure. The specific format for such resolution will be left to the reasonable discretion of the relevant management level, but may include the preparation and submission of statements of fact or of position.
- 24.4 If the dispute is not resolved at the meeting of the second management level, then either party may (at such meeting or within 14 days of its conclusion) request that the dispute be referred to an expert to be agreed between the parties.
- 24.5 If the parties cannot agree on an expert to act within 14 days of the date of the request to appoint an expert, such independent expert will be appointed by the President for the time being of the Chartered Institute of Arbitrators on the application of either party.
- 24.6 Any person to whom a reference is made under clause 24.4 or 24.5 will act as an expert and not as an arbitrator. The parties agree that the decision of the expert (which will be given in writing, stating reasons) will be final and binding on the parties.
- 24.7 Each party will provide the expert to whom a reference is made with such information as he may reasonably require for the purposes of his determination. If either party claims

any such information to be confidential to it then, provided in the opinion of the expert that party has properly claimed the same as confidential, the expert will not disclose the same to the other party or to any third party.

24.8 The costs of the reference to an expert (including the costs of any technical expert appointed by him) will be borne in the first instance by the party making the reference. The expert will in his decision determine the liability for such costs, which decision will be final and binding on the parties.

24.9 Nothing in this clause will restrict, at any time while the above dispute resolution procedures are in progress or before or after they are invoked, either party's freedom to commence legal proceedings to preserve any legal right or remedy or to protect any intellectual property or trade secret right.

## **25 Observance of Statutory Requirements**

25.1 The Supplier shall comply with all relevant Acts of Parliament, Regulations and Codes of Practice relating to the services including compliance with any obligations which may be imposed by the same upon the Client and the Supplier shall indemnify the Client accordingly.

## **26 Rights and Duties Reserved**

26.1 For the avoidance of doubt nothing herein contained or implied shall prejudice or affect the Client's rights or powers, duties and obligations for the enforcement of or pursuant of any enactment by law or regulation for the time being in force.

## **27 Gratuities**

27.1 The Supplier shall not, whether himself or by any person employed by him to provide the Services, solicit or accept any gratuity, tip or any other form of money, taking or reward, collection or charge for any part of the Service other than charges properly approved by the Client in accordance with the provisions of this Agreement.

## **28 Whistleblowing**

28.1 Whilst operating under the terms of this Agreement if the Supplier has serious concerns or doubts about the honesty and integrity of an employee of the Client which may involve dangerous practice, fraud, corruption, sexual or physical abuse or anything else which may be unethical conduct or a possible offence, then the Client asks and expects you raise concerns under its Whistleblowing Policy. A full copy of the policy is available from the Client's Personnel Service.

## **29 Professional Costs**

29.1 Each party shall bear their own professional costs and other fees and expenses in relation to the preparation and submission of documentation relating to this Contract.

## **30 Provision of Statistical Information & Data Quality**

30.1 The Supplier shall provide such statistical information in such form and with such frequency in relation to the Contract as the Client may from time to time reasonably require.

30.2 The Supplier will be responsible for the data quality of information supplied. The Client shall have the right to monitor the data and challenge the integrity of the data. The Client may if it chooses share the information to monitor and report progress on the Contract.

- 30.3 CO2 Emission Data - Each local authority is required to calculate its CO2 emissions from analysis of the energy and fuel use in their relevant buildings and transport. This includes where these services have been outsourced and the Supplier is therefore required to assist the Client to comply with this requirement by submitting such energy and fuel use data in writing to the Client by the 31<sup>st</sup> March for each year or part year of the contract and in such format as the Client may reasonably require to enable it to comply with the requirement imposed upon it by Government.
- 30.4 Digital Inclusion - The Client is endeavouring to ensure that it achieves digital inclusion in the provision of its services by the best use of digital technology, either directly or indirectly, to improve the lives and life chances of all citizens and the places in which they live. Where a Supplier is involved in the design and delivery of services on behalf of the Client the Supplier will therefore be required to assist the Client in achieving digital inclusion in the provision of those services under the Contract by ensuring general access to and opportunities for use of digital technology by all service users and will be required to demonstrate to the Client the means by which it is doing so.
- 30.5 Data quality - As part of the Client's Data Quality Strategy it is essential when entering into contracts with service providers that the responsibilities for data quality are clear. The Supplier will be responsible for the data quality of information supplied and the Client should have the right to monitor the data and have the right to challenge the integrity of the data provided. To achieve our objectives the Client works closely with a host of partners. This includes gathering and sharing information used to monitor and report progress.

