

DATED

**CONTRACT FOR THE PROVISION OF CUSTOMER SURVEYS (TRANSACTIONAL &
PERCEPTION) & RELATED TO SUPPORT EFFECTIVE MANAGEMENT OF SATISFACTION WITH
HOUSING SERVICES**

between

NEWARK & SHERWOOD DISTRICT COUNCIL

and

[REDACTED]

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THIS AGREEMENT is dated

PARTIES

- (1) Newark and Sherwood District Council of Castle House, Great North Road, Newark-on-Trent, Nottinghamshire NG24 1BY (**Council**).
- (2) [] incorporated and registered in England and Wales with company number [] whose registered office is at (**Supplier**).

BACKGROUND

- (A) The Council has, through a competitive process, selected the Supplier to provide the Services and the Supplier is willing and able to provide the Services in accordance with the terms and conditions of this agreement.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Associated Company: any holding company from time to time of the Supplier and any subsidiary from time to time of the Supplier, or any subsidiary of any such holding company.

Authorised Representatives: the persons respectively designated as such by the Council and the Supplier, the first such persons being set out in Schedule 5.

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, the KPIs, the term, the pricing structure and any other relevant factors.

Bribery Act: the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

Business Manager - the person assigned to this position in accordance with Schedule 5.

Change: any change to this agreement including to any of the Services.

Change Control Note: the written record of a Change agreed or to be agreed by the parties pursuant to the Change Control Procedure.

Change Control Procedure: the procedure for changing this agreement, as set out in Schedule 6.

Change in Law: any change in any Law which impacts on the performance of the Services and which comes into force after the Commencement 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 agreement, as such charges are set out in Schedule 4.

Commencement Date: [1st January 2024]

Commercially Sensitive Information: the information listed in Schedule 7 (if any) comprising the information of a commercially sensitive nature relating to the Supplier, its intellectual property rights or its business or 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.

Contract Year: a period of 12 months, commencing on the Commencement Date.

Controller: as defined in the Data Protection Legislation

Core Hours: nominally 8.00am – 7.00pm on each Working Day unless otherwise noted.

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 authority and applicable to a party].

Data Subject: as defined in the Data Protection Legislation.

Dispute Resolution Procedure: the procedure set out in clause 18.

Domestic law: the law of the United Kingdom or part of the United Kingdom.

EIRs: 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.

FOIA: the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Force Majeure: any circumstance not within a party's reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
- (f) collapse of buildings, fire, explosion or accident; and

but excluding any labour or trade dispute, strikes, industrial action or lockouts relating to the Supplier or the Supplier Personnel or any other failure in the Supplier's or a Sub-Contractor's supply chain.

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.

Health and Safety Policy: the health and safety policy of the Council as provided to the Supplier on or before the Commencement Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety.

Information: has the meaning given under section 84 of FOIA.

Initial Term: 36 months commencing on the Commencement Date and ending on the third anniversary of the Commencement Date.

Insolvency Event: where:

- (g) 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;
- (h) 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 other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of that other party;
- (i) 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 that other party (being a company) 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;
- (j) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier (being a company);
- (k) the holder of a qualifying floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver; (i) a person becomes entitled to appoint a receiver over the assets of the Supplier or (ii) a receiver is appointed over the assets of the Supplier;
- (l) 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 Working Days;
- (m) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (f) (inclusive); or
- (n) the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

Intellectual Property: 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.

KPIs: the key performance indicators set out in **Error! Reference source not found..**

Key Personnel: those personnel identified Schedule 5 for the roles attributed to such personnel, as modified pursuant to clause 11.

Law: any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;

Management Reports: the reports to be prepared and presented by the Supplier in accordance with clause 15 and Schedule 5.

Necessary Consents: all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Service.

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 to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) 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 agreement;
- (c) committing any offence:
 - (i) under the Bribery Act;
 - (ii) under legislation or common law concerning fraudulent acts;
 - (iii) 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 clause 1.1(c), if such activity, practice or conduct had been carried out in the UK.

Public Hours: 09.00 to 17:00 on each Working Day

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.

Regulated Activity Provider: shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.

Remediation Notice: a notice served by the Council in accordance with clause 28.1(a).

Relevant Transfer: a relevant transfer for the purposes of TUPE.

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 agreement, 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.

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

Services: the services to be delivered by or on behalf of the Supplier under this agreement, as more particularly described in Schedule 1.

Service Failure: a failure by the Supplier to provide the Services in accordance with any Target KPI.

Supplier Staff: the Supplier's agents, and contractors, including each Sub-Contractor.

Supplier's Tender: the tender submitted by the Supplier and other associated documentation set out in Schedule 3.

Sub-Contract: any contract 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: the contractors or suppliers that enter into a Sub-Contract with the Supplier.

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

- (a) any extensions to this agreement which are agreed pursuant to clause 3; or

- (b) the earlier termination of this agreement in accordance with its terms.

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

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

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

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.9 A reference to **writing** or **written** includes faxes and e-mail.
- 1.10 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.

