

Public Health  
1<sup>st</sup> Floor Westfields  
c/o Municipal Buildings  
Earle Street  
Crewe  
Cheshire  
CW1 2BJ

DATE: [DD/MM/YY]      OUR REF: [0000/0000]      YOUR REF: [0000/0000]

Please Contact: Nik Darwin

Dear Sirs,

**Re: Contract for the supply of data and intelligence for use in the Joint Strategic Needs Assessment (JSNA)**

Following your proposal for the supply of data and intelligence to Cheshire East Borough Council, we are pleased to enclose two copies of the contract for execution.

Please can you arrange for both copies of the contract to be signed on behalf of your organisation? Please do not date the contracts.

Please return both copies of the contract to me at the address above so that I can arrange for them both to be signed on behalf of the Council and dated. I shall then return one completed copy to you for you to retain for your records.

Yours faithfully

Nik Darwin

Commissioning Support Manager, Public Health

**DATED**

**2015**

**(1) CHESHIRE EAST BOROUGH COUNCIL**

**(2)[ ]**

**CONTRACT FOR THE PROVISION OF SERVICES**



## SIGNATURE

For and on behalf of Cheshire East  
Borough Council

Authorised signatory:

Name:

Title:

Date:

For and on behalf of [            ]

Authorised signatory:

Name:

Title:

Date:

I hereby witness and attest this signature  
of the above named Director/Authorised  
Signatory

Signature

Name

Address

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## **SCHEDULE 1**

### **TERMS AND CONDITIONS OF CONTRACT FOR THE PROVISION OF SERVICES**

#### **1 Definitions and Interpretation**

##### **1.1 In these terms and conditions:**

<b>“Contract”</b>	means the contract between (i) the Council and (ii) the Supplier comprising of: <ul style="list-style-type: none"><li>• Articles of Agreement;</li><li>• Schedule 1 - Terms and Conditions of Contract;</li><li>• Schedule 2 - Special Terms and Conditions of Contract;</li><li>• Schedule 3 – Specification;</li><li>• Schedule 4 – Pricing Schedule;</li><li>• Schedule 5 – Supplier’s Tender;</li></ul>
<b>“Central Government Body”</b>	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ul style="list-style-type: none"><li>(a) Government Department;</li><li>(b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li><li>(c) Non-Ministerial Department; or</li><li>(d) Executive Agency;</li></ul>
<b>“Charges”</b>	means the charges for the Services as specified in Schedule 4 (the Pricing Schedule) of the Contract;
<b>“Confidential Information”</b>	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
<b>“Council”</b>	means Cheshire East Borough Council;
<b>“DPA”</b>	means the Data Protection Act 1998;
<b>“Employee Liability Information”</b>	means: <ul style="list-style-type: none"><li>the information that a transferor is obliged to notify to a transferee under regulation 11(2) of TUPE:</li><li>(a) the identity and age of the employee;</li><li>(b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996);</li><li>(c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years;</li><li>(d) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that</li></ul>

such action may be brought against the Supplier arising out of the employee's employment with the transferor;

(e) information about any collective agreement that will have effect after the Effective Date or the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of TUPE;

“European Economic Area”	means the European Economic Area (EEA) which consists of the European Union and all the European Free Trade Association (EFTA) countries except Switzerland;
“FOIA”	means the Freedom of Information Act 2000;
“Force Majeure”	means any cause affecting the performance by a party of its obligations under this Contract arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Supplier, the Supplier’s Staff or any other failure in the Supplier's supply chain;
“Information”	has the meaning given under section 84 of the FOIA;
“Intellectual Property”	means any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites;
“Key Personnel”	means any persons specified as such in the Special Terms, or otherwise notified as such by the Council to the Supplier in writing;
“Law”	means any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body of which the Supplier is bound to comply;
“Necessary Consents”	means all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Services;
“Party”	means the Supplier or the Council (as appropriate) and “Parties” shall mean both of them;
“Personal Data”	means personal data (as defined in the DPA) which is processed by the Supplier or any Staff on behalf of the Council pursuant to or in connection with this Contract;
“Premises”	means any of the Council’s premises identified in the Special Terms at which Services are to be provided by the Supplier on the terms set out in this Contract;

"Pricing Schedule"	as set out at Schedule 4;
"Prohibited Act"	<p>the following constitute Prohibited Acts:</p> <p>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:</p> <ul style="list-style-type: none"> <li>(i) induce that person to perform improperly a relevant function or activity; or</li> <li>(ii) reward that person for improper performance of a relevant function or activity;</li> </ul> <p>(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;</p> <p>(c) committing any offence:</p> <ul style="list-style-type: none"> <li>(i) under the Bribery Act 2010;</li> <li>(ii) under legislation creating offences concerning fraudulent acts;</li> <li>(iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the Council; or</li> <li>(iv) defrauding, attempting to defraud or conspiring to defraud the Council;</li> </ul>
"Purchase Order Number"	means the Council's unique number relating to the order for Services to be provided by the Supplier to the Council in accordance with the terms of the Contract;
"Request for Information"	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term "request" shall apply);
"Services"	means the services to be provided by the Supplier to the Council under the Contract;
"Service Transfer Date"	means the date on which the Services (or any part of the Services), transfer from the Supplier or its sub-Contractor to the Authority or any replacement supplier;
"Special Terms"	means the special terms and conditions of contract as set out in Schedule 2;
"Specification"	means the specification for the Services (including as to quantity, description and quality) as specified in Schedule 3 (Specification) of the Contract;
"Staff"	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier's obligations under the Contract;
"Staff Vetting Procedures"	means vetting procedures that accord with good industry practice or, where requested by the Council, the Council's procedures for the vetting of personnel as provided to the Supplier from time to time;
"Supplier"	means the person named as Supplier in the Contract;
"Tender"	means the tender submitted by the Supplier and other associated



