STANDARD TERMS AND CONDITIONS FOR PROVISION OF SERVICES

1. DEFINITIONS AND INTERPRETATION

1.1 In these terms and conditions except where the context otherwise requires the following expressions will have the meanings hereby ascribed to them:

"Contract" means the Council's Contract incorporating these terms and conditions and any other documents referred to in the Contract.

"Contractor" means the person or organisation that is providing the Services and such term will include its employees, agents, successors, and permitted assigns.

"Price" means the agreed payment and associated terms set out in the Contract.

"Council" means Bournemouth Christchurch and Poole Council and such term will include its employees, authorised agents, successors and assigns.

"Default" means any breach of the obligations of the Contractor under the Contract or any default, act, omission or negligence of the Contractor in connection with or in relation to the subject matter of the Contract;

"Enactments" means directives, statutes, regulations, orders, 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, instrument, code or guidelines and references in their terms to Enactments will also include any secondary legislation made under them.

"Goods" means any goods or materials used or supplied by the Contractor for the purposes of the Contract.

"Intellectual Property Rights" means patents, rights to inventions, copyright and related rights, trademarks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, patterns, models, designs, moral rights, title, proprietary rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world.

"Personal Data" means any data which can be used to identify a living individual.

"Reports" means any report produced by the Contractor for the Council in respect of or in the course of provision of the Services.

"Services" means all Services that the Contractor is contractually obliged to provide under the Contract and any variation to the Services agreed in writing between the parties during the period of the Contract.

"Specification" means the detailed description of and requirements for the Services set out in the Contract.

"Working Day" means Monday to Friday from 9am to 5pm inclusive other than bank holidays and any other public holidays or the periods specified in the Contract.

1.2 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.

1.3 The headings are included in these terms and conditions for ease of reference only and will not affect the interpretation or construction of these terms and conditions.

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1.4 References to any person will include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees.

1.5 The words 'include', 'includes' and 'including' are to be construed as if they were immediately followed by the words 'without limitation'.

1.6 Words importing the masculine gender include the feminine gender and words in the singular include the plural and vice versa.

1.7 Reference to a clause is a reference to the whole of that clause unless stated otherwise.

2. COMMENCEMENT AND DURATION OF THE CONTRACT

2.1 The Contract will commence on the Commencement Date and continue for the period specified in the Contract, unless terminated earlier in accordance with these terms and conditions.

2.2 The Council may extend the Contract period by giving written notice to the Contractor if provided for and as specified in Contract.

3. QUALITY STANDARDS

3.1 The Contractor hereby warrants that the Services will be performed with due skill, care and diligence and the Contractor will comply with:-

3.1.1 the terms and conditions of the Contract;

3.1.2 any variation of the Contract agreed in writing by the parties;

3.1.3 the requirements of any relevant UK or EC statute, order, regulation, directives, standard, code of practice or bye-law from time to time in force which is relevant to the Services;

3.1.4 the professional standards which might reasonably be expected of the Contractor;

3.1.5 any agreed recommendation or representation made by the Contractor;

The Contractor will promptly draw any potential or actual conflict between any of the requirements of sub-clauses 3.1.1 to 3.1.5 to the attention of the Council and will comply with the Council's decision on the resolution of such conflict.

3.2 The Contractor will ensure that it appoints appropriately experienced, qualified and trained employees and/or permitted sub-contractors ("Staff") in the performance of its obligations under the Contract and that its Staff comply with the provisions in clause 3.1.

3.3 Where a British Standard Specification or British Standard Code of Practice or other recognised standard laid down by a regulatory body for the industry concerned applies to any or all goods and materials used or supplied by the Contractor, the goods and materials used or supplied and the workmanship shall be at minimum to such standards required.

3.4 Unless otherwise agreed in writing, neither performance nor functionality of any part of the Services will be impeded by entry into the European monetary union.

4. PRICE AND PAYMENT TERMS

4.1 The Price and method of payment will be as specified in the Contract. No invoices will be accepted or payments made in excess of the Price without the Council's prior agreement and the issue of an official Contract amendment. The Price will exclude VAT.

4.2 All invoices must state the relevant Contract details clearly.

4.3 Provided the Services are performed satisfactorily in compliance with the Contract, the Council will pay the Contractor via its electronic payment system as specified in the Contract or in default within 30 days, subject to receipt of a valid invoice from the Contractor.