## **31 Waiver**

- 31.1 No failure or delay by the Client in exercising any right, power or privilege under this Agreement shall impair the same or operate as a waiver of the same nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

## **32 Whole Contract**

- 32.1 This Agreement contains the whole agreement between the parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement. Nothing in this Agreement excludes liability for fraud.

## **33 Severance**

- 33.1 If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

## **34 Confidentiality**

- 34.1 The Client may publish the amount of the successful Tender and the name of the successful tenderer following the completion of the Tender exercise and acceptance and the consequent award of the Contract or series of Contract as herein envisaged.
- 34.2 All information, documents and records provided to the Supplier by the Client (or any third party) and all documents and reports prepared by the Supplier in connection with the

provision of the Service are and shall be confidential, subject always to the Client's obligations under the provisions of the Freedom of Information Act 2000 and Environmental Information Regulations 2004 and Data Protection Act 1998 and any amending or like legislation. The Supplier shall not (and shall ensure that its employees do not) disclose or handover any such information, documents and records to any third party without the prior written consent of the Client save that where such disclosure is required by law. All such information, documents and records shall be kept secret by the Supplier and shall be used only for the performance of the Service.

- 34.3 If the Supplier considers that any information communicated to the Client should not be disclosed because of its sensitivity then the Supplier should state this with reasons. However the Client may still decide not to withhold the information if it believes that it has an obligation to publish it or disclose it following a request.

## **35 Canvassing**

- 35.1 The Supplier or anyone employed by or acting on their behalf shall not give any kind of inducement, or have committed any offence in the Prevention of Corruption Acts (1889-1916), or given any reward which is an offence under Section 117 (2) of the Local Government Act 1972. Neither should the Supplier communicate to any person other than the Client the amount or approximate amount of the Tender other than for insurance quotations nor enter into any agreement with any other person whereby that other person would refrain from tendering for one or any of the Contracts to be awarded pursuant to the completion of the Tender process.

## **36 British Standards**

- 36.1 Where an appropriate British Standard Specification or British Standard Code of Practice issued by the British Standards Institution is current all goods used and services supplied shall be in accordance with that standard and unless the Supplier's quality assurance so complies the Supplier shall secure that its quality assurance complies with BS5750. This quality standard is for services or procedures by which a company's design, manufacturing and servicing output can be judged.

## **37 Force Majeure**

- 37.1 Neither Party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that party. The party affected by such circumstances shall promptly notify the other party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than 6 months, either party may terminate this Agreement by written notice to the other party.

## **38 Proper Law and Jurisdiction**

- 38.1 The validity, construction and performance of this Agreement shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the parties hereby submit.

## **39 Collaborative working**

- 39.1 The Supplier will take all reasonable steps within the context of the Agreement to allow and facilitate the Client to enter into and establish framework agreements with such bodies as Central Government Departments and their agencies, NHS bodies, local authorities, police & emergency services, educational establishments utilities, recognised



voluntary agencies and registered charities and in particular the council that the Client has an alliance with.

#### **40 Legislative Changes**

- 40.1 If legislative or other changes occur during the term of the Agreement in respect of which Government or other grants are available then the parties will endeavour to use them to offset any costs associated with the changes. The Parties will agree changes and costs prior to implementation of the changes are made but failure to agree on costs can be referred to arbitration and refusal by either party to make mandatory legislative changes within the legislation timescales can result in termination of the contract.

#### **41 Equalities Checklist**

41.1 The Supplier will:

- 41.1.1 Treat its and the Client's employees and those working with it and visitors with dignity and respect, and provide a working environment free from unlawful discrimination, victimisation or harassment on the grounds of gender, sexual orientation, marital status, dependants, nationality, ethnic origin, trade union, political beliefs, religious beliefs, age, hours worked, disability or health.
- 41.1.2 Comply with all relevant legislation which is designed to ensure that behaviour at work is not unfairly discriminatory including but not limited to:

Sex Discrimination Act 1986 (as amended)  
Race Relations (Amendment) Act 2000  
Disability Discrimination Act 2005  
Human Rights Act 1998  
Building Act and Building Regulations 1991  
Freedom of Information Act 2000  
Data Protection Act 1998  
Employment Equality (Sexual Orientation) Regulations  
Employment Equality (Religion/belief) Regulations 2003  
Employment Equality (Age) Regulations 2006

#### **42 Third parties**

- 42.1 For the purposes of the Contracts (Rights of Third Parties) Act 1999 and notwithstanding any other provision of this Agreement this Agreement is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.