- documentation set out in Schedule 5 (Supplier's Tender);
- "Term" means the period from the Commencement Date of the Contract to the Expiry Date as such period may be extended in accordance with an option to extend as may be set out in the Special Terms or terminated in accordance with the terms and conditions of the Contract;
- "VAT" means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
- "Working Day" means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

1.2 In these terms and conditions, unless the context otherwise requires:

- 1.2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 1.2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 1.2.3 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Contract;
- 1.2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- 1.2.5 the word 'including' shall be understood as meaning 'including without limitation'.

## 2 **Contract Documentation**

2.1 For the avoidance of doubt, the following documents shall be deemed to be incorporated and shall be read and construed as part of this Contract:

Schedule 1 – these Terms and Conditions of Contract;

Schedule 2 – Special Terms and Conditions of Contract;

Schedule 3 – Specification;

Schedule 4 – Pricing Schedule; and

Schedule 5 – Supplier's Tender.

## 3 **Supply of Services**

3.1 In consideration of the Council's agreement to pay the Charges, the Supplier shall supply the Services to the Council during the Term subject to and in accordance with the terms and conditions of the Contract.

3.2 In supplying the Services, the Supplier shall:

- 3.2.1 co-operate with the Council in all matters relating to the Services and comply with all the Council's instructions;
- 3.2.2 perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Supplier's industry, profession or trade;
- 3.2.3 use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
- 3.2.4 ensure that the Services shall conform with all the Council's policies, the descriptions and specifications set out in the Specification;
- 3.2.5 comply with all applicable laws; and
- 3.2.6 provide all equipment, tools and vehicles and other items as are required to provide the Services.

- 3.3 The Council may by written notice to the Supplier at any time request a variation to the scope of the Services. In the event that the Supplier agrees to any variation to the scope of the Services, the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Council and the Supplier.
- 3.4 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services. As part of this obligation the Supplier shall identify and report to the Council's representative quarterly in the first contract year and once every six months for the remainder of the Term on:
- 3.4.1 the emergence of new and evolving relevant technologies which could improve the Services;
  - 3.4.2 new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, performance mechanisms and customer support services in relation to the Services;
  - 3.4.3 new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Council which might result in efficiency or productivity gains or in reduction of operational risk; and
  - 3.4.4 changes in ways of working that would enable the Services to be delivered at lower costs and/or at greater benefits to the Council.
- 3.5 Any potential Changes highlighted as a result of the Supplier's reporting in accordance with clause 3.4 shall be addressed by the Parties using the variation procedure at clause 3.3.

#### **4 Charges, Payment and Recovery of Sums Due**

- 4.1 The Charges for the Services shall be as set out in Schedule 4 (Pricing Schedule) and shall be the full and exclusive remuneration of the Supplier in respect of the provision of the Services. Unless otherwise agreed in writing by the Council, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 4.2 The Supplier shall invoice the Council as specified in the Contract. Each invoice shall include such supporting information required by the Council to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services provided in the invoice period. Where the Supplier submits an invoice in accordance with this clause the Council will consider and verify that invoice in a timely fashion. The CCGs shall be invoiced separately by the Supplier for their proportionate share of the Charges.
- 4.3 In consideration of the provision of the Services by the Supplier, the Council shall pay the Supplier the invoiced amounts no later than 30 days after the Council has received and determined that the invoice (which includes a valid Purchase Order Number) is valid and undisputed. The Council may, without prejudice to any other rights and remedies under the Contract, withhold or reduce payments in the event of unsatisfactory performance.
- 4.4 Where the Council fails to comply with clause 4.2 and there is undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of clause 4.3 after a reasonable time has passed and in any event after 60 days have passed.
- 4.5 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Council shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Services.

- 4.6 If there is a dispute between the Parties as to the amount invoiced, the Council shall pay the undisputed amount. The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate the Contract for a failure to pay undisputed sums in accordance with clause 18.3. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 22.
- 4.6 If a Party fails to make any undisputed payment due to the other Party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 2% per annum above the base lending rate of the Bank of England from time to time. The Parties agree that this clause 4.6 provides each of them with a substantial remedy in respect of any late payment of sums due for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998. Such interest shall accrue on a daily basis from the due date until the actual date of payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments that the defaulting party disputes in good faith.
- 4.7 If any sum of money is recoverable from or payable by the Supplier under the Contract (including any sum which the Supplier is liable to pay to the Council in respect of any breach of the Contract), that sum may be deducted unilaterally by the Council from any sum then due, or which may come due, to the Supplier under the Contract or under any other Contract or contract with the Council. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Council in order to justify withholding payment of any such amount in whole or in part.

