



DYNAMIC PURCHASING SYSTEM FOR DIGITAL INNOVATION SERVICES

CONTRACT TERMS AND CONDITIONS

The following terms and conditions are indicative of the terms and conditions that will apply to all contracts agreed pursuant to this Dynamic Purchasing System for digital innovation services.

These terms may not be qualified or amended with the submission of an indicative tender for selection to this Dynamic Purchasing System.

Where an invitation to tender from this Dynamic Purchasing System makes reference to these terms and conditions they will be wholly incorporated in the contract as defined in this document, unless otherwise amended by Dorset Council in the invitation to tender.

Further conditions may be incorporated within specific contracts by Dorset Council. Where this is the case, details of those further conditions will be included with the invitation to tender. It is a requirement that all tenders are submitted based on all incorporated conditions communicated in the invitation to tender.

It may be necessary for the provider and Dorset Council to sign a written contract and for each party to retain a copy following an award of contract from this Dynamic Purchasing System.

It is NOT a requirement for tenderers to sign these terms and conditions with their indicative tender offer for selection to this Dynamic Purchasing System.

DEFINITIONS AND INTERPRETATION

For the purposes of this Contract the following definitions shall apply: -

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| 'Commencement Date' | the date the Services commence as agreed in the DPS Contract Details. |
| 'Commercially Sensitive Information' | any information so specified and provided by the Provider to the Purchaser in confidence. |
| 'Contract' | this agreement consisting of these terms and conditions, the DPS Contract Details (when entered into), the appendices, the invitation to tender, the Provider's tender submission and any documents accompanying it. |
| 'Confidential Information' | any information which has been designated as confidential by either party that ought to be considered as confidential (however it is conveyed) which either party may receive or obtain in connection with the operation of this Contract and including any sensitive personal data. |
| 'Contract Manager' | the competent person nominated by the Provider who shall: (i) be the nominated officer of the Provider; (ii) manage the Contract and make decisions about the provision of the Services. |
| 'Contract Period' | the period specified in Clause 2.1 (as extended if applicable) or ending on earlier termination in accordance with this Contract. |
| 'Contract Price' | the price payable (exclusive of any applicable VAT) to the Provider by the Purchaser as agreed between the parties (such agreement forming part of this Contract) for the full and proper performance of its obligations under this Contract. |
| 'Contract Review' | the arrangements made by the Purchaser with the Provider to consider any aspect of the Contract or the performance of the Services. |
| 'Contracts Officer' | the person nominated by the Purchaser who shall: (i) manage and administer the Contract; (ii) arrange payment for the Services; (iii) monitor the Provider on a regular basis to ensure that the Contract is adhered to; (iv) be responsible for ensuring that the information requested from the Provider, as detailed in Clause 9, is provided by the Provider at the time specified. |

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| 'Default' | | any default or failure by either party in complying with its obligations under this agreement. |
| 'DPS Contract Details' | | the information substantially in the form as set out in Appendix 2, which shall set out the detail of each Contract awarded under the DPS. |
| 'Financial Year' | | a period of 12 months from 1 April in one year to 31 March in the next. |
| 'Personnel' | | all persons employed by the Provider together with the Provider's volunteers, agents and sub-contractors used in the performance of the Services under this Contract. |
| 'Premises' | | any location where the Services are performed. |
| 'Provider' | | the Provider including its Personnel, agents, successors and permitted assigns, which is responsible for providing the Services. |
| 'Service Prospectus' | | the document at Appendix 1 which sets out an outline of potential Services to be provided under this DPS. |
| 'Services' | | the Services that the Provider is obliged to provide as specified in the DPS Contract Details including for the avoidance of doubt the Services set out in the Service Specification. |
| 'TUPE' | | the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended). |
| 'Working Day' | | Monday to Friday inclusive but not including any declared public holiday. |

In this Contract:

- Headings do not affect its interpretation or construction;
- Words importing the singular include the plural and vice versa;
- References to numbered clauses and appendices are references to the relevant clause in or appendix to this Contract;
- Any reference to an enactment includes a reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment.
- In the event of any conflict between the clauses and appendices, the appendices shall prevail.

- References to the Purchaser and the Provider include references to any successor body or person to which shall fall the right to enforce the benefit of this Contract or to which shall be transferred any statutory function of the Purchaser or the Provider whether by way of act of Parliament, statutory instrument, express agreement or deed or otherwise.

1. ENTIRE AGREEMENT

- 1.1 This Contract contains the whole agreement between the parties in respect of the Services and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The parties confirm that they have not entered into this Contract on the basis of any representation that is not expressly incorporated into this Contract.

2. CONTRACT PERIOD

- 2.1 This Contract shall commence on the Commencement Date and shall continue until the agreed Contract end date, unless terminated earlier in accordance with the provisions of this Contract or extended in accordance with Clause 2.2.
- 2.2 The Contract may be extended by mutual agreement of the parties. The Purchaser shall give reasonable notice to the Provider of its intention to offer an extension of the Contract which shall normally be one month before the Contract end date.

3. PROVIDER STATUS

- 3.1 This Contract shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Contract.
- 3.2 Neither party shall have, nor represent that it has, any authority to make commitments on the other party's behalf. The Provider shall ensure that its Personnel do not say or do anything that might lead another person to believe that the Provider is acting as an agent of the Purchaser.

4. PROVIDER'S OBLIGATIONS

- 4.1 The Provider shall provide the Services during the Contract Period fully in accordance with the Service Specification at Appendix 1 and the terms of this Contract.
- 4.2 The Provider shall perform the Services with all reasonable care and skill, to avoid injury to persons or damage to property and so as to conform with all relevant legislative requirements and all relevant standards and specifications, whether specified in this Contract or not.
- 4.3 The Provider shall assist the Purchaser in reviewing the planning, provision and operation of the Services, comply with the reasonable directions of the Purchaser and use all reasonable endeavours to carry out the Services in accordance with any variations to the Service Specification.
- 4.4 The Provider shall attend contract review meetings as required by the Purchaser.
- 4.5 The Provider shall perform the Services in such a way as to promote the safe, efficient and professional delivery of the Services, and so as not to cause damage to the public perception of the Services or the reputation of the Purchaser.

- 4.6 The Provider shall properly manage and monitor the performance of the Services at all times, and immediately notify the Purchaser of any actual or potential problems that affect or might affect the delivery of the Services.
- 4.7 The Provider shall provide all Personnel, equipment, Premises, resources and other things required for the provision of the Services and shall maintain such equipment and Premises and other resources in a safe, serviceable and clean condition.

