

1. Definitions and Interpretation

1.1 Definitions:

Authorised Representatives: the persons respectively designated as such by the Council and the Supplier, the first such persons being set out in the Services Contract Particulars of Contract **Error! Reference source not found.**

Council Assets: any materials, plant or equipment owned or held by the Council and provided by the Council to the Supplier for use in providing the Services.

Council Premises: such premises owned, let or otherwise occupied by the Council which are to be made available for use by the Supplier for the provision of the Services on the terms set out in this Contract.

Best Industry Practice: the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the parties, any key performance indicators, the Term, the pricing structure and any other relevant factors.

Change in Law: any change in any Law which impacts on the performance of the Services and which comes into force after the Start Date.

Charges: the charges which shall become due and payable by the Council to the Supplier in respect of the Services in accordance with the provisions of this Contract, as set out in the Services Contract Particulars of Contract.

Clarifications: any clarifications, questions and answers relating to the tender for the Services (if applicable) and where appropriate attached at Schedule 7.

Commercially Sensitive Information: information of a commercially sensitive nature relating to the pricing of the Services, the Supplier's intellectual property rights or the Supplier's business operations which the Supplier has indicated to the Council that, if disclosed by the Council, would cause the Supplier significant commercial disadvantage or material financial loss.

Confidential Information: means all confidential information (however recorded or preserved) disclosed by a party or its Representatives to the other party and that party's Representatives in connection with this Contract, including but not limited to:

- a) any information that would be regarded as confidential by a reasonable person relating to: (i) the business, affairs, customers, suppliers or plans of the disclosing party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;
- b) any information developed by the parties in the course of carrying out this Contract;
- c) any Commercially Sensitive Information.

Contract: the complete agreement entered into between the Council and the Supplier incorporating the Services Contract Particulars of Contract (including appendices and schedules), Services Contract Conditions of Contract, the Special Terms and

Conditions (and appendices), the Specification, Invitation to Tender and the Supplier's Tender Response and any Clarifications.

Contract Year: any 12-month period starting on the Start Date and on each anniversary of the Start Date.

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 the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory Council and applicable to a party.

Document: Includes, in addition to any document in writing, any drawing, map, plan diagram, design, picture or other image, tape, disc, or other device or record embodying information in any form.

EIR: the Environmental Information Regulations 2004 (*SI 2004/3391*) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

Extension Period: the period set out in the Services Contract Particulars of Contract up to which the Council may extend the Contract in accordance with clause 2.2 of the Conditions.

Extension Notice Period: the period of notice the Council shall give the Supplier to extend the Contract as set out in the Services Contract Particulars of Contract.

FOIA: the Freedom of Information Act 2000 together with any guidance or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

General Change in Law: a Change in Law where the change is of a general legislative nature, or which generally affects or relates to the supply of services which are the same as, or similar to, the Services.

GHG emissions: emissions of the greenhouse gases listed at Annex A of the 1998 Kyoto Protocol to the United Nations Framework Convention on Climate Change, as may be amended from time to time including carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), nitrogen trifluoride (NF₃), hydrofluorocarbons, perfluorocarbons, and sulphur hexafluoride (SF₆), each expressed as a total in units of carbon dioxide equivalent.

Information: has, for the purposes of **Error! Bookmark not defined.12**, the meaning given under section 84 of FOIA.

Initial Term: The period of the Contract commencing on the Start Date and ending on the End Date, as set out in the Services Contract Particulars of Contract

Insolvency Event: where:

- a) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts

or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

b) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;

c) the Supplier applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;

d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

e) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier (being a company, partnership or limited liability partnership);

f) the holder of a qualifying floating charge over the assets of the Supplier (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;

g) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;

h) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;

i) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (h) (inclusive);

j) the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Invitation to Tender: the Council's invitation to suppliers for formal offers to supply it with the Services as set out in Schedule 5.

Law: the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services or with which the Supplier is bound to comply.

Necessary Consents: all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents (whether statutory, regulatory, contractual or otherwise) necessary from time to time for the provision of the Services.

Personal Data: as defined in the Data Protection Legislation.

Processor: as defined in the Data Protection Legislation.