4.4 If the Contractor's invoice is or appears to be in error and has to be investigated or is in dispute, the date of receipt and consequently the date by which payment is due will be measured from the date on which such query or dispute is satisfactorily resolved.

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4.5 Without prejudice to any other right or remedy of the Council, the Council may make reductions in payment in respect of any Services which the Contractor has failed to provide or has provided inadequately.

5. PERFORMANCE AND REVIEW

5.1 The Contractor will comply with the Council's reasonable requests (on a free-of-charge basis) to keep records, to attend performance review meetings, to make any Reports and to permit any tests and inspections that the Council may reasonably require during the period of the Contract.

5.2 The detailed requirements for audit, monitoring and review of the performance of the Contract are specified in the Contract.

5.3 Where the Contractor is providing services to third parties, the Contractor will provide the Council with a copy of its complaints handling policy and procedures and (where applicable to the Contract) will discuss complaints and feedback from third party users of the services at performance review meetings.

5.4 The Contractor will permit appropriate and properly authorised and trained representatives of the Council to enter upon a construction site and/or site of operation for the Services at any reasonable time and have free and unfettered access to each and every part of the area covered by the Contract affected thereby.

6. VARIATION

The terms of the Contract may be varied by written agreement between the parties. In the event of a Variation the Price may also be varied. Such Variation in the Price will be calculated and agreed in writing between the parties and will be such amount as properly and fairly reflects the nature and extent of the Variation in all the circumstances. Failing agreement the matter will be determined by negotiation or mediation in accordance with the provisions of clause 22.

7. INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY

7.1 The Contractor warrants and represents that neither the performance of the Contract nor the provision or use of the Services will in any way constitute an infringement or other violation of any rights of any third party. Before using any material in relation to the performance of the Contract which is or may be subject to any third party rights the Contractor will procure the necessary licences to use such material at all times for the Council's purposes at no cost to the Council.

7.2 All rights (including without limitation title, proprietary rights, copyright) in any Intellectual Property Rights, specifications, data, information, instructions, plans, drawings or other material furnished to or made available to the Contractor by the Council or arising in connection with the Contract including Reports, will remain vested solely in the Council and will be kept confidential by the Contractor.

7.3 The Contractor will provide the Council with an irrevocable non-exclusive unlimited royalty-free licence to use, copy and adapt any documentation or publications delivered by the Contractor relating to the Services.

7.4 The Contractor will keep confidential and will not during the period of the Contract and at any time thereafter, disclose to any third party (except with the written agreement of the Council or by any requirement of law) any Council information, data or process ("Confidential Information") which may have come to the knowledge of the Contractor by reason of their engagement.

This restriction will not apply to any Confidential Information which:-

a) was at the time of receipt published or otherwise generally available to the public; or

b) has after receipt been published or become generally available to the public otherwise than through any act or omission on the part of the Contractor; or

c) was already lawfully in the possession of the Contractor at the time of receipt without any restrictions on disclosure; or

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d) was rightfully acquired from a third party without any undertaking of confidentiality imposed by such third party; or

e) was developed independently of the Contract by the Contractor as demonstrated by documentation; or

e) is communicated (against similar undertakings of confidence as are contained in the Contract) to any permitted third party insofar as necessary for the proper carrying out of the Contract; or

f) is required to be disclosed by law or by any relevant regulatory body with jurisdiction; or

g) is disclosed to any professional adviser or consultant of the party disclosing such as Confidential Information.

8. COMPLIANCE WITH LEGISLATION AND WHISTLE-BLOWING

8.1 Human Rights Act and Discrimination

8.1.1 The Contractor will comply with the Equality Act 2010 (as amended and superseded from time to time) and any relevant codes of practice and best practice guidance issued by the Government and the appropriate agencies in the performance of its obligations under the Contract.

8.1.2 In addition to clause 8.1.1, the Contractor will in the performance of its obligations under the Contract act as if the Contractor were a public authority for the purposes of the Human Rights Act 1998.

8.1.3 The Contractor will comply with the Council's Equality and Diversity Policy and Diversity Promise (available from the Council on request).

