**DATED 202**

**OXFORDSHIRE COUNTY COUNCIL**

**- and -**

 **[ ]**

**CONTRACT**

**FOR THE PROVISION OF A (HOSTED)**

**Learning Management System and Website Platform for**

**[Oxfordshire Safeguarding Children’s Board] and**

**[Oxfordshire Safeguarding Adults’ Board][[1]](#footnote-2)**

Anita Bradley

Director of Law & Governance and Monitoring Officer
Oxfordshire County Council

County Hall

New Road

Oxford OX1 1ND

LS4.0 IT Hosted Services Contract

LS/BM/55902

### CONTRACT FORM

**THIS CONTRACT** is made the day of 202

**BETWEEN:**

**(1) Oxfordshire County Council** of County Hall, New Road, Oxford OX1 1ND (“the Council”); and

**(2) *[Service Provider’s name]*** (Company number *[xxxx]*) whose registered office is situated at *[address]* (“the Service Provider”).

**WHEREAS:**

(A) The Council wishes to purchase a (hosted) Learning Management System (LMS System)and Website Platform and related maintenance and support services for [Oxfordshire Safeguarding Children’s Board; and Oxfordshire Safeguarding Adults’ Board] to manage delivery of safeguarding training as more particularly set out in its Statement of Requirements on the terms and conditions appearing below.

(B) The Council issued an Invitation to Tender on [ ] (the “ITT”) to potential providers (including the Service Provider) in respect of the provision of the LMS System, Website Platform and related support and maintenance services (“the Services”) and invited potential providers (including the Service Provider) to provide tenders in connection with their respective proposals and the Council’s requirements for the provision of the Services.

(C) The Service Provider submitted its tender on [ ] in response to the ITT.

(D) On the basis of the Service Provider’s tender the Council has selected the Service Provider to provide the LMS System, Website Platform and the Services and the Service Provider undertakes to provide the same on the terms set out below.

**IT IS AGREED** that this Contract comprises this Contract Form and the following documents attached to it:

The Particulars

The Conditions of Contract

The Schedules
Schedule 1 Statement of Requirements
Schedule 2 Finance

Schedule 3 Information Governance

Schedule 4 Service Levels

Annexes

Annex A Service Provider’s Method Statement

In the event and to the extent of any conflict or inconsistency between the Particulars, the Conditions of Contract, the Schedules and any Annexes, the following order of priority between them shall apply to the extent that it is necessary to resolve the conflict or inconsistency:

* the Particulars incorporating any special terms shall prevail over the Conditions of Contract, the Schedules and the Annexes;
* the Conditions of Contract shall prevail over the Schedules and the Annexes; and
* the Schedules shall prevail over the Annexes save where and to the extent that any provisions of Annex A exceed the requirements set out at Schedule 1.

**AS WITNESS** the hands of the parties have been set the day and year first before written.

|  |  |
| --- | --- |
| For and on behalf of the Council:**SIGNED by** **Signature** Position  | For and on behalf of the Council:**SIGNED by** **Signature** **Position**  |
| For and on behalf of the Service Provider: |

**SIGNED by**

**Signature**

**Position**

(and duly authorised signatory)

PARTICULARS

1. Commencement Date is
2. The Contract Period shall be for a period of 3 years from and including the Commencement Date unless or until terminated earlier in accordance with the provisions of this Agreement.
3. The Council’s option to extend in Condition 9 applies and the Contract Period for the continued provision of the Services may be extended for up to 2 years in aggregate and the notice period is 3 months instead of 6 months.
4. The Council’s right to terminate or reduce the Services due to a reduction in funding at Condition 26.6 applies.
5. The Council’s right to break the Contract in Condition 27 does not apply.
6. Contract Price is set out in the Finance Schedule.
7. Council’s Contact is Kay Bishop – OCSB Business Manager.
8. Service Provider’s Representative is [ ] .
9. Professional indemnity insurance shall be in the sum of £2,000,000 (Two Million)for each and every claim.
10. The Council’s email address for notices is kay.bishop@oxfordshire.gov.uk
11. The Service Provider’s email address for notices is [insert email address].
12. The Council’s postal address for notices shall be as set out at Condition 25.1
13. The Escrow provisions in Condition 30 do not apply.
14. The names and/or job titles of persons to whom disputes should be referred under Condition 33.1 are:

For the Council: Director of Children’s Services

For the Service Provider: [ ]

15. Special Conditions –The following special condition applies.

SC1 **Limitation on Liability**

SC1.1 Neither party limits its liability for:

* + 1. death or personal injury caused by its negligence, or that of its Staff; or
		2. fraud or fraudulent misrepresentation by it or its Staff; or
		3. breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.

SC1.2 Subject to Special Condition SC1.1, the Service Provider's total aggregate liability:

SC1.2.1 in respect of Condition 26.1.1 or breach of Conditions 12, 13, 20 and the indemnity under Condition 21.1 shall be unlimited.

SC1.2.2 for all loss of or damage to Council Premises, property or assets (including technical infrastructure, assets or equipment but excluding any loss or damage to the Council Data or any other data) of the Council caused by a Default shall in no event exceed £1,000,000 (subject to indexation) in any one year of the Contract Period;

SC1.2.3 In respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with the Contract shall in no event exceed £250,000 (subject to indexation) or, if greater, an amount equivalent to 125% of the annual Contract Price for the year in which the claim, loss or damage arose.

SC1.3 The parties expressly agree that if any limitation or provision contained or expressly referred to in this Special Condition SC1 is held to be invalid under any Enactment it will be deemed omitted to that extent, and if any party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this Special Condition SC1.

SC1.4 Nothing in this Special Condition SC1 shall act to reduce or affect either party's general duty to mitigate its loss.

SC2 **PCCI Compliance**

SC2.1 The Service Provider warrants that it (and any of its subcontractors or other third party service provider with whom the Service Provider shares cardholder data) shall comply with the Payment Card Industry (PCI) Data Security Standards published by the PCI Security Standards Council (as may be amended, supplemented or replaced from time to time) in so far as the PCI Data Security Standards are applicable to any processing, storage and/or transmission of transaction data or cardholder data, or applicable to any other transactions processed as part of the Services to the extent that the processing, storage and / or transmission of transaction data or cardholder data could impact the security of the Service User’s cardholder data environment.

SC2.2 The Service Provider shall indemnify and keep indemnified the Council from and against:

* + 1. any monetary penalties or fines levied by a supervisory authority or regulator on the Council; and
		2. any losses, liabilities, damages, costs and expenses howsoever caused (including, but not limited to, any direct or indirect or consequential losses, legal costs and other reasonable professional costs suffered or incurred by, awarded against, or agreed to be paid by, the Council pursuant to a claim made by a third party against the Council (including by a Data Subject),

In each case to the extent arising as a result of breach by the Service Provider (or its permitted sub-contractors) of this Agreement and / or their respective obligations as to compliance with the Payment Card Industry (PCI) Data Security Standards in accordance with the terms of this Agreement.

### CONDITIONS OF CONTRACT

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### CONDITIONS OF CONTRACT

***part one – formalities***

1. Definitions and Construction
	1. In these conditions, except where the context otherwise requires, the following expressions shall have the following meanings:

“Acceptance Tests” means the acceptance tests to be prepared by the Service Provider to test that the LMS System and Website Platform operates in accordance with the Statement of Requirements.

**“Associated Company”** means any holding company from time to time of the Service Provider and any subsidiary from time to time of the Service Provider, or any subsidiary of any such holding company (“holding company” and “subsidiary company” having the same meanings as in section 1159 of the Companies Act 2006);

“Authorised Users” those employees and independent contractors of the Council, delegates and/or other person nominated by the Council who are authorised to use the Software through the Hosted System under this Contract;

**“BCDR Plan”** means the business continuity and disaster recovery plan to be developed by the Service Provider in accordance with Condition 31;

**“Conditions”** means these conditions;

**“Contract”** means the contract entered into between the Council and the Service Provider consisting of the Contract Form, the Particulars, the Conditions and the Schedules and Annexes to them (if any);

**“Contract Period”** means the period for which the Services will be provided under this Contract as set out in the Particulars;

**“Contract Price”** means the pricesset out in the Finance Schedule and prices determined by the rates set out in the Finance Schedule;

**“Council’s Contact”** means the person specified in the Particulars and any such other person as may be appointed by the Council and notified in writing to the Service Provider to act generally or for specified purposes or periods;

**“Council Data”** means

(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:

(i) supplied to the Service Provider by or on behalf of the Council; or

(ii) which the Service Provider is required to generate, upload, process, store or transmit pursuant to the Contract;

**“Council Premises”** means any premises owned, occupied or used by the Council;

**“Critical Service Failure”** shall have the meaning given in in Schedule 4.

**“Data Controller”, “Data Processor”, “Data Subject”, “Personal Data”, “Data Protection Officer”** shall have the same meaning set out 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 Consultant under this Contract; and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including Personal Data breach.