5. PROVIDER'S PERSONNEL

- 5.1 The Provider warrants and represents that any Personnel who are located within the UK and assigned to the performance of the Services shall be entitled to work in the UK. All Personnel located outside of the UK and assigned to the performance of the Services must be fairly treated and compensated in accordance with the laws of the country in which they're located. The Provider warrants that all its Personnel are suitably qualified, trained and experienced to provide the Services required and shall be made fully aware of the Provider's obligations under this Contract as it affects them in the performance of the Services.
- 5.2 The Provider shall at all times employ and assign to the Services Personnel who are fit and competent to provide the Services and of sufficient number to ensure that the Services are provided at all times in accordance with this Contract.
- 5.3 The Provider shall promptly replace any Personnel assigned to the Contract and who cease to be in its employment or under its control for whatever reason and such replacements shall have the equivalent skill levels and shall in every way be suitable for the performance of the Services.
- 5.4 The Provider shall ensure all Personnel deployed on the Services are properly managed and sufficiently instructed and supervised with regard to the provision of the Services.
- 5.5 The Provider shall give and shall ensure that its Personnel give all reasonable assistance to the Purchaser in the investigation of complaints, disciplinary matters, claims for damages and similar matters.
- 5.6 The Purchaser shall have power upon written notice to require the Provider, but not unreasonably or vexatiously, to remove any Personnel from involvement in the Services whose admission or continued presence would be, in the reasonable opinion of the Purchaser, undesirable. The decision of the Purchaser shall be final and conclusive.
- 5.7 The Purchaser shall in no circumstances be liable either to the Provider or to any Personnel in respect of any award, cost, expenses, liability, loss or damage occasioned by such a removal and the Provider shall fully indemnify the Purchaser in respect of any claims made.

6. SERVICE CONTINUITY

- 6.1 The Provider shall have contingency arrangements in place, as approved by the Purchaser, to ensure continuity of the Services at all times at no extra cost to the Purchaser. These shall include, but not be limited to, arrangements to deal with staff absences.

- 6.2 The Provider shall demonstrate, on request by the Purchaser for the duration of the Contract, that it has adequate business continuity plans and associated contingency arrangements in place to ensure minimum disruption in the provision of any part of the Services in the event of a major incident affecting its ability to provide the Services, including an insolvency event affecting the Provider or any key sub-contractor, such plans and arrangements being appropriate to the scale of the Provider's commitments under the Contract.
- 6.3 The Purchaser reserves the right to request detailed evidence of contingency plans, such as sight of the Provider's business continuity plan and evidence of the testing of the plan, and to require review and/or amendment of the plan and any other contingency arrangements to meet the Purchaser's requirements and in any event the Provider shall review the plans as a minimum every six months.

7. VARIATIONS AND WAIVERS

- 7.1 The Purchaser reserves the right to require changes to the Services ('a Service Variation') for any reason including to meet the Purchaser's policy prevailing at the time.
- 7.2 The Purchaser shall give reasonable written notice of any such Service Variation to the Provider.
- 7.3 In the event of a Service Variation, the Contract Price may also be varied. Such variation in the Contract Price shall be calculated by the Purchaser and agreed in writing with the Provider and shall be an amount which properly and fairly reflects the nature and extent of the Service Variation. The Contract Price prevailing at the time of the Service Variation shall be used as the basis for valuing such variation insofar as may be reasonable otherwise a fair valuation shall be made.
- 7.4 The Provider shall promptly provide such information as may be reasonably required to enable such a variation in the Contract Price to be calculated.
- 7.5 In the event of dispute, the matter shall be determined in accordance with the dispute resolution procedure at Clause 30.
- 7.6 The Purchaser and Provider may vary the Contract by mutual written consent.
- 7.7 Failure by either party to insist on strict performance of the Contract or to exercise any right or remedy on breach of any provision of the Contract shall not constitute a waiver of the Contract conditions or a waiver of any subsequent breach or default in the performance of the Contract. The rights and remedies provided in this Contract are cumulative and not exclusive of any rights and remedies provided by law.

8. FINANCIAL ARRANGEMENTS

- 8.1 The Purchaser shall pay the Provider the Contract Price for the Services as agreed in the Contract Details.
- 8.2 The Contract Price shall be inclusive of all costs, expenses and overheads (unless the Purchaser agrees otherwise in writing) but exclusive of VAT which shall be charged at the prevailing rate.
- 8.3 All payments shall be made in sterling, unless otherwise agreed between the parties.

- 8.4 Payment shall be made within 30 days of receipt of a valid invoice for the Services performed to the satisfaction of the Purchaser.
- 8.5 Where the Provider enters into a sub-contract for the provision of the Services, the Provider shall include in that sub-contract a provision which requires payment to be made of all sums due under the sub-contract within a specified period not exceeding 30 days from receipt of a valid invoice.
- 8.6 If the Provider withdraws, makes unavailable or fails to provide the Services, either temporarily or permanently, the Provider shall reimburse the Purchaser the relevant proportion of the Contract Price in respect of the period of unavailability, unless otherwise agreed in advance with the Purchaser.
- 8.7 If the Purchaser intends to withhold all or any part of a payment it shall give reasonable notice to the Provider to that effect, which notice shall specify the amount proposed to be withheld and the ground for doing so.

9. INFORMATION

- 9.1 The Provider shall maintain and provide to the Purchaser accurate documented information as may be required under the terms of this Contract and the Service Specification.
- 9.2 The Provider shall submit to the Contracts Officer the following information:
 - 9.2.1 a written report, if requested, detailing evidence that the Services are meeting the objectives of this Contract;
 - 9.2.2 a copy of the audited (or inspected) accounts as soon as they are available and an up-to-date copy of the governing document of the Provider, if not provided to the Purchaser previously;
 - 9.2.3 a copy of the Provider's current insurance policy(ies) in accordance with the requirements of Clause 16 if not provided previously.
- 9.3 The Purchaser may inspect books of accounts, financial documents and other records held by the Provider and may visit establishments at any time and without notice to view the performance of the Services and obtain such explanations as may be considered necessary in so far as they concern matters pertaining to the Contract and delivery of the Services.

10. AUDIT

- 10.1 The Provider shall keep and maintain until six years after the Contract has ended, or as long a period as may be agreed between the parties, full and accurate records of the Contract including the Services provided, all expenditure reimbursed by the Purchaser and all payments made by the Purchaser.
- 10.2 The Provider shall on request afford the Purchaser or the Purchaser's representatives such access to those records as may be required by the Purchaser in connection with the Contract.