Prohibited Act: the following constitute Prohibited Acts:

- a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage as an inducement or reward for any improper performance of a relevant function of activity;
- b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;
- c) committing any offence: (i) under the Bribery Act 2010; (ii) under legislation or common law concerning fraudulent acts; or (iii) of defrauding, attempting to defraud or conspiring to defraud the Council;
- d) any activity, practice or conduct which would constitute one of the offences listed under (c) above, if such activity, practice or conduct had been carried out in the UK.

Relevant Requirements: all applicable law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

Replacement Services: any services that are identical or substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the termination or expiry of this Contract, whether those services are provided by the Council internally or by any Replacement Supplier.

Replacement Supplier: any third party supplier of Replacement Services appointed by the Council from time to time.

Representatives: means, in relation to a party, its employees, officers, contractors, subcontractors, representatives and advisors.

Request for Information: a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIR.

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

Services Contract Conditions of Contract: these terms of conditions forming Schedule 1 of the Contract.

Services Contract Particulars of Contract: the document detailing particulars of contract in relation to the Services to be provided under this Contract.

Services Start Date: The date on which the Services shall start being provided as set out in the Services Contract Particulars of Contract.

Specification: The description of the Services to be provided as detailed at Schedule 4.

Start Date: The date on which the Contract commences as set out in the Services Contract Particulars of Contract.

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

Supplier's Tender Response: the tender submitted by the Supplier and other associated documentation set out in **Error! Reference source not found.**

Sub-Contract: any contract or agreement (or proposed contract or agreement) between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the Services from that third party.

Sub-Contractor: a person with whom the Supplier enters into a Sub-Contract, and any third party with whom that third party enters into a subcontract or its servants or agents.

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

- a) any extension pursuant to clause 2.2; or
- b) the earlier termination of this Contract in accordance with its terms.

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

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

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

1.2 Interpretation:

- (a) Clause, schedule and paragraph headings shall not affect the interpretation of this
- (b) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (c) The schedules form part of this Contract and shall have effect as if set out in full in the body of this Contract and any reference to this Contract includes the schedules.
- (d) A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- (e) Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- (f) Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

- (g) Unless expressly provided otherwise in this Contract, a reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted and includes any subordinate legislation made under it, in each case from time to time.
- (h) A reference to **writing** or **written** excludes fax but not e-mail.
- (i) Any obligation in this Contract on a person not to do something includes an obligation not to agree or allow that thing to be done.
- (j) A reference to this Contract or to any other agreement or document is a reference to this Contract or such other agreement or document as varied from time to time.
- (k) References to clauses and schedules are to the clauses and schedules of this Contract and references to paragraphs are to paragraphs of the relevant schedule.
- (l) Any words following the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (m) If there is any conflict or ambiguity between any of the provisions in the main body of this Contract and the schedules, such conflict or inconsistency shall be resolved according to the priority set out in the Services Contract Particulars of Contract. Where there is any conflict or inconsistency between the provisions of this Contract and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Supplier has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services and the Supplier has notified the Council in writing.

2. Commencement and Duration

- 2.1 This Contract shall take effect on the Start Date and shall continue for the Term.
- 2.2 The Council may, by giving the Supplier written notice of no less than the Extension Notice Period prior to expiry of the Initial Term, request an extension of this Contract on the same terms mutatis mutandis, for the Extension Period from the day following expiry of the Initial Term.

3. Due diligence and Supplier's warranty

- 3.1 The Supplier acknowledges and confirms that:
 - (a) the Council has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Contract;
 - (b) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied or made available to it by or on behalf of the Council pursuant to clause 3.1(a);

- (c) it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Council before the Start Date) of all relevant details relating to the performance of its obligations under this Contract (including without limitation the suitability of Council Premises); and
 - (d) it has entered into this Contract in reliance on its own due diligence.
- 3.2 No representations, warranties or conditions are given or assumed by the Council in respect of any information which is provided to the Supplier by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.
- 3.3 The Supplier:
 - (a) warrants and represents that all information and statements made by the Supplier as a part of the procurement process, including without limitation the Supplier's Tender Response, including any response to any pre-qualification questionnaire (if applicable), remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of this Contract; and
 - (b) shall promptly notify the Council in writing if it becomes aware during the performance of this Contract of any inaccuracies in any information provided to it by the Council during such due diligence which materially and adversely affects its ability to perform the Services.
- 3.4 The Supplier shall not be entitled to recover any additional costs or charges from the Council arising as a result of, nor be relieved from any of its obligations under this Contract on the ground of, any matters or inaccuracies notified to the Council by the Supplier in accordance with clause 3.3(b), save where such additional costs or adverse effect on performance have been caused by the Supplier having been provided with fundamentally misleading information by or on behalf of the Council and the Supplier could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Supplier may recover such reasonable additional costs from the Council or shall be relieved from performance of certain obligations as shall be agreed between the parties in writing.