**“Data Protection Impact Assessment”** means an assessment by the Consultant of the impact of the envisaged processing on the protection of Personal Data.

**“Data Protection Legislation”** means the UK General Data Protection Regulation; the Data Protection Act 2018 to the extent that its applicable, and any subordinate legislation made under such Acts from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

**“Data Subject Request”** meansa 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;

**“Draft Implementation Plan”** means the outline Implementation Plan prepared by the Service Provider until it is superseded by the Implementation Plan

**“Default”** means any breach of the obligations of the Service Provider under the Contract or any default, act, omission or negligence of the Service Provider or Staff in connection with or in relation to the subject matter of the Contract;

“Deliverable**”** means a defined level of functionality or other preset Milestone within a particular phase stage of the configuration as more described or referred to in the Implementation Plan;

**“Documentation”** means any documentation relating to implementation, delivery and use of the Services provided by the Service Provider to the Council under the Contract;

**“EIRs”** means the Environmental Information Regulations 2004;

**“Enactments”** means directives, statutes, regulations, orders, judgments of relevant courts of law, instruments, national and governmental codes of practice and best practice guidelines or other similar instruments as the same may be amended, replaced or re-enacted by any subsequent directive, statute, regulation, order, judgment, instrument, code or guidelines and references to any statute shall also include any secondary legislation made under it and references in the Contract to a specific Enactment shall be construed on this basis;

“Exit Plan” means the exit plan developed by the Service Provider

for return of the Council Data upon expiry or earlier termination of

the Contract in accordance with Condition 28;

**“FOIA”** means the Freedom of Information Act 2000;

**“Finance Schedule”** means the finance schedule set out in Schedule 2;

**“Force Majeure Event”** means any act of God, natural flood, fire (save where such fire is due to the negligence or fault of the Service Provider), lightning or earthquake, war, military operations, act of terrorism or riot;

**“Go- Live Date”** means 1 April 2022 or such other date as may be determined by the Council;

**“Good Industry Practice”** means all standards, practices, methods and procedures conforming to all Enactments and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from of a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances and conditions;

 **“Hosted System”** means the information and communications technology system to be used by the Service Provider in providing the LMS System and Website Platform, including the hardware on which such system will be installed, the software and communications links between such hardware and the Council’s equipment and the Council’s operating environment;

 **“Implementation Plan”** means the detailed implementation plan agreed with the Council in accordance with Condition 5;

**“Intellectual Property Rights”** means patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, semi-conductor topography rights, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including the United Kingdom) and the right to sue for passing off;

**“Maintenance and Support” means**  any error corrections, updates and upgrades that the Service Provider may provide or perform, to ensure continued delivery of the Services including, but not limited to,, any support or training services provided to the Council under this Contract;

**“Malicious Software”** means computer viruses, malware, Trojan horses or similar destructive, disruptive or nuisance computer programmes;

 **“Method Statement”** means, where an Annex A (Method Statement) is included the Contract, the Service Provider’s agreed proposals for delivery of the Services set out at that Annex A;

 “Milestone” means an event or task described in the Implementation Plan which, if applicable, shall be completed by the date set out in the Implementation Plan;

**“Personal Data”** shall have the meaning as set out in the DPA;

**“Privacy Notice”** means a notice to Data Subjects complying with and providing all the information required to Data Subjects under Data Protection Legislation.

“**Process”** and “**Processing**” shall have the same meanings as set out in the Data Protection Legislationbut for the purposes of this Contract shall include both manual and automatic processing;

“Prohibited Act”means the following acts:

(a) offering (directly or indirectly), promising or giving any person working for or engaged by the Council a financial or other advantage to: (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity;

(b) requesting (directly or indirectly), agreeing to receive or accepting any financial or other advantage as an inducement or a reward for improper performance of a relevant function or;

(c) committing any offence: (i) under the Bribery Act; (ii) under any Enactment creating offences concerning fraudulent acts; (iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the Council; or

(d) defrauding, attempting to defraud or conspiring to defraud the Council;

“Replacement Provider” means any third-party service provider appointed by the Council to deliver the Services or services substantially similar following the expiry or termination (including partial termination) of this Contract;

**"Replacement Services"** meansany 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 or termination or partial termination of this Contract, whether those services are provided by the Council internally and/or by any third party;

 **“Service Provider’s Background IPR”** meansIntellectual Property Rights owned by the Service Provider before the Commencement Date, for example those subsisting in the Service Provider's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Service Provider's know how or generic business methodologies; and/or Intellectual Property Rights created by the Service Provider independently of this Contract;

**“Service Level Failure”** means shall have the meaning given in Schedule 4;

**“Service Provider’s Representative”** means the person specified in the Particulars and any such other person as may be appointed by the Service Provider and notified in writing to the Council to act generally or for specified purposes or periods;

**“Services”** means the services described in in Schedule 1 including but not limited to hosting, data storage and maintenance of the Council’s processes and functions in accordance with the Council’s Statement of Requirements;

**“Software”** means any software used by the Service Provider to provide the LMS System, the Website Platform and the Services including Third Party Software and any error corrections, updates, upgrades, modifications and enhancements to the Software;

**“Statement of Requirements”** means the Council’s Statement of Requirements set out in Schedule 1 for implementation, delivery and provision of the Services;

**“Staff”** means all persons, whether paid or unpaid, engaged by the Service Provider to perform the Contract or used in the performance of the Contract including the Service Provider’s employees, agents and sub-contractors;

**“Third Party Software”** means any software owned by a third party and not the Service Provider; and

**“Working Day”** means Monday to Friday inclusive other than bank holidays and any other public holidays.

* 1. The definitions given in the Particulars apply.
	2. Words denoting an obligation on a party to do any act, matter or thing include an obligation to procure that it is done and words placing a party under a restriction include an obligation not to cause permit or allow infringement of this restriction.
	3. The headings and titles in the Contract are for ease of reference only and shall not be taken into account in its construction or interpretation.
	4. The expression “person” used in the Contract shall include any individual, partnership, local authority or incorporated or unincorporated body.
	5. The expression “including” means including without limitation or prejudice to the generality of any preceding description, defining term, phrase or word(s) and “include” shall be construed accordingly;
	6. The Contract constitutes the entire understanding between the Service Provider and the Council in relation to the subject matter of the Contract and supersedes all prior contracts, undertakings, representations and negotiations whether oral or written except that nothing in this Condition shall exclude or restrict liability for fraudulent or fundamental misrepresentations.
	7. This Contract may be executed in any number of counterparts and this shall have the same effect as if the signatures and, where applicable, seals on the counterparts were on a single copy of this Contract.
1. Formation of Contract and Sufficiency of Information

## The Service Provider acknowledges that it:

### has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council;

* + 1. has obtained for itself all necessary information as to risks, contingencies and any other circumstances which might reasonably influence or affect its performance of the Services.
		2. has raised all relevant due diligence questions with the Council before entering into this Contract; and

### has entered into this Contract in reliance on its own due diligence alone.

* 1. The Service Provider shall be deemed to have satisfied itself before entering into this Contract as to the accuracy and sufficiency of the rates and prices stated in the Finance Schedule which shall (except in so far as is otherwise expressly provided in the Contract) cover all the Service Provider’s obligations under the Contract and the Service Provider shall be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances which might reasonably influence or affect its performance of the Services.
	2. The Service Provider warrants and represents that all written statements and representations in any written submissions made by the Service Provider as part of the procurement process, including without limitation its response to the pre-qualification questionnaire (if applicable), its tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Contract or to the extent that the Service Provider has otherwise disclosed to the Council in writing prior to the date of this Contract.
	3. The Service Provider warrants and represents that it has full capacity and authority and all necessary consent (including where its procedures require the consent of its parent company) to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of the Service Provider.
1. Applicable Law and Jurisdiction

The Contract and any claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and interpreted in accordance with English law and shall be subject to the exclusive jurisdiction of the courts of England and Wales.

##### PART TWO - SERVICE PROVISION AND OBLIGATIONS OF THE SERVICE PROVIDER

1. Provision of the Services and Service Standards

4.1 The Service Provider will provide the Services for the Contract Period with all reasonable skill and care, in a timely and effective manner and will otherwise perform its obligations under the Contract in accordance with the Conditions, and any other standards specified in the Schedules.

4.2 Without prejudice to Condition 4.1, the Service Provider will provide an adequate number of Staff who are appropriately experienced, qualified and trained to perform the Services and will ensure that Staff comply with the Service Provider’s obligations under the Contract.

