



TORBAY COUNCIL TERMS AND CONDITIONS FOR THE PROVISION OF SERVICES

Contract between

The Authority

Torbay Council of Town Hall, Torquay, Devon, TQ1 3DR

And

The Supplier

**[Insert name, registered office address and, where applicable,
the company number of the Supplier]**

Date

[Insert the date when signed by both parties]

Commencement Date

[Insert the date on which the Services shall commence]

Summary of Services

[Insert a summary of the Services to be supplied by the Supplier]

This Contract is made on the date set out above subject to the terms set out in the schedules listed below (**Schedules**). The Authority and the Supplier undertake to comply with the provisions of the Schedules in the performance of this Contract.

The Supplier shall supply to the Authority, and the Authority shall receive and pay for, the Services on the terms of this Contract.

The Definitions in Schedule 3 apply to the use of all capitalised terms in this Contract.

Schedules

Schedule 1	Key Provisions
Schedule 2	General Terms
Schedule 3	Definitions and Interpretations
Schedule 4	Specification
Schedule 5	Supplier's Tender Response Document
Schedule 6	Payment Schedule
Schedule 7	Exit Management Schedule
Schedule 8	Exit Management Plan
Schedule 9	TUPE
Schedule 10	Evidence of Insurance
Schedule 11	Change Control Procedure
Schedule 12	Order Form
Schedule 13	Not Used
Schedule 14	Performance Monitoring and Contract Management
Schedule 15	Data Processing Agreement

Executed as a deed by affixing the common seal of **Torbay Council** in the presence of:

.....

Name

Position

COMMON SEAL

Signed by the Authorised Representative of THE SUPPLIER

Name:		Signature	
Position:			

Schedule 1. Key Provisions

Background

- (A) The Authority published a contract notice with contract reference **[insert the contract notice reference that will be found on the Authority's contract notice for this Contract]** on **[insert date that the contract notice was published]** in the Official Journal of the European Union seeking expressions of interest from potential providers for **[insert a brief description of the Services to be provided by the Supplier]**. **[Note: amend this background paragraph if a contract notice was not published in the OJEU or if the Authority published a PIN as a call for competition]**
- (B) The Authority has, through a competitive process, selected the Supplier to provide these services and the Supplier is willing and able to provide the services in accordance with the terms and conditions of this Contract.
- (C) Documents that form part of this Contract are
- (i) the completed tender documents including the Specification, Supplier Tender Response Payment Schedule, and any other supporting documentation; and
 - (ii) the Front Sheet and its associated Schedules.

Standard Key Provisions

1 Application of the Key Provisions

- 1.1 The standard Key Provisions at clauses 1 to 5 of these Key Provisions shall apply to this Contract.
- 1.2 The optional Key Provisions at clauses 6 to 19 of these Key Provisions shall apply to this Contract if they are set out in the section below. The tick boxes are purely for administrative purposes and have no bearing on the terms of this Contract
- 1.3 Extra Key Provisions shall only apply to this Contract where such provisions are set out at the end of this Schedule 1.

2 Term

- 2.1 This Contract shall take effect on the Commencement Date and shall continue for the Term unless terminated early or extended as appropriate in accordance with the terms conditions or clauses of this Contract.
- 2.2 The Initial Term shall be the period commencing on the Commencement Date and ending **[insert proposed end date of the Contract]** unless terminated in advance of this date.

3 Authorised Representatives

- 3.1 At the commencement of this Contract:
- (a) the Authority Authorised Representative is:
[insert name and role of the Authority's Authorised Representative]
 - (b) the Supplier Authorised Representative is:
[insert name and role of the Supplier's Authorised Representative].

4 Names and Addresses for Notices

4.1 Notices served under this Contract are to be delivered to:

(a) for the Authority:

[complete name and/or role (this is normally going to be the Authorised Representative identified at 3.1(a)above) and postal address that they shall be contacted at – please note the address may be different to the registered office address of the Authority above]

[insert e-mail address of the person identified above]

(b) for the Supplier:

[complete name and/or role (this is normally going to be the Authorised Representative identified at 3.1(b) above and postal address that they shall be contacted at – please note the address may be different to the registered office address of the Supplier above].

[insert e-mail address of the person identified above]

5 Order of Precedence

5.1 Should there be a conflict between any other parts of this Contract the order of priority for construction purposes shall be:

- (a) the provisions of the Front Sheet of this Contract;
- (b) Schedule 1 Key Provisions;
- (c) Schedule 4: Specification;
- (d) Schedule 6: Payment Schedule;
- (e) Schedule 2: General Terms;
- (f) Schedule 5: Supplier's Tender Response Document
- (g) Schedule 9: TUPE;
- (h) Schedule 3: Definitions and Interpretations; and
- (i) the order in which all subsequent schedules, if any, appear.

Optional Key Provisions

<input type="checkbox"/>	6	Not Used
<input type="checkbox"/>	7	Not Used
<input checked="" type="checkbox"/>	8	<p>Insurance</p> <p>8.1 In the event that this clause applies, the following shall amend the wording of clause 15.2 of the General Terms:</p> <p>(a) public liability insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims;</p>

	<p>(b) employer's liability insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims;</p> <p>(c) professional indemnity insurance with a limit of indemnity of not less than £5,000,000 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; and</p> <p>(d) cyber liability and crime insurance with a limit of indemnity of not less than £[X,000,000] in relation to any one claim or series of claims,</p> <p>(the Required Insurances). 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 Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.</p>
<input type="checkbox"/>	<p>9 Not Used</p>
<input checked="" type="checkbox"/>	<p>10 Step-in Rights</p> <p>10.1 The Authority may take action under this clause in the following circumstances:</p> <p>(a) an event occurs entitling the Authority to terminate in accordance with clause 21 of the General Terms;</p> <p>(b) there is a breach by the Supplier of its obligations that is materially preventing or materially delaying the performance of the Services or any part of the Services;</p> <p>(c) there is a delay that has or the Authority reasonably anticipates will result in the Supplier's failure to provide any aspect of the Services by an agreed date;</p> <p>(d) a Force Majeure Event occurs which materially prevents or materially delays the performance of the Services or any part of the Services;</p> <p>(e) where the Supplier is not in breach of its obligations under this Contract but the Authority considers that the circumstances constitute an emergency;</p> <p>(f) because a serious risk exists to the health or safety of persons, property or the environment;</p> <p>(g) to discharge a statutory duty; and/or</p> <p>(h) on the occurrence of an Insolvency Event in respect of the Supplier; and/or</p>

	<p>(i) where the supplier has been issued with more than 5 Default Notices in any rolling 6 month period.</p> <p>Action to be taken prior to exercise of the right to step in</p> <p>10.2 Before the Authority exercises its right of step-in under this clause 10 it shall permit the Supplier the opportunity to demonstrate to the Authority's reasonable satisfaction within 14 Working Days that the Supplier is still able to provide the Services in accordance with the terms of this Contract and/or remedy the circumstances giving rise to the right to step-in without the requirement for the Authority to take action.</p> <p>10.3 If the Authority is not satisfied with the Supplier's demonstration pursuant to clause 10.2, the Authority may:</p> <p>(a) where the Authority considers it expedient to do so, require the Supplier by notice in writing to take those steps that the Authority considers necessary or expedient to mitigate or rectify the state of affairs giving rising to the Authority's right to step-in;</p> <p>(b) appoint any person to work with the Supplier in performing all or a part of the Services (including those provided by any Sub-Contractor); or</p> <p>(c) take the steps that the Authority considers appropriate to ensure the performance of all or part of the Services (including those provided by any Sub-Contractor).</p> <p>10.4 The Supplier shall co-operate fully and in good faith with the Authority, or any other person appointed in respect of clause 10.3(b) and shall adopt any reasonable methodology in providing the Services recommended by the Authority or that person.</p> <p>Exercise of the right of step in</p> <p>10.5 If the Supplier:</p> <p>(a) fails to confirm within 10 Working Days of a notice served pursuant to clause 10.3(a) that it is willing to comply with that notice; or</p> <p>(b) fails to work with a person appointed in accordance with clause 10.3(b)(b); or</p> <p>(c) fails to take the steps notified to it by the Authority pursuant to clause 10.3(c),</p> <p>then the Authority may take action under this clause either through itself or with the assistance of third party contractors, provided that the Supplier may require any third parties to comply with a confidentiality undertaking equivalent to clause 18 of the General Terms.</p>
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	<p>10.6 If the Authority takes action pursuant to clause 10.5, the Authority shall serve notice (Step-in Notice) on the Supplier. The Step-in Notice shall set out the following:</p> <ul style="list-style-type: none"> (a) the action the Authority wishes to take and in particular the Services it wishes to control; (b) the reason for and the objective of taking the action and whether the Authority reasonably believes that the primary cause of the action is due to the Supplier's default; (c) the date it wishes to commence the action; (d) the time period which it believes will be necessary for the action; (e) whether the Authority will require access to the Supplier's premises; (f) to the extent practicable, the effect on the Supplier and its obligations to provide the Services during the period the action is being taken. <p>10.7 Following service of a Step-in Notice, the Authority shall:</p> <ul style="list-style-type: none"> (a) take the action set out in the Step-in Notice and any consequential additional action as it reasonably believes is necessary to achieve (together, the Required Action); (b) keep records of the Required Action taken and provide information about the Required Action to the Supplier; (c) co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide any Services in relation to which the Authority is not assuming control; and (d) act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of the Authority's rights under this clause. <p>10.8 For so long as and to the extent that the Required Action is continuing, then:</p> <ul style="list-style-type: none"> (a) the Supplier shall not be obliged to provide the Services to the extent that they are the subject of the Required Action; (b) subject to clause 10.9, the Authority shall pay to the Supplier the Charges after any applicable deductions in accordance with the terms of this Contract and the Authority's costs of taking the Required Action. <p>10.9 If the Required Action results in:</p> <ul style="list-style-type: none"> (a) the degradation of any Services not subject to the Required Action; or
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	<p>(b) the failure for the Services to be provided by an agreed date, beyond that which would have been the case had the Authority not taken the Required Action, then the Supplier shall be entitled to an agreed adjustment of the Charges, provided that the Supplier can demonstrate to the reasonable satisfaction of the Authority that the Required Action has led to the degradation or non-achievement.</p> <p>10.10 Before ceasing to exercise its step in rights under this clause the Authority shall deliver a written notice to the Supplier (Step-Out Notice), specifying:</p> <p>(a) the Required Action it has actually taken; and</p> <p>(b) the date on which the Authority plans to end the Required Action (Step-Out Date) subject to the Authority being satisfied with the Supplier's ability to resume the provision of the Services and the Supplier's plan developed in accordance with clause 10.11.</p> <p>10.11 The Supplier shall, following receipt of a Step-Out Notice and not less than 20 Working Days prior to the Step-Out Date, develop for the Authority's approval a draft plan (Step-Out Plan) relating to the resumption by the Supplier of the Services, including any action the Supplier proposes to take to ensure that the affected Services satisfy the requirements of this Contract.</p> <p>10.12 If the Authority does not approve the draft Step-Out Plan, the Authority shall inform the Supplier of its reasons for not approving it. The Supplier shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Authority's approval. The Authority shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.</p> <p>The Supplier shall bear its own costs in connection with any step-in by the Authority under this clause 10.</p>
<input checked="" type="checkbox"/>	<p>11 Exit Management and Consequences of Termination</p> <p>The parties shall comply with the provisions of Schedule 7 in relation to orderly transition of the Services to the Authority or a Replacement Supplier.</p>
<input type="checkbox"/>	<p>12 Not Used</p>
<input checked="" type="checkbox"/>	<p>13 Extending the Initial Term</p> <p>13.1 The Authority may extend this Contract beyond the Initial Term by a further period or periods of up to 4 years (Extension Period), awarded in increments of up to 4 years. If the Authority wishes to extend this</p>