4. Supply of services

- 4.1 The Supplier shall provide the Services to the Council with effect from the Services Start Date for the duration of the Term in accordance with the provisions of this Contract.
- 4.2 In providing the Services, the Supplier shall at all times:
 - (a) without prejudice to **Error! Bookmark not defined.Error! Reference source not found.**, provide the Services with reasonable care and skill and in accordance with Best Industry Practice;

- (b) ensure that all goods, materials, standards and techniques used in providing the Services are of the best quality and are free from defects in workmanship, installation and design;
- (c) obtain, maintain and comply with all Necessary Consents at its own cost (unless otherwise agreed in writing with the Council);
- (d) allocate sufficient resources to provide the Services in accordance with the terms of this Contract;
- (e) ensure that any of the Supplier's Personnel who are engaged in the provision of any of the Services shall, if required by the Council, attend such meetings at the premises of the Council or elsewhere as may be reasonably required by the Council; and
- (f) provide such reasonable co-operation and information in relation to the Services to such of the Council's other suppliers as the Council may reasonably require for the purposes of enabling any such person to create and maintain any interfaces reasonably required by the Council.

5. Compliance and change in laws

- 5.1 In performing its obligations under this Contract, the Supplier shall at all times comply with all applicable Law.
- 5.2 The Supplier shall maintain such records as are necessary pursuant to the applicable Law and shall promptly on request make them available for inspection by any relevant authority that is entitled to inspect them and by the Council (or its Authorised Representative).
- 5.3 Without limiting the generality of the obligation under clause 5.1, the Supplier shall (and shall procure that the Supplier Personnel shall) perform its obligations under this Contract (including those in relation to the Services) in accordance with all applicable Law regarding health and safety.
- 5.4 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Council Premises of which it becomes aware and which relate to or arise in connection with the performance of this Contract. The Supplier shall instruct the Supplier Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.
- 5.5 Without limiting the general obligation set out in clause 5.1, the Supplier shall (and shall procure that the Supplier Personnel shall):
 - (a) perform its obligations under this Contract (including those in relation to the Services) in accordance with:

- (i) all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - (ii) any other requirements and instructions which the Council reasonably imposes in connection with any equality obligations imposed on the Council at any time under applicable equality Law;
 - (b) take all necessary steps, and inform the Council of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or any successor organisation.
- 5.6 The Supplier shall monitor and shall keep the Council informed in writing of any changes in the Law which may impact the Services and shall provide the Council with timely details of measures it proposes to take and changes it proposes to make to comply with any such changes. The Supplier shall only implement such changes in accordance with this Contract.
- 5.7 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms of this Contract nor be entitled to an increase in the Charges as the result of a General Change in Law.

6. Supplier environmental obligations

- 6.1 The Supplier shall ensure that its operations comply with all applicable environmental Law, including in relation to waste disposal, GHG emissions and the handling of hazardous and toxic materials.
- 6.2 The Supplier shall have in place a suitable environmental management system for managing its environmental risks, which as a minimum must:
- (a) assess the environmental impact of all past, current and future operations;
 - (b) specify steps to continuously improve environmental performance, and reduce pollution, emissions and waste;
 - (c) specify measures to reduce the use of all raw materials, energy and supplies;
 - (d) require Supplier Personnel to be trained in environmental matters.

7. Use of Council Premises and Assets

- 7.1 With effect from the Start Date, the Council shall grant the Supplier a non-exclusive and revocable licence to enter the Council Premises for the sole purpose of providing the Services to the Council. The licence shall be subject to the conditions of this Contract, is personal to the Supplier and is not deemed to create a relationship of landlord and tenant between the parties.
- 7.2 The licence granted pursuant to clause 7.1 shall terminate immediately on the Termination Date.