* 1. The Service Provider is responsible for the accuracy of all information supplied to the Council in connection with the provision of the LMS System and the Services and will pay the Council any and all costs occasioned by any discrepancies, errors or omissions in such information.
	2. The Service Provider shall provide the Services to achieve or exceed the Service Level performance measures as set out in Schedule 4 during the Contract Period.
	3. If the level of the performance by the Service Provider of any element of the Services during the Contract Period is:
		1. likely to, or fails to meet the Service Level performance measure;
		2. likely to cause or causes a Critical Service Level Failure;

 the Service Provider shall immediately notify the Council in writing and the Council shall (in its absolute discretion) and without prejudice to any or its rights under the Contract

1. require the Service Provider to immediately take all remedial action that is reasonable to mitigate the impact on the Council and to rectify or prevent a Service Level Failure or Critical Service Level Failure from taking place or recurring; and
2. if the action taken under paragraph (a) above has not already prevented or remedied the Service Level failure or Critical Service Level Failure, the Council shall be entitled to instruct the Service Provider to deliver a remediation plan setting out the steps required for remedy of this matter within such timescales as the Council shall require; or
3. if a Service Level failure has occurred, deduct from the Contract Price the applicable Service Level Credits payable by the Service Provider to the Council in accordance with Schedule 4; or
4. if a Critical Service Level Failure has occurred, exercise its right for Critical Service Level Failure in accordance with the provisions of this Contract.
	1. For the avoidance of doubt, approval and implementation by the Council of any rectification plan shall not relieve the Service Provider of any continuing responsibility to achieve the Service Levels,or remedy any failure to do so.

5Implementation, Hosting, Maintenance and Support Services

5.1 The Service Provider shall produce and submit to the Council a Draft Implementation Plan, no later than 14 days from the Commencement Date, for approval by the Council. The Draft Implementation Plan shall include all dependencies known by the Service Provider and contain sufficient detail to enable transition, implementation and provision of the Services to be achieved and delivered from the “Go Live Date”. Once the draft Implementation Plan is approved by the Council it shall become the Implementation Plan in relation to delivery and provision of the Services.

## 5.2 The Service Provider shall perform the implementation activities and any related professional services in accordance with the Implementation Plan and shall comply with the timetable assigned to Milestones and deliverables in the Implementation Plan. The Service Provider shall monitor its performance against the Milestones or deliverables and any other requirements of the Council set out in this Contract.

##

5.3 The Service Provider shall keep the Implementation Plan under review in accordance with the Council’s instructions and ensure that it is maintained and updated on a regular basis as may be necessary to reflect the then current state of the provision of the LMS System and the Services. The Council shall have the right to require the Service Provider to include any reasonable changes or provisions in each version of the Implementation Plan.

## 5.4  If, at any time, the Service Provider becomes aware that it will not (or is unlikely to) successfully achieve any Milestone by the applicable Milestone Date, it shall immediately notify the Council of the fact of the delay, the reasons for the delay, the consequences of the delay for the rest of the Implementation Plan and how the Service Provider proposes to mitigate the delay.

##

## 5.5 If all Acceptance Tests to be conducted in accordance with the provisions of Schedule 1 are not successfully completed on or before the relevant Milestone Date set out in the Implementation Plan, then the Council shall (unless the Council agrees for the relevant Acceptance Test to be repeated which shall be without prejudice to its rights under the Contract) be entitled (without affecting any other right it may have to terminate this Contract for the Service Provider's breach), to terminate the Contract and require the Service Provider to repay all sums it has paid the Service Provider under this Contract. The Service Provider shall repay such sums in full without set off or counterclaim within five (5) Working Days of the Council's notice.

5.6 Following successful completion of the Acceptance Tests set out in Schedule 1 by the Council, the Service Provider shall provide Services from the Go-Live Date for the duration of the Contract Period in accordance with the Statement of Requirements, the Service Levels and the terms of this Contract.

## 5.7. Not used.

5.8 Not used.

## 5.9 In relation to the provision of the Services, the Service Provider shall:

## 5.9.1 grant to the Council on and subject to the terms and conditions of this Contract non-exclusive, non-transferable licences, on an unlimited numerical basis, to allow Authorised Users to access the Hosted LMS System and the Software for the Council's business purposes;

5.9.2 to the extent that the Hosted System (or any part thereof) includes any Third Party Software or any Third Party Software is required by the Council and/or the Authorised Users to use the Hosted System / access the Software and / or Services, the Service Provider shall at its own cost procure for the Council and the Authorised Users all necessary licences required by them on terms acceptable to the Council.If the Service Provider cannot obtain for the Council a licence on terms acceptable to the Council, the Service Provider will consult with the Council on whether the Service Provider should seek to use an alternative provider of third party software;

###

### 5.9.3 in respect of network, communications, computer or other equipment provided by a third party contractor that do or are required to interface with the Service Provider’s Hosted System, the Service Provider shall have primary management responsibility for incident or problem resolution;

### 5.9.4 The Service Provider shall ensure that the release of any new Software or upgrade to Software complies with any interface requirements in the Statement of Requirements and shall notify the Council three months before the release of any new Software or upgrade to Software, and will co-ordinate its activity with the Council to ensure it minimises any disruption to the Services or the Hosted System or the Council's operations (as may be the case).

5.9.5 The Service Provider shall, as an enduring obligation throughout the Contract Period, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software in the Hosted System.

## 6. Intellectual Property Rights

## 6.1 Except as expressly set out in this Contract:

## 6.1.1 the Council shall not acquire any right, title or interest in or to

## the Intellectual Property Rights of the Service Provider or its licensors, including:

#### the Service Provider Software;

#### any Third Party Software; or

#### the Service Provider's Background IPRs,

and

### 6.1.2 the Service Provider shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Council or its licensors, including:

#### the Council Data;

#### any database belonging to the Council

#### the Council's documentation, processes and procedures;

## 6.2 Where either party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Condition 6.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other party on the request of the other party (whenever made).

## 7. Service Provider Warranties

## 7.1 The Service Provider represents warrants and undertakes:

### 7.1 1 That it has all the rights in relation to the Software and Services that are necessary to grant all the rights it purports to grant and perform all the obligations it agrees to perform under, and in accordance with, the terms of this Contract.

### 7.1.2 That the Council’s use of the Hosted System will not in any way constitute an infringement or other violation of any Intellectual Property Rights of any third party.

7.1.3 That the Hosted System will comply in all material respects with the Statement of Requirements; and the Hosted System will not contain or introduce to any equipment or system of the Council any Malicious Software and that, where it transfers Malicious Software to the Council through the Services to the Council’s IT systems, it shall reimburse Council the actual cost incurred by the Council to remove or recover from the Malicious Software;

7.1.4 That the Hosted System is free of any mechanism which may disable the Services and no loss of Council Data will result from such items if present in the Services;

7.1.5 That in the case of Council’s dispute of any Service Provider invoice, the Service Provider shall not withhold the performance of the Services, including, without limitation, access to and use of the Services by the Council, maintenance, and extract of Council Data.

1. Contract Price

8.1 In consideration of the performance of the Service Provider’s obligations under the Contract, the Council shall pay the Contract Price as set out in the Finance Schedule.

8.2 The Contract Price shall be the full and exclusive remuneration of the Service Provider in respect of the supply of the Services. Unless otherwise specified in the Finance Schedule, the Contract Price shall be deemed to include every cost and expense of the Service Provider directly or indirectly incurred in connection with the performance of the Services.

8.3 Unless otherwise set out in the Particulars or the Finance Schedule the Contract Price is exclusive of value added tax (“VAT”) where VAT is applicable. The Council shall pay to the Service Provider any VAT chargeable on the Contract Price subject to the provision to the Council of a proper VAT invoice.

8.4 Where the Service Provider submits an invoice to the Council in accordance with this Condition 8 and the Finance Schedule, the Council will consider and verify that invoice in a timely fashion.

8.5 Unless a shorter period is agreed in the Finance Schedule, the Council shall pay the Service Provider any sums due under such an invoice (or part thereof) no later than a period of 28 days from the date on which the Council has determined that the invoice (or part thereof) is valid and undisputed.

