



**(1) THE KENT COUNTY COUNCIL**

**-and-**

**(2) [INSERT SUPPLIER NAME]**

**CONTRACT**

relating to the supply of

**[Insert Service Name]**

**Contract Number: [INSERT CONTRACT NUMBER]**

## TABLE OF CONTENTS

1.	DEFINITIONS AND INTERPRETATION .....	10
2.	CONTRACT PERIOD AND EXTENSION .....	18
3.	SUPPLIER'S STATUS .....	18
4.	COUNCIL'S OBLIGATIONS .....	18
5.	NOTICES .....	18
6.	MISTAKES IN INFORMATION .....	19
7.	CONFLICTS OF INTEREST .....	19
8.	THE SERVICES .....	19
9.	SERVICE LEVELS AND SERVICE CREDITS .....	20
10.	PROVISION AND REMOVAL OF EQUIPMENT .....	20
11.	KEY PERSONNEL .....	21
12.	SUPPLIER'S STAFF .....	21
13.	SAFEGUARDING CHILDREN AND VULNERABLE ADULTS .....	22
14.	TUPE AND PENSIONS .....	23
15.	INSPECTION OF PREMISES .....	23
16.	LICENCE TO OCCUPY COUNCIL PREMISES .....	23
17.	PROPERTY .....	23
18.	PARENT COMPANY GUARANTEE .....	24
19.	PERFORMANCE BOND .....	24
20.	CONTRACT PRICE .....	24
21.	PAYMENT AND VAT .....	24
22.	RECOVERY OF SUMS DUE .....	25
23.	PRICE ADJUSTMENT .....	25
24.	PREVENTION OF BRIBERY AND CORRUPTION .....	26
25.	EQUALITIES .....	27
26.	THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999 .....	27
27.	ENVIRONMENTAL REQUIREMENTS .....	27
28.	HEALTH AND SAFETY .....	27
29.	DATA PROTECTION .....	28
30.	CONFIDENTIAL INFORMATION .....	29
31.	FREEDOM OF INFORMATION .....	30
32.	PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES .....	31
33.	SECURITY .....	32
34.	INTELLECTUAL PROPERTY RIGHTS .....	32
35.	CHANGE CONTROL AND CONTINUOUS IMPROVEMENT .....	34

36.	AUDIT 34	
37.	TRANSFER AND SUB-CONTRACTING .....	34
38.	WAIVER .....	35
39.	VARIATION .....	36
40.	SEVERABILITY .....	36
41.	REMEDIES CUMULATIVE .....	36
42.	CONTRACT MANAGEMENT .....	36
43.	ANNUAL REVIEW .....	37
44.	ENTIRE AGREEMENT .....	37
45.	COUNTERPARTS .....	37
46.	LIABILITY AND INDEMNITY .....	37
47.	INSURANCE .....	38
48.	WARRANTIES AND REPRESENTATIONS .....	39
49.	TERMINATION ON INSOLVENCY AND/OR CHANGE OF CONTROL .....	40
50.	TERMINATION AND REMEDIES ON DEFAULT .....	41
51.	BREAK CLAUSE .....	44
52.	CONSEQUENCES OF EXPIRY OR TERMINATION .....	44
53.	DISRUPTION .....	45
54.	RECOVERY UPON TERMINATION .....	45
55.	FORCE MAJEURE .....	46
56.	DISASTER RECOVERY .....	46
57.	GOVERNING LAW AND JURISDICTION .....	46
58.	DISPUTE RESOLUTION .....	47
59.	TRANSPARENCY .....	47
60.	EXTREMISM AND RADICALISATION .....	48
61.	WHISTLEBLOWING POLICY .....	48
62.	FURTHER ASSURANCES .....	48
63.	CHANGES IN LAW .....	49
64.	MODERN SLAVERY .....	49
	SCHEDULE 0 SERVICE-SPECIFIC CONDITIONS FOR <i>REGULATION 44 INDEPENDENT VISITOR SERVICE</i> .....	51
	SCHEDULE 1 SPECIAL CONDITIONS .....	52
	SCHEDULE 2 SPECIFICATION .....	62
	SCHEDULE 3 PRICING AND PAYMENT .....	68
	SCHEDULE 4 TENDER .....	70
	SCHEDULE 5 SCHEDULE OF AGREEMENTS .....	71
	SCHEDULE 6 SERVICE LEVELS AND SERVICE CREDITS .....	72

SCHEDULE 7 CHANGE CONTROL .....	73
SCHEDULE 8 EXIT ARRANGEMENTS.....	78
SCHEDULE 9 TUPE AND PENSIONS .....	80
SCHEDULE 10 PARENT COMPANY GUARANTEE .....	81
SCHEDULE 11 PERFORMANCE BOND.....	82
SCHEDULE 12 DISASTER RECOVERY PLAN.....	83
SCHEDULE 13 COMMERCIALY SENSITIVE INFORMATION .....	86
SCHEDULE 14 CONTRACT MANAGEMENT .....	87
SCHEDULE 15 MOBILISATION AND TRANSITION .....	88
SCHEDULE 16 DATA PROTECTION AND GENERAL DATA PROTECTION REGULATION ..	89

## FORM OF AGREEMENT

**THIS CONTRACT** is made on

### **BETWEEN**

- (1) **THE KENT COUNTY COUNCIL** of County Hall, Maidstone, ME14 1XQ (the “Council”); and
- (2) **[INSERT SUPPLIER NAME]** (company registered number **[INSERT COMPANY NUMBER]**) whose registered office is at **[INSERT ADDRESS]** (the “Supplier”).

### **RECITALS:**

- (A) The Council a local authority as defined by section 270 of the Local Government Act 1972.
- (B) Following a procurement process the Council has appointed the Supplier to provide the Services in accordance with this Contract.

### **IT IS AGREED:**

1. this Contract is comprised of the following documents:

- 1.1 This Form of Agreement.
- 1.2 The Contract Particulars.
- 1.3 The Special Conditions (if any).
- 1.4 The Conditions of Contract.
- 1.5 The Schedules (excluding Schedule 4 (the Tender)).
- 1.6 The Appendices; and
- 1.7 Schedule 4 (the Tender)

and (unless otherwise expressly stated) any inconsistency between them shall be resolved in accordance with the descending order of priority in which they are listed above.

2. Terms and expressions used in this Contract shall have the meanings given in Clause 1.1 of the Conditions of Contract.
3. In consideration for payment of the Contract Price, the Supplier undertakes to perform the Services with due skill, care and diligence throughout the Contract Period.

**EXECUTION UNDER HAND**

**IN WITNESS** whereof this Contract has been executed by the Parties in accordance with their respective constitutions:

Signed for and on behalf of **THE KENT COUNTY COUNCIL**

.....  
Authorised Signatory

.....  
Print Name of Authorised Signatory

Signed for and on behalf of [INSERT SUPPLIER NAME]

.....  
Authorised Signatory

.....  
Print Name of Authorised Signatory

## CONTRACT PARTICULARS

- |    |                                    |   |                            |
|----|------------------------------------|---|----------------------------|
| 1. | Commencement Date:                 | To be completed on contract award   | (Clause 2.1)               |
| 2. | Contract Period:                   | 36 months   | (Clause 1.1)               |
| 3. | Contract Price:                    | As set out in Schedule 3.   | (Clause 21)                |
| 4. | Contract Extension:                | Up to 12 months   | (Clause 2.2)               |
| 5. | Address for Service of Notices     | <p>For the Council:</p> <p>Strategic Commissioning<br/>Kent County Council<br/>Sessions House<br/>County Road<br/>Maidstone<br/>Kent ME14 1XQ</p> <p>For the Supplier:</p> <p><i>[insert address and contact details]</i></p> | (Clause 5.3)               |
| 6. | Service Levels and Service Credits | Clause 9 does not apply.  | (Clause 9 and Schedule 6)  |
| 7. | Key Personnel                      | Clause 11 applies   | (Clause 11)                |
| 8. | Safeguarding                       | Clause 13 applies.  | (Clause 13)                |
| 9. | TUPE and Pensions                  | <p>Clause 14 and Schedule 9 do not apply.</p> <p>Pensions Bond value does not</p>   | (Clause 14 and Schedule 9) |

apply.

10.	Licence to Occupy Council Premises	Clause 16 does not apply.	(Clause 16)
11.	Property	Clause 17 does not apply.	(Clause 17)
12.	Parent Company Guarantee	Clause 18.1 and Schedule 10 do not apply.	(Clause 18.1 and Schedule 10)
13.	Performance Bond	Clause 19 and Schedule 11 do not apply.	(Clause 19 and Schedule 11)
14.	Payment and VAT	<b>Payment Periods:</b>  monthly in arrears.	(Clause 21)
15.	Price Adjustment	Clause 23 does not apply.	(Clause 23)
16.	Security	Clause 33 applies.	(Clause 33)
17.	Audit	Period for which records must be maintained after the end of the Contract:  6 years	(Clause 21.6, 24.5, 35, and 36)
18.	Liability and Indemnity	The Supplier's liability under this Contract shall be limited to the sum of the sum insured  for each and every claim arising under or in connection with this Contract	(Clause 46.5)
19.	Insurance	Public liability insurance: £10,000,000 per claim (minimum	(Clause 47)



of £5,000,000 each and every claim)

Employer's liability insurance: \*£10 million per claim (not less than £10,000,000 each and every claim)

20.	Additional Insurances	Professional Indemnity Insurance	(Clause 47.5 and 47.6)
		is required.	

Where professional indemnity insurance is required:

Limit of indemnity is: £2,000,000 (not less than £2,000,000 any one claim and in the aggregate)

On a per claim basis

Period for which Professional Indemnity Insurance is required following expiry or termination:

*6 years (Where the Contract is executed under hand)*

21.	Break Clause	Clause 51 applies	(Clause 51)
		The notice period is 3 months.	

22.	Force Majeure	Clause 55 applies.	(Clause 55)
-----	---------------	--------------------	-------------

23.	Disaster Recovery	Clause 56 applies.	(Clause 56)
-----	-------------------	--------------------	-------------

24.	Commercially Sensitive Information	Schedule 13 applies.	(Schedule 13)
-----	------------------------------------	----------------------	---------------

## CONDITIONS OF CONTRACT

### 1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:

**“Achieved Service Level”** means in respect of any Service in any measurement period, the standard of performance actually achieved by the Supplier in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the Service Level for that Service is calculated and expressed in Schedule 6).

**“Appendix”** means an appendix to this Contract.

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

**“Change”** means any change to this Contract including any Variations.

**“Change Control Form”** means the written record of a Change agreed or to be agreed by the Parties pursuant to the Change Control Procedure.

**“Change Control Procedure”** means the procedure for changing this Contract, as set out in Schedule 7.

**“Change of Control”** shall have the same meaning as within section 416 of the Income and Corporation Taxes Act 1988 or section 574 of the Capital Allowances Act 2001.

**“Commencement Date”** means the date stated in the Contract Particulars or if none is stated, the date of this Contract.

**“Commercially Sensitive Information”** means the information listed in Schedule 13 (Commercially Sensitive Information) comprised of information:

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

(b) that constitutes a trade secret.

**“Confidential Information”** means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all Council Personal Data (including but not limited to special category data) within the meaning of the DPA as such terms are defined in Schedule 16. Confidential Information shall not include information which:

(a) was public knowledge at the time of

disclosure (otherwise than by breach of Clause 30 (Confidential Information)).

- (b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party.
- (c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (d) is independently developed without access to the Confidential Information.

**“Contract”** means this written agreement between the Council and the Supplier which is more particularly described in the Form of Agreement.

**“Contracting Authority”** means any contracting authority as defined in section 2 of the Public Contracts Regulations 2015.

**“Contract Extension”** means any extension to the Contract Period as set out in the Contract Particulars.

**“Contract Particulars”** means the contract particulars contained in this Contract.

**“Contract Period”** means the period stated in the Contract Particulars.

**“Contract Price”** means the price (exclusive of any applicable VAT), payable to the Supplier by the Council under the Contract, as set out in the Contract Particulars, for the full and proper performance by the Supplier of its obligations under the Contract.

**“Council”** means The Kent County Council of County Hall, Maidstone, Kent ME14 1XQ.

**“Crown Body”** means a public body which has Crown status, such that the material which it produces is subject to Crown copyright protection under section 163 of the Copyright Designs and Patents Act 1988.