	<p>Contract, it shall give the Supplier at least 3 months' written notice of such intention before the expiry of the Initial Term or Extension Period.</p> <p>13.2 If the Authority or any individual member of the Authority gives such notice then the Term shall be extended by the period set out in the notice.</p> <p>13.3 If the Authority does not wish to extend this Contract beyond the Initial Term this Contract shall expire on the expiry of the Initial Term and clause 11 of the Key Provisions shall apply.</p>
<input checked="" type="checkbox"/>	<p>14 Business Continuity</p> <p>14.1 Within 3 months following the Commencement Date, the Supplier shall prepare a draft business continuity plan relating to its provision of the Services and submit that plan to the Authority for its approval. The draft business continuity plan shall:</p> <p>(a) address how the Supplier will respond to, and rectify, any destruction or loss of the Hardware, Software, Data or any other facilities used by the Supplier in providing the Services so that there is no disruption to the Authority or the performance of the Supplier's obligations under this Contract, and</p> <p>(b) detail how and when the Supplier will test its business continuity plan.</p> <p>14.2 The Authority shall within a reasonable time provide its comments on the Supplier's draft business continuity plan, and if necessary, the parties shall discuss the Authority's comments and the Supplier shall then promptly prepare a revised draft business continuity plan which addresses the Authority's comments and submit it to the Authority for approval within 30 days of receipt of the Authority's comments provided under this clause 14.2. This process shall be repeated until the Authority approves the business continuity plan in writing.</p> <p>14.3 Once the Authority has approved the Supplier's draft business continuity plan in writing it will form part of this Contract and the Supplier shall perform its obligations under the approved business continuity plan.</p> <p>14.4 The Supplier shall review its business continuity plan at least every 12 months and update it as necessary to reflect any changes in the way the Supplier carries on business or provides the Services, any changes made to any aspect of this Contract or any other changes required as a result of changes by the Authority to its business continuity requirements.]</p>
<input type="checkbox"/>	15 Not Used
<input type="checkbox"/>	16 Not Used

<input type="checkbox"/>	17 Not Used
<input checked="" type="checkbox"/>	<p>18 Continuous Improvement</p> <p>18.1 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 for the remainder of the Term on:</p> <ul style="list-style-type: none"> (a) the emergence of new and evolving relevant technologies which could improve the Services; (a) new or potential improvements to the Services; and (b) changes in ways of working that would enable the Services to be delivered at lower costs and/or at greater benefits to the Authority. <p>18.2 Any potential Changes highlighted as a result of the Supplier's reporting in accordance with clause 18.1 shall be addressed by the parties using the Change Control Procedure.</p>
<input type="checkbox"/>	19 Not Used
<input checked="" type="checkbox"/>	<p>20 Quality Control</p> <p>20.1 It shall be the duty of the Supplier well and properly to provide the Service to a standard which is in all respects to the reasonable satisfaction of the Authority and to comply in all respects with the Contract.</p> <p>20.2 The Supplier shall ensure that neither it, nor any of its Staff or sub-contractors embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in or permitting any political activities on Authority premises or by any other act or omission relating to the performance of the Services which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Supplier's obligations under this Agreement.</p> <p>20.3 The Supplier shall deal with any complaints received (whether oral or written whether from the Authority or others) in a prompt, courteous and efficient manner and in accordance with its complaints procedure (a copy of which is available to the Authority upon demand).</p> <p>20.4 Unresolved complaints received or referred to the Authority may be investigated by the Authority, possibly making use of the Authority's own complaints procedure, which may, where it considers it appropriate, issue a Default Notice to the Supplier.</p> <p>20.5 The Supplier shall throughout the Contract Period institute and maintain a properly documented system of quality control designed to ensure that the</p>

	<p>Services are provided at all times and in all respects in accordance with the Contract. Such a system shall</p> <p>(a) include daily supervision and the carrying out of frequent inspections of buildings, sites and locations at which the Services are to be provided and equipment used by the Supplier; and</p> <p>(b) ensure the recording of any complaints received in connection with the provision or failure to provide the Service, (whether received orally or in writing and whether from members of the public or others) detailing the nature of the complaint, the name of the complainant, the time and date it was received, the action taken by the Supplier in respect of each such complaint, and the names of the Supplier's staff involved in the action complained of and its remedy.</p> <p>20.6 The system maintained by the Supplier in accordance with this condition shall be in addition to, and shall not prejudice:</p> <p>(a) any independent inspection undertaken by the Authority;</p> <p>(b) the award of any Default Notice.</p> <p>20.7 The system shall be operated by the Contract Manager on behalf of the Supplier and shall be open to inspection at any time by the Authority. In the event that any reasonable recommendations concerning the improvement of the system are made by the Authority from time to time, such recommendation shall forthwith be implemented by the Supplier.</p> <p>20.8 The Authority shall have the right at any time to interview any member of the Supplier's staff in connection with the carrying out of all or any of the Services. 24 hours' notice will be given to the Contract Manager.</p> <p>20.9 The Authority shall also be entitled to request any information relating to the carrying out of the Services and such information shall be supplied by the Supplier forthwith upon request.</p>
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Additional Key Provisions

<input type="checkbox"/>	Not Used
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Schedule 2. General Terms

1 Supply of Services

- 1.1 The Supplier shall provide the Services to the Authority with effect from the Commencement Date and for the duration of this Contract in accordance with the provisions of this Contract.
- 1.2 In the event that the Supplier does not comply with the provisions of clause 1.1 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**). The Default Notice shall be in the form set out in Schedule 14

2 Service Levels

- 2.1 The Service Level Arrangements (if any) shall apply with effect from the Commencement Date (unless the Specification provides to the contrary).

3 Compliance

- 3.1 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.
- 3.2 Where there is any conflict or inconsistency between the provisions of the Contract and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Supplier has used best endeavours to obtain a Necessary Consent in line with the requirements of the Services.
- 3.3 Without prejudice to clause 2, the Supplier shall provide the Services, or procure that they are provided:
- (a) with all reasonable skill and care and in accordance with Best Industry Practice;
 - (b) in all respects in accordance with the Authority's requirements set out in the Specification which may from time to time be amended in accordance with this Contract by the Authority ; and
 - (c) in accordance with all applicable laws.
- 3.4 Without limiting the general obligation set out in clause 3.1, the Supplier shall (and shall procure that the Supplier's Personnel shall):
- (a) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Contract. 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;
 - (b) not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination in employment; and
 - (c) 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.

4 Authority Premises and Authority Assets

- 4.1 The Authority shall, subject to clause 3 and clause 9, 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.

- 4.2 The Authority shall provide the Supplier with such accommodation and facilities in the Authority Premises as agreed by the parties from time to time.
- 4.3 Subject to the requirements of the Key Provisions on exit management (if relevant), in the event of the expiry or termination of the Contract, 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.
- 4.4 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 Authorised Representative's reasonable directions regarding the security of the same;
 - (b) only those of the Supplier's 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 not removed from Authority Premises unless expressly permitted under this Contract or by the Authority Authorised Representative.
- 4.5 The Supplier shall notify the Authority immediately on becoming aware of any damage caused by the Supplier, its agents, employees or Sub-Contractors 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.

5 Health and Safety

- 5.1 The Supplier shall promptly notify the Authority of any health and safety hazards, which may arise in connection with the performance of the Contract. The Authority shall promptly notify the Supplier of any health and safety hazards that may exist or arise at the Authority Premises and that may affect the Supplier in the performance of the Contract.
- 5.2 While on the Authority Premises, the Supplier shall comply with any health and safety measures implemented by the Authority in respect of staff and other persons working on the Authority Premises.
- 5.3 The Supplier shall notify the Authority immediately in the event of any incident occurring in the performance of the Contract on the Authority Premises where that incident causes any personal injury or damage to property that could give rise to personal injury.
- 5.4 The Supplier shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to staff and other persons working on the Authority's Premises in the performance of the Contract.
- 5.5 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Authority on request.

6 Charges and Payment

- 6.1 In consideration of the provision of the Services by the Supplier in accordance with the terms and conditions of this Contract, the Authority shall pay the Charges to the Supplier.
- 6.2 The Charges shall be calculated as set out in the Payment Schedule.
- 6.3 Unless otherwise stated in the Payment Schedule the Charges:
- (a) shall be payable from the Commencement Date;

- (b) shall remain fixed during the Term unless agreed by both parties; and
 - (c) are the entire price payable by the Authority to the Supplier in respect of the Services and includes, without limitation, any royalties, licence fees, supplies and all consumables used by the Supplier, travel costs, accommodation expenses and the cost of Supplier Personnel.
- 6.4 The Authority shall pay each invoice received by the Supplier within 30 days of the date when Authority has determined that the invoice is a valid and undisputed invoice. The Supplier shall accept payment electronically via BACS.
- 6.5 The Authority will consider and verify any invoices submitted by the Supplier for payment in a timely fashion and agrees that undue delay in doing so is not to be regarded as sufficient justification for failing to treat an invoice as valid and undisputed.
- 6.6 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 the Dispute Resolution Procedure. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of 30 days after resolution of the dispute between the parties.
- 6.7 Subject to clause 6.6, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this Contract 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 Contract under clause 21 for failure to pay undisputed charges.
- 6.8 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 at all times comply with the requirements relating to VAT as more particularly detailed in this Contract and the Specification. 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 Contract.
- 6.9 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 Contract. Such records shall be retained for inspection by the Authority for six years from the end of the Contract Year to which the records relate.
- 6.10 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 Contract.
- 6.11 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.
- 6.12 In this clause 6.12, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the Authority in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract. Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:
 - (a) provisions having the same effect as clauses 6.4 and 6.5 above; and
 - (b) a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clauses 6.4 and 6.5 above.

6.13 For the purposes of this clause 6 (but no other) "Sub-Contractor" means a person under a contract, at any stage of remoteness from the Authority in a subcontracting chain, who has entered into a contract wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.