#### **43 Further assurance**

- 43.1 Each Party to this Agreement shall at the request and expense of the other or any of them execute and do any deeds and other things reasonably necessary to carry out the provisions of this Agreement or to make it easier to enforce.

#### **44 Performance bond or parent company guarantee**

- 44.1 If the Supplier (unless relieved from performance by any clause of this agreement or by statute or by the decision of a tribunal of competent jurisdiction) shall in any respect fail to perform the Services under and in accordance with this Agreement then {the Parent Company or the XXX Bank will indemnify the Client against all losses, damages, costs and expenses which may be incurred by the Client by reason of any default on the part of the Supplier in performing and observing this agreement.

- 44.2 If any question or dispute shall arise as to the amount of any such losses, damages, costs and expenses the amount of such sums shall be determined by the Supervising Officer whose decision shall be final and who shall be deemed to be acting as an expert and not as an arbitrator.
- 44.3 The {Parent Company and XXX Bank} shall not be discharged or released from this indemnity by any arrangement made between the Supplier and the Client without the consent of the {Parent Company or XXX Bank} or by any alteration in the obligations undertaken by the Supplier or by any forbearance whether as to payment, time, performance or otherwise.
- 44.1 <<A performance bond or parent company guarantee is not required under this contract>>

**[Delete this section if not required]**

## **45 Business Continuity**

- 45.1 The Supplier will have in place a Business Continuity Plan that demonstrates their ability to continue their services in the event of a major incident. Business Continuity Plans must be regularly monitored tested, reviewed and updated by the Supplier.

## **46 Delivery of documents and data on termination of contract**

- 46.1 Cesser of right to use - On the expiry or other termination of this Agreement the Supplier undertakes to cease to use any intellectual property created for or by the Client and immediately cease to use any business name, brand name or trade mark associated with the agreement or the Client and associated copyrights and promptly remove or permanently cover up all signs, advertisements and symbols associated with them and return all stationery, paperwork and documentation associated with the agreement or the Client to the Client.
- 46.2 Delivery of documents - On the expiry or other termination of this agreement the Supplier undertakes to deliver to the Client the originals and all copies of any documents, and information in any form, containing or covering in any way any part of subject matter of the agreement.
- 46.3 Delivery of data - All data held on a computer system operated under this agreement must immediately on termination of the agreement be made available to the Client, and must be in good order and be upgraded to the date of termination.

## **47 Data Protection**

- 47.1 Each party shall ensure that any lists, records or databases supplied to the other party shall comply with the requirements of all legislation in force from time to time including, without limitation, the Data Protection Act [1998] [2018 subject to Royal Assent] and General Data Protection Regulations [subject to schedules 1 & 2 annexed hereto] and that each party shall comply with the relevant obligations of the Data Protection Act 1998 [2018 subject to Royal Assent] in respect of its dealings with any data.

## **48 Health and Safety**

- 48.1 The Supplier shall in performing the Contract adopt safe methods of work in order to protect the health and safety of their own employees the employees of the Client and of all other persons including members of the public and shall comply with the requirements of the Health & Safety at Work Act 1974, the Management of Health & Safety Regulations 1999, the Control of Substances Hazardous to Health (COSHH) Regulations 2002 and the Road Traffic Act 1988, HSE guidance notes and approved Code of Practice and of

any other Acts Regulations Orders or any European Directive pertaining to the health and safety of persons and shall have regard to the Client's health and safety policy.

- 48.2 The Supplier shall, prior to the commencement date of this Contract provide to the Client on request with a written copy of their health and safety working procedures relating to the performance of the Contract.
- 48.3 The Supplier shall review its health and safety policy and safe working procedures as often as may be necessary and in the light of changing legislation or working practices and shall notify the Client in writing of any such revisions if required by the Client. The Client will require the Supplier to amend its health and safety policy and safe working procedures to comply with any change in legislation or working practices.
- 48.4 The Supplier shall advise the Client of the name address and telephone number of the person within the organisation responsible for health and safety and welfare matters. The Supplier shall be responsible for ensuring compliance (and that of any sub-contractor) with aforementioned safety policies. The Contractor shall be responsible for ensuring compliance with all Client policies whilst accessing working on or using the Client's premises.

## **49 TUPE**

- 49.1 TUPE regulations <<will / will not / may>> apply to this contract.
- 49.2 TUPE - The Transfer of Undertakings Regulations (2006) (as amended by the collective redundancies and transfer of undertakings (Protection of Employment) (Amendment) Regulations (2014): The Contractor must comply with all reasonable requests of the Council made in connection with arrangements by the Council for the performance of the service (which is the subject of this contract) in the period following the end of the contract. In particular, where the Council considers that any such new arrangements may operate so as not to terminate the contracts of employment of those employees who are engaged in the Service at the end of the contract period, the Contractor shall comply with any request made at any time during the Contract by the Council for details of the terms and conditions of employment of any such employees, and for details of the pension arrangements which apply to them and in any event will supply such details in writing to the Council at the commencement of the term of the contract and every six months thereafter.