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

**“Disaster”** means an event defined as a disaster in the Disaster Recovery Plan.

<b>“Disaster Recovery Plan”</b>	means a plan (including Supplier’s internal business continuity provisions which are approved by the Council prior to the date of this Contract and from time to time thereafter), which sets out the procedures to be adopted by the Supplier in the event that the Services are disrupted by reason of a Disaster (including the procedures to be taken by the Supplier in planning and providing for any such event), the Disaster Recovery Plan at the date of this Contract being set out in Schedule 12.
<b>“Environmental Information Regulations”</b>	means the Environmental Information Regulations 2004 as amended and any guidance and/or codes of practice issued by the Information Commissioner’s Office or relevant government department in relation to such regulations.
<b>“Equipment”</b>	means the Supplier’s equipment, plant, materials and such other items supplied and used by the Supplier in the performance of its obligations under the Contract.
<b>“Exit Manager”</b>	has the meaning set out in paragraph 4 of Schedule 8.
<b>“Exit Obligations”</b>	means the obligations set out in paragraph 2 of Schedule 8.
<b>“Exit Period”</b>	means the period determined in accordance with paragraph 5 of Schedule 8.
<b>“Fees Regulations”</b>	means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 as amended.
<b>“FOIA”</b>	means the Freedom of Information Act 2000 as amended and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner’s Office or relevant government department in relation to such legislation.
<b>“Force Majeure”</b>	means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made precluding the provision or receipt of the Services, but excluding: <ul style="list-style-type: none"> <li>(a) any industrial action occurring within the Supplier’s or any Sub-Contractor organisation; or</li> <li>(b) the failure by any Sub-Contractor to perform its obligations under any Sub-Contract.</li> </ul>
<b>“Good Practice”</b>	<b>Industry</b> means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably

and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

**“Information”**

has the meaning given under section 84 of the FOIA.

**“Information Commissioner’s Office”**

means the public body responsible for the data protection in accordance with the Data Protection Legislation in the UK.

**“Information Governance”**

means the way organisations ‘process’ or handle information relating to the Service and/ or Service Users

**“Intellectual Property and Intellectual Property Rights”**

means any and all intellectual property and appertaining 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, topography rights, 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.

**“Interface Agreement”**

means the document that defines an interface between Parties to the Contract together with associated responsibilities.

**“Key Personnel”**

means those persons named in the Specification and/or elsewhere in the Contract as being key personnel.

**“Law(s)”**

any law, statute, regulation, by-law or subordinate legislation in force from time to time, and all subsequent amendments thereto, applicable to a Party or any part of the Services in any jurisdiction in which the Services are supplied as well as regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body, all as amended, of which the Supplier is bound to comply.

**“Losses”**

shall mean all costs, losses, charges, expenses, damages, compensation, fines, claims, demands, liabilities, actions and proceedings (including the costs and expenses (including legal costs and expenses) of such actions and proceedings and the Staff costs expended in requiring the discharge of an indemnity or payment of damages) arising from or relating to the contractual Clause in question or to its breach.

**“Month”**

means calendar month.

<b>“Party”</b>	means a party to the Contract.
<b>“Premises”</b>	means the location where the Services are to be supplied, as set out in the Specification.
<b>“Price Review Date”</b>	has the meaning given in the Contract Particulars.
<b>“Processing and Process”</b>	has the meaning given to it under the Data Protection Legislation and for the purposes of this Contract, it shall include both manual and automated processing.
<b>“Prohibited Act”</b>	<p>the following constitute Prohibited Acts:</p> <ul style="list-style-type: none"> <li>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to: <ul style="list-style-type: none"> <li>(i) induce that person to perform improperly a relevant function or activity; or</li> <li>(ii) reward that person for improper performance of a relevant function or activity.</li> </ul> </li> <li>(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.</li> <li>(c) committing any offence: <ul style="list-style-type: none"> <li>(i) under the Bribery Act 2010 as amended.</li> <li>(ii) under legislation creating offences concerning fraudulent acts.</li> <li>(iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the Council; or</li> <li>(iv) defrauding, attempting to defraud or conspiring to defraud the Council.</li> </ul> </li> </ul>
<b>“Property”</b>	means the property, other than real property, issued or made available to the Supplier by the Council in connection with the Contract.

<b>“Supplier”</b>	means the person, firm or company with whom the Council enters into the Contract.
<b>“Supplier Party”</b>	means the Supplier's agents and contractors, including each Sub-Contractor.
<b>“Public Sector Contracting Authorities”</b>	means public sector bodies that are subject to the Public Contracts Regulations 2015 and respective successor legislation.
<b>“Public Contracts Directive”</b>	means Directive 2014/24/EU of 26 February 2014 of the European Parliament and of the Council of the European Union.
<b>“Quality Standards”</b>	means the quality standards published by BSI (British Standards Institute), the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification.
<b>“Receipt”</b>	means the physical or electronic arrival of the invoice at the address of the Council set out in the Contract Particulars or at any other address given by the Council to the Supplier for the submission of invoices.
<b>“Regulations”</b>	means The Public Contracts Regulations 2015 and respective successor legislation.
<b>“Regulated Activity”</b>	has the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006 as amended. Suppliers must implement as stipulated by the Regulatory body. Regulated activities are listed in Schedule 1 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010
<b>“Regulated Activity Supplier”</b>	shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006 as amended.
<b>“Regulatory Bodies”</b>	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Council and “Regulatory Body” shall be construed accordingly.
<b>"Relevant Convictions"</b>	means a conviction that is relevant to the nature of the Services or as listed by the Council from time to time.
<b>“Relevant Index”</b>	means, where used, the index specified Schedule 3 (Pricing and Payment Schedule) or if none is specified, the Consumer

Prices Index (CPI).

<b>“Relevant Transfer”</b>	means a relevant transfer for the purposes of TUPE.
<b>“Replacement Supplier”</b>	means any third-party Service Supplier appointed by the Council to supply any services which are substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract.
<b>“Request for Information”</b>	shall have the meaning set out in FOIA or the Environmental Information Regulations 2014 as amended as relevant (where the meaning set out for the term “request” shall apply).
<b>“Schedule”</b>	means a schedule attached to, and forming part of, the Contract.
<b>“Services”</b>	means the services to be supplied as specified in Schedule 2 and elsewhere in the Contract, as appropriate, including, where appropriate, the Key Personnel, the Premises and the Quality Standards.
<b>“Service Credits”</b>	means the sums attributable to a Service Failure as specified in Schedule 6.
<b>“Service Failure”</b>	means a failure by the Supplier to provide the Services in accordance with any individual Service Level
<b>“Service Levels”</b>	means the service levels to which the Services are to be provided, as set out in Schedule 6.
<b>“Service Users”</b>	means the users of the Services.
<b>“Specification”</b>	means the description of the Services to be supplied and the required outcomes under the Contract as set out in Schedule 2 and elsewhere in the Contract, as appropriate, including, where appropriate, the Key Personnel, the Premises and the Quality Standards.
<b>“Special Conditions”</b>	means the special conditions (if any) set out in Schedule 1.
<b>“Staff”</b>	means all persons employed or engaged by the Supplier to perform its obligations under the Contract together with the Supplier’s servants, agents, suppliers and Sub-Contractors used in the performance of its obligations under the Contract.
<b>“Staff Vetting Procedure”</b>	means the Council’s procedures for the vetting of personnel and as advised to the Supplier by the Council.
<b>“Sub-Contract”</b>	means 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.



<b>“Sub-Contractor”</b>	means the contractor or contractors that enter into a Sub-Contract with the Supplier.
<b>“Tender”</b>	means the document(s) submitted by the Supplier to the Council in response to the Council's invitation to suppliers for formal offers to supply it with the Services.
<b>“TFEU”</b>	means the Treaty on the Functioning of the European Union, as amended from time to time.
<b>“the Treaties”</b>	means the Treaty on European Union and TFEU, as amended from time to time.
<b>“TUPE”</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended.
<b>“Variation”</b>	means a Change only to the Specification, and, if required, an associated Change of Contract Price.
<b>“VAT”</b>	means value added tax in accordance with the provisions of the Value Added Tax Act 1994 as amended.
<b>“Working Day”</b>	means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

- 1.2 The interpretation and construction of this Contract shall be subject to the following provisions:
- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa.
  - 1.2.2 words importing the masculine include the feminine and the neuter.
  - 1.2.3 reference to a Clause is a reference to the whole of that Clause unless stated otherwise.
  - 1.2.4 reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted.
  - 1.2.5 reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees.
  - 1.2.6 the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
  - 1.2.7 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

## **2. CONTRACT PERIOD AND EXTENSION**

- 2.1 The Contract shall take effect on the Commencement Date and shall expire automatically at the end of the Contract Period unless it is otherwise terminated in accordance with the provisions of the Contract, or by operation of law, or extended under Clause 2.2.
- 2.2 Where stipulated in the Contract Particulars, the Council may, by giving written notice to the Supplier extend the Contract for such further period as is stated in the Contract Particulars. The provisions of the Contract will apply (subject to any Variation or adjustment to the Contract Price pursuant to Clause 23 (Price Adjustment)) throughout any such extended period.

## **3. SUPPLIER'S STATUS**

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

## **4. COUNCIL'S OBLIGATIONS**

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

## **5. NOTICES**

- 5.1 Save as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.
- 5.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, first class post, recorded delivery or special delivery), or by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in Clause 5.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted, or 4 hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.
- 5.3 For the purposes of Clause 5.2, the address of each Party shall be the address stipulated in the Contract Particulars.
- 5.4 Either Party may change its address for service by serving a notice in accordance with this Clause.

## **6. MISTAKES IN INFORMATION**

- 6.1 The Supplier shall be responsible for the accuracy of all drawings, documentation and information supplied to the Council by the Supplier in connection with the supply of the Services and shall pay the Council any extra costs occasioned by any discrepancies, errors or omissions therein.
- 6.2 The Supplier agrees and acknowledges that:
- 6.2.1 it has been provided with and understood all the information that it needed to assess the scope of the Council's requirements for the Services.
  - 6.2.2 it has taken into account the Premises and any applicable Council systems and processes and is aware of the composition, size and requirements of all user groups and customers relevant to the supply of the Services; and
  - 6.2.3 it is aware of and is able to meet all of the Council's requirements for the Services as communicated to the Supplier before the execution of this Contract.
- 6.3 Accordingly, the Supplier may not at any time claim any extension of time, relief from its contractual obligations or charge for any additional costs or time incurred on the basis that it was unaware of the scope and extent of the Council's requirements or of the matters described in clauses 6.2.1 to 6.2.3.

## **7. CONFLICTS OF INTEREST**

- 7.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff is placed in a position where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Council under the provisions of the Contract. The Supplier will disclose to the Council full particulars of any such conflict of interest which may arise.
- 7.2 The Council reserves the right to terminate the Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Council under the provisions of the Contract. The actions of the Council pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

## **8. THE SERVICES**

- 8.1 The Supplier shall supply the Services during the Contract Period with due skill, care and diligence and in accordance with:
- 8.1.1 the Quality Standards (if any stipulated in the Specification)
  - 8.1.2 Good Industry Practice.
  - 8.1.3 the Law; and
  - 8.1.4 the requirements of the Contract.

- 8.2 The Council may inspect and examine the manner in which the Supplier supplies the Services at the Premises during normal business hours on reasonable notice.
- 8.3 If the Council informs the Supplier in writing that the Council reasonably believes that any part of the Services does not meet the requirements of the Contract or differs in any way from those requirements, and this is other than as a result of a Default by the Council, the Supplier shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Council.

## **9. SERVICE LEVELS AND SERVICE CREDITS**

- 9.1 This Clause 9 shall apply where stated in the Contract Particulars.
- 9.2 Where any part of the Services is stated in Schedule 6 to be subject to a specific Service Level, the Supplier shall provide that part of the Services in such a manner as will ensure that the Achieved Service Level in respect of that Service is equal to or higher than such specific Service Level.
- 9.3 The Supplier shall provide records of and management reports summarising the Achieved Service Levels as provided for in Clause 42.
- 9.4 If the Supplier fails to provide the Services in accordance with any individual Service Level, the Supplier shall pay to the Council the Service Credit set out in Schedule 6.
- 9.5 The Parties agree that any such Service Credit has been calculated as, and is, a genuine pre-estimate of the loss likely to be suffered by the Council. The Supplier has taken the Service Credit into account in setting the level of the Contract Price.