* 1. Where the Council fails to comply with Condition 8.4 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of Condition 8.5 after a reasonable time has passed.
	2. Unless otherwise agreed in the Finance Schedule, invoices shall be submitted monthly in arrears for Services provided.
	3. Where an invoice is disputed, the parties shall seek to resolve the dispute promptly and, if necessary, the matter shall be dealt with in accordance with Condition 33. The Council shall be under no obligation to pay the disputed charge until the dispute has been resolved. For the avoidance of doubt, where an invoice is disputed in part, the Council shall pay such part of the invoice which is not in dispute in accordance with Condition 8.5 and the provisions of Condition 7.1.5 shall apply.
	4. Each invoice shall:
1. be submitted to the address of the Council specified in the Finance Schedule (or if none is specified to the address set out in the Contract Form);
2. contain a detailed breakdown of Services supplied or to be supplied;
3. be supported by any information required by the Council to substantiate such invoice; and
4. comply with any other provisions in the Finance Schedule in respect of invoices.
	1. Without prejudice to any other right or remedy of the Council, the Council may, acting reasonably, reduce payment in respect of the System or any Services which the Service Provider has failed to provide or has provided inadequately.
	2. Without prejudice to any other right or remedy of the Council, where any sum of money is recoverable from or payable by the Service Provider or any Associated Company under the Contract or any other contract between the Service Provider or any Associated Company and the Council (including in all instances any sum which the Service Provider or an Associated Company is liable to pay in respect of any breach of contract), the Council may deduct that sum from monies payable by the Council to the Service Provider under the Contract.
	3. In the event of termination or expiry of this Contract, the Service Provider shall repay to the Council any part of the Contract Price which it has been paid in respect of Services not provided by the Service Provider at the date of termination or expiry.

1. Extension of the Contract Period

Unless otherwise specified in the Particulars, the Council may extend the Contract Period on the same terms (including, for the avoidance of doubt, at the same Contract Price) upon written notice to the Service Provider provided always that unless otherwise agreed with the Service Provider or specified in the Particulars, no less than six (6) months’ prior notice will be given on each occasion. The maximum period for which the Contract Period may be extended is specified in the Particulars.

1. Staff

10.1 When requested by the Council on reasonable grounds the Service Provider shall following reasonable notice make available to the Council records of all Staff involved in the provision of the Services.

* 1. The Service Provider’s employment systems shall accord with the Council’s policy on checking criminal records and the Service Provider shall on request supply to the Council such information as it may reasonably require to ensure that its employment systems do so accord.
	2. The Service Provider shall use ensure continuity of its Staff assigned to this Contract.

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* 1. Staff involved in the delivery of the Services shall, when accessing the Council’s premises, be supplied with a form of identification by the Service Provider.
	2. When requested by the Council on reasonable grounds, the Service Provider will cease to use any member of Staff specified by the Council for the provision of the Services.
	3. The Service Provider shall have an anti-bribery policy (which shall be disclosed to the Council upon request) to prevent the Service Provider and its Staff from committing a Prohibited Act and shall enforce it where appropriate.
1. Records/Contract Monitoring/Review/Audit
	1. All Council Data shall be stored in a useable format to ensure that the Service Provider can comply with Condition 28
	2. Subject to Condition 11.3 below, the Service Provider shall maintain comprehensive and accurate records of work carried out in the provision of the Services and shall retain such records and Council Data for a minimum of six (6) years from the date of termination or expiry of the Contract or such longer period as may be required under any Enactment or such other period as specified by the Council.
	3. If and when required by the Council any Personal Data held under or in connection with the Contract must be securely destroyed and/or permanently deleted.
	4. The Service Provider shall provide the Council with access to all Council Data and records relating to the Services upon request.
	5. The Service Provider shall provide and supply to the Council at no cost to the Council such other information or access to such information (including the Service Provider’s policies and procedures) as the Council may reasonably request as to the provision of the Services and the performance of the Service Provider’s obligations under the Contract and render the Council all reasonable assistance in connection with their monitoring and review.
	6. The Service Provider shall permit the Council, or its nominated auditor, to access the Service Provider’s premises and records on reasonable notice in order to audit the Service Provider’s performance of the Contract.
	7. The Service Provider’s Representative shall liaise with the Council’s Contact on all day-to-day matters relating to the Contract.
	8. The parties shall meet periodically, as the Council shall reasonably require, to review delivery and performance of the Services.
2. Council Data

12.1 The Service Provider shall not delete or remove any proprietary notices contained within or relating to the Council Data.

12.2 The Service Provider shall not store, copy, disclose, or use the Council Data except as necessary for the performance by the Service Provider of its obligations under this Contract or as otherwise expressly authorised in writing by the Council.

12.3 To the extent that Council Data is held and/or processed by the Service Provider, the Service Provider shall supply that Council Data to the Council or any provider acting on the Council’s behalf to deliver services similar to the Services in a format specified by the Council. The Service Provider shall take all actions necessary to ensure that it can legally comply with this obligation.

12.4 The Service Provider shall take responsibility for preserving the integrity of Council Data and preventing the corruption or loss of Council Data, which Council Data it shall hold in accordance with the standards as set out in the Statement of Requirements and provisions of this Contract.

12.5 The Service Provider shall perform secure backups of all Council data and record the copy on media from which the data can be reloaded if there is any corruption or loss of the data.

12.6 The Service Provider shall ensure that any system or media on which the Service Provider holds any Council Data, including back-up data, is a secure system that complies with the Council’s written instructions. Back-up data must also be stored in accordance with the BCDR Plan. The Service Provider shall ensure that such back-ups are available to the Council at all times upon request.

12.7 If the Council Data is corrupted, lost or sufficiently degraded as a result of the Service Provider’s default so as to be unusable, the Council may require the Service Provider (at the Service Provider’s cost and expense) to restore or procure the restoration of the Council Data in accordance with the Service Provider’s BCDR Plan and the Service Provider shall do so as soon as practicable but not later than two Working Days from the corruption, loss or degradation

12.8 If at any time the Service Provider suspects or has reason to believe that the Council Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Service Provider shall notify the Council immediately and take such remedial action as the Service Provider proposes to take to preserve, safeguard or restore the Council Data. The Service Provider shall keep the Council informed of all remedial action taken.

1. Protection of Personal Data, Data Protection

13.1 With respect to the parties' rights and obligations under this Contract, the parties agree that the Council is the Data Controller and the Consultant is the Data Processor. For the avoidance of doubt, and notwithstanding any other provisions of this Contract, the Consultant shall transfer all Personal Data to the Council on expiry or termination of the Contract, unless the Council otherwise specifies.

* 1. The Service Provider shall in connection with the provision of the Services and the performance of its obligations under the Contract:
		1. comply with the requirements of the Data Protection Legislation; and
		2. Comply with the provisions of the Information Governance Schedule 3.
	2. Not used.
	3. The Council may on not less than 30 Working Days’ notice to the Consultant amend this Contract to ensure that it complies with Data Protection Legislation.

14. Freedom of Information

14.1 The Service Provider shall co-operate with the Council and supply to it all information properly required in connection with any request received by the Council under the FOIA or the EIRs and shall supply all such information and documentation at no cost to the Council within 7 days of a request from the Council.

14.2 The Service Provider acknowledges that the Council may be required under the FOIA and the EIRs to disclose information without consulting or obtaining consent from the Service Provider. The Council shall take reasonable steps to notify the Service Provider of a request for information (in accordance with the Secretary of State’s section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) the Council shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA or the EIRs.

14.3 The Council may publish this Contract in its entirety to the general public (but with any information which is exempt from disclosure under the FOIA and/or the EIRs redacted).

1. Change Control
	1. Without prejudice to Conditions 26.6 and 27, insofar as is lawful, the Council may give reasonable written notice from time to time requesting changes to the Services (whether by way of discontinuance of any Services, the addition of new Services or increasing or decreasing the quantity of the Services, or changes to the locations where or the manner in which the Services are to be provided) for any reason whatsoever.
	2. In the event of such a change being requested, the Contract Price may also be varied. Such variation to the Contract Price shall be calculated by the Council and agreed with the Service Provider and shall be such amount as properly and fairly reflects the nature and extent of the change to the Services in all the circumstances.
	3. The Service Provider shall provide such information as may be reasonably required to establish the feasibility of the change to the Services and to enable a variation to the Contract Price to be calculated.
	4. No change to the Services or the Contract Price shall have effect unless agreed between the parties and recorded in writing and signed on behalf of the Council and the Service Provider.
	5. Any additional services agreed under the terms of this Condition 15 shall be subject to the Service Levels specified in Schedule 4.
2. Equal Opportunities
	1. The Service Provider shall not, in relation to the employment of
	persons for the purposes of providing the Services or in relation to the provision of the Services to any person, unlawfully discriminate within the meaning of any Enactment relating to discrimination or equality whether in relation to race, gender, religion or belief, disability, age, sexual orientation or otherwise and shall where reasonably requested by the Council assess and monitor its policies and practices as to their impact on the promotion of equality and report on this to the Council.
	2. The Service Provider shall, in relation to the employment of persons for the purposes of providing the Services or in relation to the provision of the Services, comply with the duties imposed by the Equality Act 2010 and will assist the Council in meeting its duties under the Equality Act 2010.

1. Health and Safety
	1. The Service Provider shall at all times comply with the requirements of the Health and Safety at Work etc Act 1974 and of all other Enactments pertaining to health and safety which may apply in the performance of the Contract.
2. Statutory Obligations

The Service Provider shall, in the provision of the Services and the performance of its obligations under the Contract, comply with all Enactments.