11. CONFIDENTIALITY

- 11.1 Each party, its Personnel and any other person associated with either party shall keep confidential:
 - 11.1.1 the terms of this Contract; and
 - 11.1.2 any and all Confidential Information that it may acquire in relation to any other party.
- 11.2 No party shall use or disclose the other party's Confidential Information, without prior written consent, except to persons and for the purpose of performing this Contract, or where disclosure is expressly permitted under this Contract.
- 11.3 The Provider shall only use the Purchaser's Confidential Information for the purposes of this Contract.
- 11.4 The Provider shall take reasonable steps to ensure the Purchaser's Confidential Information is only given to its Personnel, professional advisors or consultants as strictly necessary for the performance of this Contract. The Provider shall ensure its Personnel, professional advisors or consultants are aware of the Provider's confidentiality obligations under this Contract.
- 11.5 The obligations on a party set out in Clauses 11.1 to 11.4 shall not apply to any Confidential Information which:
 - 11.5.1 a party can demonstrate is or becomes public knowledge otherwise than by breach of this Contract;
 - 11.5.2 is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party;
 - 11.5.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
 - 11.5.4 is independently developed without access to the Confidential Information;
 - 11.5.5 is required to be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the Freedom of Information Act 2000 or the Environment Information Regulations 2004.
- 11.6 Nothing in this Clause shall prevent the Purchaser from:
 - 11.6.1 disclosing any Confidential Information for the purpose of:
 - 11.6.1.1. the examination and certification of the Purchaser's accounts; or
 - 11.6.1.2 any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Purchaser has used its resources; or
 - 11.6.2 disclosing any Confidential Information obtained from the Provider:
 - 11.6.2.1 to any government department or any other contracting authority. All government departments or contracting authorities receiving

such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other contracting authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any contracting authority; or

11.6.2.2 to any person engaged in providing any services to the Purchaser for any purpose relating to or ancillary to this Contract provided that in disclosing information under sub-paragraph 11.6.2 the Purchaser discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

11.7 The Provider shall ensure that its Personnel are aware of the Provider's confidentiality obligations under this Contract.

11.8 In the event that the Provider fails to comply with this Clause, the Purchaser reserves the right to terminate the Contract by notice in writing with immediate effect.

11.9 This Clause shall survive termination of this Contract indefinitely.

12. DATA PROTECTION

Definitions

For the purposes of this Clause, the following terms shall have the following meanings:

Agreed Purposes: the provision of Services according to the Service Specification;

Data Discloser: a party that discloses Shared Personal Data to the other party;

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party;

Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer have the meaning given in the Data Protection Legislation;

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;

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

DPA 2018: Data Protection Act 2018;

Independent Data Controllers where both parties are Controllers and process Personal Data under the Contract independently of the other;

Permitted Recipients: the parties to this Contract, the Personnel of each party and any third parties engaged to perform obligations in connection with this Contract;

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

Shared Personal Data: the Personal Data to be shared between the parties under Clause 12.1 of this Contract being all personal and sensitive Personal Data as defined by UK GDPR which is routinely created and collected in the course of providing the Services for the Agreed Purposes.

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

- 12.1 Clauses 12.2 to 12.11 inclusive set out the framework for the sharing of Personal Data between the parties as Independent Data Controllers. Each party acknowledges that one party (referred to in this Clause as the **Data Discloser**) will disclose to the other party Shared Personal Data collected by the Data Discloser for the Agreed Purposes.
- 12.2 Each party shall comply with the obligations imposed on a Controller under the Data Protection Legislation and any material breach of the Data Protection Legislation by one party shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate this Contract with immediate effect.
- 12.3 Each party shall be responsible for meeting their obligations under the UK GDPR in providing information to any Data Subject in respect of whose Personal Data that party is Controller.
- 12.4 Each party shall be responsible for responding to a Data Subject Request in relation to Personal Data for which it is Controller in compliance with UK GDPR.
- 12.5 Each party shall:
 - 12.5.1 ensure that it has all necessary notices and consents and lawful bases in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;
 - 12.5.2 give full information to any Data Subject whose Personal Data may be processed under this Contract of the nature of such processing. This includes giving notice that, on the termination of this Contract, Personal Data relating

to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;

- 12.5.3 process the Shared Personal Data only for the Agreed Purposes;
 - 12.5.4 not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
 - 12.5.5 ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this Contract;
 - 12.5.6 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data;
 - 12.5.7 not transfer any Personal Data received from the Data Discloser outside the UK unless the transferor ensures that (i) the transfer is to a country approved under the applicable Data Protection Legislation as providing adequate protection; or (ii) there are appropriate safeguards or binding corporate rules in place pursuant to the applicable Data Protection Legislation; or (iii) the transferor otherwise complies with its obligations under the applicable Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; or (iv) one of the derogations for specific situations in the applicable Data Protection Legislation applies to the transfer.
- 12.6 Each party shall provide reasonable assistance to the other party in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:
- 12.6.1 consult with the other party about any notices given to Data Subjects in relation to the Shared Personal Data;
 - 12.6.2 promptly inform the other party in the event of receipt of a Data Subject Request in relation to Shared Personal Data;
 - 12.6.3 assist the other party, at the cost of the other party, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, Personal Data breach notifications, Data Protection Impact Assessments and consultations with the Information Commissioner or other regulators;
 - 12.6.4 not disclose, release, amend, delete or block any Shared Personal Data in response to a Data Subject rights request without first consulting the other party wherever possible;
 - 12.6.5 at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this Contract unless required by law to store the Shared Personal Data;
 - 12.6.6 promptly notify the other party if it receives any request, complaint or communication relating to that party's obligations under the Data Protection Legislation;

- 12.6.7 promptly notify the other party it is receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - 12.6.8 promptly notify the other party if it receives a request from any third party for disclosure of Personal Data under the Contract where compliance with such request is required or purported to be required by law; and
 - 12.6.9 promptly notify the other party if it becomes aware of a Data Loss Event or any breach of the Data Protection Legislation.
- 12.7 Each party shall comply with its obligation to notify a Personal Data Breach to the Information Commissioner's Office and, where applicable, Data Subjects, under the UK GDPR in respect of the Personal Data for which it is Controller, (having first liaised with the other party to agree which party shall notify the Personal Data Breach to the Information Commissioner's Office), and each party shall inform the other party of any Personal Data Breach irrespective of whether there is a requirement to notify the Information Commissioner's Office or Data Subject.
- 12.8 The parties agree to provide reasonable assistance to each other to facilitate the handling of any Personal Data Breach in an expeditious and compliant manner.
- 12.9 The parties shall maintain complete and accurate records and information in respect of the Personal Data for which it is Controller in order to demonstrate compliance with this Clause and the Data Protection Legislation and to allow for audit of its Data Processing activity by the other party's designated auditor.
- 12.10 Each party shall, if relevant, be responsible for carrying out a Data Protection Impact Assessment in relation to the Personal Data for which it is Controller prior to commencing processing of such Personal Data, should that party consider it necessary, to ensure compliance with its obligations under the Data Protection Legislation with respect to Data Protection Impact Assessments.
- 12.11 Each party shall provide the other with contact details of at least one employee as a point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the procedures to be followed in the event of a Personal Data Breach, and the regular review of the parties' compliance with the Data Protection Legislation.