8.1.4 The Contractor will make all reasonable efforts to secure compliance with these provisions by its employees, agents and sub-contractors employed in the execution of the Contract.

8.2 Freedom of Information and Environmental Information

8.2.1 The Council has obligations and duties under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

8.2.2 The Contractor will facilitate the Council's compliance with the Council's obligations under these provisions and comply (at its own cost) with any reasonable request from the Council for that purpose. The Contractor will note particularly that the Council may be required to provide information relating to the Contract or the Contractor to a third party in order to comply with its obligations under these provisions.

8.2.3 In respect of any information submitted by a Contractor in accordance with the Freedom of Information Act that it considers to be commercially sensitive, the Contractor should:-

a) clearly identify such information as commercially sensitive;

b) explain the potential implications of disclosure of such information; and

c) provide an estimate of the period of time during which the Contractor believes that such information will remain commercially sensitive.

Where a Contractor identifies information as commercially sensitive, the Council will endeavour to maintain confidentiality. Contractors should note, however, that even where information is identified as commercially sensitive the Council might be required to disclose such information. Accordingly, the Council cannot guarantee that any information marked 'commercially sensitive' will not be disclosed.

8.3 Audit Requirements

The Council has obligations and duties under the Audit Commission Act 1998, The Contractor will facilitate the Council's compliance with the Council's obligations under these provisions and comply (at its own cost) with any reasonable request from the Council for that purpose. If either the Council's internal or external auditors or if the Local Government Ombudsman

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wish to investigate the Contract, then the Contractor will provide such information, access and co-operation as those persons may reasonably require.

8.4 Where the Contractor is undertaking Services which involve contact with children and/or vulnerable adults, the Contractor will ensure that its employees, agents and sub-contractors have been subject to all relevant and appropriate checks with the Disclosure and Barring Service. The Contractor will monitor the level and validity of the checks required under this clause 8.4 throughout the provision of the Services.

8.5 The Contractor will ensure it maintains effective whistle blowing policies whereby the Contractor's employees may raise in confidence without fear of victimisation discrimination or disadvantage concerns about possible malpractice.

8.6 The Council may terminate the Contract by written notice if the Contractor is in breach of any of the provisions of this clause 8. No period of notice will be required but the notice will state the date on which it is to take effect.

9. INDEMNITY AND INSURANCE

9.1 The Contractor will fully indemnify and keep the Council fully indemnified against all actions, claims, costs, expenses and liabilities including legal fees arising under statute or common law from:

9.1.1 injury to or the death of any person; and/or

9.1.2 the loss of or damage to any property including property belonging to the Council; and/or

9.1.3 any other financial loss;

9.1.4 any claims by the Contractor's employees;

as a result of any act, omission, Default or negligence by the Contractor or its employees agents and sub-contractors, insofar as they arise from matters pertaining to the Services (except and to the extent that such actions, claims, costs, expenses and liabilities may arise solely out of the act, omission, default or negligence of the Council, its employees or agents).

9.2 Without prejudice to the Contractor's liability detailed in 9.1 above, the Contractor will obtain and maintain appropriate insurance policies with a reputable insurer to cover the risks contemplated in respect of the Contract in such sum as is deemed prudent in all circumstances by the Contractor but with the minimum limits of indemnity set out in the Contract or in default as specified below:

9.2.1 Public Liability Insurance - £10 million each and every incident;

9.2.2 Employer's Liability Insurance (if applicable) – £5 million each and every incident;

9.2.3 Insurance for any of the Contractor's own equipment used for the Services;

9.2.4 (where applicable to the Contract) Product Liability Insurance; and

9.2.5 (where applicable to the Contract) Professional Indemnity Insurance - £5 million in aggregate for the year, with cover to be maintained for a period not less than 6 years (for as long as cover is commercially available);

and will at the request of the Council produce the relevant policy or policies together with receipts or other evidence that premiums are paid up to date.

9.3 If through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor will be liable for the cost of reconstitution of that data and will provide a full credit in respect of any charge levied for its transmission and will fully indemnify the Council against any costs charged in connection with such Default of the Contractor.

10. HEALTH AND SAFETY

10.1 The Contractor in providing the Services will have full regard to the safety of persons who may be affected in any way and will comply with the requirements of the Health and Safety at Work etc Act 1974 and its subordinate regulatory framework, and of any other Acts pertaining to the health and safety of persons.