- 7.3 The Supplier shall ensure that visiting or using the Council Premises, the Supplier Personnel shall:
- (a) keep the Council Premises clean, tidy and properly secure;
 - (b) co-operate as far as may be reasonably necessary with the Council's employees;
 - (c) act in such a way as to avoid causing unreasonable or unnecessary disruption to the routine and procedures of the Council; and
 - (d) comply with all the rules and regulations that the Council notifies to the Supplier from time to time relating to the use and security of the Council Premises.
- 7.4 The Supplier shall ensure that the Supplier Personnel shall not:
- (a) obstruct access to the Council Premises, or any part of them; or
 - (b) do or permit to be done on the Council's Premises anything which is illegal or which may be or become a nuisance, damage, inconvenience or disturbance to the Council or the occupiers of or visitors to the Council Premises.
- 7.5 The Supplier shall ensure that any Council Assets are:
- (a) used with all reasonable care and skill and in accordance any manufacturer guidelines or instructions;
 - (b) kept properly secure; and
 - (c) not removed from the Council Premises unless expressly permitted under this Contract or agreed in writing with by the Council's Authorised Representative.
- 7.6 The Council shall maintain and repair the Council Assets provided that where such maintenance or repair arises directly from the act, omission, default or negligence of the Supplier Personnel (fair wear and tear excluded) the costs incurred by the Council in maintaining and repairing the same shall be recoverable from the Supplier as a debt.
- 7.7 The Supplier shall notify the Council immediately on becoming aware of any damage caused by the Supplier Personnel to any property of the Council or other recipient of the Services, or to any of the Council Premises in the course of providing the Services. The Supplier shall be responsible for the reasonable costs of repair or replacement and, without prejudice to its other rights and remedies under this Contract or otherwise, the Council shall be entitled to set off such reasonable costs of repair or replacement against sums owing to the Supplier under this Contract.
- 7.8 Subject to the requirements of **Error! Bookmark not defined.****Error! Reference source not found.** and any Special Conditions, in the event of the expiry or termination of this Contract, the Council shall on reasonable notice provide the Supplier with such access as the Supplier reasonably requires to the Council Premises to remove any of the Supplier's equipment. All such equipment shall be promptly removed by the Supplier.

8. Charges, invoicing and payment

- 8.1 The Council shall pay the Charges to the Supplier in accordance with this Contract.
- 8.2 Subject to any Special Conditions, the Charges:
- (a) shall remain fixed during the Term; and
 - (b) are the entire price payable by the Council to the Supplier in respect of the Services and include, without limitation, any royalties, consents, licence fees, supplies and all consumables used by the Supplier, travel costs, accommodation expenses and the cost of Supplier Personnel.
- 8.3 The Supplier shall invoice the Council for payment of the Charges in accordance with the frequency specified in the Services Contract Particulars of Contract. All invoices shall be directed to the Council's Authorised Representative and shall contain such information as the Council may inform the Supplier from time to time.
- 8.4 The Council shall accept for processing any electronic invoice submitted by the Supplier that complies with the standard on electronic invoicing provided that it is valid and undisputed. For these purposes, an electronic invoice complies with the standard of electronic invoicing where it complies with the standard and any of the syntaxes published in the UK version of Commission Implementing Decision (EU) 2017/1870 as it forms part of English law under the European Union (Withdrawal) Act 2018.
- 8.5 Where the Supplier submits an invoice to the Council in accordance with **Error! Bookmark not defined.8.3**, the Council will consider and verify that invoice in a timely fashion. Where the Council fails to do so, and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of clause 8.6 after a reasonable time has passed after the date on which it is received by the Council.
- 8.6 The Council shall pay the Supplier any Charges due under any invoice submitted to it by the Supplier within 30 days of verifying that the invoice is valid and undisputed.
- 8.7 Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:
- (a) provisions having the same effect as clause 8.5 and clause 8.6 of this Contract; and
 - (b) a provision requiring the counterparty to that Sub-Contract to include in any subcontract which it awards provisions having the same effect as clause 8.5 to clause 8.7 of this Contract.
- 8.8 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with **Error! Bookmark not defined.15**. Provided that the

sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until 14 days after resolution of the dispute between the parties.