**PART THREE – GENERAL**

1. Gratuities and charges

The Service Provider shall ensure that no Staff solicit any gratuity or tip or any other form of money taking or reward, collection or charge for any of the Services save for charges explicitly provided for in this Contract.

1. Confidentiality
	1. The Service Provider shall not, and shall ensure that Staff shall not use or disclose any confidential material provided by the Council pursuant to the Contract or by any user of the Services otherwise than for the performance of the Contract save as may be agreed by the Council or required by law.

20.2 For the avoidance of doubt, confidential information shall not include (a) any information obtained from a third party who is free to divulge such information; (b) any information which is already in the public domain otherwise than as a breach of this Contract; or (c) any information which was rightfully in the possession of a party prior to the disclosure by the other party and lawfully acquired from sources other than the other party.

20.3 The Service Provider shall take all necessary precautions to ensure that confidential information is only made available to Staff on a “need to know” basis and shall ensure that such Staff are aware of and comply with the confidentiality obligations under the Contract.

21. Indemnity

21.1 The Service Provider shall at all times, during and after the Contract Period, on written demand indemnify the Council and keep the Council indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Council arising from any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Intellectual Property used to provide the Services or as otherwise provided by the Service Provider (or to which the Service Provider has provided access) to the Council in the fulfilment of its obligations

21.2The Service Provider shall indemnify and keep indemnified the Council from and against any and all claims, demands, proceedings, actions, damages, costs, expenses, loss and liability arising from a Default, save to the extent that it arises from any default or negligence of the Council or its employees provided always, for the avoidance of doubt, that this does not extend to any loss of profits suffered by the Council.

1. Insurance

	1. Without prejudice to Condition 21, the Service Provider shall at all times maintain insurance cover with a reputable company, as follows:

22.1.1 public liability insurance (minimum of £5,000,000 (five million) for each and every claim);

22.1.2 employers’ liability insurance (minimum of £10,000,000 (ten million) for each and every claim);

22.1.3 professional indemnity insurance (if applicable) in the sum specified in the Particulars which insurance shall be maintained for no less than 12 years where the Contract is executed as a deed and otherwise for no less than 6 years after the end of the Contract Period.

22.2 The Service Provider shall supply to the Council annually and at any other time within 14 days of request a copy of all insurance policies, cover notes, premium receipts or such other documents as may satisfy the Council that such insurance is in place.

22.3 The Service Provider shall give immediate notice to the Council in the event of any incident in connection with the Services which causes any personal injury or damage to property and which may be the subject of a claim under the Council’s insurance and shall give all information and assistance that the Council’s insurers may require and shall not make any admission without the written consent of the Council’s insurers. The Service Provider shall permit the Council’s insurers to take proceedings in the name of the Service Provider to recover compensation in respect of any matter covered by the Council’s insurers. This Condition is without prejudice to Condition 21.

22.4 The Service Provider shall immediately notify the Council if any claim or demand is made or action brought against the Service Provider for infringement or alleged infringement of any Intellectual Property Rights in connection with the performance of the Contract.

1. Assignment and Sub-Contracting

23.1 The Service Provider shall not assign the benefit or advantage of the Contract in whole or in part.

23.2 The Service Provider shall not sub-contract the provision of the Services to any person without the written consent of the Council and should such consent be given it shall not relieve the Service Provider from any liability or obligation under the Contract and the Service Provider shall be responsible for the acts, omissions, defaults or neglect of any sub-contractor and its agents or employees in all respects as if they were the acts, omissions, defaults or neglect of the Service Provider.

23.3 Where the Council gives consent to the Service Provider sub-contracting the Services (or any part of the Services) under Condition 23.2, such consent shall be limited to the matters within the scope of that permission and the Service Provider shall not proceed unless it has satisfied any matters required by the Council as a condition of grant of its consent.

23.3 Where the Service Provider enters into a Sub-Contract the Service Provider shall include in that Sub-Contract:

23.1.1 provisions having the same effect as Conditions 8.4 to 8.6 of this Contract; and

23.1.2 provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as Conditions 8.4 to 8.6 of this Contract.

23.4 Without prejudice to Condition 23.3, where the Service Provider enters into a Sub-Contract such Sub-Contract must impose obligations on the proposed sub-contractor in the same terms as those imposed on it pursuant to this Contract to the extent practicable and the Service Provider shall procure that the sub-contractor complies with such terms.

23.5 In Conditions 23.3 and 23.4 “Sub-Contract” means a contract between two or more suppliers, at any stage of remoteness from the Council in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.

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24. No Agency/Employment/Partnership

Nothing in this Contract shall be construed as creating a legal partnership or contract of employment or a relationship of principal and agent between the Council and the Service Provider and the Service Provider shall not at any time or in any circumstances take any action so as to bind (or purport to bind) the Council and nor shall the Service Provider hold itself out as having authority to bind the Council and shall ensure that Staff do not hold themselves out likewise.

25 Service of Notices

25.1 Any demand or notice required to be given under the Contract shall be sufficiently served if:

* + 1. served personally on the addressee;

25.1.2 sent by prepaid first class recorded delivery post to the registered office or last known address of the Service Provider where notice is required to the Service Provider and, unless otherwise set out in the Particulars or notified by the Council in accordance with this Condition 25.1, to the name of the Council’s Contact, County Hall, Oxford OX1 1ND where notice is required to the Council; or

25.1.3 subject to Condition 25.2, emailed to the address of the relevant party set out in the Particulars or such other address as the party may from time to time notify to the other party in accordance with this Condition 25.1.

* 1. Demands or notices served by email shall only be valid if the demand or notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in Condition 25.1.1 or 25.1.2 within two Working Days.
	2. Any demand or notice served in accordance with:
		1. Condition 25.1.1 shall be deemed to have been served on the date of delivery if it is delivered before 4pm on a Working Day and otherwise on the next Working Day;
		2. Condition 25.1.2 shall be deemed to have been served two Working Days from the date of posting;
		3. Condition 25.1.3 shall be deemed to have been served on the date of delivery if it is sent before 4pm on a Working Day and otherwise on the next Working Day unless in either case an error message is received.
1. Termination
	1. The Council may terminate the Contract by notice in writing, such notice to have effect from the date specified in it, and recover from the Service Provider the amount of any loss resulting from such termination if the Service Provider or any of its Staff (in all cases whether or not acting with the Service Provider’s knowledge):
		1. commit a Prohibited Act , or
		2. give any financial or other advantage to any person working for or engaged by the Council.
	2. If the Service Provider:
		1. commits a material Default and the Service Provider has not remedied the Default to the satisfaction of the Council within 20 days or such other shorter or longer period which may be specified by the Council after issue of a written notice specifying the Default and requesting it to be remedied;
		2. commits a material Default which is not capable of remedy;
		3. commits a Default on a persistent or repeated basis whether in respect of the same or different obligations of the Service Provider under the Contract and whether or not rectified, provided such Default does not amount to a service level failure;
		4. is an individual or a firm and a petition is presented for the Service Provider’s bankruptcy or a criminal bankruptcy order is made against the Service Provider or any partner in the firm, or the Service Provider or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or an administrator is appointed to manage the Service Provider’s affairs;
		5. is incorporated, and passes a resolution for its winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation the Service Provider or any person gives or files notice of intention to appoint an administrator or such an administrator is appointed, or the court makes a winding-up order, or the Service Provider makes a composition or arrangement with its creditors, or an administrator, administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge;
		6. is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
		7. ceases to carry on its business or disposes of all its assets or ceases to carry on a substantial part of its business or disposes of a substantial part of its assets which in the reasonable opinion of the Council would materially affect the delivery of the Services;
		8. undergoes a change of control and for this purpose where the Service Provider is a company, there is a change of control if the majority of shares carrying a right to vote in the Service Provider or its holding company are acquired by a person who is not at the date of the Contract a major shareholder (“holding company” having the same meaning as in section 1159 of the Companies Act 2006) save that if there is a change of control which is only a change from one subsidiary company to another (“subsidiary company” having the same meaning as in section 1159 of the Companies Act 2006) then that shall be deemed not to be a change of control for the purposes of this Condition 26.2.8;
		9. is subject to any event or proceedings in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Conditions 26.2.4 to 26.2.8;
		10. is convicted (or any member of Staff is convicted) of a serious criminal offence related to the business or professional conduct;
		11. commits (or any member of Staff commits) an act of grave misconduct in the course of the business;
		12. is in breach of the warranty at Condition 2.3;

* + 1. has provided any information at any time prior to the Council entering into the Contract with the Service Provider which is materially untrue or incorrect; or
		2. has a contract for services which are similar to the Services terminated by the Council due to the Service Provider’s default,

then in any such circumstances the Council may, without prejudice to any other rights or remedies of the Council terminate the Contract or the Services in whole or in part (whereupon a corresponding reduction in the Contract Price shall be made) by notice in writing, such notice to have effect from the date specified in it.