10.2 The Contractor will operate a system of risk assessment to comply with appropriate Health and Safety legislation. The Contractor will provide copies of any risk assessments (or a summary of the said documents if they are unable to be released for any justifiable reason) as and when required by the Council.

10.4 The Contractor will notify the Council immediately in the event of any incident occurring in the performance of the Services on the Council's Premises where that incident causes any personal injury, or damage to property that could give rise to personal injury.

10.5 Each party will promptly notify the other of any health and safety hazards which may arise in connection with the performance of the Services including those that may exist or arise at the Council's premises and that may affect the Contractor in the performance of the Services.

10.6 While on the Council's premises, the Contractor will comply with any health and safety measures implemented by the Council in respect of employees and other persons working on such premises.

10.7 The Council may suspend the Contract in whole or in part without paying compensation if the Council is reasonably of the opinion that the Contractor is in breach of this clause 10.

11. NO AGENCY, EMPLOYMENT, PARTNERSHIP

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

11.2 Where the Contractor is an individual he/she will be an independent contractor and not an employee of the Council. In such capacity, the Contractor will bear exclusive responsibility for the payment of his/her national insurance contributions, income tax and VAT liabilities arising out of remuneration for the Services performed by him/her under the Contract.

12. TERMINATION

12.1 The Council may terminate the Contract in whole or in part (and where applicable enter upon and expel the Contractor from any premises or site to which it has been given access) by written notice if any of the events specified in clause 12.2 occur. No period of notice will be required but the notice will state the date on which it is to take effect.

12.2 The events referred to in clause 12.1 are:

12.2.1 the Contractor has breached the Contract in a way which the Council reasonably regards as irremediable, which may include, without limitation, fundamental breach or repeated and/or persistent remediable breaches of the Contract;

12.2.2 the Council has given the Contractor at least one month's notice to remedy a breach of contract which can be remedied and the Contractor has failed to do so;

12.2.3 the Contractor has without reasonable cause failed to proceed diligently with or wholly suspends performance of any activity under the Contract;

12.2.4 (if an organisation) the Contractor makes any arrangement with its creditors or is subject to winding up or dissolution, or has an administrator, administrative receiver, receiver or liquidator appointed;

12.2.5 (if an individual) the Contractor makes any arrangement with its creditors or is declared bankrupt or adjudged incapable of managing his or her affairs within the meaning of Part VII of the Mental Health Act 1983 or dies;

12.2.6 the Contractor or anyone acting on the Contractor's behalf do any of the following things:-

a) offers, gives or agrees to give to anyone any inducement or reward in respect of this or any other Council contract (even if the Contractor does not know what has been done); or

b) commits an offence under the Bribery Act 2010 or Section 117(2) of the Local

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Government Act 1972; or

c) commits any fraud in connection with this or any other Council contract whether alone or in conjunction with a Council Member, other contractor, or Council employee;

any clause limiting the Contractor's liability will not apply to this sub-clause;

12.2.7 any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.

12.3 Where the Contractor is providing a named individual whose qualifications, skill and experience is of primary importance to the provision of the Services under the Contract and that individual ceases to be provided by the Contractor, the Contractor will, if permitted under the Contract, immediately provide a replacement individual of similar qualifications, skill and experience subject to approval by the Council.

If replacement of the individual is not permitted under the Contract or the Contractor does not provide such a replacement individual or the Council reasonably objects to the replacement individual, the Council may, without prejudice to any of its other rights or remedies, terminate the Contract by notice in writing, such notice to have effect from the date specified in it.

12.4 Where the Council terminates the provision of the whole or any part of the Contract under this clause 12 and must make other arrangements for the provision of the Services, the Council will be entitled to recover from the Contractor as a debt the costs reasonably incurred of making those other arrangements throughout the remainder of the term of the Contract or any extension of the term of the Contract in excess of the total value of Contract. The Council will take all reasonable steps to mitigate such costs. Where the Contract is terminated under clause 12.2 no further payments will be payable by the Council to the Contractor until the Council has established the final cost of making those other arrangements.

13. EFFECTS OF TERMINATION

13.1 The expiry or termination of the Contract for whatever reason will not affect any provisions of clauses capable of surviving or operating in the event of termination of the Contract and termination of the Contract will be without prejudice to the rights and remedies of one party against the other party.