## **5 Term**

- 5.1 The Contract shall take effect on the Commencement Date and shall expire on the Expiry Date, unless it is otherwise extended by the Council in accordance with an option to extend contained in the Special Terms (in which case the terms and conditions of the Contract shall apply throughout any such extended period) or terminated in accordance with the terms and conditions of the Contract.

## **6 Premises and equipment**

- 6.1 If necessary, the Council shall provide the Supplier with reasonable access at reasonable times to the Premises on a non-exclusive licence basis free of charge, for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Council's premises by the Supplier or the Staff shall be at the Supplier's risk.
- 6.2 If the Supplier supplies all or any of the Services at or from the Premises, on completion of the Services or termination or expiry of the Contract (whichever is the earlier) the Supplier shall vacate the Premises, remove the Supplier's plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Premises in a clean, safe and tidy condition. The Supplier shall be solely responsible for making good any damage to the Premises or any objects contained on the Premises which is caused by the Supplier or any Staff, other than fair wear and tear.
- 6.3 If the Supplier supplies all or any of the Services at or from its premises or the premises of a third party, the Council may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
- 6.4 The Council shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Premises the Supplier shall, and shall procure that all Staff shall, comply with all the Council's security requirements.
- 6.5 Where all or any of the Services are supplied from the Supplier's premises, the

Supplier shall, at its own cost, comply with all security requirements specified by the Council in writing.

- 6.6 Without prejudice to clause 3.2.6, any equipment provided by the Council for the purposes of the Contract (Council Equipment) shall remain the property of the Council and shall be used by the Supplier and the Staff only for the purpose of carrying out the Contract. Such Council Equipment shall be returned promptly to the Council on expiry or termination of the Contract.
- 6.7 The Supplier shall reimburse the Council for any loss or damage to the Council Equipment (other than deterioration resulting from normal and proper use) caused by the Supplier or any Staff. Equipment supplied by the Council shall be deemed to be in a good condition when received by the Supplier or relevant Staff unless the Council is notified otherwise in writing within 5 Working Days.

## **7 Staff and Key Personnel**

- 7.1 If the Council reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Contract, it may, by giving written notice to the Supplier:

- 7.1.1 refuse admission to the relevant person(s) to the Premises;
- 7.1.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s); and/or
- 7.1.3 require that the Supplier replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Council to the person removed is surrendered;

and the Supplier shall comply with any such notice.

- 7.2 The Supplier shall ensure that:

- 7.2.1 each of the Staff is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
- 7.2.2 there is an adequate number of Staff to provide the Services properly;
- 7.2.3 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;
- 7.2.4 all of the Staff comply with all of the Council's policies including those that apply to persons who are allowed access to the Premises;
- 7.2.5 all Staff are vetted in accordance with the Staff Vetting Procedures and if requested, comply with the Council's Staff Vetting Procedures as supplied from time to time;
- 7.2.6 if requested to do so, it shall provide the Council with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Premises in connection with the Contract; and
- 7.2.7 it procures that all Staff comply with any rules, regulations and requirements reasonably specified by the Council.

- 7.3 The Council may refuse to grant access to, and remove, any of the Staff who do not comply with any such policies, or if they otherwise present a security threat.
- 7.4 The Supplier shall replace any of the Staff who the Council reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Staff 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.
- 7.5 The Supplier shall maintain up-to-date personnel records on the Staff engaged in the provision of the Services and, on request, provide reasonable information to the

Council on the Staff. The Supplier shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.

- 7.6 The Supplier shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good at the prevailing industry norm for similar services, locations and environments.
- 7.7 The Supplier shall appoint the Key Personnel to be responsible for the matters allocated to such Key Personnel. The Key Personnel are key to the success of the implementation and/or operation of the Services and shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of the Supplier on the matters for which they are expressed to be responsible.
- 7.8 The Supplier shall not remove or replace any of the Key Personnel unless:
  - 7.8.1 requested to do so by the Council;
  - 7.8.2 the person is on long-term sick leave;
  - 7.8.3 the element of the Services in respect of which the individual was engaged has been completed to the Council's satisfaction;
  - 7.8.4 the person resigns from their employment with the Supplier;
  - 7.8.5 the Supplier obtains the prior written consent of the Council.
- 7.9 The Supplier shall inform the Council of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified. The Council shall be entitled to interview any such person and may object to any such proposed appointment within 20 Working Days of being informed of or meeting any such replacement if, in its reasonable opinion, it considers the proposed replacement to be unsuitable for any reason.
- 7.10 The Supplier shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than 5 Working Days. Any replacement shall be as, or more, qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Supplier or the Council becoming aware of the role becoming vacant.
- 7.11 The Council may require the Supplier to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities.
- 7.12 If the Supplier replaces the Key Personnel as a consequence of this clause 7, the cost of effecting such replacement shall be borne by the Supplier.
- 7.13 Any Key Personnel shall not be released from supplying the Services without the agreement of the Council, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.
- 7.14 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Council (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