* 1. Where the Contract or the Services are terminated by the Council in whole or in part under this Condition 26:
		1. the Council shall be entitled to recover from the Service Provider the amount of any loss resulting from the termination including, but not limited to, the cost of arranging alternative provision and use of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period in excess of that which would have been paid to the Service Provider (such additional expenditure calculated on the basis that there had been no early termination of the Contract); and
		2. the Council shall cease to be under any obligation to make any payment relating to the terminated element until the costs, loss and/or damage resulting from or arising out of the termination of the Contract shall have been calculated and the Council shall then be entitled to deduct from any sum or sums due from the Council to the Service Provider under the Contract the amount of such costs, loss and/or damage.
	2. The Council shall be entitled to suspend the provision of the Services and carry out itself, or engage a third party to carry out, the Services or any of them on a temporary basis (without terminating the Contract) where the Service Provider is in Default and the Service Provider shall be liable for any costs incurred by the Council in this regard.
	3. If the Council commits a material breach of the Contract which:
		1. the Council has not remedied to the satisfaction of the Service Provider within 20 days or such longer period which may be specified by the Service Provider after issue of a written notice specifying the material breach and requesting it to be remedied; or
		2. is not capable of remedy,

then in any such circumstances the Service Provider may, without prejudice to any other rights or remedies of the Service Provider terminate the Services by notice in writing, such notice to have effect from the date specified in it.

* 1. The Council shall be entitled to terminate the Contract or reduce the Services on written notice to the Service Provider where the Council’s funding is reduced (including, for the avoidance of doubt, totally withdrawn). For the avoidance of doubt, no compensation by way of damages or otherwise (howsoever arising) shall be payable to the Service Provider in such circumstances.
	2. If any of the circumstances allowing the Council to terminate the Contract pursuant to Conditions 26.2.4 to 26.2.14 inclusive arise the Service Provider must promptly notify and provide all related information reasonably required by the Council to the Council.
1. Break

The Council shall have the right to terminate the Contract in whole or in part at any time by giving not less than 6 months’ written notice to the Service Provider unless otherwise specified in the Particulars. For the avoidance of doubt, no compensation by way of damages or otherwise (howsoever arising) shall be payable to the Service Provider in such circumstances.

28 Exit and Transition Arrangements

28.1 When this Contract expires or terminates (for whatever reason), the Council may, for a period of six (6) months thereafter, require the Service Provider to use all reasonable endeavours to assist the Council in the transfer of the provision of the Services to either the Council or a third party nominated by the Council and give the Council and/or such third party such help as may be reasonably necessary to enable such transfer to take place smoothly. This shall be at the Service Provider’s cost if the Contract is terminated pursuant to Conditions 26.1 or 26.2, but otherwise at the Service Provider’s then current rates.

28.2 The Service Provider shall, within 3 months of the Commencement Date, produce an Exit Plan for the orderly transition of the Services (or, as specified by the Council, any of them) from the Service Provider to the Council and/or any Replacement Provider in the event of any termination or expiry of this Contract. Within two months after the submission of that Exit Plan, the parties shall meet and use all reasonable endeavours to agree the contents of that Exit Plan and both parties shall keep the Exit Plan under continuous review.

28.3 In the event of the termination or expiry of this Contract for any reason, the Service Provider shall comply with the requirements of the last approved version of the Exit Plan and both parties shall comply with their respective obligations set out in this Condition 28.

28.4 On expiry or termination of the Contract howsoever arising, the Service Provider shall make arrangements with the Council to forthwith return to the Council, all deliver to the any third party nominated by the Council, at no additional cost:

28.4.1 all Council Data, unless the Council requests destruction of the Council Data. Where the Council Data is delivered to the Council it shall be delivered in such usable format as the Council may reasonably specify, or in the case of IT data, in Common Data Interchange Format (CIF) unless otherwise specified by the Council;

* + 1. all the property issued or made available to the Service Provider by the Council (including, but not limited to, materials, clothing, equipment, vehicles, documents, information, access keys) in its possession or under its control or in the possession or under the control of any Staff.

28.5 Where the Council requests destruction of the materials, the Service Provider shall securely destroy and permanently delete the materials forthwith and shall provide a certificate signed by an authorised signatory confirming that such materials have been destroyed.

28.6 For the avoidance of doubt, nothing in this Condition 28 or the Exit Plan or any of provision of this Contract shall:

28.6.1 affect the Council’s discretion not to put in place any alternative arrangements in respect of the Services after the expiry or termination of the Contract Period; or

28.6.2 be taken as committing the Council to taking any particular action in respect of the continuance of the Services after the expiry or termination of the Contract Period.

1. Survival
	1. The expiry or termination of this Contract for whatever reason shall not affect any provisions of the Conditions capable of surviving or operating in the event of termination of the Contract (including without limitation Conditions 9, 11.2, 11.5, 22.1.3, 22.4, 26.3, and 28 and termination of this Contract shall be without prejudice to the rights and remedies of one party against the other party.
2. Escrow and Service Continuity - Not used

30.1 If the Council so requests, the Service Provider shall secure escrow facilities to ensure business continuity including but not limited to proper functioning of the Software; backup and recovery of the Services and / or Council Data; any interfaces with the Council’s IT systems; and all updates or other documentation from time to time developed by Service Provider which are necessary to ensure continued delivery of the Services for the benefit of Council.

30.2 The Service Provider agrees that upon the occurrence of any event or circumstance which demonstrates with reasonable certainty the inability or unwillingness of Service Provider to fulfil its obligations to Council in providing the Services, as determined solely by Council, Council shall be entitled to enter into an arrangement with the Service Provider’s escrow agent, for receipt of the Services, or for any Replacement Services.

1. Business Continuity and Force Majeure
	1. Without prejudice to Condition 4 the Service Provider shall ensure it has appropriate business continuity arrangements (including a BCDR Plan) in place to deliver the Services without disruption and shall implement such arrangements in the event of any Force Majeure Event, emergency, disaster or other circumstance which affects the ability of the Service Provider to provide the Services.
	2. If either party is affected by a Force Majeure Event it shall immediately notify the other party in writing of the matters constituting the Force Majeure Event and shall keep that party fully informed of any relevant change of circumstances whilst such Force Majeure Event continues.
	3. The party affected by the Force Majeure Event shall take all reasonable steps available to it to minimise the effects of the Force Majeure Event on the performance of its obligations under the Contract.
	4. Save as provided in Conditions 31.6 and 31.7, a Force Majeure Event shall not entitle either party to terminate the Contract and neither party shall be in breach of the Contract, or otherwise liable to the other, by reason of any delay in performance, or non-performance of any of its obligations due to a Force Majeure Event.
	5. If the party affected by a Force Majeure Event fails to comply with any of its obligations under Condition 31.1, 31.2 or 31.3 above then no relief for the Force Majeure Event, including the provisions of Condition 31.4 above, shall be available to it and the obligations of each party shall continue in force.
	6. If a Force Majeure Event results in the suspension of the provision of the Services, the Council shall not be obliged to pay the Contract Price until such time as such suspension has ceased. If the provision of the Services is partly suspended, the Council shall pay a pro rata amount for those Services it has received.
	7. If in the Council’s reasonable opinion a Force Majeure Event results in disruption to more than 50% of the Services provided and such disruption continues for a continuous period of a month or longer (unless otherwise specified in the Particulars), the Council shall be entitled to terminate the Contract on giving one week’s notice to the Service Provider with termination taking effect upon the expiry of such notice.
2. Severance

If any of these Conditions become or are declared by a court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall in no way impair or affect any other provisions all of which shall remain in full force and effect and the parties shall negotiate in good faith to amend such provision so that, as amended, it is valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

1. Disputes and Mediation
	1. A dispute relating to the provision of the Services, the Contract Price, or payments which cannot be resolved in the first instance between the Service Provider’s Representative and the Council’s Contact within a month shall be referred to the persons specified in the Particulars.
	2. Nothing in this Condition 33 shall prejudice the right of either party to apply to the court for interim relief to prevent the violation by the other party of any proprietary interest or any breach of that party’s obligations.
	3. Services to be provided under the Contract shall not cease or be delayed by this dispute resolution procedure.
	4. If any dispute cannot be resolved between the Service Provider and the Council within a month of referral as set out in Condition 33.1, then the Service Provider or the Council may refer the matter to mediation in accordance with the Centre for Effective Dispute Resolution’s (**“CEDR”**) Model Mediation Procedure.
	5. To initiate the mediation, either party may give notice in writing to the other requesting mediation in accordance with this Condition 33.5. The initiating party shall send a copy of such request to CEDR.
	6. If there is any issue on the conduct of the mediation (including as to the nomination of the mediator) upon which the parties cannot agree within a reasonable time, CEDR will, at the request of either party, decide the issue.
	7. If the dispute is not resolved within 90 days of the initiation of the mediation, or if either party will not participate in the mediation either party may commence proceedings.
2. Waiver

	1. The failure of the Council or the Service Provider to exercise any right or remedy shall not constitute a waiver of that right or remedy.
	2. No waiver shall be effective unless it is communicated to the Council or the Service Provider in writing and expressly stated to be a waiver.
	3. A waiver of any right or remedy arising from a breach of Contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.
	4. Unless otherwise provided in this Contract, rights and remedies under this Contract are cumulative and do not exclude and are without prejudice to any rights or remedies provided by law, in equity or otherwise.
3. No Fetter

Nothing in the Contract shall prejudice or affect the rights, powers, duties and obligations of the Council in the exercise of its statutory functions.