7 Due Diligence

7.1 The Supplier acknowledges and confirms that:

- (a) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Authority all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this Contract;
- (b) it has received all information requested by it from the Authority pursuant to paragraph (a) to enable it to determine whether it is able to provide the Services in accordance with the terms of this Contract;
- (c) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority pursuant to paragraph (b);
- (d) it has raised all relevant due diligence questions with the Authority before the Commencement Date; and
- (e) it has entered into this Contract in reliance on its own due diligence.

7.2 Save as provided in this Contract, 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.

7.3 The Supplier:

- (a) as at the Commencement Date, warrants and represents that all information contained in the Supplier's Tender Response remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract; and
- (b) shall promptly notify the Authority in writing if it becomes aware during the performance of this Contract 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 the Service Level Arrangements.

7.4 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 7.3(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.

7.5 Nothing in this clause 7 shall limit or exclude the liability of the Authority for fraud or fraudulent misrepresentation.

8 Key Personnel

- 8.1 Each party shall appoint the persons named as such in the Specification 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.
- 8.2 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.
- 8.3 The Supplier shall inform the Authority of the identity and 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 30 Working Days of being informed of or meeting any such replacement if, in its reasonable opinion, it considers the proposed replacement to be unsuitable for any reason.
- 8.4 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 10 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.
- 8.5 The Authority may require the Supplier to remove, or procure the removal of, any of its Key Personnel whom it considers, in its absolute opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities or for any reason which impacts on the management or operation of any applicable Authority's Premises.
- 8.6 If the Supplier replaces the Key Personnel as a consequence of this clause 8, the cost of effecting such replacement shall be borne by the Supplier.

9 Supplier's Personnel Used to Provide the Services

- 9.1 At all times, the Supplier shall ensure that:
- (a) each of the Supplier's 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's 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;

- (d) all of the Supplier's Personnel comply with all of the Authority's policies including those that apply to persons who are allowed access to the applicable Authority Premises; and
 - (e) where the Services are regulated activities enabling the Supplier to obtain a Disclosure Barring Service (**DBS**) certificate, it holds a clear DBS certificate for each of the Supplier's Personnel.
- 9.2 The Authority in its absolute discretion may refuse to grant access to, and remove, any of the Supplier's Personnel who do not comply with any such policies, or if they otherwise present a security threat.
- 9.3 The Supplier shall replace any of the Supplier's Personnel who the Authority reasonably decides have failed to carry out their duties with all reasonable skill and care. Following the removal of any of the Supplier's 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.
- 9.4 The Supplier shall maintain up-to-date personnel records on the Supplier's Personnel engaged in the provision of the Services and, on request, provide reasonable information to the Authority on the Supplier's Personnel. The Supplier shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.
- 9.5 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 as the prevailing industry norm for similar services, locations and environments.

10 TUPE

The parties agree that the provisions of Schedule 9 shall apply to any Relevant Transfer of staff under this Contract.

11 Monitoring

- 11.1 The Authority may monitor the performance of the Services by the Supplier at its discretion.
- 11.2 The Supplier shall co-operate with the Authority in carrying out the monitoring referred to in clause 11.1 at no additional charge to the Authority.

12 Dispute Resolution Procedure

- 12.1 If a Dispute arises then except as expressly provided in this Contract, the parties shall follow the procedure set out in this clause:
- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives of both the Authority and the Supplier shall attempt in good faith to resolve the Dispute;
 - (b) if the Authorised Representatives of the Authority the Supplier are for any reason unable to resolve the Dispute within 14 days of service of the Dispute Notice, the Dispute shall be referred to senior officers of both the Authority and the Supplier who shall attempt in good faith to resolve it; and
 - (c) if the senior officers of the Authority and the Supplier are for any reason unable to resolve the Dispute within 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 30 days after the date of the ADR notice.

- 12.2 The Supplier shall continue to provide the Services in accordance with the terms of this Contract until a Dispute has been resolved.
- 12.3 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 36 and 37 which shall apply at all times.
- 12.4 If the Dispute is not resolved within 60 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 60 days, or the mediation terminates before the expiration of the said period of 60 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 36 and 37 of these General Terms.

13 Sub-contracting and Assignment

- 13.1 The Supplier shall not be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this Contract without the prior written consent of the Authority. The Supplier shall not sub-contract the whole or any part of its obligations under this Contract nor shall it replace a Sub-Contractor approved under this Contract or permit a Sub-Contractor approved under this Contract to assign, novate or otherwise dispose of any or all of its rights and obligations under the Sub-Contract, except with the express prior written consent of the Authority.
- 13.2 In the event that the Supplier enters into any Sub-Contract in connection with this Contract it shall:
- (a) remain responsible to the Authority for the performance of its obligations under the Contract notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors and shall indemnify and keep indemnified the Authority against any loss or claim arising resulting from the failure of the Sub Contractor or an employee of the Sub Contractor in the performance of the duties of the Sub Contractor to provide the Services on behalf of the Supplier under this Contract;
 - (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this Contract and shall procure that the Sub-Contractor complies with such terms and, if necessary, imposes obligations on any further sub-contractors in its sub-contract pursuant to this Contract; 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.
- 13.3 The Authority shall be entitled to novate the Contract to any other body which substantially performs any of the functions that previously had been performed by the Authority.
- 13.4 The Authority may, by notice in writing to the Contractor, require the Contractor immediately (or as specified in the notice) to cease to engage a specified Sub-Contractor for the performance of any of its obligations under this Contract where any of the circumstances specified in Regulation 57(1) or (8) of the Public Contracts Regulations 2015 applies to the Sub-Contractor.

14 Limitation of Liability

- 14.1 Subject to clause 14.3, neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the Contract which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.

- 14.2 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 Contract.
- 14.3 Notwithstanding any other provision of this Contract 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 act or omission, liability for which may not be limited under any applicable law.

15 Insurance

- 15.1 The policy limits set out below shall apply unless expressly amended in the Key Provisions.
- 15.2 The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:
- (a) public liability insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims; and
 - (b) employer's liability insurance with a limit of indemnity of not less than £10,000,000 in relation to any one claim or series of claims,

(the **Required Insurances**). 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 Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.

- 15.3 The Supplier shall, prior to the Commencement Date and on each subsequent anniversary of the Commencement Date, provide the Authority with 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. This evidence of insurance will be added annually to this Contract in Schedule 10.
- 15.4 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 including by way of set off against payments that may be made by the Authority to the Supplier for the provision of the Services.
- 15.5 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract.
- 15.6 The Supplier shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of the Contract.

16 Freedom of Information and Transparency Obligations

- 16.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs and transparency obligations under the Public Contracts Regulations 2015, and shall assist and co-operate with the Authority (at the Supplier's expense) to enable the Authority to comply with its obligations under the FOIA and the EIRs and its transparency obligations under the Public Contracts Regulations 2015.

- 16.2 The Supplier shall and shall procure that its Sub-Contractors shall:
- (a) transfer any Request for Information to the Authority as soon as practicable after receipt and in any event within 5 Working Days of receiving a Request for Information;
 - (b) provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within 5 Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and
 - (c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIRs.
- 16.3 The Authority shall be responsible for determining at its absolute discretion whether the Confidential Information and/or any other Information:
- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the EIRs; and/or
 - (b) is to be disclosed in response to a Request for Information.
- 16.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 16.5 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Confidential 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 Contract) the Authority shall be responsible for determining in its absolute discretion whether any Confidential Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs. The Supplier shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.
- 16.6 The Supplier acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with clause 16.5.
- 16.7 The Supplier acknowledges that the United Kingdom Government's transparency agenda, including the transparency obligations under the Public Contracts Regulations 2015, requires that contracts, such as the Contract, and any tender document, such as the invitation to tender and certain other information, are published on a designated, publicly searchable website and the Supplier consents to such publication.
- 16.8 The Supplier acknowledges that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA, the content of the Contract is not Confidential Information. The Authority shall be responsible for determining in their absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of FOIA.
- 16.9 Notwithstanding any other term of the Contract, the Supplier hereby consents to the Authority publishing the Contract in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of FOIA redacted) including from time to time agreed changes to the Contract, to the general public.

16.10 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish this Contract.

17 Data Protection

17.1 The Supplier shall (and shall procure that any of its Supplier's Personnel involved in the provision of the Contract shall) comply with any notification requirements under Data Protection Legislation and both Parties shall duly observe all their obligations under Data Protection Legislation, which arise in connection with the Contract.

17.2 Notwithstanding the general obligation in clause 17.1, where the Supplier is processing Personal Data as a Data Processor for the Authority, the Supplier shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under Data Protection Legislation; and

- (a) provide the Authority with such information as the Authority may reasonably require to satisfy itself that the Supplier is complying with its obligations under Data Protection Legislation;
- (b) within 24 hours of the Supplier becoming aware of the breach occurring, notify the Authority of any breach and of the security measures required to be put in place pursuant to this clause 17.2;
- (c) co-operating with the Authority and/or any relevant regulatory body in carrying out any investigation by providing information requested by the Authority and/or relevant regulatory body within the timescales required;
- (d) allow the Authority's and/or the regulatory body's representatives access to Supplier premises, systems and data for the purposes of any investigation, inspection or audit; and
- (e) ensure it does not knowingly or negligently do or omit to do anything which places the Authority in breach of the Authority's obligations under Data Protection Legislation.

17.3 The Supplier shall not engage another processor without prior written authorisation from the Authority. The Supplier shall inform the Authority of any intended changes concerning the addition or replacement of other processors giving the Authority the opportunity to object. All additional or replacement processors are required to sign the Authority's Data Processing Agreement.

17.4 The Supplier shall indemnify the Authority against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profits, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by, or awarded against the Authority arising from any breach of the Supplier's obligations in this clause 17 except and to the extent that such liabilities have resulted directly from the Authority's instructions.

18 Confidentiality

18.1 The provisions of this clause shall not apply to any Confidential Information that:

- (a) is required for disclosure by any applicable law, provided that clause 16.5 shall apply to any disclosures required under the FOIA or the EIRs;
- (b) is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Authorised Representatives in breach of this clause);

- (c) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
- (d) is disclosed by the Authority to any other department, office or agency of the Government;
- (e) where in the reasonable opinion of the Authority it is necessary to disclose information or required to disclose information to any court tribunal arm of Government or Local Government;
- (f) may assist in the enabling of a determination to be made under clause 12;
- (g) was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; or
- (h) the parties agree in writing is not confidential or may be disclosed.

18.2 Each party shall keep the other party's Confidential Information confidential and shall not:

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

18.3 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, 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 Contract,

and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this clause.

18.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible.

18.5 A party may, provided that it has reasonable grounds to believe that the other party is involved in activity that may constitute a criminal offence under the Bribery Act 2010, disclose Confidential Information to the Serious Fraud Office without first informing the other party of such disclosure.

18.6 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this Contract are granted to the other party, or to be implied from this Contract.

18.7 On termination of this Contract, the Supplier shall:

- (a) return to the Authority all documents and materials (and any copies) containing, reflecting, incorporating or based on the Authority's Confidential Information;

- (b) erase all the Authority's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically practicable); and
- (c) certify in writing to the Authority that it has complied with the requirements of this clause, provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the Authority's Confidential Information to the extent required by law or any applicable governmental or regulatory authority.