## **10. PROVISION AND REMOVAL OF EQUIPMENT**

- 10.1 The Supplier shall provide all the Equipment necessary for the supply of the Services.
- 10.2 The Supplier shall not deliver any Equipment nor begin any work on the Premises without obtaining prior Approval.
- 10.3 All Equipment brought onto the Premises shall be at the Supplier's own risk and the Council shall have no liability for any loss of or damage to any Equipment unless the Supplier is able to demonstrate that such loss or damage was caused or contributed to by the Council's Default. The Supplier shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Supplier.
- 10.4 The Supplier shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- 10.5 The Supplier shall, at the Council's written request, at its own expense and as soon as reasonably practicable:
- 10.5.1 remove from the Premises any Equipment which in the reasonable opinion of the Council is either hazardous, noxious or not in accordance with the Contract; and
  - 10.5.2 replace such item with a suitable substitute item of Equipment.

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

## **11. KEY PERSONNEL**

- 11.1 This Clause 11 (Key Personnel) shall apply if so, stated in the Contract Particulars.
- 11.2 The Key Personnel shall not be released from supplying the Services without the agreement of the Council, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances.
- 11.3 Any replacements to the Key Personnel shall be subject to the agreement of the Council. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 11.4 The Council shall not unreasonably withhold its agreement under Clauses 11.2 or 11.3. Such agreement shall be conditional on appropriate arrangements being made by the Supplier to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

## **12. SUPPLIER'S STAFF**

- 12.1 The Council may, by written notice to the Supplier, refuse to admit onto, or withdraw permission to remain involved in the delivery of the Services:
- 12.1.1 any member of the Staff; or
- 12.1.2 any person employed or engaged by any member of the Staff,
- whose admission or continued involvement with the delivery of the Services would, in the reasonable opinion of the Council, be undesirable.
- 12.2 At the Council's written request, the Supplier shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Council may reasonably request.
- 12.3 The Supplier's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations, policies and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Premises.
- 12.4 The Supplier shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Services. The Supplier confirms that all persons employed or engaged by the Supplier were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.
- 12.5 In addition to any requirements specified in the Staff Vetting Procedures, the Council may require the Supplier to carry out an appropriate Disclosure and Barring Service (DBS) check in respect of any person to be employed or engaged in the provision of the Services. The Supplier shall ensure that any person who discloses that he/she has a Relevant Conviction or is found by the Supplier to have a Relevant Conviction (whether

as a result of or through a DBS check or otherwise) is risk assessed to ensure safety of Service delivery should that person be employed or engaged in the provision of any part of the Services.

12.6 If the Supplier fails to comply with Clause 12.2 within 21 days of the date of the request the Supplier shall be in Default of its obligations under the Contract.

12.7 The decision of the Council as to whether any person is to be excluded from being employed or engaged in delivering the Services and as to whether the Supplier has failed to comply with Clause 12.2 shall be final and conclusive and the Supplier shall indemnify the Council in respect of all claims, costs, losses or expenses arising from a decision under Clause 12.1.

### **13. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS**

13.1 Without prejudice to the provisions of this Clause 13 the Supplier shall at all times in providing the Services comply with the provisions of all Law and guidance that are relevant to the Services and shall take all steps necessary to promote preserve and ensure the wellbeing of the service users.

13.2 This Clause 13 shall apply where stipulated in the Contract Particulars.

13.3 The Parties acknowledge that the Supplier is a Regulated Activity Supplier with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006.

13.4 The Supplier shall ensure that all individuals engaged in the provision of the Services:

13.4.1 are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service (DBS) including a check against the adults' barred list or the children's barred list, as appropriate; and

13.4.2 shall monitor the level and validity of the checks under this Clause 13.4 for each member of Staff.

13.5 The Supplier warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Supplier in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

13.6 The Supplier shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this Clause 13 have been met.

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

13.8 The Supplier shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users.

#### **14. TUPE AND PENSIONS**

The Parties agree that the provisions of Schedule 9 shall not apply to any Relevant Transfer of Staff under or in connection with this Contract.

#### **15. INSPECTION OF PREMISES**

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

#### **16. LICENCE TO OCCUPY COUNCIL PREMISES**

16.1 This Clause 16 applies where stipulated in the Contract Particulars.

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

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

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

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

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

#### **17. PROPERTY**

17.1 Where the Council issues Property free of charge to the Supplier such Property shall be and remain the property of the Council and the Supplier irrevocably licences the Council and its agents to enter upon any premises of the Supplier during normal business hours on reasonable notice to recover any such Property. The Supplier shall not in any circumstances have a lien or any other interest on the Property and the Supplier shall at all times only possess the Property as fiduciary agent and bailee of the Council. The Supplier shall take all reasonable steps to ensure that the title and proprietary rights of

the Council to the Property and the exclusion of any such lien or other interest are brought to the notice of all Staff and other appropriate persons and shall, at the Council's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Council.

- 17.2 The Property shall be deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Council otherwise within 5 Working Days of receipt.
- 17.3 The Supplier shall maintain the Property in good order and condition (excluding fair wear and tear) and shall use the Property solely in connection with the Contract and for no other purpose without prior Approval.
- 17.4 The Supplier shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Council's reasonable security requirements as required from time to time.
- 17.5 The Supplier shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Council's Default. The Supplier shall inform the Council within 2 Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.
- 17.6 Where the Council pays, directly or indirectly, for Property, real or otherwise, in relation to the Contract, the Council will retain ownership of such Property unless stated otherwise in Contract. The Supplier shall return such Property to the Council upon request and at the end of the Contract.

## **18. PARENT COMPANY GUARANTEE**

- 18.1 Where stipulated in the Contract Particulars the Supplier shall procure the delivery of a parent company guarantee substantially in the form contained in Schedule 10.

## **19. PERFORMANCE BOND**

Where stipulated in the Contract Particulars the Supplier shall procure the delivery of a performance bond substantially in the form contained in Schedule 11.

## **20. CONTRACT PRICE**

- 20.1 In consideration of the Supplier's performance of its obligations under the Contract, the Council shall pay the Contract Price in accordance with Clause 21 (Payment and VAT).
- 20.2 The Council shall, in addition to the Contract Price and following Receipt of a valid VAT invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

## **21. PAYMENT AND VAT**

- 21.1 Unless otherwise specified in Schedule 3, the Council shall pay all sums due to the Supplier within 30 days of receipt of a valid invoice, submitted monthly in arrears.
- 21.2 The Supplier shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation reasonably required by the Council to substantiate the invoice.



- 21.3 Where the Supplier enters into a Sub-Contract with a supplier or Sub-Contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a Sub-Contract which requires payment to be made of all sums due by the Supplier to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.
- 21.4 The Supplier shall add VAT to the Contract Price at the prevailing rate as applicable.
- 21.5 The Supplier shall indemnify the Council on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Council at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Contract. Any amounts due under this Clause 21.5 shall be paid by the Supplier to the Council not less than 5 Working Days before the date upon which the tax or other liability is payable by the Council.
- 21.6 The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate the Contract under Clause 50.3 (Termination and Remedies on Default) for failure to pay undisputed sums of money.
- 21.7 The Supplier shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Council pursuant to this Contract. Such records shall be retained for inspection by the Council during the Contract Period and following the end of the Contract for the period specified in the Contract Particulars.

## **22. RECOVERY OF SUMS DUE**

- 22.1 Wherever under the Contract any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Council in respect of any breach of the Contract), the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under the Contract or under any other agreement or contract with the Council.
- 22.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 22.3 The Supplier shall make all payments due to the Council 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 Council to the Supplier.
- 22.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

## **23. PRICE ADJUSTMENT**

- 23.1 Unless otherwise indicated in the Contract Particulars, the Contract Price shall apply for the Contract Period without adjustment.
- 23.2 Where stipulated in the Contract Particulars, the Contract Price shall be adjusted on each Price Review Date by an amount equal to the annual percentage change in the Relevant Index(s) as published in the December preceding the relevant Price Review Date or the average annual percentage change over the three months ending December

or the average annual percentage change over the six months ending December, whichever is the lowest.

## **24. PREVENTION OF BRIBERY AND CORRUPTION**

### **24.1 The Supplier:**

24.1.1 shall not, and shall procure that any Supplier Staff or Supplier Party shall not, in connection with this Contract commit a Prohibited Act.

24.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, 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 Council before execution of this Contract.

### **24.2 The Supplier shall:**

24.2.1 if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010.

24.2.2 within 10 Working Days of the Commencement Date, and annually thereafter, certify to the Council 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 Council may reasonably request.

24.3 The Supplier shall ensure that its anti-bribery policy is provided to the Council on request.

24.4 If any breach of Clause 24.1 is suspected or known, the Supplier must notify the Council immediately.

24.5 If the Supplier notifies the Council that it suspects or knows that there may be a breach of Clause 24.1, the Supplier must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation. This obligation shall continue for the period specified in the Contract Particulars following the expiry or termination of this Contract.

24.6 The Council may terminate this Contract by written notice with immediate effect if the Supplier, Supplier Party or Supplier Staff (in all cases whether or not acting with the Supplier's knowledge) breaches Clause 24.1.

24.7 Any notice of termination under Clause 24.6 must specify:

24.7.1 the nature of the Prohibited Act.

24.7.2 the identity of the party whom the Council believes has committed the Prohibited Act; and

24.7.3 the date on which this Contract will terminate.

- 24.8 Despite Clause 58 (Dispute Resolution), any dispute relating to:
- 24.8.1 the interpretation of Clause 24; or
- 24.8.2 the amount or value of any gift, consideration or commission,
- shall be determined by the Council and its decision shall be final and conclusive.
- 24.9 Any termination under Clause 24.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

## **25. EQUALITIES**

- 25.1 The Supplier shall and shall ensure its Sub-Contractor's and Staff at all times comply with the requirements of the Equality Act 2010 and all other related statutory and regulatory requirements and the Council's policies and procedures copies of which are available on request relating to equal opportunities and shall not treat any person or group of people less favourably than another on the grounds of age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, pregnancy and maternity, marriage and civil partnerships.
- 25.2 The Supplier shall fully indemnify the Council against all actions, claims demand, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Supplier of this Clause 25.

## **26. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

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

## **27. ENVIRONMENTAL REQUIREMENTS**

The Supplier shall, when working on the Premises, perform its obligations under the Contract in accordance with the Council's environmental policy, which is to minimise use of natural resources such as energy, water, wood, paper and other consumables, reduce waste avoiding landfill and minimise the release of greenhouse gases, volatile organic compounds, ozone depleting substances and other forms of pollution which may cause a nuisance or be damaging to health and the environment.

## **28. HEALTH AND SAFETY**

- 28.1 The Supplier shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Council shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Premises, and which may affect the Supplier in the performance of its obligations under the Contract.
- 28.2 While on the Premises, the Supplier shall comply with any health and safety measures implemented by the Council in respect of Staff and other persons working there.
- 28.3 The Supplier shall notify the Council immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that

incident causes any personal injury or damage to property which could give rise to personal injury.

28.4 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 Premises in the performance of its obligations under the Contract.

28.5 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 Council on request.

## **29. DATA PROTECTION**

29.1 Clause 29 is to be read in conjunction with Schedule 16 and Annex 1 to Schedule 16, which are, where applicable, incorporated into this Clause 29. The definitions used within this Clause 29 are defined at Schedule 16.

29.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller, and the Supplier is the Processor unless otherwise specified in Schedule 16 and Schedule 16 - Annex 1 (Processing, Personal Data and Data Subjects).

29.3 The Parties acknowledge their respective obligations arising under the Data Protection Legislation and must assist each other as necessary to comply with these obligations.

29.4 The Supplier acknowledges its obligations pursuant to Schedule 16 and further undertakes on an ongoing basis on behalf of itself, its staff and shall ensure its Sub-processors:

29.4.1 treat as Confidential Information all Personal Data which may be derived from or be obtained in the course of the Contract, or which may come into the possession of the Supplier or an employee, servant or agent or Sub-Contractor of the Supplier as a result or in connection with the contract;

29.4.2 provide all necessary precautions to ensure that all such information is treated as confidential by the Supplier, his employees, servants, agents or Sub-Contractors.

29.4.3 ensure that he, his employees, servants, agents and Sub-Contractors are aware of the provisions of the DPA, and that any personal information obtained from the Council shall not be disclosed or used in any unlawful manner; and

29.4.4 ensure that the Council is kept informed at all times of the identities of the nominated Supplier data protection lead.

29.5 The Supplier shall, for and on behalf of itself, its staff and Sub-Contractors, comply with any notification requirements under the DPA.