13.2 At the end of the Contract or on termination by either party, the Contractor will immediately deliver to the Council:

13.2.1 all or any records of the Council and any records, documentation, drawings, data or other information produced or received for the purposes of the Contract stored on whatever medium and all copies of the whole or any part thereof; and

13.2.2 all of the property issued or made available to the Contractor by the Council including (but not limited to) materials, clothing, equipment, vehicles, documents, information and access keys in its possession or under its control.

14. DATA PROTECTION

14.1 The Contractor will comply with any notification requirements under the Data Protection Act 1998 (DPA) and both parties will comply with all their obligations under the DPA which arise in connection with the Contract.

14.2 Notwithstanding the general obligation in clause 14.1, where the Contractor is processing Personal Data as a Data Processor (as defined in the DPA) for the Council, the Contractor will ensure that it has in place appropriate technical and contractual measures to ensure the security of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, as required under the DPA; and

14.2.1 provide the Council with such information as the Council may reasonably require to satisfy itself that the Contractor is complying with its obligations under the DPA;

14.2.2 promptly notify the Council of any breach of its security measures;

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14.2.3 ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the DPA.

14.3 The Contractor will be liable for and fully indemnify the Council against all losses, damages, costs, expenses and liabilities (including legal fees) incurred by or awarded against the Council or its officers, agents, employees, Council Members and its successors in interest, in connection with any proceedings, claim or action against the Council as a result of any failure by the Contractor to comply with its obligations under this clause.

14.4 The Contractor will be liable for and fully indemnify the Council against any material adverse reputational damage as a result of any failure by the Contractor to comply with its obligations under this clause.

14.5 The provisions of this clause will apply during the Contract and continue after its completion or termination.

15. ASSIGNMENT AND SUB-CONTRACTING

15.1 The Contractor will not assign, sub-contract or in any other way deal in or dispose of the benefit or burden of the whole or any part of the Contract without the Council's prior written agreement.

15.2 Assigning or sub-contracting the whole or any part of the Contract will not relieve the Contractor of any obligation or duty attributable to the Contractor under the Contract and the Contractor will be responsible for the acts omissions defaults and negligence of its assignees and sub-contractors as though they are its own. The Contractor will include a term in its contract with its sub-contractors requiring them to comply with the terms of the Contract. The Contractor will not use the services of self-employed individuals without the Council's prior written agreement.

15.3 Where the Contractor enters into a sub-contract with a third party for the purpose of performing the Contract, it will include a term in such sub-contract that the sub-contractor will comply with the terms of the Contract and a term that provides that payment will be made by the Contractor to the sub-contractor of undisputed sums within a specified period not exceeding 30 days from the receipt of a valid invoice (as defined by the sub-contract requirements).

15.4 The Council may assign, transfer or in any other way deal in or dispose of the benefit or burden of the whole or any part of the Contract if it has a requirement to do so and will notify the Contractor in writing of any such dealing.

16. STATUTORY OBLIGATIONS AND PUBLIC ACCOUNTABILITY

16.1 The Contractor will, in the provision of the Services and the performance of its obligations under the Contract, comply with all Enactments.

16.2 Where the Contractor purchases goods, works or services on behalf of the Council in the course of providing the Services under the Contract, it will comply with the European Public Procurement Directives, the Public Contracts Regulations 2015 and the Council's policies and procedures as though it was a Council employee. The Contractor will ensure that the Council receives the benefit of all guarantees and warranties provided by any such suppliers of goods, works or services, either directly or through a collateral warranty agreement (as applicable).

17. ENTIRE AGREEMENT

17.1 This agreement and the documents annexed to it constitute the entire agreement and understanding of the parties and supersede any previous agreement between them relating to the subject matter of the Contract.

The Contractor acknowledges and agrees that in entering into the Contract, it does not rely on and will have no remedy in respect of any statement, representation, warranty, collateral agreement or other assurance (whether made negligently or innocently) of any person (whether party to this agreement or not) other than as expressly set out in the Contract or the documents annexed to it.