18.8 Except as expressly stated in this Contract, no party makes any express or implied warranty or representation concerning its Confidential Information.

19 Audit

19.1 During the Term and for a period of 7 years after the Termination Date, the Authority may conduct or be subject to an audit for the following purposes;

- (a) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this Contract) 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's compliance with Data Protection Legislation and the FOIA in accordance with clause 17 and clause 16 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 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 (if applicable) and any other management information delivered or required by this Contract.

19.2 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.

19.3 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's Personnel.

19.4 The Authority shall endeavour to (but is not obliged to) provide at least 15 days' notice of its or, where possible, a regulatory body's, intention to conduct an audit.

19.5 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 Contract 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.

19.6 If an audit identifies that:

- (a) the Supplier has failed to perform its obligations under this Contract 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 Working 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 Working Days.

20 Intellectual Property

20.1 Unless expressly stated otherwise in the Specification or in a separate prior written agreement signed by both parties to the contrary, all Intellectual Property Rights created by the Supplier, Supplier Personnel, a Sub-Contractor or any other employee, agent or subcontractor of the Supplier:

- (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.

20.2 The Supplier shall indemnify the Authority against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis and all other reasonable professional costs and expenses), 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.

21 Termination for Breach

21.1 The Authority may terminate this Contract 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 Contract provided that if the breach is capable of remedy or the Authority has served the Supplier with a Default Notice, the Authority may only terminate this Contract under this clause 21.1 if the Supplier has failed to remedy such breach within 28 days of receipt of notice from the Authority (a **Remediation Notice**) to do so;
- (b) if a Service Failure Default has occurred;
- (c) if a Catastrophic Failure has occurred;
- (d) if an Insolvency Event has occurred;

- (e) if the Supplier ceases or threatens to cease to carry on business in the United Kingdom;
- (f) if there is a change of control (as defined in section 1124 of the Corporation Tax Act 2010) of the Supplier to which the Authority reasonably objects; or
- (g) in accordance with clause 24.7.

21.2 The Authority may terminate this Contract by giving not less than 30 days written notice on the Supplier in any of the following circumstances:

- (a) the Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of the Public Contracts Regulations 2015;
- (b) at the Commencement Date one of the situations referred to in regulation 57(1) of the Public Contracts Regulations 2015 (including as a result of the application of regulation 57(2)) applied:
 - (i) to the Supplier such that it should have been excluded from the procurement procedure; or
 - (ii) to a Sub-Contractor on which the Supplier relied in its tender to the Authority for this Contract and the Supplier does not cease to engage that Sub-Contractor within 30 days of a notice from the Authority requiring the Supplier to cease to engage that Sub-Contractor; or
- (c) the Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the EU in a procedure pursuant to Article 258 of TFEU.

21.3 If this Contract is terminated by the Authority for cause in accordance with clause 21.1 or 21.2 such termination shall be at no loss or cost to the Authority.

22 Termination on Notice

22.1 The Authority may terminate this Contract at any time by giving not less than 30 days written notice to the Supplier.

22.2 Any individual member of the Authority in respect of an applicable Authority Premises may terminate this Contract in so far as it relates to an applicable named Authority Premises at any time by the service of 30 days written notice on the Supplier.

23 Force Majeure

23.1 Subject to the remaining provisions of this clause 23, neither party to this Contract shall be liable to the other for any delay or non-performance of its obligations under this Contract to the extent that such non-performance is due to a Force Majeure Event.

23.2 In the event that either party is delayed or prevented from performing its obligations under this Contract by a Force Majeure Event, such party shall:

- (a) give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
- (b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Contract; and

- (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 23.3 A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 23.4 The Supplier cannot claim relief if the Force Majeure Event is one where a reasonable Supplier should have foreseen and provided for the cause in question.
- 23.5 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Contract. Where the Supplier is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.
- 23.6 The affected party shall notify the other party 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 Contract. Following such notification, this Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
- 23.7 The Authority may, during the continuance of any Force Majeure Event, terminate this Contract by written notice to the Supplier if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than 60 Working Days.

24 Prevention of Bribery

- 24.1 The Supplier:
- (a) shall not, and shall procure that any Supplier Party and all Supplier Personnel shall not, in connection with this Contract commit a Prohibited Act;
 - (b) shall not 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;
 - (c) 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 Authority, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Authority before execution of this Contract.
- 24.2 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Party or 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.
- 24.3 The Supplier shall:
- (a) if requested, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity required by any

relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;

- (b) within 30 Working Days of the Commencement Date, and annually thereafter, certify to the Authority in writing (such certification to be signed by an officer of the Supplier) compliance with this clause 24 by the Supplier and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Supplier shall provide such supporting evidence of compliance as the Authority may reasonably request.

24.4 The Supplier shall establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, an anti-bribery policy (which shall be disclosed to the Authority) to prevent any Supplier Party or Supplier Personnel from committing a Prohibited Act and that are compliant with the Bribery Act and shall enforce it where appropriate.

24.5 If any breach of clause 24.1 or clause 24.2 is suspected or known, the Supplier must notify the Authority immediately.

24.6 If the Supplier notifies the Authority that it suspects or knows that there may be a breach of clause 24.1 or clause 24.2, the Supplier must respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documentation.

24.7 The Authority may terminate this Contract 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 24.1 or clause 24.2. The expression "not acting independently of" (when used in relation to the Supplier or a Sub-Contractor) means and shall be construed as acting:

- (a) with the Authority; or,
- (b) with the actual knowledge;

of any one or more of the directors of the Supplier or the Sub-Contractor (as the case may be); or

- (c) in circumstances where any one or more of the directors of the Supplier ought reasonably to have had knowledge.

24.8 Any notice of termination under clause 24.7 must specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the party whom the Authority believes has committed the Prohibited Act; and
- (c) the date on which this Contract will terminate.

24.9 Despite clause 12, any dispute relating to:

- (a) the interpretation of clause 24; or
- (b) the amount or value of any gift, consideration or commission,

shall be determined by the Authority and its decision shall be final and conclusive.

24.10 Any termination under clause 24.7 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

25 Non-solicitation

Neither party shall (except with the prior written consent of the other) during the term of this Contract, and for a period of one year thereafter, solicit the services of any senior staff of the other party who have been engaged in the provision of the Services or the management of this Contract 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.

26 Waiver

No forbearance or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach. In particular, but without limitation to the generality of the foregoing, any prior acceptance or approval communicated by the Authority to the Supplier in respect of the Services or any omission on the part of the Authority to communicate such prior acceptance or approval shall not relieve the Supplier of its obligations to deliver the Services in accordance with the provisions of this Contract.

27 Accumulation of Remedies

Subject to the specific limitations set out in this Contract, no remedy conferred by any provision of this Contract is intended to be exclusive of any other remedy except as expressly provided for in this Contract and each and every remedy shall be cumulative and shall be in addition to every other remedy given there under or existing at law or in equity by statute or otherwise.

28 Severability

28.1 If any provision or part-provision of this Contract 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 Contract.

28.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

29 Partnership or Agency

29.1 Nothing in this Contract shall be construed as constituting a partnership between the parties or as constituting either party as the agent of the other for any purpose whatsoever except as specified by the terms of this Contract.

29.2 Each party confirms that it is acting on its own behalf and not for the benefit of any other person.

30 Third Party Rights

No one other than a party to this Contract, their successors and permitted assignees, shall have any right to enforce any of its terms.

31 Publicity

The Supplier shall not:

- (a) make any press announcements or publicise this Contract or its contents in any way;
- or

- (b) use the Authority's name or brand in any promotion or marketing or announcement of orders,

without the prior written consent of the Authority.

32 Notices

32.1 Notices shall be in writing, and shall be sent to the other party marked for the attention of the person at the address set out for such party in this Contract. Notices may be sent by:

- (a) first-class mail,
- (b) e-mail (provided that the e-mail is sent to the e-mail address of the Authorised Representative of the receiving party as set out at clause 4 of the Key Provisions, or as notified by one party to the other in writing from time to time and are confirmed within 24 hours by first class mailed confirmation of a copy) however notice of a parties' intention to terminate this Contract or informing the other party of a breach of this Contract shall not be accepted in email form and may only be sent by first class mail or facsimile transmission; or
- (c) facsimile transmission (provided that facsimile transmissions are confirmed within 24 hours by first-class mailed confirmation of a copy).

32.2 This table sets out:

- (a) delivery methods for sending a notice to a party under this agreement; and
- (b) for each delivery method, the corresponding delivery date and time when delivery of the notice is deemed to have taken place provided that all other requirements in this clause have been satisfied and subject to the provisions in clause 32.3:

Delivery method	Deemed delivery date and time
Delivery by hand.	On signature of a delivery receipt or at the time the notice is left at the address.
Pre-paid first class recorded delivery post or other next working day delivery service providing proof of postage.	9.00 am on the third Working Day after posting or at the time recorded by the delivery service.
Pre-paid airmail providing proof of postage.	9.00 am on the fifth Working Day after posting or at the time recorded by the delivery service.
Facsimile transmission/E-mail.	At the time of transmission provided that they are confirmed as set out above.

32.3 For the purpose of clause 32.2 and calculating deemed receipt:

- (a) all references to time are to local time in the place of deemed receipt; and
- (b) if deemed receipt would occur in the place of deemed receipt on a Saturday or Sunday, outside the hours of 9.00 am to 5.00 pm, or a public holiday when banks are not open for business, deemed receipt is deemed to take place at 9.00 am on the day when business next starts in the place of receipt.

33 Changes to the Contract

No Change to this Contract shall be effective unless it is processed in accordance with the Change of Control Procedure set out in Schedule 11.

34 Entire Agreement

This Contract, the schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

35 Counterparts

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

36 Governing Law

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

37 Jurisdiction

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

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

Schedule 3. Definitions and Interpretation

1 Definitions and Interpretation

1.1 The definitions and rules of interpretation in this clause apply in this Contract.

Authorised Representative: the persons respectively designated as such by the Authority and the Supplier, the first such persons being set out in the Key Provisions

Authority Assets: any materials, consumables, resources, plant or equipment owned or held by the Authority and provided by the Authority for use in providing the Services as set out in Schedule 15.

Authority Premises: the premises which are to be made available for use by the Supplier for the provision of the Services on the terms set out in this Contract as set out in the Specification.

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 Service Level Arrangements, 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: any action by the Supplier, whether in relation to the Services and this Contract or otherwise, which in the reasonable opinion of the Authority's Representative has or may cause significant harm to the reputation of the Authority.

Change: any change to this Contract including to any of the Services.

Change Control Procedure: the procedure for making a Change, as set out in clause 33 of the General Terms.

Charges: means the charges referred to in clause 6 of the General Terms and more particularly set out in the Payment Schedule.

Commencement Date: the date on which this Contract commences as set out on the Front Sheet, or, if the Front Sheet does not expressly state the Commencement Date, the date on which the Contract is signed.