- 8.9 Subject to clause 8.8, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this Contract in accordance with **Error! Bookmark not defined.**8.13. The Supplier shall not suspend the supply of the Services if any payment is overdue.
- 8.10 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Council following delivery of a valid VAT invoice. The Supplier shall indemnify the Council against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Council at any time in respect of the Supplier's failure to account for, or to pay, any VAT relating to payments made to the Supplier under this Contract.
- 8.11 The Supplier shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Council pursuant to this Contract. Such records shall be retained for inspection by the Council for 6 years from the end of the Contract Year to which the records relate.
- 8.12 The Council may at any time, set off any liability of the Supplier to the Council against any liability of the Council to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Contract. Any exercise by the Council of its rights under this clause shall not limit or affect any other rights or remedies available to it under this Contract or otherwise.
- 8.13 Each party shall pay interest on any sum due under this Contract, calculated as follows:
- (a) The rate shall be 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
 - (b) The period shall be from when the overdue sum became due until it is paid.

9. Supplier Personnel

- 9.1 At all times, the Supplier shall ensure that:
- (a) each of the Supplier Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
 - (b) there is an adequate number of Supplier Personnel to provide the Services properly;
 - (c) only those people who are authorised by the Supplier (under the authorisation procedure to be agreed between the parties) are involved in providing the Services; and
 - (d) all of the Supplier Personnel comply with the applicable Law.

- 9.2 The Council may refuse to grant access to, and remove, any of the Supplier Personnel who do not comply with the reasonable instructions of the Council, or if they otherwise present a security threat.
- 9.3 The Supplier shall replace any of the Supplier Personnel whom the Council reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Supplier Personnel for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
- 9.4 The Supplier shall maintain up-to-date personnel records on the Supplier Personnel engaged in the provision of the Services and shall provide information to the Council as the Council reasonably requests on the Supplier Personnel. The Supplier shall ensure that the Supplier Personnel cannot be individually identified from the information so provided.

10. Authorised Representatives

- 10.1 Each party shall nominate an Authorised Representative who will have authority to act on its behalf and contractually bind it in respect of all matters relating to the performance of this Contract. The first Authorised Representatives are listed in the Services Contract Particulars of Contract. The Authorised Representatives will co-ordinate and manage the provision of the Services and work with each other to address any problems that arise in connection with the Services.
- 10.2 Each party shall use all reasonable endeavours to ensure that the same person acts as its Authorised Representative throughout the Term, but may, following reasonable notice to the other party, replace that person from time to time where circumstances are unforeseen and/or it is reasonably necessary in the interests of its business.

11. Data Protection

- 11.1 The Supplier shall (and shall procure that any of its Supplier's Personnel involved in the provision of the Services shall) comply with any registration requirements under the Data Protection Legislation and in respect of the use of personal information in the course of performing its obligations under the Contract both parties shall duly observe all their obligations under the Data Protection Legislation, best practice and any Data Sharing Agreements.
- 11.2 Notwithstanding the general obligation in clause 11.1 of these Services Contract Conditions of Contract, where the provision of Services requires the Supplier to process Personal Data as Processor for the Council, the Supplier shall enter into a Data Processing Agreement with the Council.
- 11.3 The Provider shall indemnify the Council for any costs, losses or expenses that the Council incurs as a result of the Supplier failing to comply with the Data Protection Legislation or otherwise breaching this clause (including in any situation where a court

or tribunal of competent jurisdiction holds the Supplier and the Council jointly and severally liable in respect of any claim where the Supplier was the Processor (either solely or jointly)).

11.4 The provisions of this clause 11 shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

12. Freedom of Information

12.1 The Supplier acknowledges that the Council is subject to the requirements of the FOIA and the EIR. The Supplier shall (and shall procure that any of its Supplier's Personnel involved in the provision of the Contract shall):

- (a) provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and EIR;
- (b) transfer to the Council all requests for information relating to this Contract (including the Services) that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- (c) provide the Council with a copy of all information belonging to the Council requested in the Request for Information which is in its possession or control in the form that the Council requires within 5 Working Days (or such other period as the Council may reasonably specify) of the Council's request for such information;
- (d) not respond directly to a Request for Information unless authorised in writing to do so by the Council; and
- (e) indemnify the Council against all claims, demands, actions, costs, expenses (including legal costs and disbursements), losses and damages arising from or incurred by reason of any breach of this clause 12 by the Supplier except to the extent that they have been caused by or contributed to by the Council's acts or omissions.