1. Variations to the Contract

No variation to the Contract shall have any effect unless it is made in writing and signed on behalf of the Council and the Service Provider.

1. The Contracts (Rights of Third Parties) Act 1999

The Contracts (Rights of Third Parties) Act 1999 shall not apply to the Contract, but this does not affect any rights which are available apart from this Act.

Any amendment to this Contract may be made, including altering or extinguishing any third party rights, without the consent of any third party.

1. Publicity and Advertising

The Service Provider shall not without prior consultation with the Council seek any publicity or, without prior notification, make any announcement to the press or respond to press enquiries relating to the Services and shall, where reasonably practicable, agree joint press releases with the Council.

**Schedule 1**

**Statement of Requirements**

A. [Statement of technical requirements].

[ ]

Installation and acceptance

B.1 The Council shall supply to the Service Provider test data which in the reasonable opinion of the parties is suitable to test whether the Hosted System is in accordance with the Specification above, together with the results expected to be achieved by processing such test data using the Hosted System. The Service Provider shall not be entitled to object to such test data or expected results unless the Service Provider can demonstrate to the Council that they are not suitable for testing the Hosted System, in which event the Council shall make any reasonable amendments to such test data and expected results as the Service Provider may request. Subject to the receipt of such test data and expected results, the Service Provider shall process such data, in the presence of the Council or its authorised representative, using the Hosted System by way of acceptance testing within 7 days after such receipt at a time mutually convenient to both parties.

B.2 The Council shall notify the Service Provider in writing of its acceptance of the Services as soon as reasonably practical after the Service Provider has demonstrated that the Hosted System has correctly processed the test data by achieving the expected results.

B.3 In the event of failure of the Hosted System to pass the tests referred to in paragraph B1 above the Service Provider shall, and in any event not later than 2 working days following notification of the relevant failure, at its own expense correct the errors in the Hosted System and notify the Council that it is ready to repeat the tests and such tests shall be repeated within 7 days after such notice at a time mutually convenient to both parties.

B.4 In the event of failure of the Hosted System to pass the repeat tests referred to in paragraph B3 above the Council shall be entitled to terminate the Contract or, by notice to the Service Provider within 3 days require the Service Provider to correct the errors in the Hosted System in which event the provisions of paragraph B3 above shall apply mutatis mutandis.

B.5 Notwithstanding the above, the Hosted System shall be deemed to be accepted if the Council puts the Hosted System into operational use before the Council notifies the Service Provider in writing of its acceptance of the System pursuant to paragraph B2 above.

C: Monitoring

The parties shall periodically meet to discuss (inter alia) performance of the Hosted System and such other matters as the Council (acting reasonably) shall require to ensure effective delivery of the Service.

### Schedule 2

**Finance**

**The Contract Price**

The Contract Price is £[ ] excluding VAT which breaks down as follows:

[Learning Management System (LMS System and Website Platform) for Oxfordshire Safeguarding Children’s Board; and

**[ ]**

Learning Management System (LMS System and Website Platform) for Oxfordshire Safeguarding Children’s Board Oxfordshire Safeguarding Adults’ Board

**[ ]**

**Instalments**

The instalments of the Contract Price are as follows.

The Service Provider shall be paid upon completion of the milestones set out below:

[Learning Management System (LMS System and Website Platform for Oxfordshire Safeguarding Children’s Board];

|  |  |  |
| --- | --- | --- |
| Instalment (milestone) | Amount of Instalment | Cumulative Amount |
| *[Describe milestone]* | [£ ] | [£ ] |
| *[Describe milestone]* | [£ ] | [£ ] |

[Learning Management System (LMS System and Website Platform) for Oxfordshire Safeguarding Children’s Board Oxfordshire Safeguarding Adults’ Board]*–*

|  |  |  |
| --- | --- | --- |
| Instalment (milestone) | Amount of Instalment | Cumulative Amount |
| *[Describe milestone]* | [£ ] | [£ ] |
| *[Describe milestone]* | [£ ] | [£ ] |

and the Service Provider shall submit an invoice upon completion of the milestone to which the instalment relates.

The Service Provider shall be paid monthly in arrears for [Maintenance and Support] Services provided in the relevant month. The Service Provider shall submit an invoice on the last day of the month to which the instalment relates.

**Address for invoices**

Invoices shall be sent to the following address:

PO Box 652
The Castle
Winchester
SO23 3NP

Email: VIMenquiries@hants.gov.uk

**Schedule 3**

**Information Governance**

The definitions given in the Particulars apply.

1. **Protection of Personal Data**
	1. The only Processing that the Service Provider is authorised to do is listed by the Council in the Table below and may not be determined by the Service Provider.

* 1. The Service Provider shall, in relation to any Personal Data Processed in connection with its obligations under this Contract Process that Personal Data only in accordance with this Schedule, unless the Service Provider is required to do otherwise by an Enactment, in which case, it will notify the Council before carrying out such Processing.
	2. The Service Provider shall notify the Council immediately if it considers that any of the Council’s instructions infringe Data Protection Legislation.
	3. The Service Provider shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Council, include:

a) a systematic description of the envisaged Processing operations and the

purpose of the Processing;

b) an assessment of the necessity and proportionality of the Processing

operations in relation to the Services;

c) an assessment of the risks to the rights and freedoms of Data Subjects; and

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

1.5 Without prejudice to any other provisions of the Contract, the Service Provider shall not authorise any third party or Sub-contractor to Process the Personal Data without the prior written consent of the Council and should such consent be given, it shall not relieve the Service Provider from any liability or obligation under the Contract and the Service Provider shall be responsible for the acts, omissions, defaults or neglect of any Sub-Contractor and its agents or employees in all respects as if they were the acts, omissions, defaults or neglect of the Service Provider. The Service Provider shall ensure that in relation to Personal data, such Sub-contractor or third-party processor is under contractual obligations which are no less protective than the data protection requirements set out in the Contract. The Service Provider shall provide the Council with such information regarding the Sub-contractor as the Council may reasonably require.

* 1. The Service Provider shall in Processing pursuant to this Contract, ensure that it takes all appropriate technical and organisational security measures to protect against a Data Loss Event having taken into account the:

a) nature of the data to be protected;

1. harm that might result from a Data Loss Event;
2. state of technological development; and
3. cost of implementing any security measures

and the Service Provider shall provide to the Council such information as the Council may reasonably require to satisfy itself that the Service Provider is complying with the obligations referred to in this Clause 1.6. The Council shall be entitled to reject on reasonable grounds any technical, organisational and security measures employed by the Service Provider, provided that failure to reject such measures shall not amount to approval by the Council of such measures.

* 1. The Service Provider must exercise its best endeavours to ensure the accuracy of any Personal Data Processed in carrying out its obligations under the Contract and that where necessary such Personal Data is kept up to date.
	2. The Service Provider shall not Process or otherwise transfer any Personal Data in or to any country outside the United Kingdom unless the prior written consent of the Council has been obtained and:
1. the Service Provider has provided appropriate safeguards in relation to the transfer in accordance with Chapter V of the GDPR;
2. the Data subject has enforceable rights and effective legal remedies;
3. the Service Provider complies with the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
4. the Service Provider complies with any reasonable instructions notified to it in advance by the Council with respect to the Personal Data.

It shall be the responsibility of the Service Provider to produce satisfactory evidence of compliance with this clause 1.8 during the Contract Period.

1.9 The Service Provider shall take reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that:

1. all Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with all the Service Provider’s obligations with respect to Personal Data, including the confidentiality undertakings under the terms of this Contract;
2. staff do not Process Personal Data except in accordance with this Contract;
3. staff are subject to appropriate confidentiality undertakings with the Service Provider or any subcontractor used by the Service Provider in delivering the Service;
4. none of their Staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council or unless otherwise permitted under this Contract; and
5. staff have undergone adequate training in the use, care, protection and handling of Personal Data.