## **8 Assignment and sub-contracting**

- 8.1 The Supplier shall not without the written consent of the Council assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Contract or any part of the Contract. Where the Supplier's tender identifies a sub-contractor, this sub clause shall only apply to the replacement of the already identified sub-contractor. The Council may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall be responsible for the acts and omissions of its sub-Suppliers as though those acts and omissions were its own.
- 8.2 Where the Supplier enters into a sub-contract for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such sub-contract which requires payment to be made of all sums due by the Supplier to the sub-Supplier within a specified period not exceeding 30 days from the receipt of a valid invoice in accordance with the terms of clauses 4.2, 4.3 and 4.4 above and a provision requiring the sub-Supplier to that Sub-Contract to include in any further Sub-Contract it awards similar provisions to clauses 4.2, 4.3 and 4.4 above. In this clause, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the Council in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract .
- 8.3 Where the Council has consented to the placing of sub-contracts, the Supplier shall, at the request of the Council, send copies of each sub-contract, to the Council as soon as is reasonably practicable.
- 8.4 The Council may assign, novate, or otherwise dispose of its rights and obligations under the Contract without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under the Contract.

## **9 Conflicts of Interest**

- 9.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff is placed in a position where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Council under the provisions of the Contract. The Supplier will disclose to the Council full particulars of any such conflict of interest which may arise.
- 9.2 The Council reserves the right to terminate the Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Council under the provisions of the Contract.

## **10 Intellectual Property and Indemnity**

- 10.1 In the absence of prior written agreement by the Council to the contrary, all Intellectual Property created by the Supplier or any employee, agent or subcontractor of the Supplier:

- (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.

For the avoidance of doubt, Intellectual Property shall include all community JSNA website content hosted on the Supplier's website. It shall vest in the Council on creation and be transferred to the Council on termination of the Contract, or at any time on request from the Council.

- 10.2 All Intellectual Property in any materials provided by the Council to the Supplier for the purposes of this Contract shall remain the property of the Council but the Council hereby grants the Supplier a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Contract for the sole purpose of enabling the Supplier to perform its obligations under the Contract.
- 10.3 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 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.

## **11 Governance and Records**

### **11.1 The Supplier shall:**

- 11.1.1 attend progress meetings with the Council at the frequency and times specified by the Council and shall ensure that its representatives are suitably qualified to attend such meetings; and
- 11.1.2 submit progress reports to the Council at the times and in the format specified by the Council.

- 11.2 The Supplier shall keep and maintain until 6 years after the end of the Contract, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it and all payments made by the Council. The Supplier shall on request afford the Council or the Council's representatives such access to those records as may be reasonably requested by the Council in connection with the Contract.

## **12 Confidentiality, Transparency and Publicity**

### **12.1 Subject to clause 12.2, each Party shall:**

- 12.1.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
- 12.1.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Contract.

- 12.2 Notwithstanding clause 12.1, a Party may disclose Confidential Information which it receives from the other Party:

- 12.2.1 where disclosure is required by applicable law or by a court of competent jurisdiction;
- 12.2.2 to its auditors or for the purposes of regulatory requirements;
- 12.2.3 on a confidential basis, to its professional advisers;
- 12.2.4 to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
- 12.2.5 where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier's obligations under the Contract provided

that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 12.2.5 shall observe the Supplier's confidentiality obligations under the Contract; and

12.2.6 where the receiving Party is the Council:

- (a) on a confidential basis to the employees, agents, consultants and contractors of the Council;
- (b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Council transfers or proposes to transfer all or any part of its business;
- (c) to the extent that the Council (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
- (d) in accordance with clause 13;

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality Contract or arrangement containing terms no less stringent than those placed on the Council under this clause 12.

12.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Contract is not Confidential Information and the Supplier hereby gives its consent for the Council to publish this Contract in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Contract agreed from time to time. The Council may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.

12.4 The Supplier shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Contract or any part of the Contract in any way, except with the prior written consent of the Council.

### **13 Freedom of Information**

13.1 The Supplier acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:

- 13.1.1 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 the Environmental Information Regulations 2004;
- 13.1.2 transfer to the Council all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- 13.1.3 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; and
- 13.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Council.