## **50 Prevention of Bribery**

- 50.1 The Supplier :
- 50.1.1 shall not, and shall procure that any Supplier Party and all Supplier Personnel shall not, in connection with this Agreement commit a Prohibited Act;
  - 50.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Client, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Client before execution of this Agreement.
- 50.2 The Supplier shall:
- 50.2.1 if requested, provide the Client with any reasonable assistance, at the Client's reasonable cost, to enable the Client to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;

- 50.2.2 within 14 Working Days of the Commencement Date, and annually thereafter, certify to the Client in writing (such certification to be signed by an officer of the Supplier) compliance with this clause 50 by the Supplier and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Supplier shall provide such supporting evidence of compliance as the Client may reasonably request.
- 50.3 The Supplier shall have an anti-bribery policy (which shall be disclosed to the Client) to prevent any Supplier Party or Supplier Personnel from committing a Prohibited Act and shall enforce it where appropriate.
- 50.4 If any breach of clause 50 is suspected or known, the Supplier must notify the Client immediately.
- 50.5 If the Supplier notifies the Client that it suspects or knows that there may be a breach of clause 51, the Supplier must respond promptly to the Client's enquiries, co-operate with any investigation, and allow the Client to audit books, records and any other relevant documentation.
- 50.6 The Client may terminate this Agreement by written notice with immediate effect if the Supplier, Supplier Party or Supplier Personnel (in all cases whether or not acting with the Supplier's knowledge) breaches clause 50.
- 50.7 Any notice of termination under clause 50.6 must specify :
- 50.7.1 the nature of the Prohibited Act
  - 50.7.2 the identity of the party whom the Client believes has committed the Prohibited Act; and
  - 50.7.3 the date on which this Agreement will terminate
- 50.8 Despite the terms of this Agreement relating to disputes, any dispute relating to:
- 50.8.1 the interpretation of clause 50; or
  - 50.8.2 the amount or value of any gift, consideration or commission, shall be determined by the Client and its decision shall be final and conclusive
- 50.9 Any termination under clause 50.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Client

## **51 Safeguarding Children and Vulnerable Adults**

- 51.1 The parties acknowledge that the Service Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
- 51.2 The Service Provider 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; and
  - (b) monitor the level and validity of the checks under this clause 1.2 for each member of staff.
  - (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.

- 51.3 The Service Provider warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Service Provider 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.
- 51.4 The Service Provider shall immediately notify the Service Purchaser of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 1 have been met.
- 51.5 The Service Provider 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 [the Service Users OR children OR vulnerable adults].”

## **52 Counter-Terrorism and Security Act 2015**

- 52.1 The Provider acknowledges that the Council has a duty under the Counter-Terrorism and Security Act 2015 (“CTSA”) to have due regard to the requirement to prevent people from being drawn into terrorism. The Provider shall facilitate the Council’s compliance with its duty pursuant to the CTSA and the Provider shall have regard to the statutory guidance issued under section 29 of the CTSA and in particular the Provider shall ensure that staff:-
- 52.1.1 understand what radicalisation means and why people may be vulnerable to being drawn into terrorism;
  - 52.1.2 are aware of extremism and the relationship between extremism and terrorism;
  - 52.1.3 know what measures are available to prevent people from becoming drawn into terrorism and how to challenge the extreme ideology that can be associated with it;
  - 52.1.4 obtain support for people who may be exploited by radicalising influences;
  - 52.1.5 where the Provider identifies or suspects that someone may be engaged in illegal terrorist related activity, the Provider must refer such person or activity to the police.

IS IT INTENDED THAT THIS FORM OF BOND BE ATTACHED ? IF SO THIS WILL NEED TO BE MENTIONED AS AN ATTACHMENT IN THE CONDITIONS

Delete this information if not required

Performance Guarantee in respect of:

Contract between <<Supplier>> and Staffordshire Moorlands District Council

We are informed by <<Supplier>> ("the Seller") that they have entered into a contract with you for the supply of <<details>> to the value of £XXX, and in this connection we have been requested to issue a Performance Guarantee. The contract will commence in <<XXX>>

Therefore, we, <<XXX>> irrevocably undertake to pay you any amount or amounts not exceeding in aggregate 10% of £XXX, despite any objection by the Seller, upon receipt by us of your first demand made in accordance with the claim procedure detailed below.