13. FREEDOM OF INFORMATION

- 13.1 The Provider acknowledges that the Purchaser is subject to the requirements of the Freedom of Information Act 2000 ('the FOIA') and the Environment Information Regulations 2004 (the 'EIR') and shall assist and co-operate with the Purchaser (at the Provider's expense) to enable the Purchaser to comply with its information disclosure requirements.
- 13.2 The Provider shall:
- 13.2.1 transfer all requests for information to the Purchaser (where it is reasonably apparent that such are intended to be requests for information for the Purchaser) as soon as practicable after receipt and in any event within two Working Days of receiving a request for information;

- 13.2.2 provide the Purchaser with a copy of any information in its possession or power in the form that the Purchaser requires within five Working Days (or such other period as the Purchaser may specify) of the Purchaser requesting that information; and
- 13.2.3 provide all necessary assistance as reasonably requested by the Purchaser to enable the Purchaser to respond to a request for information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the EIR.
- 13.3 The Purchaser shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other information:
 - 13.3.1 is exempt from disclosure in accordance with the provisions of the Code of Practice on the Discharge of Public Authorities' Functions under Part 1 FOIA or the EIR; or
 - 13.3.2 is to be disclosed in response to a request for information.
- 13.4 In no event shall the Provider respond directly to a request for information unless expressly authorised to do so by the Purchaser.
- 13.5 The Provider acknowledges that the Purchaser may, acting in accordance with the Code of Practice on the Discharge of Public Authorities' Functions under Part 1 of the FOIA or the EIR, be obliged to disclose Information:
 - 13.5.1 without consulting with the Provider; or
 - 13.5.2 following consultation with the Provider and having taken its views into account.
- 13.6 The Provider shall ensure that all information produced in the course of this Contract or relating to this Contract is retained for disclosure and shall permit the Purchaser to inspect such records as requested from time to time.
- 13.7 The Provider acknowledges that any lists or schedules provided by it outlining Commercially Sensitive Information are of indicative value only and that the Purchaser may nevertheless be obliged to disclose Confidential Information in accordance with Clause 13.3.

14. WARRANTIES

- 14.1 The Provider warrants and represents to the Purchaser that:
 - 14.1.1 it has the full capacity and authority to enter into and perform this Contract and that the Contract is executed by a duly authorised representative of the Provider;
 - 14.1.2 it will perform the Services using reasonable care and skill and suitably qualified Personnel, volunteers, agents and sub-contractors, and to a standard which conforms to generally accepted industry standards and practice;
 - 14.1.3 it will use all reasonable endeavours to achieve the outcomes in the Service Specification and that the outcomes will be in accordance in all material respects with the Service Specification and accompanying

documents;

- 14.1.4 the Provider's Personnel shall have the necessary skills, professional qualifications and experience to perform the Services in accordance with the Service Specification and industry standards and practice, being responsible for all costs, fees, expenses, and charges for training necessary or required for the Provider to perform the Services;
 - 14.1.5 it has obtained all necessary and required licences, consents and permits to perform the Services;
 - 14.1.6 it is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under the Contract.
- 14.2 Each of the parties acknowledges that in entering into this Contract it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this Contract and any Clauses, warranties or other terms implied by statute or common law or custom and practice are excluded from this Contract to the fullest extent permitted by law.

15. LIABILITY AND INDEMNITIES

- 15.1 Neither party excludes nor limits its liability to the other party for death or personal injury caused by its negligence or that of its Personnel, agents or sub-contractors, fraud by it or its Personnel or for any breach of obligation implied by Part 2 of the Supply of Goods and Services Act 1982.
- 15.2 The Provider shall indemnify the Purchaser fully against all claims, proceedings, actions, damages, legal costs, expenses and other liabilities arising out of or in connection with this Contract, caused directly or indirectly by any act or omission of the Provider in providing the Services unless such injury, loss, damage, cost or expense is caused by the negligence or wilful misconduct of the Purchaser.
- 15.3 Subject to Clauses 15.1 and 15.2, neither party shall be liable to the other in any event for any loss of profits, turnover, business opportunities, damage to goodwill or anticipated savings and/or indirect or consequential loss or damage.
- 15.4 The Purchaser shall not, under any circumstances, be liable for any damage to the Provider's property or Premises.
- 15.5 The parties expressly agree that if any limitation or provision contained or expressly referred to in this Clause 15 is held to be invalid under any law, it shall 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 shall be subject to the remaining limitations and provisions set out in this Clause 15.
- 15.6 Nothing in this Clause 15 shall act to reduce or affect a party's general duty to mitigate its loss.

16. INSURANCE

16.1 The Provider shall at all times effect and maintain appropriate insurance policies with a reputable insurer in relation to the provision of the Services and shall ensure the same applies in respect of any sub-contractor.

17. ASSIGNMENT AND SUB-CONTRACTING

17.1 The Provider shall not transfer, assign or sub-contract directly or indirectly to any person or organisation any part of this Contract without the previous written permission of the Purchaser.

17.2 Sub-contracting any part of this Contract shall not relieve the Provider of any obligation or duty attributable to the Provider under this Contract.

17.3 The Provider shall be responsible for the acts and omissions of its sub-contractors as though they are its own.

17.4 Any such permitted transfer, assignment or sub-contracting shall be on the same terms as this Contract, unless otherwise agreed between the parties.

17.5 The Purchaser shall be entitled to assign the benefit of the Contract or any part and shall give written notice of any assignment to the Provider.

17.6 The Purchaser shall be entitled to novate this Contract to any statutory successor which substantially performs any of the functions that the Purchaser previously performed.

18. RIGHTS OF THIRD PARTIES

18.1 In accordance with the Contracts (Rights of Third Parties) Act 1999, a person who is not a party to this Contract shall not have any rights under or in connection with it.

19. DISCRIMINATION

19.1 The Provider shall at all times operate a policy of equal opportunity in both staffing recruitment and service delivery. The Provider shall be required to forward a copy of this policy to the Purchaser when required and demonstrate its operation in the performance of the Services.

19.2 The Provider shall not unlawfully discriminate in the provision of the Services either directly or indirectly on such grounds as race, colour, ethnic or national origin, culture and linguistic background, disability, gender or sexual orientation, pregnancy and maternity, gender reassignment, marriage and civil partnership, religion or belief or age and, without prejudice to the generality of the foregoing, shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or other relevant legislation.

19.3 The Provider shall take all reasonable steps to secure the observance of this Clause by all Personnel engaged in the Services.

19.4 In the event of a finding of discrimination being made by any court or employment tribunal against the Provider or any sub-contractor appointed by the Provider during the performance of the Services, or of an adverse finding in any formal investigations by the Equality and Human Rights Commission during the performance of the Services, the Provider shall inform the Purchaser of this finding and shall take appropriate steps to prevent repetition of the unlawful discrimination.

19.5 The Provider shall indemnify the Purchaser in respect of any claims against the Purchaser which arise by reason of the Provider's breach of the legislation referred to in Clause 19.2 where such breach arises in the performance of its obligations under this Contract.

19.6 The Provider may be required to answer questions raised by the Purchaser on matters referred to in this Clause.

20. NOT USED

21. HUMAN RIGHTS ACT 1998

21.1 The Provider shall, at all times when providing the Services act in a way that is compatible with the Convention Rights within the meaning of Section 1 of the Human Rights Act 1998.