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17.2 The Contract between the parties will be constituted by and comprise only the Contract. No terms and conditions put forward at any time by the Contractor will form any part of the Contract. Any act made in response to the Contract will be taken as unconditional acceptance of this clause and any additional terms accompanying the Contract will be invalid. The terms and conditions may only be varied with the written agreement of the Council.

17.3 Nothing in this clause will operate to limit or exclude any party's liability for fraud or fraudulent misrepresentation.

18. TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS ('TUPE')

18.1 The parties agree that no relationship of employer and employee will arise or be deemed to arise between the Contractor's employees and the Council regardless of the degree of supervision that may be exercised over the Contractor's employees by the Council.

18.2 Where applicable to the Contract, when the Contract ends the Contractor will, in compliance with the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006, provide the Council with such information as the Council may reasonably require. The Contractor agrees that this information may be shared with potential alternative contractors in situations where TUPE might apply. The Contractor undertakes to indemnify the Council and any alternative Contractor to whom the Contractor's employees may be transferred, against any losses costs damages or expenses arising from any act omission or negligence by the Contractor prior to the transfer.

19. CONFLICT OF INTEREST

19.1 The Contractor will use its best endeavours to avoid being engaged in any activity where there is, or is likely to be, an actual or reasonably perceivable conflict with the interests, aims or objectives of the Council further to the Contract.

19.2 The Contractor will as soon as is practicably possible disclose to the Council any potential or actual conflict and will comply with any reasonable measures required by the Council to mitigate such conflict.

19.3 The Council agrees that this will not restrict the Contractor from being involved in other activities and holding other interests.

20. PUBLICATION OF EXPENDITURE OVER £500

The Contractor hereby confirms that it:

a) understands that Local Authorities are required by the Government to publish details of all spending over £500, including details of contracts and tenders over £500; and

b) agrees that the Council may therefore publish details (to the extent and in the manner required by the Government) of its Contract with the Contractor; and

c) that it will comply with any reasonable request from the Council in order to assist the Council in complying with it's obligations in respect of this requirement.

21. NOTICES

21.1 A notice given by a party to the other party under or in connection with these terms and conditions will be in writing and delivered by hand or sent by pre-paid first class post or other next working day delivery service (providing proof of postage or proof of delivery) or by facsimile transmission to the other party's address given at commencement of the Contract or as notified by each party to the other from time to time.

21.2 Any notice or communication will be deemed to have been received:-

a) if delivered by hand: when left at the relevant address referred to in this clause; or

b) if sent by pre-paid first-class post or other next working day delivery service: at 12 noon on the second working day after posting; or

c) if delivered by commercial courier: on the date and at the time that the courier's delivery receipt is signed;

d) if sent by facsimile: on confirmation of successful transmission to the address referred to in this clause.

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21.3 For the purpose of this clause, 'in writing' will not include e-mail.

22. DISPUTE RESOLUTION

22.1 A dispute relating to the provisions of the Contract which cannot be resolved between the parties' representatives within a month will be referred to each party's relevant director (or equivalent).

22.2 Nothing in this clause will 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.

22.3 If any dispute cannot be resolved between the parties within a month of referral as set out in clause 22.1 then at the instance of either party it will be referred to mediation in accordance with the Centre for Effective Dispute Resolution's ("CEDR") Model Mediation Procedure.

22.4 To initiate the mediation, either party may give notice in writing to the other requesting mediation in accordance with this clause. The initiating party will send a copy of such request to CEDR.

22.5 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.

22.6 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.

23. SEVERANCE

Each provision in these terms and conditions will be separately construed. If any of the provisions are held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision will be severed and the remainder of the provisions in these terms and conditions will continue in full force and effect.

In the event of a holding of invalidity, illegality or unenforceability so fundamental as to prevent the accomplishment of the purpose of the Contract, the parties will immediately commence good faith negotiations to remedy such invalidity, illegality or unenforceability.

24. RIGHTS OF THIRD PARTIES

Except where expressly provided for in the Contract including clauses 15 and 18, the parties agree that a person who is not a party to the Contract may not enforce any of its terms by virtue of the Contracts (Rights of Third Parties) Act 1999.

25. WAIVER

25.1 The failure of either party to insist upon strict performance of any provision of the Contract or the failure of either party to exercise any right or remedy will not constitute a waiver of that right or remedy and will not cause a diminution of the obligations established by the Contract.