Confidential Information: means all confidential information (however recorded or preserved) disclosed by a party or its employees, officers, representatives or advisers (together its Representatives) to the other party and that party's Representatives whether before or after the date of this Contract in connection with the Contract, concerning:

- (a) the existence and terms of this Contract;
- (b) any information that would be regarded as confidential by a reasonable business person relating to:
 - (i) the business, affairs, customers, clients, suppliers, or plans, intentions, or market opportunities of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and
 - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and
- (c) any information developed by the parties in the course of carrying out this Contract.

Contract: means this agreement and no other.

Contract Price: the aggregate Charges paid or payable by the Authority to the Supplier for the Services assuming that the Contract runs for the duration of the Term or, if it is not possible to calculate this value; either:

- (a) the price agreed by the parties (acting reasonably) in writing; or
- (b) an amount calculated by the parties (acting reasonably) taking into account the average Charges of the Contract prior to the liability incident and the projected future spend extrapolated to the end of the Term.

Contract Year: a period of 12 months, commencing on the Commencement Date

Data: shall have the meaning as set out in the Specification.

Data Processor: shall have the same meaning as set out in the General Data Protection Regulation.

Data Protection Legislation: means all current UK legislation that relates to Data Protection.

Default Notice: is defined in clause 1.2 of the General Terms.

Dispute: a dispute arising out of or in connection with this Contract or the performance, validity or enforceability of it.

Dispute Resolution Procedure: the procedure set out in clause 12 of the General Terms.

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 Management Plan: the plan (if any) set out in Schedule 8.

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 Event: any circumstance not within a party's reasonable control affecting the performance by a party of its obligations under this Contract arising from acts of God, flood, drought, earthquake or other natural disaster, epidemic or pandemic, 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, nuclear, chemical or biological contamination or sonic boom, any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, collapse of buildings, fire, explosion or accident, interruption or failure of utility service, and any labour or trade dispute, strikes, industrial action or lockouts, but excluding any industrial dispute relating to the Supplier, the Supplier's Personnel or any other failure in the Supplier's supply chain.

Front Sheet: the front sheet of the Contract.

General Terms: the provisions set out in Schedule 2.

Hardware: shall have the meaning as set out in the Specification.

Information: has the meaning given under section 84 of FOIA.

Initial Term: shall have the meaning as set out in the Key Provisions.

Intellectual Property Rights: any and all intellectual property rights of any nature anywhere in the world whether registered, or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

Insolvency Event: where;

- (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 other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of that other party;
- (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) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (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;
- (f) 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;
- (g) the Supplier (being an individual) is the subject of a bankruptcy petition or order;
- (h) 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;
- (i) 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 (h) (inclusive);
- (j) the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (k) 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.

Key Personnel: those personnel identified in the Specification for the roles attributed to such personnel, as modified from time to time in accordance with the terms of this Contract.

Key Provisions: the terms set out in Schedule 1.

Management Reports: the reports to be prepared and presented by the Supplier in accordance with Schedule 14 and the Specification.

Necessary Consents: means all consents required from time to time by UK law and all reasonable local consents required by the Authority.

Payment Schedule: the document set out at Schedule 6.

Personal Data: shall have the same meaning as set out in the General Data Protection Regulation.

Prohibited Act: the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority 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 Contract;
- (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 Contract or any other contract with the Authority; or
 - (iv) defrauding, attempting to defraud or conspiring to defraud the Authority.

Public Contracts Regulations 2015: the Public Contracts Regulations 2015 as enacted or the same or equivalent provisions in any re-enactment/amendment.

Regulated Activity: in relation to children as defined in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 in relation to vulnerable adults as defined in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

Regulated Activity Provider: as defined 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 21.1(a) of the General Terms.

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 Contract, 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.

Service Failure: a failure by the Supplier to provide the Services in accordance with the Service Level Arrangements.

Service Failure Default: a failure by the Supplier to provide the Services in accordance with the Service Level Arrangements that the Authority deems shall result in termination of the Contract as set out in the Specification.

Service Level Arrangements: the service level arrangements set out in the Specification.

Software: shall have the meaning as set out in the Specification.

Supplier Party: the Supplier's agents and contractors, including each Sub-Contractor.

Supplier's Personnel: all employees, staff, other workers, agents and consultants of the Supplier and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

Supplier's Tender Response: the tender response document submitted by the Supplier and other associated documentation set out in Schedule 5.

Services: the services to be delivered by or on behalf of the Supplier under this Contract, as more particularly described in the Specification which may from time to time be altered by the Authority.

Specification: the specification detailed in Schedule 4.

Sub-Contract: (except in clause 6.12 of the General Terms) any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the Services from that third party.

Sub-Contractor: the contractors or suppliers that enter into a Sub-Contract with the Supplier.

Term: the period of the Initial Term as may be varied by:

- (a) any extensions to this Contract which are agreed pursuant to clause 13 of the Key Provisions; or
- (b) the earlier termination of this Contract in accordance with its terms.

Termination Date: the date of expiry or termination of this Contract.

Transferable Contracts: the third-party contracts (including any licenses to third-party software) that are necessary to enable the transition of the Services to the Authority or any Replacement Supplier on expiry or termination of this Contract.

Transferring Contracts: shall have the meaning as set out in Schedule 7.

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar additional tax or any other similar turnover, sales or purchase tax or duty levied in any other jurisdiction.

Working Day: Monday to Friday, excluding any public holidays in England and Wales.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Contract.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4 The schedules form part of this Contract and shall have effect as if set out in full in the body of this Contract and any reference to this Contract 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 the other genders.
- 1.8 A reference to statute, legislation, regulations or a 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 facsimile transmission and e-mail.
- 1.10 Any obligation in this Contract 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 Contract) at any time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this Contract; references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 Where any statement is qualified by the expression so far as any party is aware or to any party's knowledge or any similar expression, that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.

Schedule 4. Specification

Guidance - See Specification in the tender pack – before signing the Contract the Specification will need to be inserted here.

Guidance: Insert the details of what the Supplier shall be doing as fully and completely as possible.

Schedule 5. Supplier's Tender Response Document

Guidance - See Supplier's tender response document – before signing the Contract the Tender Response Document will need to be inserted here.

Schedule 6. Payment Schedule

Guidance - See Payment Schedule in the tender pack – before signing the Contract the Payment Schedule will need to be inserted here.

Schedule 7. Exit Management Schedule/

1 Introduction

- 1.1 This Schedule describes the duties and responsibilities of the Supplier to the Authority or any individual member of the Authority leading up to and covering the expiry or termination (howsoever arising) (including partial termination) of this Contract and the transfer of service provision to a Replacement Supplier.
- 1.2 The objectives of this Schedule 7 are to ensure a smooth transition of the availability of the Services from the Supplier to the Authority and/or Replacement Supplier at the termination (howsoever arising) (including partial termination) or expiry of this Contract.

2 Exit and Service Transfer Arrangements

The Supplier agrees to indemnify and keep the Authority fully indemnified for itself and on behalf of any replacement Supplier in respect of any claims, costs (including reasonable legal costs), demands, and liabilities arising from the provision of incorrect information provided to the Authority by the Supplier, to the extent that any such claim, cost, demand or liability directly and unavoidably arises from the use of the incorrect information in a manner that can reasonably be assumed to be proper in bidding for or providing services similar to the Services.

3 Exit Management Plan

- 3.1 Where required by the Authority, no later than three (3) months after the Commencement Date, and thereafter as specified in paragraph 3.4 of this Schedule, the Supplier shall prepare an Exit Management Plan for review by the Authority which will set 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 Contract.
- 3.2 The Authority shall review the Exit Management Plan within twenty (20) Working Days of receipt from the Supplier and shall notify the Supplier of any suggested revisions to the Exit Management Plan. In this respect, the Authority will act neither unreasonably, capriciously nor vexatiously. Such suggested revisions shall be discussed and resolved within ten (10) Working Days of them being communicated to the Supplier. Once agreed, the Exit Management Plan shall be inserted into this Contract at Schedule 8. The agreed Exit Management Plan shall be signed as approved by each party. If the parties are unable to agree the contents of the Exit Management Plan within 30 Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 3.3 The Exit Management Plan shall provide comprehensive proposals for the activities and the associated liaison and assistance that will be required for the successful transfer of the Services, including the following details as a minimum:
- (a) how the information in paragraph 6.1 of this Schedule 7 is obtained;
 - (b) how the Supplier will deal with the expiry or termination of this Contract;
 - (c) a detailed description of both the transfer and cessation processes, including a timetable;
 - (d) 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);
 - (e) the scope of any services and activities to be performed by the Supplier to assist the Authority and/or the Replacement Supplier in the transfer of the Services to the Authority and/or Replacement Supplier including a timetable (where applicable);

- (f) how each of the issues set out in this Schedule 7 will be addressed to facilitate the transition of the Services from the Supplier to the Authority and/or the Replacement Supplier with the aim of ensuring that there is no disruption to or degradation of the Services;
- (g) proposals for the identification and transfer of documentation providing details of the Services;
- (h) proposals for the identification of all leases, maintenance agreements and support agreements utilised by the Supplier in connection with the provision of the Services, together with details of the relevant lessors and contractors, the payment terms, expiry dates and any relevant novation and/or early termination provisions;
- (i) proposals to enable the Authority or the Replacement Supplier to recruit suitably skilled personnel;
- (j) proposals for the training of key members of the Authority's and/or the Replacement Supplier's personnel in connection with the continuation of the provision of the Services following the expiry or termination (howsoever arising) of this Contract charged at rates agreed between the parties at that time;
- (k) proposals for the granting of licences to use all software (including the Software) necessary for the Authority's receipt of the Services and the provision of copies of all related documentation;
- (l) proposals for the transfer of all Authority Data then in the Supplier's possession to either the Authority and/or a Replacement Supplier, including:
 - (i) an inventory of all Authority Data;
 - (ii) details of the data structures in which the Authority Data is stored, in the form of an agreed data model together with information on other data structures in which the Authority Data could be stored;
 - (iii) proposed transfer methods, both physical and electronic; and
 - (iv) proposed methods for ensuring the integrity of the Authority Data on transfer;
- (m) proposals for providing the Authority and/or a Replacement Supplier with copies of all documentation used in the provision of the Services and necessarily required for the continued use thereof, in which the Intellectual Property Rights are owned by the Supplier; and
- (n) proposals for the supply of any other information or assistance reasonably required by the Authority or a replacement Supplier in order to affect an orderly hand over of the provision of the Services.

3.4 The Exit Management Plan shall be reviewed and updated by the Supplier. In this regard, the Supplier shall provide a revised version of the Exit Management Plan to the Authority on each year (or more frequently as may be agreed between the parties). The revised Exit Management Plan shall be reviewed and agreed in accordance with the provisions of paragraph 3.2 of this Schedule.