Your demand must be received by us on or before <<date/period>> and must be accompanied by:

- a. a copy of your notice to the Seller (dated at least 30 days prior to the date of your demand), informing the Seller of a breach of their obligations under this contract
- b. the nature of the breach and of your intention to demand payment under this Guarantee if the breach is not remedied within 30 days from the date of your notice; and
- c. your signed declaration stating that the Seller has failed to remedy the breach detailed in your notice by the date specified.

Any demand under this Guarantee must be submitted by letter and the signature(s) on the demand authenticated by your bankers.

A demand submitted by facsimile transmission will not be accepted.

Any demand and documents specified at a) and b) above shall be accepted as conclusive evidence that the amount claimed is due to you under this Guarantee.

ALWAYS PROVIDED THAT:

Our liability under this Guarantee is limited to an amount or amounts not exceeding in aggregate 10% of £XXX

This Guarantee will come into force on <<date>>

This Guarantee will expire on completion of the contract and any demand hereunder and the documents specified in clauses a) and b) above must be received by us at this office in accordance with the aforesaid claim procedure on or before that date, after which this Guarantee will become of no effect whatsoever whether returned to us or not.

This Guarantee is personal to yourselves and is not transferable or assignable.

This Guarantee shall be governed by and construed in accordance with the Laws of England and Wales and shall be subject to the exclusive jurisdiction of the English Courts.

Signed ..... Date .....

Name and position at Bank.....

Signed ..... Date .....

Name, position, company name .....

Signed ..... Date .....

Name, position, company name .....

One copy of the signed Bond should be returned to Legal Services, Staffordshire Moorlands  
District Council Stockwell Street Leek Staffordshire ST13 6HQ>>

**Schedule 1 Generic Standard GDPR Clauses**

**GDPR CLAUSE DEFINITIONS:**

Data Protection Legislation: (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 (subject to Royal Assent) 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.

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer take 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 Contractor 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 Subject Access 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.

DPA 2018: Data Protection Act 2018

GDPR: the General Data Protection Regulation (Regulation (EU) 2016/679)

LED: Law Enforcement Directive (Directive (EU) 2016/680)

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.

Sub-processor: any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement

**1. DATA PROTECTION**

- 1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in Schedule [X] by the Customer and may not be determined by the Contractor.
- 1.2 The Contractor shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 1.3 The Contractor shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, 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.
- 1.4 The Contractor 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 [X], unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
  - (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event 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 personnel of the Contractor do not process Personal Data except in accordance with this Agreement (and in particular Schedule X);
    - (ii) it takes all reasonable steps to ensure the reliability and integrity of any the personnel of the Contractor who have access to the Personal Data and ensure that they:
      - (A) are aware of and comply with the Contractor's duties under this clause;
      - (B) are subject to appropriate confidentiality undertakings with the Contractor 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 Customer 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 Customer has been obtained and the following conditions are fulfilled:
    - (i) the Customer or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;
    - (ii) the Data Subject has enforceable rights and effective legal remedies;
    - (iii) the Contractor 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 Customer in meeting its obligations); and
    - (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
  - (e) at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.
- 1.5 Subject to clause 1.6, the Contractor shall notify the Customer immediately if it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access 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.
- 1.6 The Contractor's obligation to notify under clause 1.5 shall include the provision of further information to the Customer in phases, as details become available.
- 1.7 Taking into account the nature of the processing, the Contractor shall at its own cost provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
  - (a) the Customer with full details and copies of the complaint, communication or request;
  - (b) such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - (c) the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
  - (d) assistance as requested by the Customer following any Data Loss Event;
  - (e) assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.
- 1.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
  - (a) the Customer determines that the processing is not occasional;
  - (b) the Customer 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; and
  - (c) the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 1.9 The Contractor shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.
- 1.10 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 1.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:
  - (a) notify the Customer in writing of the intended Sub-processor and processing;
  - (b) obtain the written consent of the Customer;
  - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause such that they apply to the Sub-processor; and
  - (d) provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
- 1.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 1.13 The Customer 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).
- 1.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Contractor amend

this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## Schedule 2 Processing, Personal Data and Data Subjects

1. The Contractor shall comply with any further written instructions with respect to processing by the Customer.
2. Any such further instructions shall be incorporated into this Schedule.

Description	Details
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]</i>
Duration of the processing	<i>For the Duration of the contract</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. The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i>
Type of Personal Data	<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>