1.10 The Service Provider shall ensure that Data Subjects are provided at first point of contact with a Privacy Notice and where Processing is based on consent of Data Subjects, ensure that such consent is obtained before any Processing commences.

1.11 The Service Provider shall notify the Council immediately if it becomes aware of a Data Loss Event or if it receives:

1. a Data Subject Request concerning any aspect of the processing or handling of that person's Personal Data;
2. a request to rectify, block or erase any Personal Data;
3. a complaint, request or communication relating to the Council's obligations under the Data Protection Legislation;
4. any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under this Agreement; or
5. a request from any third party for disclosure of Personal Data where compliance with such request is required or is purported to be required by any Enactment.

1.12 The Service Provider’s duty to notify the Council under clause 1.11 shall include the provision of further information to the Council in phases, as details become available.

1.13 The Service Provider shall provide the Council with full cooperation and assistance in relation to any complaint or request made in relation to either party’s obligations under Data Protection Legislation including by providing:

1. the Council with full details of the complaint, communication or request;
2. such assistance and information as is reasonably requested by the Council to enable the Council to comply with a Data Subject Request within the timescales required by the Council;
3. the Council with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Council);
4. assistance as requested by the Council following any Data Loss Event.
5. such assistance as requested by the Council with respect to any request from the Information Commissioner’s Office, or any consultation by the Council with the Information Commissioner’s Office.

1.14 The Service Provider shall maintain complete and accurate records and information to demonstrate its compliance with this Schedule.

1.15 The Service Provider shall permit the Council or the Council’s representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Service Provider'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 Service Provider is in full compliance with its obligations under this Contract.

1.16 The Service Provider shall comply with any further written instructions given by the Council with respect to processing and any such further instructions shall be incorporated into this Schedule.

1. **Data Processing Table**

|  |  |
| --- | --- |
| **Description** | **Details** |
| Type of Personal Data  | Name, address, telephone contact and email details |
| Duration of the processing | The duration of the Contract Period. |
| Categories of DataSubject | Training delegates / users of the OCSB LMS System and Website Platform  |
| Nature of the processing  | Collection, recording, organisation, structuring, storage, retrieval, dissemination or otherwise making available, restriction, erasure or destruction of data (whether or not by automated means) etc. |
| Plan for return anddestruction of the dataonce the processing iscomplete  | The data will be retained only from the date of first input into the OCSB Training website until expiry of the Contract Period, at which point it shall be returned or destroyed in accordance with the provisions of the Contract (see Condition 28)  |

1. **Policies and Procedures**
	1. The Service Provider must have in place at the Commencement Date and throughout the Contract Period:
2. internal records of its data processing activities;
3. policies and procedures for data protection compliance;
4. specific Staff training relating to data protection; and
5. a documented system for the handling of security incidents and close calls (‘near misses’)
	1. The Service Provider will co-operate with the monitoring of such obligations on an annual basis and will notify the Council immediately of any data protection issues and security incidents within its organisation.
	2. When delivering the Services, the Service Provider will uphold the highest standards in safeguarding Personal Data, and specifically will:
6. ensure that information governance/data security is a key component of both the induction and on-going training programmes;
7. not allow Staff to use their own personal equipment to store Council Data;
8. provide Staff with appropriate means and guidelines for keeping any personal information they are required to store outside of the office securely;
9. ensure that equipment holding Personal Data is kept secure;
10. have procedures in place to ensure immediate reporting to the Council of any security related incidents and to ensure that full and prompt cooperation can be given to the Council in the investigation of such incidents.
	1. If required by Data Protection Legislation, the Service Provider shall appoint a qualified Data Protection Officer, or where not required, allocate responsibility for data protection to a named senior member of Staff who has responsibility for information governance in their organisation. This person will:
	2. develop information governance within the Service Provider’s organisation;
	3. complete and submit an annual position statement to the Council by end of April each year, to include an information governance improvement plan for the coming 12 months; and
	4. draft and implement policies, procedures and guidance to ensure that the above information governance best practice is adopted.

### Schedule 4

**Service Levels**

In this Schedule 4 the following terms shall have the following meanings:

|  |  |
| --- | --- |
| “Business Hours” | means 8am until 6pm Monday to Friday (excluding any day which is a bank holiday or other public holiday) |
| “Critical Service Failure” | means any of the following events: 1. entire inaccessibility of the Services for a continuing period of more than 72 hours after the target resolution fix time referred to below;
2. the Service Provider accruing 3 or more Repeat Service Delivery Failures in any period of 12 months;
 |
| “Core Hours” | means 6am until 9pm Monday to Friday (excluding any day which is a bank holiday or other public holiday) |
| “Service Commencement Date” | means the one Working Day after the Acceptance Tests have been successfully passed. |

The Service Levels shall apply with effect from the “Go Live Date”.

## This Schedule 4 sets out required Service Levels for the Services, the performance of which the parties have agreed to measure

* + - 1. Scheduled maintenance
1. Scheduled maintenance that may require interruption of the Services shall only be performed outside of Core Hours. The Service Provider may interrupt the Services outside Core Hours for scheduled maintenance provided that:
2. it has given the Council at least five working days' advance written notice on each occasion; and
3. scheduled maintenance is undertaken on no more than 6 occasions in each year.
4. Any scheduled maintenance that occurs during Core Hours, or that occurs with less notice than required by paragraph 1(a)(i), and which was not requested by the Council, shall be considered downtime for the purpose of service availability measurement at paragraph 3 below.
5. When undertaking scheduled maintenance the Service Provider shall at all times endeavour to keep any service interruptions to a minimum.

2) Support

1. Should the Council determine that the Services include a defect then any system administrator may file error reports or support requests.

1. The Service Provider shall accept voicemail, e-mail and web form-based incident submittal from Council users 24 hours a day, seven days a week. The Service Provider shall accept telephone calls for English language telephone support during Business Hours.
2. The Service Provider shall use reasonable endeavours to process support requests, issue trouble ticket tracking numbers if necessary, determine the source of the problem and respond to the Council. The Service Provider shall use reasonable endeavours to respond to all support requests within the time periods specified below, according to priority.
3. The Service Provider shall determine the priority of any fault in accordance with the following table.

|  |  |  |  |
| --- | --- | --- | --- |
| **Priority**  | **Description**  | **Response time** **(only during Business Hours)** | **Target resolution time (only during Business Hours)** |
| Priority 1  | The entire Services are completely inaccessible. Priority 1 incidents shall be reported by telephone only. | Within two hours  | Four hours. Continuous effort after initial response and with the Council’s co-operation. |
| Priority 2  | Operation of the Services is severely degraded, or major components of the Services are not operational and work cannot reasonably continue. Priority 2 incidents shall be reported by telephone only. | Within four hours. | Within two Working Days after initial response. |
| Priority 3  | Certain non-essential features of the Service are impaired while most major components of the Service remain functional. | Within 12 hours. | Within seven Working Days after initial response. |
| Priority 4 | Errors that are non-disabling or cosmetic and clearly have little or no impact on the normal operation of the Services. | Within 24 hours. | When reasonably possible. |

1. If no progress has been made on a Priority 1 or Priority 2 incident within the target resolution time, the incident shall be escalated to the Council’s Contact and the Service Provider’s Representative. If the incident is not resolved, then after the first successive increment of the target resolution time the incident shall be escalated to the persons noted in paragraph 14 of the Contract Particulars.

3) Availability

1. The Service Provider shall provide at least a 99% uptime service availability level during Business Hours. The uptime service level is to be measured as the number of possible minutes of availability during Business Hours in each month.
2. The Services will be considered as unavailable only:
	* 1. during periods of Priority 1 or Priority 2 faults in accordance with the table at paragraph 2(d) above, measured only during Business Hours; and
		2. during periods of downtime in accordance with paragraph 1(b) above, regardless of whether this occurs outside of Business Hours.
3. For the avoidance of doubt, the Services will not be considered as "unavailable" during scheduled maintenance as described in paragraph 1 above, Council-caused outages or disruptions, or outages or disruptions attributable in whole or in part to Force Majeure Events.

## The Council reserves the right to measure the uptime service level using all reasonable methods.

## If the level of performance of the Service Provider of any element of the Services during a Service Period, constitutes a Critical Service Failure, the Council shall be entitled to terminate this Contract pursuant to Condition 26 (Termination) of the Contract and/or seek damages.

4) Monitoring

The Service Provider shall, in addition, provide monitoring of the Services as described in Schedule 1 and shall provide a report on the monthly Uptime Service Level achieved as soon as practicable at the end of each month.

**Annex A**

**Method Statement**

1. Drafting Note: The title of the Contract and the Recitals will be amended to reflect which of the options in the ITT is selected by the Council. [↑](#footnote-ref-2)