13.2 The Supplier acknowledges that the Council may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Supplier or the Services (including commercially sensitive information) without



consulting or obtaining consent from the Supplier. In these circumstances the Council shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

- 13.3 Notwithstanding any other provision in the Contract, the Council shall be responsible for determining in its absolute discretion whether any Information relating to the Supplier or the Services is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

#### **14 Protection and Security of Data**

- 14.1 The Supplier warrants that in providing data to the Council and the CCGs the Supplier is not in breach of the DPA.
- 14.2 The Supplier shall, and shall procure that all Staff shall, comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA which arise in connection with the Contract.
- 14.3 Notwithstanding the general obligation in clause 14.2, where the Supplier is processing Personal Data for the Council as a data processor (as defined by the DPA) the Supplier shall:
- 14.3.1 ensure that it has in place appropriate technical and organisational measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA;
  - 14.3.2 provide the Council with such information as the Council may reasonably request to satisfy itself that the Supplier is complying with its obligations under the DPA;
  - 14.3.3 promptly notify the Council of:
    - (a) any breach of the security requirements of the Council as referred to in clause 14.4; and
    - (b) any request for personal data; and
  - 14.3.4 ensure that it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the DPA.
- 14.4 When handling Council data (whether or not Personal Data), the Supplier shall ensure the security of the data is maintained in line with the security requirements of the Council as notified to the Supplier from time to time. The Supplier shall not cause or allow any of the Council's data to be transferred outside of the European Economic Area.

#### **15 Liability**

- 15.1 The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Council if and to the extent that it is caused by the negligence or wilful misconduct of the Council or by breach by the Council of its obligations under the Contract.
- 15.2 Subject always to clauses 15.3 and 15.4:
- 15.2.1 the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Contract, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise

shall in no event exceed a sum equal to either 125% of the Charges paid or payable to the Supplier or such other sum as is set out in the Special Terms. This proviso shall not apply however if no such amount is recoverable due to the Supplier having been in breach of its obligations under clause 16 (Insurance) or of the terms of any insurance maintained in accordance therewith or having failed to report such circumstances of the claim to the insurers in question timeously; and

15.2.2 except in the case of claims arising under clauses 10.3 and 21.9, in no event shall the Supplier be liable to the Council for any:

- (a) loss of profits;
- (b) loss of business;
- (c) loss of revenue;
- (d) loss of or damage to goodwill;
- (e) loss of savings (whether anticipated or otherwise); and/or
- (f) any indirect, special or consequential loss or damage.

15.3 Nothing in the Contract shall be construed to limit or exclude either Party's liability for:

15.3.1 death or personal injury caused by its negligence or that of its Staff;

15.3.2 fraud or fraudulent misrepresentation by it or that of its Staff; or

15.3.3 any other matter which, by law, may not be excluded or limited.

15.4 The Supplier's liability under the indemnity in clause 10.3 and 21.9 shall be unlimited.

## **16 Insurance**

16.1 The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the levels of covers specified in the Special Terms ("the Required Insurances").

16.2 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.

16.3 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.

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

16.5 The Supplier shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of the Contract.

## **17 Force Majeure**

Neither Party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from circumstances beyond the reasonable control of the Supplier which amount to Force Majeure. Each Party shall promptly notify the other Party in writing when such

circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than 30 days, either Party may terminate the Contract by written notice to the other Party.

## **18 Termination**

- 18.1 Without prejudice to any other right or remedy it might have, the Council may terminate the Contract by written notice to the Supplier with immediate effect if:
- 18.1.1 The Supplier (without prejudice to clause 18.1.5), is in material breach of any obligation under the Contract which is not capable of remedy;
  - 18.1.2 The Supplier repeatedly breaches any of the terms and conditions of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Contract;
  - 18.1.3 The Supplier is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;
  - 18.1.4 The Supplier undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;
  - 18.1.5 The Supplier breaches any of the provisions of clauses 7.2, 12, 14, and 19 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 18.1.5) in consequence of debt in any jurisdiction;
  - 18.1.6 If any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.
- 18.2 The Supplier shall notify the Council as soon as practicable of any change of control as referred to in clause 18.1.4 or any potential such change of control.
- 18.3 In addition to the Supplier's statutory rights, the Supplier may terminate the Contract by written notice to the Council if the Council has not paid any undisputed amounts within 90 days of them falling due.
- 18.4 Termination or expiry of the Contract shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 3.2, 7, 10, 11.2, 12, 13, 14, 15, 16.5, 18.6, 21, 22 and 23.7 or any other provision of the Contract that either expressly or by implication has effect after termination, including provisions in the Special Terms.
- 18.5 The Council may terminate the Contract at any time by notice in writing to the Supplier to take effect on any date falling at least 1 month (or, if the Contract is less than 3 months in duration, at least 10 Working Days) later than the date of service of the relevant notice, or as stated in the Special Terms.
- 18.6 Upon termination or expiry of the Contract, the Supplier shall:
- 18.6.1 give all reasonable assistance to the Council and any incoming supplier of the Services; and
  - 18.6.2 return all requested documents, information and data to the Council as soon as reasonably practicable.
- 18.7 If the Contract is terminated under clause 18.1.6 then the Parties will agree how the costs that are to be incurred by the Parties pursuant to such termination may be apportioned between them. Any dispute as to the apportionment of the costs shall be dealt with in accordance with the dispute resolution procedure in clause 22.