21.2 The Purchaser shall be empowered to suspend the provision of the Services or part thereof in the event of non-compliance with this Clause by the Provider. The Provider shall not resume provision of the Services or such part until the Purchaser is satisfied that the non-compliance has been rectified.

22. HEALTH AND SAFETY

22.1 The Provider shall comply with the Health and Safety at Work etc Act 1974, and any other acts, orders and regulations and codes of practice relating to health and safety in the performance of the Services, including the Manual Handling Operations Regulations 1992 as amended, and are required to operate written policies which demonstrate such compliance.

22.2 The Purchaser shall be empowered to suspend the provision of the Services or part thereof in the event of non-compliance by the Provider with its legal duties in health and safety matters. The Provider shall not resume provision of the Services or such part until the Purchaser is satisfied that the non-compliance has been rectified.

22.3 The Purchaser places great emphasis on compliance with both the letter and spirit of health and safety legislation and expects full co-operation by the Provider with all statutory bodies including Environmental Health.

22.4 The Provider shall promptly notify the Purchaser of any health and safety hazards or any incident which causes personal injury or damage which may arise in connection with the performance of the Services.

28. CONTRACT MANAGEMENT AND MONITORING ARRANGEMENTS

28.1 The Provider shall take appropriate steps (which may include one or more Contract implementation meetings) with the Purchaser to confirm the preferred communication and other procedures at the outset of the Contract.

28.2 The Provider shall promptly give notice to the Purchaser of the identity of the Provider's Contract Manager appointed to manage the Services and any replacement for them. Any Contract Manager shall be appropriately qualified and/or experienced for his responsibilities in relation to the Services.

28.3 The Purchaser shall monitor contract compliance, all financial and operational

aspects of the Services and the standards of the Services provided with particular emphasis on quality.

28.4 The Contracts Officer shall be responsible for arranging and/or carrying out the monitoring of the Services using various approaches depending on the purpose of the monitoring, e.g. routine monitoring visit, contract review meeting, or a visit instigated as a result of a specific concern regarding the quality of the service being provided by the Provider.

28.5 In relation to the Purchaser's visits:

28.5.1 For planned visits such as routine monitoring and routine follow-up visits, the Provider shall be contacted in advance of the monitoring visit. If the suggested time and date is not convenient, the Provider shall contact the Contracts Officer without delay to arrange a mutually convenient time.

28.5.2 All other visits shall be carried out by the Purchaser without giving prior notice to the Provider.

28.6 In relation to Contract Review meetings, these shall be held on a regular basis, as specified within the Service Specification, between the Provider's Contract Manager and/or other representatives and the Purchaser's Contracts Officer. The purpose of these meetings shall be to:

(i) monitor, review and evaluate the performance of the Provider against the Service Specification;

(ii) evaluate and review the information reported by the Provider in accordance with the Service Specification.

(iii) ensure that the data to be produced in accordance with the Service Specification has been reported accurately and that targets have been achieved. If not achieved, a plan of action shall be agreed between the parties.

(iv) measure the outcomes against the Service Specification and discuss and identify areas for improvement or more focus;

(v) provide an opportunity for the Provider and the Purchaser to openly discuss any areas for future development, gaps in provision, current barriers to success, etc.

28.7 Where there are areas of non-compliance with the terms of this Contract, the Provider shall be notified in writing in accordance with Clause 29.

28.8 The Provider shall comply with all records and monitoring requirements, as specified in this Contract and the Service Specification.

28.9 Any costs incurred by the Provider in attending any meetings shall be at the Provider's expense.

28.10 The Provider shall ensure that the Purchaser and/or their representatives or agents have reasonable access to the Services in order to benchmark, inspect, review and assess service delivery.

29. REMEDIATION PLAN PROCESS

- 29.1 If the Provider commits a Default and the Default is capable of remedy, the Purchaser may not terminate this agreement without first operating the Remediation Plan Process. If the Provider commits such a Default, the Purchaser shall give a Remediation Notice to the Provider which shall specify the Default in outline and the actions the Provider needs to take with respect to remedying the Default.
- 29.2 The Purchaser shall be under no obligation to initiate the Remediation Plan Process if a right to terminate has arisen in accordance with the terms of this agreement.
- 29.3 Within 20 Business Days of receipt of a Remediation Notice, the Provider shall either:
29.3.1 submit a draft Remediation Plan, even if it disputes that it is responsible for the matters which are the subject of the Remediation Notice; or
29.3.2 inform the Purchaser that it does not intend to submit a Remediation Plan, in which event the Customer shall be entitled to terminate this agreement.
- 29.4 The Purchaser shall either approve the draft Remediation Plan within 10 Business Days of its receipt, or it shall inform the Provider why it cannot accept the draft Remediation Plan. In such circumstances, the Provider shall address all such concerns in a revised Remediation Plan, which it shall submit to the Purchaser within 5 Business Days of its receipt of the Purchaser's comments. If no such notice is given, the Provider's draft Remediation Plan shall be deemed to be agreed.
- 29.5 Once agreed, the Provider shall immediately start work on the actions set out in the Remediation Plan.
- 29.6 If, despite the measures taken under Clause 29.4, a Remediation Plan cannot be agreed within 60 Business Days then the Purchaser may elect to end the Remediation Plan Process and serve a termination notice.
- 29.7 If a Remediation Plan is agreed between the parties, but the Provider fails to implement or successfully complete the Remediation Plan by the required remedial plan completion date, the Purchaser may:
29.7.1 terminate this agreement by serving a termination notice; or
29.7.2 give the Provider a further opportunity to resume full implementation of the Remediation Plan; or
29.7.3 escalate any issues arising out of the failure to implement the Remediation Plan to the dispute resolution procedure in Clause 30.
- 29.8 If, despite the measures taken under Clause 29.7, the Provider fails to implement the Remediation Plan in accordance with its terms, the Purchaser may elect to end the Remediation Plan Process and refer the matter for resolution by the dispute resolution procedure (in Clause 30) or serve a termination notice.
- 29.9 The Purchaser shall not be obliged to follow the Remediation Plan Process if there is a repetition of substantially the same Default as had previously been addressed in a Remediation Plan within a period of 6 months following the conclusion of such previous Remediation Plan. In such event, the Purchaser may serve a termination notice.

30. RESOLUTION OF DISPUTES

- 30.1 It is the intention of the parties to settle amicably by negotiation all disagreements and differences on matters relating to this Contract or the provision of the Services.