29.6 The Council is required to comply with Her Majesty's Government information security standards for the secure destruction of data processed on its behalf. The Supplier must provide certificated evidence of secure destruction to the required standards when equipment is decommissioned or retired or at the end of the Contract.

29.7 The Supplier shall return to the Council or destroy (at the Council's sole discretion) all data processed on the Council's behalf under this Contract (including but not limited to

Personal Data) at the end of the Contract whether by expiry or termination unless the Council has informed the Supplier in writing that this is not required.

- 29.8 The Supplier shall permit the Council or the Council's representative (subject to reasonable and appropriate confidentiality requirements), to inspect and audit, in accordance with Clause 36 (Audit), the Supplier's data processing activities (and/or those of its agents, subsidiaries and Sub-Contractors) and comply with all reasonable requests or directions by the Council to enable the Council to verify and/or procure that the Supplier is in full compliance with its obligations under this Contract.
- 29.9 The Supplier shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Council to breach any of its applicable obligations under the Data Protection Legislation.
- 29.10 Subject always to Clause 37 (Transfer and Sub-Contracting) if the Supplier requires any Sub-Contractor to process Personal Data on its behalf as a Sub-processor, the Supplier must, in addition to Schedule 16:
- 29.10.1 require the Sub-Contractor to have in place the appropriate technical and organisational security measures governing the data processing to be carried out, and take all reasonable steps to ensure compliance with those measures.
- 29.10.2 ensure that the Sub-Contractor is engaged under the terms of a written agreement requiring the Sub-Contractor to obligations that are substantially equivalent as those imposed on the Supplier by this Clause 29.
- 29.11 The provision of this Clause 29 shall apply during the Contract Period and indefinitely after its expiry.

### **30. CONFIDENTIAL INFORMATION**

- 30.1 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
- 30.1.1 treat the other Party's Confidential Information as confidential and safeguard it; accordingly, and
- 30.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 30.2 Clause 30.1 shall not apply to the extent that:
- 30.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause 31 (Freedom of Information);
- 30.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- 30.2.3 such information was obtained from a third party without obligation of confidentiality;
- 30.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or

30.2.5 it is independently developed without access to the other Party's Confidential Information.

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

30.4 The Supplier shall not, and shall procure that the Staff do not, use any of the Council's Confidential Information received otherwise than for the purposes of this Contract.

30.5 At the written request of the Council, the Supplier shall procure that those members of the Staff identified in the Council's notice sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.

30.6 Nothing in this Contract shall prevent the Council from disclosing the Supplier's Confidential Information:

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

30.6.2 to any consultant, contractor or other person engaged by the Council or any person conducting a Cabinet Office mystery shopper review as amended or superseded;

30.6.3 for the purpose of the examination and certification of the Council's accounts; or

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

30.7 The Council shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Supplier's Confidential Information is disclosed pursuant to Clause 30.6 is made aware of the Council's obligations of confidentiality.

30.8 Nothing in this Clause 30 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.

## **31. FREEDOM OF INFORMATION**

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

31.2 The Supplier shall and shall procure that any Sub-Contractors shall transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information:

- 31.2.1 provide the Council with a copy of all Information in its possession, or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council's request; and
- 31.2.2 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

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

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

31.5 The Supplier acknowledges that (notwithstanding the provisions of Clause 31) the Council may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier or the Services in certain circumstances:

31.5.1 without consulting the Supplier; or

31.5.2 following consultation with the Supplier and having taken their views into account;

provided always that where Clause 31.5.1 applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

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

31.7 The Supplier acknowledges that the Commercially Sensitive Information listed in the Commercially Sensitive Information Schedule is of indicative value only and that the Council may be obliged to disclose it in accordance with this Clause 31.

31.8 The Supplier's actions under this Clause 31 shall be at no cost to the Council.

## **32. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES**

32.1 The Supplier shall not make any press announcement or publicise the Contract, the Services or any aspects thereof in any way, except with the prior written consent of the Council.

32.2 The Supplier shall take reasonable steps to ensure that its servants, employees, agents, Sub-Contractors, suppliers, professional advisors and consultants comply with Clause 32.1.

### **33. SECURITY**

- 33.1 The Council shall be responsible for maintaining the security of the Premises over which the Council has control in accordance with its standard security requirements. The Supplier shall comply with all security requirements of the Council while on the Premises and shall ensure that all Staff comply with such requirements.

### **34. INTELLECTUAL PROPERTY RIGHTS**

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

34.1.1 furnished to or made available to the Supplier by or on behalf of the Council shall remain the property of the Council; and

34.1.2 prepared by or for the Supplier on behalf of the Council for use, or intended use, in relation to the performance by the Supplier of its obligations under the Contract shall belong to the Council;

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

- 34.2 The Supplier hereby assigns to the Council, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with Clause 34.1.2. This assignment shall take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Supplier. The Supplier shall execute all documentation necessary to execute this assignment.

- 34.3 The Supplier shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Contract or the performance of the Contract.

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

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

34.5.1 items or materials based upon designs supplied by the Council; or

34.5.2 the use of data supplied by the Council which is not required to be verified by the Supplier under any provision of the Contract.



- 34.6 The Council shall notify the Supplier in writing of any claim or demand brought against the Council for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Supplier.
- 34.7 The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Supplier, provided always that the Supplier:
- 34.7.1 shall consult the Council on all substantive issues which arise during the conduct of such litigation and negotiations;
  - 34.7.2 shall take due and proper account of the interests of the Council; and
  - 34.7.3 shall not settle or compromise any claim without the Council's prior written consent (not to be unreasonably withheld or delayed).
- 34.8 The Council shall at the request of the Supplier afford to the Supplier all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Council or the Supplier by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Supplier's obligations under the Contract and the Supplier shall indemnify the Council for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Supplier shall not, however, be required to indemnify the Council in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in Clause 34.5.1 or 34.5.2.
- 34.9 The Council shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Council or the Supplier in connection with the performance of its obligations under the Contract.
- 34.10 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall notify the Council and, at its own expense and subject to the consent of the Council (not to be unreasonably withheld or delayed), use its best endeavours to:
- 34.10.1 modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutatis mutandis to such modified Services or to the substitute Services; or
  - 34.10.2 procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Council,
- and in the event that the Supplier is unable to comply with Clauses 34.10.1 or 34.10.2 within 15 Working Days of receipt of the Supplier's notification the Council may terminate the Contract with immediate effect by notice in writing.
- 34.11 The Supplier grants to the Council a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights that the Supplier owned or developed prior to the Commencement Date and which the Council reasonably

requires in order exercise its rights and take the benefit of this Contract including the Services provided.

**35. CHANGE CONTROL AND CONTINUOUS IMPROVEMENT**

35.1 The Supplier shall keep and maintain for the period stipulated in the Contract Particulars, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Supplier shall on request afford the Council or the Council's representatives such access to those records and any other reasonable data request as may be requested by the Council in connection with the Contract.

35.2 Any requirement for a Change shall be subject to the Change Control Procedure detailed in Schedule 7 (Change Control).

35.3 The Supplier shall have an ongoing obligation throughout the Contract Period to identify new or potential improvements to the Services. As part of this obligation the Supplier shall identify and report to the Council's authorised representative quarterly in each Contract year on:

35.3.1 the emergence of new and evolving relevant technologies which could improve the Services;

35.3.2 new or potential improvements to the Services including the quality, responsiveness, procedures, performance mechanisms and customer support services in relation to the Services;

35.3.3 new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Council which might result in efficiency or productivity gains or in reduction of operational risk; and

35.3.4 changes in ways of working that would enable the Services to be delivered at lower costs and/or at greater benefits to the Council.

35.4 Any potential Changes highlighted as a result of the Supplier's reporting in accordance with Clause 35.3 shall be addressed by the Parties using the Change Control Procedure.

**36. AUDIT**

36.1 The Supplier shall keep and maintain for the period stipulated in the Contract Particulars, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Supplier shall on request afford the Council or the Council's representatives such access to those records and any other reasonable data request as may be requested by the Council in connection with the Contract.

36.2 The Supplier shall additionally allow the Council access to its Premises on reasonable notice for the purpose of inspection of the Supplier's records and systems for the purposes of Contract management.

**37. TRANSFER AND SUB-CONTRACTING**

37.1 The Supplier shall not assign, Sub-Contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Supplier of any of its obligations or duties under the Contract.

- 37.2 The Supplier shall be responsible for the acts and omissions of its Sub-Contractors as though they are its own.
- 37.3 Where the Council has consented to the placing of Sub-Contracts, copies of each Sub-Contract shall, at the request of the Council, be sent by the Supplier to the Council as soon as reasonably practicable.
- 37.4 The Supplier shall ensure that the assignee notifies the Council of the assignee's contact information and bank account details to which the Council shall make payment.
- 37.5 The provisions of Clause 21 (Payment and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Council.
- 37.6 The Council may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- 37.6.1 any Contracting Authority; or
- 37.6.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Council; or
- 37.6.3 private sector body which substantially performs the functions of the Council, ("the Transferee")
- provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations under the Contract.
- 37.7 Any change in the legal status of the Council such that it ceases to be a Contracting Authority shall not affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Council.
- 37.8 The Council may disclose to any transferee any Confidential Information of the Supplier which relates to the performance of the Supplier's obligations under the Contract. In such circumstances the Council shall authorise the transferee to use such Confidential Information only for purposes relating to the performance of the Supplier's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- 37.9 Each Party shall at its own cost and expense carry out or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

## **38. WAIVER**

- 38.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.
- 38.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 5 (Notices).

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

### **39. VARIATION**

- 39.1 Subject to the provisions of this Clause 39, the Council may request a Change to the Specification. Such a Change to the Specification is hereinafter called a Variation and may include a Change to the Contract Price.
- 39.2 The Council may request a Variation by notifying the Supplier in writing of the Variation and giving the Supplier sufficient information to assess the extent of the Variation and consider whether any change to the Contract Price is required in order to implement the Variation. The Council shall specify a time limit within which the Supplier shall respond to the request for a Variation. Such time limits shall be reasonable having regard to the nature of the Variation. If the Supplier accepts the Variation, it shall confirm the same in writing.
- 39.3 In the event that the Supplier is unable to accept the Variation to the Specification or where the Parties are unable to agree a change to the Contract Price, the Council may;
- 39.3.1 allow the Supplier to fulfil its obligations under the Contract without the variation to the Specification;
- 39.3.2 terminate the Contract with immediate effect.
- 39.4 The Supplier may propose Variations to the Contract, provided that the Council shall be under no obligation whatsoever to accept any request for a Variation. A Variation proposed by the Supplier shall not give rise to any increase to the Contract Price, unless expressly agreed by the Council (in its absolute discretion) in writing.
- 39.5 Variations will be dealt with according to the process defined in Schedule 7 (Change Control).

### **40. SEVERABILITY**

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

### **41. REMEDIES CUMULATIVE**

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

### **42. CONTRACT MANAGEMENT**

The Supplier shall comply with the monitoring and contract management arrangements set out in the Schedule 14 (Contract Management) including, but not limited to, providing such data and information as the Supplier may be required to produce under the Contract.

#### **43. ANNUAL REVIEW**

- 43.1 On each anniversary (or other time should this be reasonably required) of the Commencement Date, the Council shall be entitled to carry out a review of the Contract and of the Council's requirements for the Services. As a result of the review, the Council shall (in its discretion) be entitled to:
- 43.1.1 affirm that the Contract shall continue in accordance with its terms; or
  - 43.1.2 reduce the Contract Period; or
  - 43.1.3 exercise the option to terminate the Contract in accordance with Clause 51 (Break Clause) ; or
  - 43.1.4 require a reduction in the volume or scope of the Services (which shall take effect as a Variation in accordance with Clause 39) in return for a reduction in the Contract Price; or
  - 43.1.5 through negotiation require a reduction in the Contract Price, where there has been a reduction in the Council's budget for the provision of the Services.
- 43.2 The Council shall notify the Supplier in writing of the results of the annual review and the Supplier shall take all necessary steps to implement the review within 4 weeks of receiving such notice (or such other reasonable period as may be specified by the Council).