## **19 Compliance**

- 19.1 The Supplier shall ensure that all Necessary Consents are in place to provide the Services and the Council shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 19.2 Where there is any conflict or inconsistency between the provisions of the 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.
- 19.3 The Supplier shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Council shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Council's premises and which may affect the Supplier in the performance of its obligations under the Contract.
- 19.4 The Supplier shall:
- 19.4.1 comply with the reasonable requirements of the Council's security arrangements;
  - 19.4.2 comply with all the Council's health and safety measures;
  - 19.4.3 comply with the requirements of the Health and Safety at Work Act 1974 and any other acts, orders, regulations or codes of practice relating to health and safety;
  - 19.4.4 if requested by the Council, supply the Council with a copy of the Supplier's Health and Safety policy statement;
  - 19.4.5 notify the Council immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Council's premises where that incident causes any personal injury or damage to property which could give rise to personal injury;
  - 19.4.6 perform its obligations under the Contract in accordance with all applicable equality Law and the Council's equality and diversity policy as provided to the Supplier from time to time;
  - 19.4.7 take all reasonable steps to secure the observance of clause 19.4.6 by all Staff;
  - 19.4.8 provide the Services in accordance with the Council's environmental policy as provided from time to time; and
  - 19.4.9 comply with any social value provisions set out in the Special Terms.
- 19.5 The Supplier will provide the Council on demand, at no cost to the Council and within such reasonable time which the Council may stipulate, with such Employee Liability Information regarding the terms and conditions of its Staff involved in the provision of the Services as the Council may reasonably require in order for the Council to decide whether the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) (or as may be amended) apply upon expiry or termination of this Contract and/or so that the Council can make appropriate provision in any future tender documentation for the Services and or related services. Information disclosed to the Council pursuant to the clause shall not be used for any other purpose without the consent of the Supplier.

## **20 Warranties and Representation**

20.1 The Supplier acknowledges and confirms that:

20.1.1 it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Council all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this Contract;

20.1.2 it has received all information requested by it from the Council pursuant to clause 20.1.1 to enable it to determine whether it is able to provide the Services in accordance with the terms of this Contract;

20.1.3 it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council pursuant to clause 20.1.1;

20.1.4 it has raised all relevant due diligence questions with the Council before the Commencement Date;

20.1.5 it has entered into this Contract in reliance on its own due diligence.

20.2 Save as provided in this Contract, 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.

20.3 The Supplier warrants and represents that:

20.3.1 as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the Contract;

20.3.2 it 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;

20.3.3 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;

20.3.4 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and

20.3.5 it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

20.4 The Supplier shall not be entitled to recover any additional costs from the Council which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Council by the Supplier in accordance with clause 20.3.2 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 shall be entitled to recover such reasonable additional costs from the Council or shall be relieved from performance of certain obligations as shall be agreed in writing between the Parties.

- 20.5 Nothing in this clause 20 shall limit or exclude the liability of the Council for fraud or fraudulent misrepresentation.

## **21 Prevention of Fraud and Corruption**

### **21.1 The Service Provider:**

- (a) shall not, and shall procure that any Supplier Staff shall not in connection with this Contract commit a Prohibited Act; and
- (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Contract.

- 21.2 The Supplier shall have an anti-bribery policy (which shall be disclosed to the Council on request) to prevent any Staff from committing a Prohibited Act and shall enforce it where appropriate.

- 21.3 If any breach of clause 21.1 is suspected or known, the Supplier must notify the Council immediately.

- 21.4 If the Supplier notifies the Council that it suspects or knows that there may be a breach of clause 21.1 the Supplier must respond promptly to the Council's enquiries, co-operate with any investigation by the Council to audit books, records and any other relevant documentation.

- 21.5 The Council may terminate this Contract by written notice with immediate effect if the Supplier or any Staff (in all cases whether or not acting with the Supplier's knowledge) breaches clause 21.1.

- 21.6 Any notice of termination under clause 21.5 must specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the party whom the Council believes has committed the Prohibited Act; and
- (c) the date on which this Contract will terminate.

- 21.7 Any dispute relating to:

- (a) the interpretation of clause 21.1; or
  - (b) the amount or value of any gift, consideration or commission,
- shall be determined by the Council and its decision shall be final and conclusive.

- 21.8 Any termination under clause 21.5 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Council.

- 21.9 If there is any breach of this clause 21 by the Supplier the Council may terminate the Contract and recover from the Supplier the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council or making other arrangements for the supply of the Goods and any additional expenditure incurred by the Council throughout the remainder of the Contract.

## 22 **Dispute Resolution**

- 22.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.
- 22.2 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 22.1, the dispute may by Contract between the Parties be referred to a neutral adviser or mediator (the “**Mediator**”) chosen by Contract between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
- 22.3 If the Parties fail to appoint a Mediator within one month, or fail to enter into a written Contract resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.

## 23 **General**

- 23.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Contract, and that the Contract is executed by its duly authorised representative.
- 23.2 Other than the CCGs, a person who is not a party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 23.3 The Contract cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 23.4 The Contract contains the whole Contract between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Contract on the basis of any representation that is not expressly incorporated into the Contract. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 23.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Contract shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.
- 23.6 The 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 the Contract. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 23.7 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract (whether under the Contract, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 23.8 If any provision of the Contract is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Contract and rendered ineffective as far as possible without modifying the remaining provisions of the Contract, and shall not in any way affect any other circumstances of or the validity or enforcement of the Contract.