- 30.2 In the event that any disagreement or difference of opinion arises out of this Contract which cannot be resolved by the Purchaser's Contracts Officer and the Provider's representative, the matter shall be dealt with as follows:
- 30.2.1 the contract managers for the Purchaser and the Provider shall meet to seek resolution. In the event that they do not meet within ten Working Days of the date on which either party convenes a meeting to resolve the matter or should they not be able to resolve the matter within ten Working Days of the first meeting, the matter shall be promptly referred to the Purchaser's Director of Place and the Provider's Chief Executive (or equivalent) or their nominee for resolution.
 - 30.2.2 if within fourteen Working Days of the matter having been referred for resolution in accordance with Clause 30.2.1 no agreement has been reached as to the matter in dispute, the parties shall thereafter seek to determine the matter in dispute by adopting the procedure set out below.
- 30.3 An independent expert shall be appointed by Contract between the parties. The parties shall promptly furnish to such expert all information relating to the dispute to enable them to give a decision as to what course of action in his reasonable opinion ought to be followed to give an outcome equitable to the parties taking into account the respective rights and obligations of the parties.
- 30.4 The decision of the expert shall be final and binding on the parties.
- 30.5 The parties shall share equally the fees and expenses of the expert unless the expert directs otherwise.
- 30.6 Alternatively, the parties may agree to refer the matter for decision to arbitration whereupon the parties shall comply with the following provisions:
- 30.6.1 the arbitration shall be governed by the provisions of the Arbitration Act 1996;
 - 30.6.2 the arbitration fees shall be met by the Purchaser and the Provider in equal shares;
 - 30.6.3 the decision of the arbitrator shall be binding on the parties.

31. LEGAL/OMBUDSMAN PROCEEDINGS

- 31.1 On written request from the Purchaser, the Provider or any of its Personnel, agents, officers or sub-contractors shall provide to that Purchaser all relevant information (including but not limited to documentation and statements from any Personnel, agent, officers or sub-contractor) and shall co-operate fully with and provide assistance and give evidence in connection with:
- 31.1.1 any legal or quasi-legal inquiry, arbitration or court proceedings in which the Purchaser may become involved; or
 - 31.1.2 any internal Purchaser disciplinary hearing arising out of or in connection with the Services or these Clauses;
 - 31.1.3 any investigation by the Local Government Ombudsman.

32. STATUTORY FUNCTIONS

- 32.1 Nothing in the Contract or these Clauses shall be read as preventing or inhibiting the Purchaser from carrying out any such statutory or regulatory duty as each may respectively be under, or as derogating therefrom, or as inhibiting or fettering the exercise of any statutory or regulatory power which either may respectively possess.

33. INTELLECTUAL PROPERTY

- 33.1 Neither Party shall acquire the intellectual property rights of the other unless specified in the DPS Contract Details.
- 33.2 The Provider shall not use the Purchaser's logo without prior consent.

34. PUBLICITY

- 34.1 The Provider shall seek written approval from the Purchaser prior to the publication of any publicity where the Purchaser is acknowledged.

35. SEVERANCE

- 35.1 If any Clause of this Contract is declared by any judicial or other competent authority or considered by the parties to be void, voidable, illegal or otherwise unenforceable:
- 35.1.1 The parties shall amend that provision in such reasonable manner as mutually agreed.
- 35.1.2 At the discretion of the parties it may be severed from this Contract and the remaining Clauses of this Contract shall except whether otherwise provided remain in full force and effect unless otherwise terminable.

36. TERMINATION

- 36.1 The Purchaser may by notice in writing to the Provider terminate this Contract as from the date of service of such notice if:
- 36.1.1 the Provider passes a resolution or a court makes an order that the Provider be wound up otherwise than for the purpose of a bona fide solvent reconstruction or amalgamation; or
- 36.1.2 circumstances exist which entitle a court or a creditor to appoint a receiver, manager or administrator or which entitle a court otherwise than for the purpose of a bona fide solvent reconstruction or amalgamation to make a winding-up order regarding the Provider; or
- 36.1.3 the Provider undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, which impacts adversely and materially on the performance of the Contract; or
- 36.1.4 the Provider becomes the subject of a voluntary arrangement under section 1 of the Insolvency Act 1986.
- 36.1.5 the Provider has a receiver, manager, administrator, or administrative receiver appointed over all or any part of its undertakings, assets or income, or has passed a resolution for its winding up;

- 36.1.6 the Provider has a petition presented to any court for its winding up or for an administration order;
 - 36.1.7 the Provider is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - 36.1.8 the Provider suffers any distraint, execution or other process to be levied or enforced on any of its property by any third party and is not paid out, withdrawn or discharged within 7 days;
 - 36.1.9 the circumstances specified in Clause 37 arise;
 - 36.1.10 the Provider becomes bankrupt or makes a composition or arrangement with its creditors, or has a proposal in respect of the business for voluntary arrangements for a composition of debts or scheme of arrangement approved in accordance with the Insolvency Act 1986; or
 - 36.1.11 the Provider has been convicted of a criminal offence or act of grave misconduct in the conduct of its business within the meaning of Regulation 57(8)(c) of the Public Contracts Regulations 2015; or
 - 36.1.12 the Provider has failed to comply with any obligations relating to the payment of any taxes or social security contributions.
- 36.2 The Purchaser may only exercise its right under Clause 36.1.3 within six months after a change of control occurs and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs. The Provider shall notify the Contracts Officer immediately any change of control occurs.
- 36.3 Either the Purchaser or the Provider may at any time by notice in writing to the other party terminate this Contract as from the date of service of such notice whenever any of the following events occurs:-
- 36.3.1 the other party commits a material breach of any of its obligations under or in relation to this Contract which is not capable of remedy or, if capable of remedy, is not remedied within 30 days after receipt of written notice from the non-breaching party of its intention to terminate; or
 - 36.3.2 the other party is continually in breach or commits a series of repeated breaches of this Contract, which cannot be remedied with 30 days of written notice from the non-breaching party of its intention to terminate.
- 36.4 The Purchaser may terminate the Contract with immediate effect in accordance with Clause 29.
- 36.5 The parties may terminate the Contract at any time on giving to the other not less than 3 months' notice in writing.
- 36.6 In any case where immediate termination is permitted, the Purchaser may, at its discretion, initially suspend the Contract.
- 36.7 The termination of this Contract howsoever arising is without prejudice to the rights, duties and liabilities of either party accrued at or prior to termination and subject thereto neither party shall have any further obligations to the other under this

Contract. The Clauses of this Contract which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

37. PREVENTION OF CORRUPTION

37.1 The Purchaser shall be entitled to terminate the Contract immediately and recover from the Provider the amount of any loss or damage resulting from such cancellation if, in relation to this Contract or any Contract with the Purchaser, the Provider or any person employed by them or acting on their behalf shall have committed:

37.1.1 any fraud

37.1.2 an offence under the Bribery Act 2010 or shall have given any fee or reward, the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

38. CONSEQUENCES OF SUSPENSION OR TERMINATION

38.1 Following termination by the Purchaser of this Contract, the Provider shall be entitled to such proportion of the Contract Price as represents a fair and reasonable value of that part of the Services carried out up to the date of termination provided always that the Purchaser reserves the right to deduct from any such sum the amount of any claim the Purchaser may have in respect of any breach and / or failure by the Provider to perform its obligations under this Contract.