#### **44. ENTIRE AGREEMENT**

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

#### **45. COUNTERPARTS**

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

#### **46. LIABILITY AND INDEMNITY**

- 46.1 Neither Party excludes or limits liability to the other Party for:
- 46.1.1 death or personal injury caused by its negligence; or
  - 46.1.2 Prohibited Act; or
  - 46.1.3 fraudulent misrepresentation; or
  - 46.1.4 any breach of any obligations implied by section 2 of the Supply of Goods and Services Act 1982.
- 46.2 The Supplier shall indemnify the Council without limitation in respect of:
- 46.2.1 breach of Council Intellectual Property and Intellectual Property Rights;

46.2.2 loss or corruption of Personal Data (including any special category data); and

46.2.3 breach of Council Confidential Information.

46.3 Subject to Clause 46.4 and 46.5 the Supplier shall indemnify the Council and keep the Council indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of:

46.3.1 the supply, or the late or purported supply, of the Services or the performance or non-performance by the Supplier of its obligations under the Contract;

46.3.2 the act, omission or default of the Supplier, any Sub-Contractor or any member of Staff including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by any such party; and

46.3.3 any other loss which is caused directly or indirectly by any act or omission of the Supplier which, for the avoidance of doubt, includes wasted expenditure, anticipated savings, replacement services, procurement costs, interests and fines.

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

46.5 Subject to Clauses 46.1 and 47.2, the Supplier's liability under this Contract shall be limited to the amount stated in Contract Particulars.

## **47. INSURANCE**

47.1 The Supplier shall throughout the Contract Period effect and maintain with a reputable insurance company the following policies of insurance:

47.1.1 public liability insurance; and

47.1.2 employer's liability insurance

with the levels of indemnity cover for each claim stipulated in the Contract Particulars.

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

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

47.4 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract.

47.5 Where stipulated in the Contract Particulars, the Supplier shall effect the additional insurances stipulated in the Contract Particulars.

- 47.6 Where professional indemnity insurance is required in accordance with the Contract Particulars the Supplier shall maintain appropriate professional indemnity insurance cover during the Contract Period and shall ensure that all agents, professional consultants and Sub-Contractors involved in the supply of the Services do the same. To comply with its obligations under this Clause and as a minimum, the Supplier shall ensure professional indemnity insurance held by the Supplier and by any agent, Sub-Contractor or consultant involved in the supply of the Services has a limit of indemnity of not less than the amount stated in the Contract Particulars. Such insurance shall be maintained for a minimum of the period specified in the Contract Particulars following the expiration or earlier termination of the Contract.

#### **48. WARRANTIES AND REPRESENTATIONS**

The Supplier warrants and represents on an ongoing basis that:

- 48.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Supplier;
- 48.1.2 in entering the Contract it has not committed any Prohibited Act;
- 48.1.3 as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the Contract;
- 48.1.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- 48.1.5 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- 48.1.6 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
- 48.1.7 it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- 48.1.8 in the three 3 years prior to the date of the Contract:
  - (a) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;

- (b) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established;
  - (c) it is and has not been subject to any contractual obligations which might have a material adverse effect on its performance in the provision of the Services to the Council; and
  - (d) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
- 48.1.9 each warranty and representation are separate and shall not be limited or restricted by reference to, or inference from, the terms of other representations or warranties; and
- 48.1.10 if Supplier becomes aware that a warranty or representation given in this Contract is either untrue, misleading or has been breached, it shall immediately notify the Council.

#### **49. TERMINATION ON INSOLVENCY AND/OR CHANGE OF CONTROL**

- 49.1 The Council may terminate the Contract with immediate effect by notice in writing where the Supplier is a company and in respect of the Supplier:
- 49.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
  - 49.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
  - 49.1.3 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
  - 49.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
  - 49.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
  - 49.1.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
  - 49.1.7 being a "small company" within the meaning of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
  - 49.1.8 any event similar to those listed in Clauses 49.1.1 – 49.1.7 occurs under the law of any other jurisdiction.



- 49.2 The Council may terminate the Contract with immediate effect by notice in writing where the Supplier is an individual and:
- 49.2.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Supplier's creditors; or
  - 49.2.2 a petition is presented and not dismissed within 14 days or order made for the Supplier's bankruptcy; or
  - 49.2.3 a receiver, or similar officer is appointed over the whole or any part of the Supplier's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
  - 49.2.4 the Supplier is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
  - 49.2.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within 14 days; or
  - 49.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or
  - 49.2.7 he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.
- 49.3 The Supplier shall notify the Council immediately if the Supplier undergoes a Change of Control. The Council may terminate the Contract by notice in writing with immediate effect within six months of being notified that a Change of Control has occurred; or
- 49.3.1 where no notification has been made, the date that the Council becomes aware of the Change of Control,
- but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.
- 49.4 With regard to the notification to the Council by the Supplier detailed in Clause 49.3, such notification shall be made to the Council's Contract Manager as described in Schedule 5 (Schedule of Agreements) or Schedule 14 (Contract Management) or, if this is not possible, the second or third level contacts within Schedule 5 (Schedule of Agreements) or Schedule 14 (Contract Management).
- 49.5 The notification to the Council by the Supplier detailed in Clauses 49.3 and 49.4 shall be made for each contract that the Supplier holds with the Council.

## **50. TERMINATION AND REMEDIES ON DEFAULT**

- 50.1 The Council may also terminate this Contract with immediate effect by written notice to the Supplier in the following circumstances:
- 50.1.1 if the Supplier commits a Default, and:

- (i) the Default is not, in the opinion of the Council, capable of remedy;
- (ii) the Default is a material breach of this Contract; or
- (iii) provided that the Default is capable of remedy, the Council may only terminate this Contract under this Clause 50 if the Supplier has failed to remedy such a Default within 28 days (or such other period as may be specified by the Council) of receipt of notice from the Council (a Remediation Notice) to do so.

50.1.2 if a Persistent Breach has occurred (defined in Schedule 6);

50.1.3 if an Irremediable Default has occurred (defined in Schedule 6);

50.1.4 if the Supplier ceases or threatens to cease to carry on business in the United Kingdom;

50.1.5 if this Contract has been subject to a substantial modification which would have required a new procurement procedure pursuant to Regulation 72 of the Regulations;

50.1.6 if the Supplier has, at the time of this Contract's award, been in one of the situations referred to in regulation 57(1) to (3) of the Regulations and should therefore have been excluded from the procurement procedure; or

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

50.3 If the Council fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Council in writing of such failure to pay. If the Council fails to pay such undisputed sums within 90 Working Days of the date of such written notice, the Supplier may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Council exercising its rights under Clause 22 (Recovery of Sums Due).

50.4 If this Contract is terminated by the Council for cause such termination shall be at no loss or cost to the Council and the Supplier hereby indemnifies the Council against any such losses or costs which the Council may suffer as a result of any such termination for cause.

50.5 The Council may terminate this Contract either in whole or in part.

50.6 Where a complaint is received about the standard of service or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Supplier's obligations under the Contract, then the Council shall be entitled to investigate the complaint in accordance with the contract monitoring and management procedures contained in Schedule 14 (Contract Management). The Council may, in its sole discretion, uphold the complaint and take further action in accordance with this Clause 50.

- 50.7 In the event that the Council is of the reasonable opinion that there has been a material breach of this Contract by the Supplier, then the Council may, without prejudice to its rights under Clause 50.1(a)(ii), do any of the following:
- 50.7.1 without terminating this Contract, itself supply or procure the supply of all or part of the Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Council that the Supplier will once more be able to supply all or such part of the Services in accordance with the Contract;
  - 50.7.2 without terminating the whole of this Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or
  - 50.7.3 terminate, in accordance with this Clause 50.1, the whole of the Contract.
- 50.8 Without prejudice to its rights under Clause 22 (Recovery of Sums Due), the Council may charge the Supplier for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Council or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services and provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- 50.9 The Supplier shall ensure that the Service is delivered as commissioned. In the event there is a difference between commissioned and delivered activities, the Supplier shall inform the Council prior to the submission of an invoice to enable all relevant changes to be made on Council systems to effect accurate payments. Should the Supplier fail to do this, the Council shall be entitled to recover (i) all sums due in accordance with Clause 22 and (ii) interest calculated in accordance with the Late Payment of Commercial Debt (Interest) Act 1998 as subsequently amended.
- 50.10 If the Supplier fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Council shall instruct the Supplier to remedy the failure and the Supplier shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as the Council may direct
- 50.11 In the event that:
- 50.11.1 the Supplier fails to comply with the above Clause 50.10 and the failure is materially adverse to the interests of the Council or prevents the Council from discharging a statutory duty; or
  - 50.11.2 if in the Council's reasonable opinion, the Supplier's failure, included but not limited to safeguarding issues, is such that it requires immediate rectification which in the Council's reasonable opinion the Supplier cannot or will not make; or
  - 50.11.3 the Supplier persistently fails to comply with Clause 50.10 above,
- the Council may terminate the Contract with immediate effect by notice in writing.

## **51. BREAK CLAUSE**

- 51.1 Where stipulated in the Contract Particulars, the Council shall have the right to terminate the Contract at any time by giving written notice (of not less than the period specified in the Contract Particulars) to the Supplier.
- 51.2 Where the Council exercises its right to terminate the Contract under Clause 51.1, the Supplier shall only be entitled to payment for Services duly rendered up to the date of termination and the Council shall incur no liability to the Supplier in respect of any other losses whatsoever whether:
- 51.2.1 loss of future profits;
  - 51.2.2 redundancy or Sub-Contractor breakage costs; or
  - 51.2.3 any other costs whatsoever incurred by the Supplier as a consequence of such termination which shall include but not be limited to licence fees, redeployment fees and other contract break fees resulting directly or indirectly from the termination of the Contract.

## **52. CONSEQUENCES OF EXPIRY OR TERMINATION**

- 52.1 Where the Council terminates the Contract under Clause 50 (Termination and Remedies on Default):
- 52.1.1 the Council may recover from the Supplier the cost reasonably incurred of making other arrangements for the delivery of replacement services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period. The Council shall take all reasonable steps to mitigate such additional expenditure.
  - 52.1.2 no further payments shall be payable by the Council to the Supplier (for Services supplied by the Supplier prior to termination and in accordance with the Contract but where the payment has yet to be made by the Council), until the Council has established the final cost of making the other arrangements envisaged under this Clause.
- 52.2 Save as otherwise expressly provided in the Contract:
- 52.2.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
  - 52.2.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Council or the Supplier under Clauses 21 (Payment and VAT), 22 (Recovery of Sums Due), 24 (Prevention of Bribery and Corruption), 29 (Data Protection Act), 30 (Confidential Information), 31 (Freedom of Information), 34 (Intellectual Property Rights), 36 (Audit), 41 (Remedies Cumulative), 46(Liability and Indemnity), 47(Insurance), 52(Consequences of Expiry or Termination), 54(Recovery upon Termination) and 57 (Governing Law and Jurisdiction).

### **53. DISRUPTION**

- 53.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Council, its employees or any other contractor employed by the Council.
- 53.2 The Supplier shall immediately inform the Council of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- 53.3 In the event of industrial action by the Staff, the Supplier shall seek Approval to its proposals to continue to perform its obligations under the Contract.
- 53.4 If the Supplier's proposals referred to in Clause 53.3 are considered insufficient or unacceptable by the Council acting reasonably, then the Contract may be terminated with immediate effect by the Council by notice in writing.
- 53.5 If the Supplier is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business of the Council, the Supplier may request a reasonable allowance of time and in addition, the Council will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

### **54. RECOVERY UPON TERMINATION**

- 54.1 On the termination of the Contract for any reason, the Supplier shall:
- 54.1.1 immediately return to the Council or destroy (at the Council's sole discretion) all Confidential Information, Personal Data and intellectual property materials in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Services;
  - 54.1.2 immediately deliver to the Council all Property (including materials, documents, information and access keys) provided to the Supplier under Clause 17. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
  - 54.1.3 assist and co-operate with the Council to ensure an orderly transition of the provision of the Services to the Replacement Supplier and/or the completion of any work in progress.
  - 54.1.4 promptly provide all information concerning the provision of the Services which may reasonably be requested by the Council for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Council or the Replacement Supplier to conduct due diligence.
- 54.2 If the Supplier fails to comply with Clause 54.1.1 and 54.1.2, the Council may recover possession thereof and the Supplier grants a licence to the Council or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its permitted suppliers or Sub-Contractors where any such items may be held.
- 54.3 Where the end of the Contract Period arises due to the Supplier's Default, the Supplier shall provide all assistance under Clause 54.1.3 and 54.1.4 free of charge. Otherwise, the Council shall pay the Supplier's reasonable costs of providing the assistance and the Supplier shall take all reasonable steps to mitigate such costs.