## 24 **Notices**

- 24.1 Any notice to be given under the Contract shall be in writing and may be served by

personal delivery, first class recorded or, subject to clause 24.3, e-mail to the address of the relevant Party set out in the Award Letter, or such other address as that Party may from time to time notify to the other Party in accordance with this clause.

24.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An e-mail shall be deemed delivered when sent unless an error message is received.

24.3 Notices under clauses 17 (Force Majeure) and 18 (Termination) may be served by e-mail only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 24.1.

## **25 Governing Law and Jurisdiction**

The validity, construction and performance of the Contract, and all contractual and non contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.



## SCHEDULE 2

### SPECIAL TERMS AND CONDITIONS OF CONTRACT

For the purposes of the Contract, the Council and the Supplier agree the following Special Terms:

<b>1.Term:</b>	Three years term; Commencement Date: Expiry Date: Council Option to Extend: one period of twelve (12) months
<b>2. The Services - Specification:</b>	Schedule 3 the Specification as provided for by the Council.
<b>3. Place of Performance/Delivery</b>	The Services will be provided at: Non-Council premises.
<b>4. Key Personnel</b>	The following persons are Key Personnel for the purposes of the Contract:
<b>5. Charges for the Services shall be as set out in:</b>	Schedule 4 (Pricing Schedule) as provided by the Supplier.
<b>6. Liability</b>	No increase in liability cap beyond 125%. Clause 15.2 applies.
<b>7. Insurances required in accordance with clause 18 of the Terms and Conditions</b>  <b>Public Liability Insurance</b>  <b>Employers Liability Insurance</b>  <b>Professional Indemnity Insurance</b>  <b>Product Liability Insurance</b>	With a limit of indemnity of not less than £5 000 000 (five million pounds) in relation to any one claim or series of claims  With a limit of indemnity of not less than £10 000 000 (ten million pounds) in relation to any one claim or series of claims  With a limit of indemnity of not less than £1 000 000 (one million pounds) in relation to any one claim or series of

<p><b>Any other insurance (please state)</b></p>	<p>claims</p> <p>Not applicable.</p> <p>Not applicable.</p>
<p><b>8. The addresses for notices of the Parties are:</b></p> <p><b>Council:</b></p>	<p>Cheshire East Borough Council</p> <p>Public Health</p> <p>1<sup>st</sup> Floor Westfields</p> <p>c/o Municipal Buildings, Earle Street, Crewe, CW1 2BJ</p> <p>Attention: Nik Darwin</p> <p>Email: Nik.Darwin@cheshireeast.gov.uk</p>
<p><b>Supplier:</b></p>	<p>[</p> <p style="text-align: right;">]</p>

<b>9. Liaison</b>	<p>For general liaison your contact will continue to be Anna Whitehead, <a href="mailto:Anna.Whitehead@cheshireeast.gov.uk">Anna.Whitehead@cheshireeast.gov.uk</a> or in her absence, Nik Darwin, <a href="mailto:Nik.Darwin@cheshireeast.gov.uk">Nik.Darwin@cheshireeast.gov.uk</a>.</p>
<b>10. Payment</b>	<p>All invoices should be sent, quoting a valid purchase order number (PO Number), to: <a href="mailto:supplier@cosocius.co.uk">supplier@cosocius.co.uk</a> or Cheshire East Council, c/o CoSocius, PO Box 3655, Chester, CH1 9PP.</p> <p>To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, and the details (name and telephone number) of your Council contact (i.e. the person named in 8 above (Liaison)). Non-compliant invoices will be sent back to you, which may lead to a delay in payment. If you have a query regarding an outstanding payment please contact our Accounts Payable section either by email to [<a href="mailto:supplier@cosocius.co.uk">supplier@cosocius.co.uk</a>] or by telephone [01244 972 511] between 09:00-17:00 Monday to Friday.</p>
<b>11. Supplier to comply with the Council's Staff Vetting Procedures in accordance with clause 7.2.5 of the Terms and Conditions (Schedule 1)</b>	<b>Required to comply</b>
<b>12. Supplier required to comply with Disclosure and Barring Service checks where Services include Regulated Activity</b>	<p>The Council requires the Supplier to ensure that any person employed in the carrying out of a Regulated Activity in the supply of the Services has undertaken a Disclosure and Barring Service check. The Supplier shall ensure that no person who discloses that he/she has a conviction that is relevant to the nature of the Contract, relevant to the work of the Council, or is of a type otherwise advised by the Council (each such conviction a "<b>Relevant Conviction</b>"), or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the supply of the Services.</p>