38.2 The Purchaser shall not in any circumstances be liable to the Provider for any losses or expenses arising out of termination or suspension, and no payment shall be due from the Purchaser under this Contract during any period of suspension.

38.3 Where the Purchaser terminates or suspends the Contract as a consequence of a breach by the Provider, the Purchaser shall be entitled to recover from the Provider:

38.3.1 any costs (including any administration costs) reasonably incurred by the Purchaser in respect of the supply of any part of the Services by the Purchaser or a third party; and

38.3.2 the amount of any other loss (including any administration costs) incurred by the Purchaser as a result of having to suspend or terminate the Contract.

The Purchaser shall take all reasonable steps to mitigate any additional expenditure.

38.4 The Provider shall upon the termination of the Contract immediately deliver up to the Purchaser all correspondence, documents and other property belonging to the Purchaser which may be in its possession or under its control.

38.5 The provisions of this Clause shall survive the termination or expiry of this Contract.

39. FORCE MAJEURE

39.1 Neither party shall be liable for any delay in, or non-performance of, any obligation under the Contract (other than the payment of money) caused by an event beyond the reasonable control of that party including but not limited to acts of God, war, explosion, fire, strike, epidemic or pandemic, flood, riot or civil commotion or any act or omission of the other party, or a force majeure event affecting a supplier, sub-contractor or a third party.

39.2 In the event such circumstances persist beyond a reasonable period given the nature of the event and its effect on the obligations under this Contract, then the other party shall have the right, for so long as the circumstances which prevent performance continue, to terminate this Contract by giving not less than 30 (thirty) Working Days' written notice to the other party.

40. LAW AND JURISDICTION

40.1 This Contract shall be governed by and construed in accordance with English law and each party agrees to submit to the exclusive jurisdiction of the English Courts.

40.2 This Contract is binding on the Purchaser and the Provider, their successors and assignees.

41. CHANGE IN LAW

41.1 The Provider shall neither be relieved of its obligations to perform its obligations under this Contract nor be entitled to an increase in the Contract Price and/or any charges payable as a result of a change in law, if the change and its effect are known at the commencement of the Contract.

41.2 If a change in law occurs or is shortly to occur which will significantly affect the provision of the Services or the cost of doing so, the Provider shall notify the Purchaser to express an opinion of the likely effects of the change including:

41.2.1 whether any change is required to the Services, the Contract Price or this Contract; and

41.2.2 whether the Provider requires any relief from compliance with its obligations.

41.3 If the parties to this Contract agree upon the effects of the change in law and any financial consequences such Contract shall be implemented through the variation provisions of Clause 7.

41.4 In the case of any dispute arising under this Clause, it shall be resolved in accordance with Clause 30.

42. CONFLICT OF INTEREST

42.1 The Provider shall use reasonable endeavours to ensure that it and any of its Personnel, agents, suppliers or sub-contractors are not placed in a position where in the reasonable opinion of the Purchaser there is or may be an actual or potential conflict between the pecuniary or personal interests of the Provider and others and the duties owed to the Purchaser under the provisions of the Contract. The Provider shall immediately disclose to the Purchaser full particulars of any such conflict of interest which may arise.

42.2 Where such a conflict does arise the Provider shall take such reasonable steps as are required by the Purchaser for ending or avoiding the actual or potential conflict of interest or alleviating its effect. If the Provider fails to comply or is unable to comply with such measures, then the Purchaser shall have the right by notice in writing to terminate this Contract immediately. If the Purchaser terminates this Contract in accordance with this Clause, it shall reimburse the Provider against any commitments, liabilities or expenditure incurred or to be incurred which are

reasonably and properly payable by the Provider in connection with the Services. However, it is expressly agreed that the Purchaser shall not be liable to pay any severance payment or compensation to the Provider for loss of profits.

42.3 The provisions of this Clause shall apply during the continuance of the Contract and for a period of two years after its termination.

43. RIGHT OF SET OFF

43.1 Without prejudice to any other rights and remedies available to it, the Purchaser shall be entitled to set off all or any of its liabilities to the Provider against all or any of the Provider's liabilities to it, and any liability, damage, loss, charge or expense which the Purchaser has incurred in consequence of any breach by the Provider of its obligations under the Contract.

44. Not used

45. TUPE

45.1 At any time during the last six months of the Contract Period, the Provider shall provide to the Purchaser within 20 Working Days of a written request such information as the Purchaser may reasonably require in respect of TUPE.

45.2 The Provider shall comply with its obligations under Clause 11 in relation to any information supplied under Clause 45.1.

45.3 The Provider shall permit the Purchaser to use the information for the purposes of TUPE and re-tendering.

45.4 If TUPE applies on termination of this Contract then:

45.4.1 the Provider agrees to indemnify the Purchaser fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of the information under Clause 45.1;

45.4.2 the Provider agrees to indemnify the Purchaser from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities in connection with or as a result of any claim or demand by any Personnel or other personnel or person claiming to be an employee on any date upon which the Contract is terminated and/or transferred to any third party ('Relevant Transfer Date') arising out of their employment or its termination whether such claim or claims arise before or after the Relevant Transfer Date.

45.5 In the event that the information provided by the Provider in accordance with Clause 45.1 becomes inaccurate, whether due to changes to the employment and personnel details of the affected Personnel made subsequent to the original provision of such information or by reason of the Provider becoming aware that the information originally given was inaccurate, the Provider shall notify the Purchaser of the inaccuracies and provide the amended information within 10 Working Days.

45.6 The provisions of this Clause shall apply during the continuance of this Contract and indefinitely after its termination.

46. NOTICES

- 46.1 Any notice to be given under this Contract shall be in writing and shall be hand delivered or sent by first class mail to the address of the Provider or the Purchaser at the address set out at the head of this Contract or such other address as that party may from time to time notify to the other party in accordance with this Clause.
- 46.2 Provided the notice sent as above is not returned as undelivered it shall be deemed to have been received:
- 46.2.1 if delivered by hand before 4pm on a Working Day, at the time of delivery, otherwise receipt shall be deemed to occur at 9am on the next following Working Day; or
- 46.2.3 if delivered by first class inland mail, two Working Days after the day of posting.
- 46.3 In proving the giving of a notice it shall be sufficient to prove that the notice was left or that the envelope containing the notice was properly addressed and posted.
- 46.4 Notice may not be given by email.

47. RECOVERY OF SUMS DUE

- 47.1 Whenever any sum of money is recoverable from, or payable by, the Provider (including any sum which the Provider is liable to pay to the Purchaser under Clauses 29 or 38) the Purchaser may unilaterally deduct that sum from any sum then due or which at any later time may become due to the Provider under any other contract with the Purchaser.
- 47.2 The Provider shall make any payments due to the Purchaser without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Provider has a valid court order requiring an amount equal to such deduction to be paid by the Purchaser to the Provider.