## **55. FORCE MAJEURE**

55.1 This Clause 55 shall apply where stipulated in the Contract Particulars.

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

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

55.4 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in Clause 55.2 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

## **56. DISASTER RECOVERY**

56.1 This Clause 56 shall apply where stipulated in the Contract Particulars.

56.2 The Supplier shall comply at all times with the relevant provisions of the Disaster Recovery Plan.

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

56.3.1 implement the Disaster Recovery Plan;

56.3.2 continue to provide the affected Services to the Council in accordance with the Disaster Recovery Plan; and

56.3.3 restore the affected Services to normal within the period laid out in the Disaster Recovery Plan.

56.4 To the extent that the Supplier complies fully with the provisions of this Clause 56 (and the reason for the declaration of a Disaster was not breach of any of the other terms of this Contract on the part of the Supplier), the Service Levels (if any) to which the affected Services are to be provided during the continuation of the Disaster shall not be the Service Levels as referred to in Schedule 6 but shall be the Service Levels set out in the Disaster Recovery Plan or (if none) the best Service Levels which are reasonably achievable in the circumstances.

## **57. GOVERNING LAW AND JURISDICTION**

Subject to the provisions of Clause 58, the Council and the Supplier accept the exclusive jurisdiction of the English courts and agree that the Contract and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

## **58. DISPUTE RESOLUTION**

- 58.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 10 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director (or equivalent) of each Party.
- 58.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 58.3 If the dispute cannot be resolved by the Parties pursuant to Clause 58.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 58.5 unless (a) the Council considers that the dispute is not suitable for resolution by mediation; or (b) the Supplier does not agree to mediation.
- 58.4 The obligations of the Parties under the Contract shall not cease or be suspended or delayed by the reference of a dispute to mediation and the Supplier and the Staff shall comply fully with the requirements of the Contract at all times.
- 58.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- 58.5.1 a neutral adviser or mediator (the “Mediator”) shall be appointed by the Centre for Effective Dispute Resolution.
  - 58.5.2 The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure.
  - 58.5.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
  - 58.5.4 If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
  - 58.5.5 Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.
  - 58.5.6 If the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

## **59. TRANSPARENCY**

- 59.1 The Council may disclose to other Public Sector Contracting Authorities any of the Supplier's information, tender documentation and supporting documentation (including

any that the Supplier has indicated to be confidential and/or Commercially Sensitive Information) such as specific tender information which has been submitted by the Supplier as part of the tender process. The Supplier acknowledges and agrees that by virtue of taking part in the tender process they hereby consent to such disclosure by the Council as a part of the tender process and the Council shall have no liability to the Supplier under this Clause or otherwise and the Supplier shall indemnify and keep indemnified the Council against any Losses in respect of the same.

## **60. EXTREMISM AND RADICALISATION**

60.1 This Clause is to be read in conjunction with Clause 13 (Safeguarding Children & Vulnerable Adults) and all requirements of that Clause are to be adopted herein.

60.2 The Supplier must comply with the requirements and principles in relation to section 26 Counter Terrorism and Security Act 2015 and Prevent to include:

60.2.1 in its policies and procedures, and comply with, the principles contained in the Government Prevent Strategy, the Prevent Guidance and Channel Guidance; and

60.2.2 in relevant policies and procedures a programme to raise awareness of the Government Prevent Strategy among Staff and volunteers in line with the Contracting Authorities Prevent Training and Competencies Framework;

60.2.3 the Council's policies and procedures in relation to the Prevent agenda.

## **61. WHISTLEBLOWING POLICY**

61.1 The Supplier shall have, and keep operational, a suitable and effective Public Interest Disclosure Act 1998 (Whistleblowing) Policy which will include procedures under which Staff can raise, in confidence, any serious concerns that they may have and do not feel that they can raise in any other way. These will include but will not be limited to situations listed below when Staff believe that:

61.1.1 a criminal offence has been committed, and/or

61.1.2 someone has failed to comply with a legal obligation, and/or

61.1.3 a miscarriage of justice has occurred, and/or

61.1.4 the health and safety of an individual is being endangered, and/or

61.1.5 there are or may be financial irregularities, and/or

61.1.6 there may be a Safeguarding concern.

61.2 The Supplier will make its Whistleblowing Policy available to the Council for inspection upon request.

## **62. FURTHER ASSURANCES**

The Supplier shall at its own cost and expense perform all acts and sign all deeds and documents as may be reasonably required for the purpose of giving effect to this Contract and shall procure that any third parties shall also do so.



**63. CHANGES IN LAW**

- 63.1 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms of the Contract nor be entitled to an increase in the Contract Price as the result of a change in Law, save that in relation to any change in Law which affects the Council's requirements as set out in the Contract and would increase the cost of providing the Services to the Council by more than 10%, in which case the Supplier may propose an amendment to the Contract Price which the Council shall consider in good faith.

**64. MODERN SLAVERY**

- 64.1 The Supplier shall, and procure that each of its Sub-Contractors shall, comply with:

64.1.1 the Modern Slavery Act 2015 ('Slavery Act'); and

64.1.2 the Council's anti-slavery policy as provided to the Supplier from time to time ('Anti-slavery Policy').

- 64.2 The Supplier shall:

64.2.1 implement due diligence procedures for its Sub-Contractors and other participants in its supply chains, to ensure that there is no slavery or trafficking in its supply chains;

64.2.2 respond promptly to all slavery and trafficking due diligence questionnaires issued to it by the Council from time to time and shall ensure that its responses to all such questionnaires are complete and accurate;

64.2.3 prepare and deliver to the Council each year, an annual slavery and trafficking report setting out the steps it has taken to ensure that slavery and trafficking is not taking place in any of its supply chains or in any part of its business;

64.2.4 maintain a complete set of records to trace the supply chain of all Services provided to the Council regarding the Contract; and

64.2.5 implement a system of training for its employees to ensure compliance with the Slavery Act.

- 64.3 The Supplier represents, warrants and undertakes throughout the Term that:

64.3.1 it conducts its business in a manner consistent with all applicable laws, regulations and codes including the Slavery Act and all analogous legislation in place in any part of the world;

64.3.2 its responses to all slavery and trafficking due diligence questionnaires issued to it by the Council from time to time are complete and accurate; and

64.3.3 neither the Supplier nor any of its Sub-Contractors, nor any other persons associated with it:

(a) has been convicted of any offence involving slavery and trafficking; or

(b) has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or

regulatory body regarding any offence regarding slavery and trafficking.

- 64.4 The Supplier shall notify the Council as soon as it becomes aware of:
  - 64.4.1 any breach, or potential breach, of the Anti-Slavery Policy; or
  - 64.4.2 any actual or suspected slavery or trafficking in a supply chain which relates to the Contract.
- 64.5 If the Supplier notifies the Council pursuant to paragraph 64.4 of this Clause 64, it shall respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit any books, records and/or any other relevant documentation in accordance with the Contract.
- 64.6 If the Supplier is in Default under paragraphs 64.2 or 64.3 of this Clause 64 the Council may by notice:
  - 64.6.1 require the Supplier to remove from performance of the Contract any Sub-Contractor, Staff or other persons associated with it whose acts or omissions have caused the Default; or
  - 64.6.2 immediately terminate the Contract.

**SCHEDULE 0**

**SERVICE-SPECIFIC CONDITIONS FOR Regulation 44 Independent Visitor Service**

Not Used

**SCHEDULE 1**  
**SPECIAL CONDITIONS**

Not Used

## **SCHEDULE 2**

### **SPECIFICATION**

Kent County Council is inviting tenders from a suitably experienced contractor(s) who can deliver an independent visitor service to 6 children's homes (increasing to 7 in 2023) in Kent that provide residential short breaks for disabled children, in accordance with Regulation 43 and 44 of the Children's Homes (England) Regulations 2015.

#### **Supplier Responsibilities**

##### **Regulation 44**

- (1) The registered person must ensure that an independent person visits the children's home at least once each month.
- (2) When the independent person is carrying out a visit, the registered person must help the independent person—
  - (a) if they consent, to interview in private such of the children, their parents, relatives, and persons working at the home as the independent person requires; and
  - (b) to inspect the premises of the home and such of the home's records (except for a child's case records unless the child and the child's placing authority consent) as the independent person requires.
- (3) A visit by the independent person to the home may be unannounced.
- (4) The independent person must produce a report about a visit ("the independent person's report") which sets out the independent person's opinion as to whether
  - (a) children are effectively safeguarded; and
  - (b) the conduct of the home promotes children's well-being.
- (5) The independent person's report may recommend actions that the registered person may take in relation to the home and timescales within which the registered person must consider whether or not to take those actions.
- (6) If the independent person becomes aware of a potential conflict of interest (whether under regulation 43(3) or otherwise) after a visit to the home, the independent person must include in the independent person's report
  - (a) details of the conflict of interest; and
  - (b) the reasons why the independent person did not notify the registered provider of the conflict of interest before the visit.
- (7) The independent person must provide a copy of the independent person's report to—

- (a) HMCI
- (b) upon request, the local authority for the area in which the home is located
- (c) the placing authorities of children
- (d) the registered provider and, if applicable, the registered manager; and
- (e) the responsible individual (if one is nominated).

### **Provider requirements and responsibilities**

The delivery of the regulation 43 and 44 requirements represents the complete function of the services being procured under this contract. The provider will be responsible for ensuring the following:

#### **Principles:**

- The welfare of the child is paramount, and this principle underpins all aspects of the visit.
- The focus of the visit must always remain child focused and should consider how each individual child's needs are being met and safeguarded.
- This is the child/young person's home, as such the visit should be conducted with courtesy, respect and not be intrusive or interfere with the normal running of the home or the plans for children and young people.
- All children and young people will be treated with respect and equal concern having regard for race; disability; religion / belief; age; gender; gender identity or sexual orientation and be afforded the opportunity and supported to be involved in the visit and to give their views of the home.
- The home's commitment to equality, diversity and anti-oppressive practice will be considered in all aspects of the visit.
- Every reasonable effort should be made to ascertain the views and experiences of children and young people at each visit, via interviews and observations as appropriate.
- The Visit Report will be balanced, fair and evidence-based, be analytical and report strengths as well as areas of weakness and in need of improvement.

- **Good Practice**

- Wherever possible, the provider will appoint the same visitor over a period of time as such continuity will build rapport and trust with children, young people and staff, and give continuity to the follow up of any issues for improvement.
- Visits should be undertaken at varying times of the day when children and young people are most likely to be at home and a minimum of 50% of visits should be unannounced.
- The length of visit may vary, as a minimum of 3 hours to a full day, having regard to the size of the home; its statement of purpose; the complexity and extent of any known issues which will need to be addressed / followed up. A visitor's first visit may take longer than subsequent visits, allowing time to build rapport with children and staff and generally get to know the home.
- Any safeguarding concerns arising during a visit will be brought to the attention of the registered manager/provider immediately and each home has procedures in place to facilitate the visitor's contact with the registered persons, if they are not present at the time of the visit.
- The provider will inform the visitor of arrangements for escalating any immediate safeguarding concerns, including arrangements, should neither of the registered persons be available – i.e. the visitor may make a direct referral to the local children's services safeguarding team or the police, in accordance with inter-agency safeguarding procedures.
- The visit will triangulate evidence from different sources. such interviews with children, young people, parents/relatives, staff and professional visitors, as well as observations and evidence from records to inform its findings.

### **The Appointed Visitors**

Persons appointed to the undertake visits must have the skills and understanding necessary to:

- Relate to children in a home's care
- Assess all relevant information; and
- Form an impartial judgement about the quality of the home's care.

In addition, ICHA guidance for best practice suggests that persons appointed to undertake the visits will possess the following:

**Experience:**

- In-depth and successful residential childcare experience working with children and young people.
- Successful management experience within or working with residential childcare services.
- Experience of working within the OFSTED inspection frameworks and sector standards and delivering improved outcomes for children.
- Experience of implementing quality assurance methodologies, including effective Regulation 44 and/or 45 monitoring and action planning.
- Experience of handling conflict and change, managing sensitive issues to achieve positive outcomes, managing performance driven settings and raising standards to agreed targets.
- Experience of working within established policies and procedures and of developing and implementing new policies, practices and procedures.
- Substantial experience of managing care planning practice in children's homes; identifying, assessing, planning, delivering, monitoring and evaluating outcomes.
- Successful experience of core children's homes practice: managing child protection and safeguarding, supporting resilience, managing risk, maximising care and welfare, health and safety issues, etc.