12.2 The Supplier acknowledges that the Council may be required under the FOIA and EIR to disclose information (including Confidential Information) without consulting or obtaining consent from the Supplier. The Council shall take reasonable steps to notify the Supplier of a Request for Information to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) the Council shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and/or the EIR.

13. Confidentiality

13.1 Each party undertakes that it shall not at any time disclose to any person any Confidential Information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 13.2.

13.2 Each party may disclose the other party's Confidential Information:

- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's Confidential Information comply with this clause 13;
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory Council (including but not limited to in accordance with clause 12.2).

13.3 Neither party shall use the other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

14. Insurance

14.1 The Supplier shall at its own cost effect and maintain with reputable insurance companies insurance policies to cover its liabilities under this Contract providing as a minimum the following levels of cover:

- (a) public liability insurance with a limit of indemnity of at least £10 million in relation to any one claim or series of claims;
- (b) employer's liability insurance with a limit of at least £10 million per claim in relation to any one claim or series of claims; and
- (c) any other insurances required under the Special Conditions;

(the **Required Insurances**). The cover shall be in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of this Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.

14.2 The Supplier shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

14.3 If, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

14.4 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under this Contract.

14.5 The Supplier shall hold and maintain the Required Insurances for a minimum of six years (or twelve years if the Contract has been executed as a deed) following expiry or earlier termination of this Contract.

15. Dispute resolution

15.1 If a dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it (**Dispute**) then, the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;
- (b) if the Authorised Representatives are for any reason unable to resolve the Dispute within 30 Working Days of service of the Dispute Notice, the Dispute shall be referred to the Council's Chief Executive and the Supplier's Chief Executive (or equivalent) who shall attempt in good faith to resolve it;
- (c) if the Council's Chief Executive and the Supplier's Chief Executive (or equivalent) are for any reason unable to resolve the Dispute within 30 Working Days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 15 Working Days of referral of the Dispute Notice, the mediator will be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, referring the dispute to mediation.

15.2 Unless otherwise agreed between the parties, the mediation will start not later than 15 Working Days after the date of the ADR notice.

15.3 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings.

16. Intellectual property

16.1 In the absence of prior written agreement by the Council to the contrary, all Intellectual Property Rights created by the Supplier or Supplier Personnel:

- (a) in the course of performing the Services; or
- (b) exclusively for the purpose of performing the Services,

shall vest in the Council on creation.

16.2 The Supplier shall indemnify the Council against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Council's acts or omissions.

17. Termination

17.1 The Council may terminate this Contract in whole or part with immediate effect by the service of written notice on the Supplier in the following circumstances:

- (a) if the Supplier is in Material Breach of any obligation under this Contract and that breach is not capable of remedy to the Council's satisfaction;
- (b) if the Supplier is in Material Breach of any obligation under this Contract, that breach is capable of remedy and the Supplier has failed to remedy the breach to the Council's satisfaction within 28 days of receipt of a Default Notice;
- (c) if there is an Insolvency Event;
- (d) if there is a change of control of the Supplier within the meaning of section 1124 of the Corporation Tax Act 2010;
- (e) if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply; or
- (f) if any other circumstances specified in the Special Conditions apply.

17.2 Either party may terminate this Contract in accordance with the provisions of clause 19 of these Services Contract Conditions of Contract.

17.3 The Council may terminate this Contract in accordance with the provisions of clause 20 of these Services Contract Conditions of Contract.

17.4 If this Contract is terminated by the Council for cause under clause 17.1 and/or clause 17.2 of these Services Contract Conditions of Contract such termination shall be at no loss or cost to the Council and the Supplier hereby indemnifies the Council against any such losses or costs which the Council may suffer as a result of any such termination for cause.

18. Consequences of Expiry or Termination

18.1 On the expiry of the Term or if this Contract is terminated in whole or in part for any reason the Supplier shall:

- (a) co-operate fully with the Council to ensure an orderly migration of the Services to the Council or, at the Council's request, a Replacement Supplier at no extra cost to the Council; and
- (b) procure that all data, Documents and other material belonging to the Council (and all media of any nature containing information and data belonging to the Council or relating to the Services), shall be delivered to the Council forthwith at no extra cost to the Council and the Supplier's Authorised Representative shall certify full compliance with this clause.