48. IR35 RULES AND EMPLOYMENT STATUS

- 48.1 The Provider agrees to notify the Purchaser as soon as reasonably practicable in the event of a change in the employment status of the Provider during the period of the Contract within the meaning of Part 2 Chapter 8 of the Income Tax (Earnings and Pensions) Act 2003 ('the IR35 Rules') and to provide all such information regarding the same as may be reasonably requested by the Purchaser.
- 48.2 The Provider shall indemnify the Purchaser fully against all claims, proceedings, actions, damages, legal costs, expenses and other liabilities arising from the Provider's failure to comply with Clause 48.1.

49. MODERN SLAVERY ACT 2015

- 49.1 The Provider warrants and undertakes that in performing its obligations under the terms of this Contract, it will:
- 49.1.1 comply with the Modern Slavery Act 2015; and

49.1.2 not engage in any activity, practice or conduct that would constitute an offence under the Modern Slavery Act 2015; and

49.1.3 include in its subcontracting arrangements provisions that are at least as onerous as those set out in this clause 49.1.

49.2 The Provider warrants that neither it nor any of its officers, Personnel, agents or subcontractors has:

49.2.1 committed an offence under the Modern Slavery Act 2015 ('a MSA Offence'); or

49.2.2 been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or

49.2.3 is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA offence or prosecution under the Modern Slavery Act 2015.

50. WHISTLEBLOWING

50.1 The Provider shall be aware of and adhere to the principles set out in the Purchaser's whistleblowing policy in reporting concerns which arise during the Contract and shall ensure that its agents and sub-contractors do the same. The Purchaser's whistleblowing policy can be accessed on the Purchaser's website at www.dorsetcouncil.gov.uk

Appendix 1 Service Prospectus

Appendix 2 DPS Contract Details

All but the Provider's details must be completed and published alongside each further competition under the DPS.

CONTRACT DETAILS**DATE:**

| | |
|-----------------------------------|--|
| Contract Reference | [CONTRACT NUMBER] |
| Purchase: | Dorset Council |
| Purchaser's address: | County Hall, Colliton Park, Dorchester, Dorset DT1 1XJ |
| Customer's representative: | Name: [NAME] Title: [TITLE] Email: [EMAIL] Telephone: [NUMBER] Postal Address: [POSTAL ADDRESS] |
| Provider: | [COMPANY NAME] LIMITED (No. [NUMBER]) |
| Provider's address: | [ADDRESS] |
| Provider's VAT number: | [NUMBER] |
| Supplier's representative: | Name: [NAME] Title: [TITLE] Email: [EMAIL] Telephone: [NUMBER] Postal Address: [POSTAL ADDRESS] |
| Services Start Date: | [[INSERT DATE] OR The date the Contract is entered into by the parties.] |
| Services: | [DESCRIPTION], as further detailed in Error! Reference source not found. |
| Key Deliverables: | [DESCRIPTION], as further detailed in Error! Reference source not found. |
| Contract Price: | [[SUMS], as further detailed in Error! Reference source not found. OR The charges for the Services set out in the Supplier's published price list in force at the date this Contract is signed by both parties.] |
| Special terms: | [In the Contract terms: [(a) Clause [NUMBER] deleted: The entire text of clause [NUMBER] is deleted and replaced with the words "Not |

| | |
|---|--|
| | <p>used".]</p> <p>[(b) Clause [NUMBER] added: This clause is inserted into the Conditions: [NEW CLAUSE].]</p> <p>[(c) Clause [NUMBER] amended: This clause is amended to read as follows: [AMENDED CLAUSE IN FULL].]</p> |
| Contract Management: | [set out arrangements for reporting data, meetings frequency and KPIs if appropriate] |
| Implementation Testing | [set out process for developing, agreeing and undertaking testing prior to go-live] |
| Delay to the Contract | <p>[set out consequences for delay caused by Provider]</p> <p>[set out consequence for delay caused by Purchaser]</p> |
| Intellectual Property Rights and Indemnity | [set out arrangements for IP including ownership, licensing and revocation] |
| Quality Assurance and Control | <ol style="list-style-type: none"> 1. The Provider shall adhere to the standards of service detailed in the Service Specification. 2. The Provider shall demonstrate compliance with its obligations under this Contract and maintain their own quality control programme. Information must be made available to the Purchaser in respect of all aspects of contract compliance and quality control on request. Particular emphasis will be placed on the following areas: <p>[set out factors that will be of key importance to this contract]</p> 3. For the avoidance of doubt, nothing in this Contract is intended to prevent the Provider from achieving higher quality standards than those required by this Contract and/or any regulator and the Provider shall make all reasonable efforts to comply with all best practice guidance in relation to the provision of the Services. |
| Disaster Recovery and Service Continuity | [set out process for developing/agreeing/approving DRSC plans] |
| Insurance: | For the duration of the Contract the Provider must effect and maintain with a reputable insurer: |

| | |
|------------------------|---|
| | <ol style="list-style-type: none"> 1. Public liability insurance shall be maintained in such sum as is deemed prudent in all the circumstances by the Provider and in any event with a minimum level of indemnity of £5 million for any one claim. 2. Employers' liability cover shall be maintained with a minimum of £5 million for any one claim. 3. The Provider shall, if relevant, maintain motor vehicle insurance to cover all liabilities to third parties arising from the performance of the Services. 4. The Provider shall produce evidence of the insurances in force before commencement of the Services, and as subsequently required by the Purchaser. A copy of the insurance documents shall be submitted to the Contracts Officer. 5. If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by this Clause, the Purchaser may make alternative arrangements to protect its interests and may recover the reasonable costs of such arrangements from the Provider. Such failure shall be regarded as a serious breach of this Contract. 6. The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under this Contract. 7. For the avoidance of doubt, minimum insurance levels shall not be a limit of liability under the Contract |
| Data Protection | [The parties are data controllers in common OR The Provider is data processor and Schedule 2 is completed and attached.] |
| Schedules: | Error! Reference source not found.: Services. |

| | |
|--|--|
| | <p>Error! Reference source not found.: Charges.</p> <p>[Error! Reference source not found.3: Data protection, provider as processor]</p> <p>[Add additional schedules if required]</p> |
|--|--|

1. This Contract is made up of the following:

- (a) The Contract Details.
- (b) The DPS Terms.
- (c) The Mandatory Policies.
- (d) The Schedules specified in the Contract Details.

2. If there is any conflict or ambiguity between the terms of the documents listed in paragraph 1, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list.

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

Signed by [NAME OF AUTHORISED SIGNATORY]
for and on behalf of Dorset Council

.....
Authorised Signatory

Signed by [NAME OF DIRECTOR]
for and on behalf of [NAME OF PROVIDER]

.....
Director

Schedule 1 – Specification
Schedule 2 – Charges
[Schedule 3 - Data Processor Schedule]