3.5 Within 20 Working Days after service of a notice to terminate this Contract by either party or 6 months prior to the expiry of this Agreement, the Supplier will submit for the Authority's approval the Exit Management Plan in a final form that could be implemented immediately. The final form of the Exit Management Plan shall be prepared on a basis consistent with the principles set out in this Schedule and shall reflect any changes in the Services that have occurred since the Exit Management Plan was last agreed.

4 Termination Obligations

- 4.1 The Supplier shall comply with all of its obligations contained in the Exit Management Plan.
- 4.2 On termination or expiry of this Contract for any reason, the Supplier shall (to the extent that it does not adversely affect the Supplier's performance of the Services and the Exit Management Plan):
- (a) immediately deliver to the Authority all Authority Assets (where applicable), copies of information, documentation and Data provided by the Authority to the Supplier for the purposes of this Contract;
 - (b) immediately repay to the Authority all Charges that it has been paid in respect of Services not provided by the Supplier as at the date of expiry or termination or any other sums due to the Authority in accordance with this Contract;
 - (c) cease to use the Authority Data;
 - (d) provide the Authority and/or the Replacement Supplier with a complete and uncorrupted version of all Authority Data;
 - (e) certify to the Authority that it has not retained any copies of any Authority documentation or other information or data, except for one copy which the Supplier may use for audit purposes only and subject to the confidentiality obligations in clause 18 of the General Terms;
 - (f) vacate any Authority Premises; and
 - (g) provide such information relating to the Services as remains in the possession or control of the Supplier.
- 4.3 The provisions of clauses 14 (Limitation of Liability) 15 (Insurance), 16 (Freedom of Information), 17 (Data Protection), 18 (Confidentiality), 19 (Audit), 20 (Intellectual Property Rights) 21 (Termination for Breach) of the General Terms and this paragraph 4 of the Key Provisions shall survive termination or expiry of this Contract.
- 4.4 Termination or expiry of this Contract 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 Contract which existed at or before the date of termination or expiry.

5 Assistance on Expiry or Termination

- 5.1 In the event that this Contract expires or is terminated the Supplier shall, where so requested by the Authority in accordance with this Schedule 7, provide assistance to the Authority to migrate the provision of the Services to a Replacement Supplier.

6 Pre-service Transfer Obligations

- 6.1 The Supplier agrees that, subject to compliance with the Data Protection Legislation:
- (a) within twenty (20) Working Days of the earliest of:
 - (i) receipt of a notification from the Authority of a Service Transfer or intended Service Transfer; or
 - (ii) receipt of the giving of notice of early termination of this Contract or any part thereof; or
 - (iii) the date which is six (6) months before the expiry date of this Contract,

it shall provide to the Authority and/or its Replacement Suppliers:

- (iv) details of the Services;
 - (v) details of all Authority Assets currently used in providing the Services;
 - (vi) details of the Transferable Contracts;
 - (vii) a list of those of its, or its Sub-Contractors', employees who are wholly or mainly assigned to the provision of the Services which the Supplier believes will transfer to the Authority or the replacement Supplier (as the case may be), together with Staffing Information in relation to such employees,
 - (viii) an inventory of any Authority Data in the Supplier's possession or control;
 - (ix) details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
 - (x) a list of ongoing and/or threatened disputes in relation to the provision of the Services,
 - (xi) such other material and information as the Authority shall reasonably require, and
- (b) at least ten (10) Working Days prior to the Service Transfer Date, the Supplier shall provide to the Authority for itself or on behalf of any replacement Supplier (as the case may be) a final list of employees which shall transfer under TUPE.

6.2 Within 10 Working Days of the Authority receiving the information in 6.1(a), the Authority shall notify the Supplier which, if any, of the Transferable Contracts the Authority requires to be assigned or novated to the Authority and/or the Replacement Supplier (the **Transferring Contracts**). Where requested by the Authority and/or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Authority and/or its Replacement Supplier to enable it to determine which Transferable Contracts the Authority and/or its Replacement Supplier requires to provide the Services.

6.3 The Supplier shall as soon as reasonably practicable assign or procure the novation to the Authority and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.

6.4 The Authority shall:

- (a) accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
- (b) once a Transferring Contract is novated or assigned to the Authority and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.

6.5 The Supplier shall hold any Transferring Contracts on trust for the Authority until such time as the transfer of the relevant Transferring Contract to the Authority and/or the Replacement Supplier has been effected.

6.6 The Supplier shall indemnify the Authority (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Authority (and/or Replacement

Supplier) pursuant to paragraph 6.3 in relation to any matters arising prior to the date of assignment or novation of such Sub-contract.

- 6.7 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.
- 6.8 The Supplier warrants that all information provided under paragraph 6 of this Schedule shall be true, accurate and complete 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 prepare an informed offer for those Services and to not be disadvantaged in any subsequent procurement process compared to the Supplier.
- 6.9 The Supplier shall notify the Authority within 5 Working Days of any change to the information provided in paragraph 6.1 and shall consult with the Authority regarding such changes
- 6.10 From the date of the earliest event referred to in paragraphs 6.1(a)(i) to 6.1(a)(iii) of this Schedule 7, the Supplier agrees that it shall not, and agrees to procure that its Sub-Contractors shall not, other than in the ordinary course of business, in respect of those employees engaged in the provision of the Services:
- (a) increase or reduce the total number of employees so engaged, or give notice to terminate the employment of any such employees; or
 - (b) replace or re-deploy any such employee other than where any replacement is of equivalent grade, skills, experience and expertise; or
 - (c) make, promise, propose or permit any changes to their terms and conditions of employment (including any payments connected with the termination of employment).

Schedule 8. Exit Management Plan

Guidance: To insert the Exit Management Plan when it is agreed by both parties.

Schedule 9. TUPE

Part 1 Transfer of Employees

1 Definitions

The definitions in this paragraph apply in this schedule:

Admission Agreement: the agreement in the form set out in Part 3 of this Schedule 9 to be entered into in accordance with regulation 6 of the Local Government Pension Scheme (Administration) Regulations 2008, as amended, by [the administering authority,] the Authority and the Supplier or Sub-Contractor, as appropriate.

Appropriate Pension Provision: in respect of:

- (a) Eligible Employees, either:
- (i) membership, continued membership or continued eligibility for membership of the pension scheme of which they were members, or were eligible to be members, or were in a waiting period to become a member of, prior to the Relevant Transfer; or
 - (ii) pension scheme, which is certified by the Government Actuary's Department (GAD) as being broadly comparable to the terms of the pension scheme of which they were, or were eligible to be, members.

Bond: Not used.

Effective Date: the date(s) on which the Services (or any part of the Services) transfer from the Authority or any Third Party Employer 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 Transfer Date.

Employee Liability Information: the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE.

Employment Liabilities: all claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful 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 made 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.

LGPS: Local Government Pension Scheme.

LGPS Regulations: means the Local Government Pension Scheme Regulations 2013 (as amended and replaced from time to time)

Relevant Employees: those employees whose contracts of employment transfer with effect from the Service Transfer Date from the Supplier or Sub-contractor to the Authority or a Replacement Supplier by virtue of the application of TUPE.

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 or any part 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.

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 an anonymised format, such information as the Authority may reasonably request including but not limited to 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 the Services.

Transfer Date: **[Insert details]**

Transferring Employees: employees of the Authority whose contracts of employment will transfer with effect from the Transfer Date to the Supplier by virtue of the application of TUPE as listed in Part 2 of this Schedule 9.

2 Transfer of Employees to the Supplier

- 2.1 The Authority and the Supplier agree that the contracts of employment of the Transferring Employees shall transfer to the Supplier or Sub-contractor on the Transfer Date.
- 2.2 The Supplier shall comply and shall procure that each Sub-Contractor shall comply with their obligations under TUPE.
- 2.3 The Authority shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the Transfer Date.
- 2.4 The Supplier shall be liable for and indemnify and keep indemnified the Authority 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 and otherwise from and including the Transfer Date.
- 2.5 The Supplier shall immediately on request by the Authority provide details of any measures that the Supplier or any Sub-Contractor of the Supplier 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 shall give confirmation of that fact, and shall indemnify the Authority against all Employment Liabilities resulting from any failure by it to comply with this obligation.

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 relevant 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, provide the Supplier's Provisional Staff List and the Staffing Information together with any additional information required by the Authority, including but not limited to information as to the potential application of TUPE to the personnel identified in the Supplier's Provisional Staff List. The Supplier shall notify the Authority of any changes to this information as and when they occur.
- 3.3 At least 14 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 (or any part of) the Services.
- 3.5 The Supplier warrants 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 In the six months prior to termination of this Agreement, and at any point after notice has been served to terminate this Agreement, the Supplier shall not and shall procure that any Sub-Contractor shall not without the prior written consent of the Authority, assign any person to the provision of the Services who is not listed in the Supplier's Provisional Staff List and shall not without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed):
- (a) increase the total number of employees listed on the Supplier's Provisional Staff List save for fulfilling assignments and projects previously scheduled and agreed with the Authority;
 - (b) make, propose or permit any changes to the terms and conditions of employment of any employees listed on the Supplier's Provisional Staff List;
 - (c) increase the proportion of working time spent on the Services by any of the Supplier's Personnel save for fulfilling assignments and projects previously scheduled and agreed with the Authority;
 - (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Staff List; and
 - (e) replace any of the Supplier's Personnel listed on the Supplier's Provisional Staff List or deploy any other person to perform the Services or increase the number of employees or terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Staff List.
- 3.8 The Supplier will promptly notify the Authority or, at the direction of the Authority, the Replacement Supplier of any notice to terminate employment received from any persons listed on the Supplier's Provisional Staff List regardless of when such notice takes effect.
- 3.9 The Supplier shall indemnify the Authority and at the Authority's request each and every Replacement Supplier in full for and against all claims costs, expenses or liabilities whatsoever and howsoever arising, incurred or suffered by the Authority or any Replacement Supplier

including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:

- (a) any claim, demand, action or proceeding which is made or brought by a Relevant Employee, or any trade union or other body or person representing any Relevant Employee, against the Authority or any Replacement Supplier at any time and which relates to circumstances or events occurring or arising on or prior to the Service Transfer Date;
- (b) any failure by the Supplier or any Sub-Contractor to comply with its or their obligations under this paragraph 3.

3.10 The Supplier shall indemnify and keep indemnified in full the Authority and at the Authority's request 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 (where such claim arises as a result of any act, fault or omission of the Supplier and/or any Sub-Contractor),

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 to paragraph 3.1 to paragraph 3.11, 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.

3.13 Despite paragraph 3.12, it is expressly agreed that the parties may by agreement rescind or vary any terms of this contract without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

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 up to and including the date of the termination or expiry of this agreement.

4.2 The provisions of paragraph 4 and paragraph 5 of this Schedule 9 shall be directly enforceable by an affected employee against the Supplier or any relevant Sub-contractor.

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 or, if the Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer. The Supplier or Sub-Contractor will bear the cost of any actuarial assessment required in order to assess the employer's contribution rate in respect of any Eligible Employee who elects to join the LGPS on or after the Effective Date.