25.2 No waiver will be effective unless it is expressly stated to be a waiver and communicated to the other party in writing in accordance with the provisions of clause 21.

25.3 A waiver of any right or remedy arising from a breach of the Contract will not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

26. FORCE MAJEURE

26.1 Neither party will be liable for breach of its obligations under these terms and conditions to the extent that any such breach is caused by any act of God, natural flood, fire (save where such fire is due to the negligence or fault of the party in default), lightning strike, earthquake, pandemic outbreak of an infectious illness, war, military operations, act of terrorism or riot, but nonetheless each party will use all reasonable endeavours to perform its obligations under the Contract.

26.2 Where an event specified in 26.1 occurs the affected party will notify the other party in writing of the cause and likely duration of the non-performance. Where performance is affected for more than the number of days specified in the Contract, or in default for more than 30 days, the Council will notify the Contractor whether it requires the Services to be recommenced, varied or cancelled (without further liability to either party). Where the

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Services are recommenced, if required the Contract will be subject to a formal amendment agreed between the parties to validate the extension of the time for completion or delivery of the Services by the period concerned.

27. PURCHASE OUTSIDE THE CONTRACT

The Council will have the right to employ a person or organisation other than the Contractor to provide services of the same type as is contemplated by the Contract if the Council acting reasonably thinks it is appropriate to do so.

28. FUNDING AND ACCOUNTS

28.1 Where the Council provides funding to the Contractor during the Contract for the provision of Services to third parties ('Funds'), the Contractor will keep full accounting records of the use of the Funds and provide a copy to the Council annually or at the periods set out in the Contract.

28.2 Any Funds received by the Contractor that are not used for the provision of the Services ('Surplus Funds') will be refunded to the Council on the dates or at the periods set out in the Contract or in default on expiry or earlier termination of the Contract.

29. ENVIRONMENT

29.1 Where applicable the Contractor warrants that it will comply with all environmental laws and guidance and obtain, maintain and comply with all environmental permits relevant to the provision of the Services. The Contractor will deliver to the Council such management information in relation to the Services in evidence of its compliance with this clause as the Council may reasonably request in writing.

30. THE COUNCIL'S PREMISES AND ASSETS

30.1 Where required under the Contract the Council will provide the Contractor (and its sub-contractors) with access to such parts of the Council's Premises as the Contractor reasonably requires for the purposes only of properly providing the Services.

30.2 Where appropriate the Council will provide the Contractor with such accommodation and facilities in the Council's Premises as is specified in the Contract or which is otherwise agreed in writing by the parties from time to time.

30.3 On the expiry or earlier termination of the Contract, the Council will on reasonable notice from the Contractor provide the Contractor with such access as the Contractor reasonably requires to the Council's Premises to remove any of the Contractor's equipment. All such equipment will be promptly removed by the Contractor.

30.4 The Contractor will ensure that:

a) where using the Council's Premises and any Council assets they are kept properly secure and it will comply and cooperate with the Council's reasonable directions and policies and procedures regarding the same;

b) only those of the Contractor's employees, sub-contractors or agents that are duly authorised enter upon the Council's Premises for the purposes of providing the Services;

c) any Council assets used by the Contractor are maintained or restored at the end of the Term in the same or similar condition as at the Commencement Date (fair wear and tear excepted) and are not removed from Council's Premises unless expressly permitted under the Contract or otherwise in writing by the Council.

30.5 The Council will maintain and repair Council assets, however, where such maintenance or repair arises directly from the act, omission, default or negligence of the Contractor (fair wear and tear excepted) the costs incurred by the Council in maintaining and repairing the same will be recoverable from the Contractor as a debt.

30.6 The Contractor will notify the Council immediately on becoming aware of any damage caused by the Contractor, its employees, agents or sub-contractors in the course of providing the Services to any property of the Council, to any of the Council's Premises or assets, or to any property of any recipient of the Services.

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31. THE COUNCIL AS LOCAL AUTHORITY
Nothing contained in the Contract will prejudice, override, modify or in any other way affect the rights, powers, duties and obligations of the Council in the exercise of its statutory powers as a local authority.

32. APPLICABLE LAW AND JURISDICTION
The Contract will be governed by and interpreted in accordance with English law and will be subject to the jurisdiction of the courts of England.

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