18.2 If the Supplier fails to fulfil its obligations under clause 18.1 then the Council shall have authority to enter the Supplier's premises upon reasonable notice and take possession

of any items which should have been returned to it. Until they have been returned the Supplier shall be solely responsible for their safe keeping.

18.3 Where notice of termination has been given, the parties shall immediately liaise with regard to matters such as the redeployment of personnel and potential transfer of contractual obligations and liabilities in order to minimise the financial repercussions of such termination and ensure an orderly migration of the Services to the Council or, at the Council's election, to a Replacement Supplier.

18.4 The termination of this Contract is without prejudice to the accrued rights of the Parties.

19. Force Majeure

19.1 Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly.

19.2 If the period of delay or non-performance continues for 3 months, the party not affected may terminate the Contract by giving 30 days' written notice to the affected party.

19.3 A party cannot claim relief under clause 19.1 if:

- (a) the delay or failure is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the cause in question; and/or
- (b) in accordance with best practice prevailing in the relevant industry, the Supplier should have foreseen and provided for the cause in question.

20. Prevention of bribery

20.1 The Supplier represents and warrants that neither it, nor any of its Supplier Personnel:

- (a) has committed a Prohibited Act;
- (b) to the best of its knowledge has been or is subject to an investigation, inquiry or enforcement proceedings by a governmental, administrative or regulatory body regarding any Prohibited Act or alleged Prohibited Act; or
- (c) has been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

20.2 The Supplier shall promptly notify the Council if, at any time during the Term, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in clause 20.1 at the relevant time.

20.3 The Supplier shall (and shall procure that its personnel shall) during the Term:

- (a) not commit a Prohibited Act;
 - (b) not do or omit to do anything that would cause the Council or any of the Council's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements;
 - (c) notify the Council (in writing) if it becomes aware of any breach of clause 20.1(a) or clause 20.1(b), or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage in connection with performance of this Contract.
- 20.4 The Supplier shall maintain appropriate and up to date records showing all payments made by the Supplier in connection with this Contract and the steps taken to comply with its obligations under clause 20.3.
- 20.5 The Supplier shall allow the Council and its third party representatives to audit any of the Supplier's records and any other relevant documentation.
- 20.6 If the Supplier is in default under this clause 20.1 the Council may by notice:
- (a) require the Supplier to remove from performance of this Contract any personnel whose acts or omissions have caused the default; or
 - (b) immediately terminate this Contract.
- 20.7 Any notice served by the Council under clause 20.6 shall specify the nature of the Prohibited Act, the identity of the party who the Council believes has committed the Prohibited Act and the action that the Council has elected to take (including, where relevant, the date on which this Contract shall terminate).

21. Assignment and other dealings

- 21.1 The Council may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.
- 21.2 The Supplier may not assign, transfer, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Council.

22. Subcontracting

- 22.1 The Supplier may not subcontract any or all of its rights or obligations under the Contract without the prior written consent of the Council.
- 22.2 If the Council consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all the acts and omissions of its subcontractors as if they were its own.

23. Entire agreement

- 23.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.
- 23.2 Each party acknowledges that in entering into this Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract.
- 23.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.

24. Variation

- 24.1 Except as set out in these Services Contract Conditions of Contract or in any Special Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Council.

25. Waiver

- 25.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 25.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

26. Rights and remedies

- 26.1 Except as expressly provided in this Contract, the rights and remedies provided under this Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

27. Severance

- 27.1 If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract.
- 27.2 If any provision or part-provision of this Contract is deemed deleted under clause 27.1, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

28. Notices

28.1 Any notice given to a party under or in connection with this Contract shall be in writing marked for the attention of the party's Authorised Representative and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service to NWLDC, PO Box 11051, Coalville, LE67 0FW in respect of notices to the Council or to its registered office (if a company) or its principal place of business (in any other case) in respect to notices to the Supplier; or
- (b) sent by email, provided that a copy is also delivered by hand or by pre-paid first-class post or other next working day delivery service in accordance with (b) above.

28.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; or
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service.

28.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

29. Third party rights

29.1 Unless it expressly states otherwise, this Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.

29.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Contract are not subject to the consent of any other person.

30. No partnership or agency

30.1 Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

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

31. Governing law

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

32. Jurisdiction

- 32.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).