5.2 The Supplier shall indemnify and keep indemnified the Authority and/or any Replacement Supplier and, in each case, their Suppliers, from and against all direct losses suffered or incurred by it or them, which arise from any breach by the Supplier or Sub-Contractor of the terms of the Admission Agreement, to the extent that such liability arises before or as a result of the termination or expiry of this agreement.

5.3 Not Used

5.4 The Supplier shall and shall procure that any relevant Sub-Contractor shall award benefits (where permitted) to the Eligible Employees under the LGPS Regulations in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Authority. The Supplier shall be responsible for meeting all costs associated with the award of such benefits.

6 Council Guarantees on Pension Fund Liabilities

6.1 References to “Scheme Employer”, “Administering Authority”, “Admission Body”, “Admission Agreement” and “Cessation Valuation” refer to the Admission Agreement in respect of participation in the Devon County Council Fund of the Local Government Pension Scheme (the “Fund”) between Torbay Council, [Insert Supplier’s Name] and Devon County Council, dated [xxxx] and attached as Part 3 of this Schedule 9.

6.2 The Scheme Employer (Torbay Council) guarantees to the Administering Authority (Devon County Council) that in the event of insolvency of the Admission Body (the Supplier) it will on written demand from the Administering Authority meet in full all and any liabilities of the Admission Body to the Fund. In the meeting the liability the Scheme Employer may choose to meet those liabilities by incorporating them into their pre-existing liabilities to the Fund thereby spreading the liabilities over time rather than meeting the liabilities as a one-off payment. For the avoidance of doubt this guarantee replaces the requirement for a bond or indemnity under the Bond Level sub-clause of the Admission Agreement.

6.3 The Authority (Torbay Council) hereby guarantees that, on termination (for whatever reason) of this Contract that it will meet in full its liabilities identified in the “Cessation Valuation” incorporated into the Admission Agreement. In meeting these liabilities the Authority may choose to incorporate them into their pre-existing liabilities to the Fund thereby spreading the liabilities over time rather than meeting the liabilities as a one-off payment.

7 Supplier Pension Scheme

Where the Supplier or Sub-Contractor does not wish to or is otherwise prevented from offering the Eligible Employees membership or continued membership of the LGPS or such other broadly comparable scheme, 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 or, if the Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer. Such an occupational pension scheme must be:

- (a) established no later than three months prior to the date of the Relevant Transfer; and
- (b) certified by the GAD as providing benefits that are broadly comparable to those provided by the Local Government Pension Scheme.

and the Supplier shall produce evidence of compliance with this paragraph to the Authority prior to the date of the Relevant Transfer. :

The Authority's actuary shall determine the terms for bulk transfers from the Local Government Pension Scheme to the Supplier's scheme following the Effective Date and any subsequent bulk transfers on termination or expiry of this agreement.

Part 2 Transferring employees

Transferring Employees

Part 3 Admission agreement [for use in transfers of members of LGPS only]

[INSERT COPIES]

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Intentionally left blank

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[INSERT COPIES]

Schedule 10. Evidence of Insurance

Guidance: To insert evidence of the Supplier's compliance with the insurance obligations on receipt.

Schedule 11. Change Control Procedure

1 Definitions

The definitions in this paragraph apply in this Schedule 11.

Change Control Note: the written record of a Change agreed or to be agreed by the parties pursuant to the Change Control Procedure.

2 Permitted Changes

2.1 Changes to the Contract shall be made only where:

- (a) Such a Change is permitted by the Public Contracts Regulations 2015, Regulation 72(1)(b) to (f); or
- (b) permitted under paragraph 2.2 below.

2.2 A Change is permitted where each of requirements (a) to (d) below is satisfied:

- (a) the Change is of the following scope and nature:
 - (i) delivering the Authority's requirements in a different way; or
 - (ii) inclusion of additional services associated with the services delivered under this Contract; or
 - (iii) use of the Contract by Council subsidiary or wholly owned companies.
- (b) the price of the Change is calculated as follows:
 - (i) in accordance with the Supplier's tender pricing submission; or
 - (ii) in accordance with CPI/RPI; or
 - (iii) in accordance with Authority costs in relation to any additional outsourced services.
- (c) the circumstances necessitating the Change are:
 - (i) technological advances; or
 - (ii) strategic change of direction by the Authority;
 - (iii) restructuring within the Authority;
 - (iv) outsourcing and/or reduction of services;
 - (v) acquisition and/or increase of services;
 - (vi) changes in legislation and/or security standards.
- (d) the Change does not alter the overall nature of the Contract.

3 General Principles

3.1 Where the Authority or the Supplier sees a need to change this Contract, 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 paragraph 4 of this Schedule 11.

- 3.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Authority and the Supplier shall continue to perform this Contract in compliance with its terms before such Change.
- 3.3 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.
- 3.4 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 11, shall be undertaken entirely at the expense and liability of the Supplier.

4 Procedure

- 4.1 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 Contract by the Authority; or
 - (c) a recommendation to change this Contract by the Supplier.
- 4.2 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.
- 4.3 A recommendation to amend this Contract 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.
- 4.4 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 Contract 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;
 - (i) the date of expiry of validity of the Change Control Note; and
 - (j) provision for signature by the Authority and the Supplier.
- 4.5 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) arrange 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.
- 4.6 A Change Control Note signed by the Authority and by the Supplier shall constitute an amendment to this Contract.

Schedule 12. Order Form

ORDER FORM	
Contract	
FROM	
Authority	
Service address	
Invoice address	
Authorised representative	
Telephone number	
Email address	
Order number <i>(to be quoted on all correspondence relating to this order)</i>	
Order date	
TO	
Supplier	
Address	
For the attention of	
Telephone number	
Email address	
1. Job Specification	
1.1. Origination:	
1.2. Size:	
1.3. Material:	
1.4. Processes:	
1.5. Finishing:	
1.6. Quantity:	
1.7. Notes:	
2. Delivery date	

3. Delivery address	
4. Price payable by Authority	
5. Supplemental requirements in addition to Terms and Conditions (if applicable)	
6. Sub-contracted parts of the job (if applicable)	
7. Confidential Information	
7.1. The following information shall be deemed Confidential information	
7.2. Duration that the information shall be deemed Confidential information	
<p>BY SIGNING AND RETURNING THIS ORDER FORM THE SERVICE PROVIDER AGREES to enter a legally binding contract with the Authority to provide to the Authority the Services specified in this Order Form (together with, where completed and applicable, the further competition order (additional requirements) set out in section 2 of this Order Form) incorporating the rights and obligations in the Call-Off Terms and Conditions set out in the Framework Agreement entered into by the Supplier and the Authority on [date].</p>	
For and on Behalf of the Supplier	
Name and title	
Signature	
Date	
For and on behalf of the Authority	
Name and title	
Signature	
Date	
Appendices	
Appendix 1: Specification for the Services	
Appendix 2: Supplier's Tender	

Schedule 13. Not Used

Schedule 14. Performance Monitoring and Contract Management

1. Key Performance Indicators

- 1.1 The Authority requires good quality service. The Supplier acknowledges this requirement and undertakes to use its best endeavours to provide such a service based on the philosophy of "Get it right first time". The Authority shall be entitled to take steps to ascertain whether the Supplier has performed the Service and that they have done so in complete accordance with the Contract.
- 1.2 The Supplier's performance in relation to the delivery of their obligations as identified in Section 6 of Part 2 Specification shall be monitored through a series of Key Performance Indicators (KPIs) which are set out in the table below:

KPI	Target
Posting deadlines met	95%
Quality of printed material matching pre-approved proof/template	100%
Quality issues raised	<1%
Complaints acknowledged within 2 hours	100%

- 1.3 All KPIs shall be monitored over any two consecutive rolling quarterly periods.
- 1.4 The Supplier shall report against the above KPIs on a quarterly basis. This information shall be provided to the Authority within ten working days of the end of each quarter.

2. Performance Management System

- 2.1 The Supplier's performance shall be measured against the KPIs identified at paragraph 1 of this Schedule, as varied from time to time in accordance with the Contract terms.

Default Notice

- 2.2 The Authority will issue a Default Notice to the Supplier when:
- (a) the Supplier's performance against one or more of the KPIs does not meet the expected or acceptable target in over any two consecutive rolling quarterly periods;
 - (b) the Supplier's performance against other KPIs demonstrates significant or consistent underperformance or non-performance that is impacting on the service provided to the Authority;
 - (c) the Provider breaches a Remedial Action Plan and does not remedy the breach within 5 Working Days of its occurrence.
- 2.3 A default notice shall not be issued where the performance failure is due to force majeure as defined in the Contract terms, or where non-performance is reasonably defined as being caused by the actions or omissions of a third party and which are outside the control of the Supplier and which are not the responsibility of the Supplier under this Contract. These circumstances should be appropriately evidenced to the Authority where a failure to perform results. The Authority expects that when such circumstances apply, the Supplier shall use their best endeavours to continue delivering the service through appropriate means.

- 2.4 The Default Notice will set out:
- (a) details of the incident(s) of non-performance;
 - (b) any additional information in relation to the incident(s) of non-performance;
 - (c) a timeframe for submission by the Supplier of the Draft Remedial Action Plan;
 - (d) a timeframe for rectification by the Supplier of the incident(s) of non-performance;
 - (e) details of any consequences of failing to rectify the non-performance within the agreed timeframe.
- 2.5 Where a Default Notice is issued, the Supplier will acknowledge receipt within one Working Day. The Supplier will provide the Authority with a Remedial Action Plan for approval by the Authority, within the timescale specified within the Default Notice. Once agreed by the Authority, the Supplier will implement the Remedial Action Plan within the agreed timescale.
- 2.6 The Remedial Action Plan must set out:
- (a) details of the incident(s) of non-performance;
 - (b) the actions required to make the necessary improvements;
 - (c) the dates on which the actions will be completed;
 - (d) who will be responsible for completing the actions;
 - (e) any issues or concerns, if applicable, that the Provider has and wants to raise with the Authority, in order to assist with the completion of the necessary actions.
- 2.7 Where deficient service has been identified and it is not possible to reform the service (whether or not a Default Notice has been issued) the Supplier shall use its best endeavours to ameliorate the situation.
- 2.8 Should the Supplier fail to remedy the issue referred to in a Default Notice then the Authority shall have power to implement clause 10 of the Key Provisions or rely on the provisions of clause Part 121 or clause 22 of the General Terms depending upon the nature and seriousness of the breach.
- 2.9 The Authority reserves the right to notify the Supplier's Chief Executive and/or Board of Directors of the default in order that each of them may take whatever steps they think are appropriate.

Withholding Payment for Breach of a Remedial Action Plan

- 2.10 If the Provider breaches a Remedial Action Plan:
- (a) the Authority may withhold, in respect of each milestone not met, up to 5% of the aggregate monthly sums payable by the Authority, from the date of issuing the Default Notice in respect of the breach and for each month the Supplier's breach continues, subject to a maximum monthly withholding of 20% of the aggregate monthly sums payable by the Authority in relation to each Remedial Action Plan;
 - (b) the Authority must pay the Supplier any sums withheld under paragraph 2.10 within 10 Working Days following the Authority's confirmation that the breach of the Remedial Action Plan has been rectified. Subject to paragraph 2.11 below no interest will be payable on those sums.