**Knowledge**

- Knowledge of current evidence-based theory and practice relating to Looked After Children and children's residential services.
- Up-to-date knowledge of relevant childcare legislation and government guidance relevant to children's residential services.
- Extensive working knowledge of child protection policies and procedures, causal factors and Social Work methodologies.
- Comprehensive understanding of child development and strategies for managing challenging behaviour.
- Understanding of the complexities of group living.



- **Skills and abilities**

- Strong communication skills to build rapport, based on trust and respect with children and young people, including specific modes of communication as used by the children and young people in the particular setting, e.g. British sign language, Makaton etc.
- Ability to analyse a range of evidence, including children's views, observations, staff feedback and records etc. to make sound judgements.
- Ability to manage the task of Regulation 44 preparation, undertaking, reporting and monitoring.
- Excellent verbal and written communication skills, including report writing and using IT, and the ability to feed into and influence continuous improvement cycles.
- Skills to write confident and succinct, coherent, grammatically correct, and well formatted reports.
- Ability to write child friendly reports.
- Ability to make difficult decisions in a timely fashion.
- Ability to analyse complex information and explain complex issues succinctly.
- Ability to make sound assessments of risk.
- A commitment to high standards of professional practice.
- A commitment to providing effective services.
- A commitment to user and carer involvement in the regulation 44 process.
- Ability to understand and respond appropriately to the needs of children and young people and adults, having regard for their race; age; gender; gender assignment; disability; sexual orientation; faith or belief.

**Education Training Qualifications**

- A relevant professional qualification.
- Registration with the relevant professional body, as applicable
- Relevant training in GDPR and Safeguarding

Where possible the independent visits will be conducted in the first 20 days of the calendar month, suitable notification should be made to the registered manager if this is not possible, and the report is expected to be received no later than the last working day of the calendar month.

Contract management meetings will be held quarterly and expected to be held primarily as virtual meetings, but if required the provider is expected to attend face to face meetings in

the Kent Area. These meetings will focus on achievement of above requirements and discuss any themes arising from the visits.

**SCHEDULE 3**  
**PRICING AND PAYMENT**

**PRICING SCHEDULE**

*“Not Used”*

## **SCHEDULE 4**

### **TENDER**

**SCHEDULE 5**  
**SCHEDULE OF AGREEMENTS**

**SCHEDULE 6**

**SERVICE LEVELS AND SERVICE CREDITS**

Not Used

## SCHEDULE 7

### CHANGE CONTROL

#### 1. GENERAL PRINCIPLES

- 1.1 Where the Council or the Supplier sees a need to change this Contract, the Council 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 2 of this Schedule 7.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Council and the Supplier shall, unless otherwise agreed in writing, continue to perform this Contract in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the Council and the Supplier in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either Party.
- 1.4 Any Change-related work undertaken by the Supplier and the Supplier's Staff 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 7, shall be undertaken entirely at the expense and liability of the Supplier. Should the Council not authorize such work the Supplier may, at the Council's absolute discretion, be required to reverse such work and the cost for so doing will be borne by the Supplier alone.

#### 2. PROCEDURE

- 2.1 A Change request must be submitted to the Council's Contract manager in the case of a request by the Supplier and to the Supplier's manager in the case of a request by the Council.
- 2.2 Either Party may raise a change request in the form annexed (the "**Contract Change Control Form**"). All Contract Change Control Forms should where practicable be supported by additional information which should accompany the Contract Change Control Form. Where a Party requires additional information from the other Party in order to complete the Contract Change Control Form as fully as possible then that other Party shall respond to such request for additional information as soon as practicable and in any event shall use all reasonable endeavours to supply the necessary details within 3 Working Days, or such other timescales as may be agreed between the Parties.
- 2.3 The minimum information required to be submitted on the Contract Change Control Form is as follows:
  - (a) Date of Change request
  - (b) Name of Party making the change request
  - (c) Date of proposed implementation of Change request
  - (d) If appropriate, changes to the requirement, or any other aspect of this Contract to be changed



- (e) Any changes to existing documentation or any new documentation that may be required
  - (f) A description of the change or the new requirement (as appropriate).
  - (g) Justification for making the Change
  - (h) Detailed cost implications
  - (i) Impact on exit plan
  - (j) If necessary and so far as possible a description of any future impact analysis work to be undertaken together with anticipated time scales and costs if any.
  - (k) So far as possible, a description of the impact of the Change or new requirement (as appropriate) quantified in terms of input required from each Party, timescales, performance and cost.
- 2.4 Discussions between the Council 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 Council; or
  - (c) A recommendation to change this Contract by the Supplier
- 2.5 Where a written request for an amendment is received from the Council, the Supplier shall, unless otherwise agreed, submit two copies of a Change Control Form signed by the Supplier to the Council within three weeks of the date of the request or such other timescales as may be agreed between the Parties.
- 2.6 A recommendation to amend this Contract by the Supplier shall be submitted directly to the Council in the form of two copies of a Change Control Form signed by the Supplier at the time of such recommendation. The Council shall give its response to the Change Control Form within three weeks or such other timescales as may be agreed between the Parties.
- 2.7 A Change Control Form signed by the Council and by the Supplier shall constitute an amendment to this Contract.



**Annex 1**

**Contract Change Control Form**

CCF NO.:	TITLE:	DATE RAISED:
ORIGINATOR:	REQUIRED BY DATE:	
DETAILED DESCRIPTION OF CONTRACT CHANGE BEING PREPARED AND DETAILS OF ANY RELATED CONTRACT CHANGES:		
DETAILED JUSTIFICATION FOR MAKING THE CHANGE :		
PROPOSED ADJUSTMENT TO THE PRICING WITH DETAILED COSTINGS RESULTING FROM THE CONTRACT CHANGE:		
DETAILS OF PROPOSED ONE-OFF ADDITIONAL PRICING AND MEANS FOR DETERMINING THESE – THESE WILL BE BASED ON SUPPLIER COSTS PLUS ACCEPTABLE MARGIN):		
DETAILS OF ANY PROPOSED CONTRACT AMENDMENTS:		
DETAILS OF ANY KEY PERFORMANCE INDICATOR'S AFFECTED:		
DETAILS OF IMPACT ON EXIT PLAN:		
DETAILS OF IMPACT ON REQUIREMENT:		
DETAILS OF IMPACT ON DOCUMENTATION :		
DETAILS OF ANY OPERATIONAL SERVICE IMPACT:		
DETAILED RISK ASSESSMENT:		

**EXECUTION AS A DEED**

**Execution as a Deed by the Council**

The COMMON SEAL of

**THE KENT COUNTY COUNCIL**

was affixed in the presence of:

.....

Authorised Signatory

.....

Print Name of Authorised Signatory

**EXECUTION UNDER HAND**

**IN WITNESS** whereof this Contract has been executed by the Parties in accordance with their respective constitutions:

Signed for and on behalf of

**THE KENT COUNTY COUNCIL**

.....

Authorised Signatory

.....

Print Name of Authorised Signatory

Signed for and on behalf of

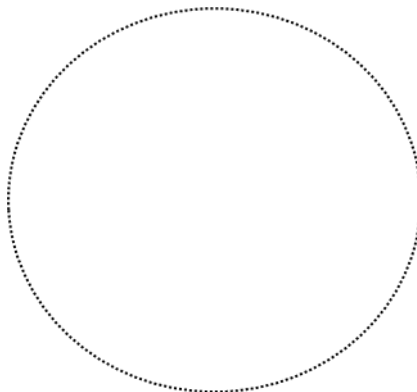
**[THE SUPPLIER]** in the presence of:

.....

Authorised Signatory

.....

Print Name of Authorised Signatory



## **SCHEDULE 8**

### **EXIT ARRANGEMENTS**

#### **1. General**

- (a) The Supplier acknowledges that it is of critical importance to the Council to ensure on termination or expiry of this Contract an orderly transfer of the Services either back to the Council or to a Replacement Supplier and for this reason the Council relies significantly on the Supplier fulfilling its obligations under this Schedule.
- (b) If this Contract is terminated in whole or part or expires in accordance with its terms, the Supplier will, during the Exit Period, co-operate with the Council and where applicable any Replacement Supplier to ensure the orderly migration of, and transfer of responsibility for, the Services.

#### **2. Exit Obligations**

- (a) During the Exit Period the Supplier shall:
  - (i) provide all reasonable assistance and appropriate resources to the Council and any Replacement Supplier to facilitate the orderly transfer of the Services to the Council or the Replacement Supplier;
  - (ii) continue to provide the Services in accordance with any relevant Service Levels in force at the date of termination or expiry on the terms set out in this Contract;
  - (iii) provide such information and assistance as detailed in paragraph 4;
  - (iv) provide such copies of the Council's data in its possession as are requested by the Council and at no additional charge to the Council;
  - (v) carry out such security tasks necessary to identify security and operator risks inherent in the transfer of the Services and inform the Council of such risks and possible preventative and curative measures necessary to deal with such risks;
  - (vi) immediately prior to the end of the Exit Period provide the Council with a detailed description and status report of all errors which have not been corrected, problems not resolved or agreed changes to the Services which have not been fully implemented at the termination of the Exit Period.
- (b) The Supplier shall carry out the Exit Obligations in such a manner so as to cause as little disruption as possible to the Council's business.

#### **3. Documentation and Due Diligence**

- (a) During the Exit Period, the Supplier will comply with any reasonable request by the Council for any information in relation to the Services to

ensure the smooth transition of the Services. Following such a request the Supplier will within two (2) days of such request make the relevant information available to the Council for inspection or on the Council's authorisation to the Replacement Supplier and shall within two (2) days of such inspection provide copies of the relevant information to the Council and/or (if so requested by the Council) the Replacement Supplier.

- (b) The Supplier shall promptly and diligently answer any questions about the Services which may be asked by the Council or by any Replacement Supplier as necessary in order (i) to explain the manner in which the Services have been provided; and (ii) to allow the Council or Replacement Supplier to conduct all such due diligence as is reasonably required to enable it to take over responsibility for the provision of the Services (or any part thereof).
- (c) The Council shall procure that any Replacement Supplier agrees to be bound by (i) an obligation of confidentiality in respect of any confidential information of the Supplier which is made available to it under this Schedule and (ii) an obligation to use any of the Supplier's confidential information solely for the purpose of evaluating and/or providing to the Council the services which will replace the Services.

#### **4. Exit Manager**

- (a) The Supplier will appoint a person as Exit Manager at the commencement of the Exit Period and will notify the Council as soon as possible of the name and contact details of such person. The Council shall have the right to require the replacement of the Exit Manager if it reasonably believes that such person is unsuitable for the position.
- (b) The Exit Manager will be the Council's primary point of contact in connection with the matters referred to in this Schedule. The Supplier shall ensure that the Exit Manager liaise with the Council in relation to all issues relevant to the termination (in whole or part) or expiry of this Contract and all matters connected with this Schedule.

#### **5. Exit Period**

- (a) The Exit Period shall be:
  - (i) a period of up to twelve (12) months prior to the end of the Contract;

provided that the Council may terminate the Exit Period at any time by giving ninety (90) days' notice in writing to the Supplier.

**SCHEDULE 9**  
**TUPE AND PENSIONS**

Not Used

**SCHEDULE 10**  
**PARENT COMPANY GUARANTEE**

Not Used



**SCHEDULE 11**  
**PERFORMANCE BOND**

Not Used

## **SCHEDULE 12**

### **DISASTER RECOVERY PLAN**

The Council is required to continue to provide essential services at all times regardless of emergencies or business interruptions. Suppliers must therefore have in place their own resilient contingency arrangements to enable the Council's obligations in relation to this Contract to be met. Specifically, the Supplier is required to have in place a Disaster Recovery Plan which must contain required information in accordance with the Civil Contingencies Act 2004.

The Supplier is required to assist the Council in meeting these duties by:

- Developing and adopting a Disaster Recovery Plan which complies with the Civil Contingencies Act 2004;
- Operating the Disaster Recovery Plan for the duration of this Contract;
- Providing the Council with a copy of any such plan upon request.

It should be acknowledged that Supplier commitments under this Contract shall include regular risk assessments and business impact analysis in relation to this Contract to be carried out on an annual basis, or more frequently if the Council requests that additional testing be undertaken.

The Disaster Recovery Plan must include but is not limited to the following:

#### **Distribution List**

- The Supplier must note all the individuals to whom the completed Disaster Recovery Plan has been sent. The list should include the number of each recipient's copy, along with the recipient's name and location.