<p><b>13. Supplier acknowledges and agrees to Safeguarding Children and Vulnerable Adults provisions:</b></p>	<p><b>Safeguarding Children and Vulnerable Adults provisions:</b></p> <p>For the purpose of this clause the following expressions shall have the following meanings:</p> <p>“Regulated Activity”: in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.</p> <p>“Regulated Activity Provider”: shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.</p> <p>The Parties acknowledge that where the Supplier is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006</p> <p>The Supplier shall:</p> <ul style="list-style-type: none"> <li>• ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service (DBS); and</li> <li>• monitor the level and validity of checks under this clause for each member of staff;</li> <li>• not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users.</li> </ul> <p>The Supplier warrants that at all times for</p>
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	<p>the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Supplier in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.</p> <p>The Supplier shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause have been met.</p> <p>The Supplier shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to service users or children or vulnerable adults.</p>
<b>14. Social Value Requirements</b>	Not applicable.
<b>15. Additional Special Terms and Conditions of Contract for a Contract for Consultancy Services</b>	<p>The following Special Terms and Conditions shall additionally apply to this Contract where the Contract is for Services including consultancy services:</p> <p><b>15.1 CONFLICTS OF INTEREST</b></p> <p>15.1.1 During the Term, the Supplier shall not provide Services to any third party in connection with a project in conflict with the business of the Council without the prior written approval of the Council.</p> <p>15.1.2 In relation to the Services, the Supplier will take all reasonable steps to identify whether or not a conflict of interest arises or is likely to arise between the Supplier, the Council and a third party or parties in relation to the Services. If a conflict does or may arise, the Supplier must forthwith notify the</p>

	<p>Council of such potential or actual conflict and propose a means by which the conflict can be avoided or minimised.</p> <p>15.1.3 If a potential or actual conflict is not resolved to the satisfaction of the Council, and the prior approval of the Council pursuant to Clause 6.1 is refused, the Supplier shall, if so directed by the Council, cease to provide the Services in relation to which it has been instructed.</p> <p>15.1.4 In the event that the Supplier does cease to provide Services pursuant to this Clause 1, the Supplier shall be liable for the additional cost to the Council (if any) of having to engage an alternative consultant.</p> <p>15.1.5 Prior to commencement of the Services the Supplier shall use its best endeavours to disclose any actual or potential financial, non-financial, personal or professional interest in any organisation, company or other body that is or has potentially, currently and / or previously had dealings with the Council, where such interest may and / or could result in a conflict with the interests of the Council.</p> <p><b>15.2 DUTY OF CARE</b></p> <p>15.2.1 The Supplier shall provide the Services and duties hereunder in a proper and efficient manner with reasonable skill, care and diligence and in accordance with the terms and conditions of this agreement.</p> <p>15.2.2 The Supplier shall act at all times in good faith and in the best interests of the Council in connection with the provision of the Services and this agreement.</p> <p>15.2.3 The Supplier shall ensure that work done in connection with the provision of the Services is carried out by suitably qualified and/or</p>
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	<p>competent members of the Supplier's staff experienced in work of a similar size, scope and complexity to that instructed by the Council, under proper management and supervision by the Authorised Representative.</p> <p><b>15. 3. RELIANCE ON SUPPLIER'S SKILL AND CARE</b></p> <p>15.3.1 The Supplier acknowledges and accepts that the Council is reliant upon the Supplier's reasonable professional skill, care and judgement and will ensure that all works in respect of which the Supplier is instructed by the Council pursuant hereto are properly, adequately and safely carried out in accordance with the Council's requirements.</p> <p>15.3.2 Where, in the performance of the Services, the Supplier seeks or is obliged to seek the Councils approval or agreement to any matter or thing, the giving or confirming of the same by the Council shall not in any way derogate from the duty of care owed to the Council by the Supplier pursuant to this agreement or otherwise and shall not diminish any obligation upon the Supplier's part in respect thereof.</p> <p>15.3.3 This agreement shall not negate or diminish any duty or obligation owed to the Council by the Supplier in equity, at common law or pursuant to statute or European law.</p> <p><b>15.4. HEALTH AND SAFETY</b></p> <p>15.4.1 The Supplier shall promptly notify the Council of any health and safety hazards, which may arise in</p>
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	<p>connection with the performance of the agreement. The Council shall promptly notify the Supplier of any health and safety hazards that may exist or arise at the Premises and that may affect the Supplier in the performance of the agreement.</p> <p>15.4.2 While on the Premises, the Supplier shall comply with any health and safety measures implemented by the Council in respect of staff and other persons working on the Premises.</p> <p>15.4.3 The Supplier shall notify the Council immediately in the event of any incident occurring in the performance of the agreement on the Premises where that incident causes any personal injury or damage to property that could give rise to personal injury.</p> <p>15.4.4 The Supplier shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to staff and other persons working on the Premises in the performance of the agreement.</p> <p>15.4.5 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Council on request.</p>
<b>16. Termination</b>	The termination notice period is as stated at 18.5.



**SCHEDULE 3**  
**SPECIFICATION**

**SCHEDULE 4**  
**PRICING SCHEDULE**

The total contract price is [     ]

The Council and each of the CCGs shall each pay an equal sum of [     ] directly to the Supplier.

This shall be payable as one annual payment on a date to be agreed between the Council and the Supplier.

**SCHEDULE 5**  
**SUPPLIER'S TENDER**