Unjustified Withholding of Payment

- 2.11 If the Authority withholds sums under paragraph 2.10 and within 20 Working Days of the date of that withholding the Supplier produces evidence satisfactory to the Authority that the relevant sums were withheld unjustifiably, the Authority must pay those sums to the Provider within 10 Working Days following the date of the Authority's acceptance of that evidence, together with interest at the Default Interest Rate for the period for which the sums were withheld. If the Authority does not accept the Provider's evidence the Provider may refer the matter to dispute resolution.

Retention of Sums Withheld on Expiry or Termination of the Contract

- 2.12 If the Supplier does not rectify a breach of a Remedial Action Plan before the Expiry Date or earlier termination of this Contract, the Authority may retain permanently any sums withheld under paragraph 0 above.

Consequences of Persistent Default

- 2.13 In the event that the total number of Default Notices issued to the Supplier exceeds 5 in any rolling 6 month period, the Authority reserves to step-in or terminate the affected part of the Service, or where the defaults affect multiplies elements of service delivery the right to step-in or terminate shall apply to the whole Contract:

3. Information Provision

- 3.1 The Supplier shall make available to the Authority, on reasonable request, a copy of the following policies, procedures or other documentation:
- (a) business continuity plan and latest copy of any relevant inspection reports;
 - (b) accounts (audited where required by law and other relevant financial information (where this is reasonable));
 - (c) evidence of appropriate and adequate insurance cover;
 - (d) risk assessment, security, health and safety, confidentiality and quality standards policy;
 - (e) policy & procedure for staff recruitment, induction, training and development;
 - (f) complaint procedure and copy of records relating to complaints made in relation to the service and the Supplier's response;
 - (g) any other documentation that may be reasonably required in order to verify the service.

4. Contract and Performance Review Meetings

- 4.1 The Authority and the Supplier shall, as a minimum meet on a Quarterly basis, with additional ad hoc meetings as required to deal with any urgent issues.
- 4.2 The Agenda will include but is not limited to:
- (a) operational issues;
 - (b) service development;
 - (c) review of performance against KPIs;
 - (d) summary of default notices issued(if applicable)
 - (e) remedial action plan progress (if applicable)

- (f) health and safety;
- (g) financial review
- (h) compliments and complaints

5. Financial Monitoring

- 5.1 The Provider acknowledges the importance to the Authority of transparency and complete and accurate records in relation to financial matters and the provision of the Services.
- 5.2 During the Contract Term and for a period of 12 years following the end of the Contract Term or earlier termination of this Contract the Provider shall maintain and retain the financial records referred to at paragraph 5.1 above and shall allow the Authority and its authorised agents access to that information upon the Authority giving at least 10 Working Days' notice in writing.

Appendix A14 DEFAULT NOTICE

This is a Default Notice given by the Authority to the Supplier under the contract referred to below.

If the defaults referred to below are capable of remedy, it is important that the Supplier remedies those defaults. Failure to remedy the defaults may give rise to a right for the Authority to terminate the Contract.

Name of the Authority	
Name of the Supplier	
Contract Description	
Contract Commencement Date	
Details of Supplier's default	
Any additional information	
Details of agreed actions to remedy the default and timescales for completion	
Details of consequences of failing to meet timescales for completion of remedial actions	

Schedule 15. **Data Processing Agreement**

1 **Definitions and Interpretation**

In this Schedule the definitions and rules of interpretation below will apply, unless the context otherwise requires or permits:-

The Authority: means Torbay Council

The Supplier: means the organisation named at the beginning of this document

Agreement: means this Data Processing Agreement;

Completion: means the time immediately following the completion of the **purpose**

Data: means the information provided to the Supplier for the stated **purpose**

Data Controller: has the meaning set out in the General Data Protection Regulation.

Data Processor: has the meaning set out in the General Data Protection Regulation.

Data Protection Legislation: means all current UK legislation that relates to Data Protection.

Personal Data: has the meaning set out in the General Data Protection Regulation.

Personal Data Breach: has the meaning set out in the General Data Protection Regulation.

Processing and process: have the meaning set out in the General Data Protection Regulation.

Intellectual Property Rights: means any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other similar rights.

Parties: means the parties to this Agreement and **Party** means either of them. Words in the singular include the plural and in the plural include the singular. Clause headings will not affect the interpretation of this agreement.

References to clauses are, unless otherwise provided, references to the clauses of this agreement.

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.

In the event that there is any conflict between these terms and conditions and the Schedules they shall take the following order of precedence (from most to least important):

For the purposes of this Schedule, the Authority is the Data Controller and the Supplier is the Data Processor of any Personal Data.

2 **Processing Activity to be Undertaken**

2.1 The processing activity will take place in respect printing and distribution of documents on behalf of Torbay Council.

2.2 The processing activity shall only be undertaken for the duration of the Contract unless the processing requirement is terminated earlier through formal variation.

- 2.3 The processing activity will be carried out for the specific purpose of printing and distribution of documents on behalf of Torbay Council.
- 2.4 The processing activity will only apply to these types of personal data:
- (a) Names and contact details;
 - (b) Revenue and benefits information;
 - (c) Electoral registration information;
 - (d) Personal financial information;
 - (e) Business financial information; and
 - (f) Special category data.
- 2.5 The processing activity will only apply to these categories of data subjects:
- (a) Customers of the Council;
 - (b) Staff; and
 - (c) Suppliers.
- 2.6 The means of processing will be:
- (a) [insert details]
- 2.7 If the Supplier does not comply with the required agreed under 2.1 to 2.6 and determines the purpose and means of processing the Supplier will be considered to be a Data Controller in respect of that processing.

3 Obligations of the Supplier

- 3.1 The Supplier and its employees are bound by a duty of confidentiality and will to adhere to the conditions within the agreement between the Authority and the Supplier and employees personal responsibilities to comply with the requirements of the Data Protection legislation.
- 3.2 The Supplier will use all reasonable skill and care in providing the Services.
- 3.3 The Supplier will process the Data only to the extent, and in such a manner, as is necessary for this Agreement and will not process the Data for any other purpose.
- 3.4 The Supplier will:
- (a) process the Data in accordance with Data Protection legislation, in so far as it applies;
 - (b) take appropriate technical and organisational measures against unauthorised or unlawful processing of the Data and against accidental loss of, destruction of, or damage to Data; and
 - (c) act only on instructions from the Authority and in accordance with this agreement;
 - (d) take appropriate technical and organisational measures to assist the Authority in responding to requests for exercising data subject's rights under Data Protection legislation, including but not limited to the right of access and right to be forgotten;

- (e) comply with the requirement to carry out a data protection impact assessment on any new technologies used in connection with the processing of data under this contract and shall consult the Authority's Data Protection Officer on any impact assessment;
 - (f) on termination of this Data Processing Agreement the Supplier will delete or return all personal data to the Authority;
 - (g) the Supplier will notify the Authority immediately in the event that any instruction from the Authority or its authorised representatives in relation to monitoring compliance with data protection legislation, in their opinion, infringes Article 28 of the General Data Protection Regulation
- 3.5 The Supplier will keep a record of any processing of Data it carries out on behalf of the Authority.
- 3.6 In the event that the Supplier receives any complaint, notice or communication from a third party in connection with the Services, it will immediately notify the Authority in writing to The Data Protection Officer, Torbay Council, Town Hall, Castle Circus, Torquay TQ1 3DR and provide the Authority with full co-operation and assistance dealing with such complaint, notice or communication.
- 3.7 The Supplier will promptly comply with any reasonable request received from the Authority in relation to the Data.
- 3.8 The Supplier will keep all information (written or oral) confidential, in so far as permitted by law relating to any Data.
- 3.9 The Supplier will not disclose or transfer the Data in whole or in part to any other person without the Authority's written consent (not to be unreasonably withheld or delayed), except to its employees who have a need to know and involved in the performance of the Services.
- 3.10 The Supplier will promptly, within 24 hours of becoming aware, inform the Authority if they become aware that any Data is lost or if a personal data breach has occurred. The Supplier will recover such Data at its own expense. If equipment containing the data has been lost or stolen, the Supplier will notify the Authority's Data Protection Officer immediately at infocompliance@torbay.gov.uk and the supplier shall assist the Authority with any investigation undertaken.
- 3.11 The Supplier will not transfer any Personal Data outside the European Economic Area without the prior written consent of the Authority.
- 3.12 The Supplier will not be restricted by this Agreement in its use of any Data which is in the public domain or in the possession of the Supplier prior to the date of this Agreement.

4 The Supplier's Employees

- 4.1 The Supplier ensure that access to the Data is limited to:
- (a) those employees who need access to the Data for the purpose of this Agreement; and in the case of any access by any employee, such part or parts of the Data as is strictly necessary for performance of that employee's duties under this Agreement.

- 4.2 The Supplier will ensure that any of their employees, agents, subcontractors or professional advisors who have access to the Data under this Agreement:
- (a) are informed of the confidential nature of the Data;
 - (b) have undertaken training in the laws relating to handling Personal Data;
 - (c) are aware of the Supplier obligations under this Agreement.
- 4.3 The Supplier will use reasonable endeavours to ensure the reliability of any of their employees who have access to the Data.

5 The Obligations and Rights of the Authority

- 5.1 The Authority is entitled, on giving at least five working days' notice to the Supplier, to inspect or appoint representatives to inspect all facilities, equipment, documents and electronic data relating to the processing of the Data.
- 5.2 The requirement under clause 5.1 to give notice will not apply if the Authority believes that the Supplier is in breach of any of its obligations under this Agreement.
- 5.3 The Authority will notify the data subject of any personal data breach, resulting from any actions of the Supplier.

6 Warranties

- 6.1 Each party warrants to the other that it is duly authorised to enter into this Agreement.
- 6.2 The Supplier warrants that it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.
- 6.3 The Supplier warrants that it will not authorise any third party or sub-contractor to process the Data.

7 Intellectual Property Rights

- 7.1 The Supplier agrees and acknowledges that any Intellectual Property Rights in the Data belongs to the Authority and that the Supplier does not acquire any rights, title or interest in such Data, save as granted under this Agreement.
- 7.2 The Authority hereby grants the Supplier a royalty free licence to process the Data under this Agreement. For the avoidance of doubt, this licence shall terminate automatically on termination of this Agreement.

8 Indemnity

- 8.1 The Supplier agrees to indemnify and hold the Authority harmless against all costs, claims, losses, damages or expenses (including legal expenses) incurred by The Authority as a result of the Supplier's failure to comply with its obligations under this Agreement and Data Protection legislation.

9 Completion of the Term

- 9.1 Immediately after Completion, the Supplier will delete all Data and any copies of the Data in its possession (unless otherwise stipulated).