#### **Table of Contents**

This enables information in the plan to be located quickly. The number and name of the section should be given along with a page reference.

#### **Aims and Objectives**

The Supplier should be clear about why he is completing this plan and what it aims to achieve if the plan is activated.

#### **Considerations**

- The Supplier's aim is to prepare its business to cope with the effects of an emergency or disruption to enable continuity of delivery under this Contract;
- The Supplier's organisation must know how to act in the event of an emergency or crisis;
- The Supplier intends that its usual working patterns will recover as quickly as possible and with as little impact as possible;
- Additional Supplier-specific objectives of the plan may include:
  - To prevent customers going elsewhere;

- To ensure that the Supplier's credit rating is unaffected; and
- To prevent cash-flow problems.

Note: requirements specific to the Supplier's own organisation should also be listed.

#### Critical Function Analysis and Recovery Process

- A critical function is an operation that the Supplier's business cannot survive without. Each of the Supplier's 'critical functions' should be analysed, and the Supplier should assign a level of importance to each.
- The Supplier needs to work out the effect of disruption of a 'critical function' over time - after 24 hours, between 24-48 hours, up to a week and up to two weeks.
- This allows the Supplier to identify the actions it may need to take in the short-term (immediately following an emergency) and in the long-term (to fully recover).
- The Supplier will also need to identify what resources, including people, will be required to recover its business from the emergency.

#### Priority List of Critical Functions

- In the event of an emergency or extended period of disruption the Supplier may need to refer to its list of priorities in order to prepare an Action Plan.
- This will serve as a reminder about which functions must be reinstated first and will be most crucial in the recovery process.
- By prioritising and organising in advance, the Supplier's course of action will be clearer if a crisis occurs.

#### Emergency Response Checklist

- This should include all actions that need to be completed to ensure the most efficient method of recovery. The Supplier will need to note who has completed each action, and the date it was completed.

#### Actions may include:

- Liaison with emergency services;
- Noting damage to the organisation, including staff, premises, equipment, data or records;
- Identification of disrupted "critical functions"; and
- Provision of briefings to staff, customers, public and interested parties.

#### Key Contacts lists

- The Supplier should keep a list of people who need to be informed in case of an emergency, or will need to be involved in action planning following a disruption.
- Details should include name, email, mobile number and other details as appropriate. Next of kin details for staff members within the Supplier's organisation may also be relevant.

#### Layout/map

- The Supplier should consider including with its disaster recovery document up-to-date plans of any premises that the Supplier's organisation may occupy.
- This is of use to the emergency services and should include locations of main water stop-cock; switches for gas and electricity supply; any hazardous substances; and items that would have priority if salvage became a possibility.

#### Emergency Pack

- As part of the disaster recovery plan for the Supplier's organisation, the Supplier should hold copies of all important documents, records and/or equipment off-site. Their location should be recorded in the Supplier's Disaster Recovery Plan.
- This emergency pack may be crucial to the recovery process.

#### Expenses Log

- All expenses incurred should be recorded. Details of who made the decision and reasons why should be given.

Keep the plan up to date.

The Supplier organisation should not only prepare a Disaster Recovery Plan, but must ensure it is kept up to date. Plans should be updated:

- If there are any changes to the Supplier's organisation, including restructuring;
- If the Supplier changes the method of delivery of its critical activities;
- If there is a change to the external environment in which the organisation operates;
- With lessons learned from an incident or exercise;
- If there are changes to staff;
- If the Council requires any changes to the Disaster Recovery Plan in relation to ensuring continuity of delivery under this Contract.

**SCHEDULE 13**

**COMMERCIALLY SENSITIVE INFORMATION**

*To be agreed*

**SCHEDULE 14**  
**CONTRACT MANAGEMENT**

See separate Schedule 14 attached to this Invitation to Tender.

**SCHEDULE 15**  
**MOBILISATION AND TRANSITION**

*“Not Used”*

## SCHEDULE 16

### DATA PROTECTION AND GENERAL DATA PROTECTION REGULATION

***The Contract concerns the processing of Personal Data?***      **Yes**

**If “Yes”:** The processing of Personal Data applies to the Contract.

**If “No”:** The Processing of Personal Data does not apply to the Contract.

**If the answer given is originally “No” and the situation changes to involve the processing of Personal Data, this Schedule will apply in its entirety and need to be completed in full.**

**Whether “Yes” or “No”, Annex 1 must be completed in accordance with the guidance at Annex 1.**

**Whether “Yes” or “No”, the Supplier shall at all times comply with the Data Protection Legislation.**

#### **PARTIES**

**The Kent County Council**

**[ENTER SUPPLIER NAME]** (“Supplier”)

The Parties agree that the Contract includes this Schedule 16 - Data Protection and General Data Protection Regulation and its Annex 1.

The following new definitions shall be introduced:

**“Controller”** has the meaning given in the Data Protection Legislation;

**“Data Loss Event”** means any event that results or may result in unauthorised access to Personal Data held by the Council under this Deed, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement including any Personal Data Breach;

**“Data Protection Legislation”** means any data protection laws and regulations applicable in the United Kingdom from time to time which relates to the protection of Personal Data, including but not limited to UK GDPR, and any codes of practice, guidelines and recommendations issued by the Information Commissioner or any replacement body;

**“Data Protection Officer”** has the meaning given in the Data Protection Legislation;

**“Data Subject Access Request”** means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

**“Data Subject”** has the meaning given in the Data Protection Legislation;

**“DPA”** means the Data Protection Act 2018 as amended from time to time;

**“LED”** means the Law Enforcement Directive (Directive (EU) 2016/680);



**“Personal Data”** has the meaning given in the Data Protection Legislation;

**“Protective Measures”** appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;

**“Processor”** has the meaning given in the Data Protection Legislation;

**“Processor Personnel”** all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any sub-contractor of the Processor;

**“Personal Data Breach”** has the meaning given in the Data Protection Legislation;

**“Sub-processor”** any third party appointed to process Personal Data on behalf of the Processor related to this agreement; and

**“UK GDPR”** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA.

1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Supplier is the Processor unless otherwise specified in this Schedule 16 and Schedule 16 - Annex 1 (Processing, Personal Data and Data Subjects). The only processing that the Processor is authorised to do is listed in Annex A (Processing Personal Data) by the Controller and may not otherwise be determined by the Processor.
2. The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.
3. The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Schedule 16 and Schedule 16 - Annex 1 (Processing, Personal Data and Data Subjects):
  - 3.1. process that Personal Data only in accordance with Annex 1 (Processing, Personal Data and Data Subjects), unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
  - 3.2. ensure that it has in place Protective Measures which have been reviewed and approved by the Controller as appropriate to protect against a Data Loss Event having taken account of the:
    - 3.2.1. nature of the data to be protected;
    - 3.2.2. harm that might result from a Data Loss Event;
    - 3.2.3. state of technological development; and
    - 3.2.4. cost of implementing any measures;
  - 3.3. ensure that:
    - 3.3.1. the Processor Personnel do not process Personal Data except in accordance with this Schedule 16 and (and in particular Schedule 16 - Annex 1 (Processing, Personal Data and Data Subjects));

- 3.3.2. it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
  - (A) are aware of and comply with the Processor's duties under this paragraph;
  - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
  - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this Schedule 16 and Schedule 16 - Annex 1 (Processing, Personal Data and Data Subjects); and
  - (D) have undergone adequate training in the use, care, protection and handling of Personal Data;
- 3.4. not transfer Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
  - 3.4.1. the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
  - 3.4.2. the Data Subject has enforceable rights and effective legal remedies;
  - 3.4.3. the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
  - 3.4.4. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- 3.5. at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Deed unless the Processor is required by Law to retain the Personal Data.
- 4. Subject to paragraph 5, the Processor shall notify the Controller immediately if it:
  - 4.1. receives a Data Subject Access Request (or purported Data Subject Access Request);
  - 4.2. receives a request to rectify, block or erase any Personal Data;
  - 4.3. receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation;
  - 4.4. receives any communication from the Information Commissioner's Office or any other regulatory authority in connection with Personal Data processed under this Deed;

- 4.5. receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - 4.6. becomes aware of a Data Loss Event.
5. The Processor's obligation to notify under paragraph 1.4 shall include the provision of further information to the Controller in phases, as details become available.
6. Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 1.4 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
  - 6.1. the Controller with full details and copies of the complaint, communication or request;
  - 6.2. such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - 6.3. the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 6.4. assistance as requested by the Controller following any Data Loss Event;
  - 6.5. assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
7. The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
8. The parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
9. Before allowing any Sub-processor to process any Personal Data related to this Deed, the Processor must:
  - 9.1. notify the Controller in writing of the intended Sub-processor and processing;
  - 9.2. obtain the written consent of the Controller;
  - 9.3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this paragraph 1.9 such that they apply to the Sub-processor; and
  - 9.4. provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
10. The Processor shall remain fully liable for all acts or omissions of any Sub-processor.
11. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor require it to amend this Deed to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## ANNEX 1 TO SCHEDULE 16

### Schedule of Processing, Personal Data and Data Subjects

#### Guidance for Completion

1. If processing Personal Data, complete Annex 1 in full.
2. If the Contract does not concern the processing of Personal Data, complete Supplier and Contract details below and select “Not Applicable” for each “Detail” section of Parts A and B.

Supplier: [ENTER SUPPLIER NAME]

Contract: [ENTER CONTRACT NAME, CONTRACT REFERENCE]

1. The Processor shall comply with any further written instructions with respect to processing by the Controller.
2. Any such further instructions shall be incorporated into this Schedule.
3. Part A and/or Part B, as appropriate, describe the Data relationship(s) between the Parties. Only completed Part(s) apply and an uncompleted Part indicates that the Data relationship pertaining to that Part does not exist within the Contract. If the Contract concerns the processing of Personal Data at least one Part must be completed and both Parts may be completed but the latter must apply to different Data within the Contract. The same Party cannot be both a Controller and a Processor for the same Data in one contract but can be for different data within the same contract.
4. Any uncompleted Parts below should have “Details” contents deleted and replaced with “Not Applicable”.

#### PART A

The Kent County Council      Data Controller  
[ENTER SUPPLIER NAME]      Data Processor

Description	Details
Subject matter of the Processing	[This should be a high level, short description of what the processing is about i.e. its subject matter]  OR  “Not Applicable”
Duration of the Processing	[Clearly set out the duration of the processing including dates]  OR  “Not Applicable”
Nature and purposes of	[Please be as specific as possible, but make sure that you

the Processing	<p>cover all intended purposes.</p> <p>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</p> <p>The purpose might include: employment processing, statutory obligation, recruitment assessment etc.]</p> <p><b>OR</b></p> <p>"Not Applicable"</p>
Type of Personal Data	<p>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.]</p> <p><b>OR</b></p> <p>"Not Applicable"</p>
Categories of Data Subject	<p>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc.]</p> <p><b>OR</b></p> <p>"Not Applicable"</p>
Plan for return and destruction of the Data once the Processing is complete UNLESS requirement under union or member state law to preserve that type of Data	<p>[Describe how long the data will be retained for, how it be returned or destroyed]</p> <p><b>OR</b></p> <p>"Not Applicable"</p>

## PART B

**The Kent County Council**  
**[ENTER SUPPLIER NAME]**

Data Processor  
Data Controller

Description	Details
Subject matter of the Processing	<p>[This should be a high level, short description of what the processing is about i.e. its subject matter]</p> <p><b>OR</b></p> <p>"Not Applicable"</p>

Duration of the Processing	<p>[Clearly set out the duration of the processing including dates]</p> <p><b>OR</b></p> <p>"Not Applicable"</p>
Nature and purposes of the Processing	<p>[Please be as specific as possible, but make sure that you cover all intended purposes. The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.]</p> <p>The purpose might include: employment processing, statutory obligation, recruitment assessment etc.]</p> <p><b>OR</b></p> <p>"Not Applicable"</p>
Type of Personal Data	<p>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.]</p> <p><b>OR</b></p> <p>"Not Applicable"</p>
Categories of Data Subject	<p>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc.]</p> <p><b>OR</b></p> <p>"Not Applicable"</p>
Plan for return and destruction of the Data once the Processing is complete UNLESS requirement under union or member state law to preserve that type of Data	<p>[Describe how long the data will be retained for, how it be returned or destroyed]</p> <p><b>OR</b></p> <p>"Not Applicable"</p>