- 1.13 Where there is any conflict or inconsistency between the provisions of the agreement, such conflict or inconsistency shall be resolved according to the following order of priority:
- (a) the clauses of the agreement;
 - (b) Schedule 1 to this agreement;
 - (c) the remaining schedules to this agreement other than Schedule 3;
 - (d) Schedule 3 to this agreement.

COMMENCEMENT AND DURATION

2. TERM

This agreement shall take effect on the Commencement Date and shall continue for the Term.

3. EXTENDING THE INITIAL TERM

- 3.1 The Council may extend this agreement beyond the Initial Term by 2 yearly extensions (each an **Extension Period**). If the Authority wishes to extend this agreement, it shall give the Supplier at least 3 months' written notice of such intention before the expiry of the Initial Term or the first Extension Period.
- 3.2 If the Council gives such notice then the Term shall be extended by the period set out in the notice.
- 3.3 If the Council does not wish to extend this agreement beyond the Initial Term or the first Extension Period this agreement shall expire on the expiry of the Initial Term or the first Extension Period (as applicable) and the provisions of clause 32 shall apply.

4. DUE DILIGENCE AND SUPPLIER'S WARRANTY

- 4.1 The Supplier acknowledges and confirms that:
- (a) 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 agreement;
 - (b) it has received all information requested by it from the Council pursuant to clause 4.1(a) to enable it to determine whether it is able to provide the Services in accordance with the terms of this agreement;

- (c) 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 4.1(b);
 - (d) it has raised all relevant due diligence questions with the Council before the Commencement Date; and
 - (e) it has entered into this agreement in reliance on its own due diligence.
- 4.2 Save as provided in this agreement, 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.
- 4.3 The Supplier:
 - (a) as at the Commencement Date, warrants and represents that all information contained in the Supplier's Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the agreement; and
 - (b) shall promptly notify the Council in writing if it becomes aware during the performance of this agreement 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 or meet any KPIs.
- 4.4 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 4.3(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 shall be entitled to recover such reasonable additional costs from the Council or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.
- 4.5 Nothing in this clause 4 shall limit or exclude the liability of the Council for fraud or fraudulent misrepresentation.

THE SERVICES

5. SUPPLY OF SERVICES

- 5.1 The Supplier shall provide the Services to the Council with effect from the Commencement Date and for the duration of this agreement in accordance with the provisions of this agreement.
- 5.2 In the event that the Supplier does not comply with the provisions of clause 5.1 in any way, the Council may serve the Supplier with a notice in writing setting out the details of the Supplier's default (a **Default Notice**).
- 5.3 Should the Council serve the Supplier with three or more Default Notices in any one calendar month, this shall constitute a **Consistent Failure** for the purposes of clause 28(1)(b).

6. KPIs

- 6.1 The Services shall be provided in such a manner as to ensure compliance with the KPIs.
- 6.2 As existing Services are varied and new Services are added, KPIs for the same will be determined and included within Schedule 2.
- 6.3 The Supplier shall provide records of and Management Reports summarising the performance of the Services against the KPIs as provided for in clause 15.

7. SERVICE STANDARDS

Without prejudice to clause 6, the Supplier shall provide the Services, or procure that they are provided:

- (a) with reasonable skill and care and in accordance with the best practice prevailing in the Supplier's industry from time to time;
- (b) in all respects in accordance with the Council's policies provided to the Supplier from time to time;
- (c) in accordance with all applicable Laws.
- (d) In accordance with requirements of the Specification, detailed in Schedule 1.

8. COMPLIANCE AND CHANGE IN LAWS

- 8.1 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.

- 8.2 Where there is any conflict or inconsistency between the provisions of this agreement 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.
- 8.3 The Supplier shall perform its obligations under this agreement (including those in relation to the Services) in accordance with:
- (a) all applicable Law regarding health and safety; and
 - (b) the Health and Safety Policy whilst at the Premises.
- 8.4 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Premises of which it becomes aware and which relate to or arise in connection with the performance of this agreement. The Supplier shall instruct the Supplier Staff to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.
- 8.5 Without limiting the general obligation set out in clause 8.1, the Supplier shall (and shall procure that the Councils shall):
- (a) perform its obligations under this agreement (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) the Council's equality and diversity policy as provided to the Supplier from time to time; and
 - (iii) 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; and
 - (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).
 - (c) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Supplier shall also undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998.

- (d) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including, but not limited to, the Modern Slavery Act 2015;
- (e) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and
- (f) include in its contracts with its subcontractors and suppliers anti-slavery and human trafficking provisions that are as least as onerous as this clause 8.5
- (g) The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms of this agreement nor be entitled to an increase in the Charges as the result of a General Change in Law.

9. NOT USED

CHARGES AND PAYMENT

10. PAYMENT

- 10.1 In consideration of the provision of the Services by the Supplier in accordance with the terms and conditions of this agreement, the Council shall pay the Charges to the Supplier in accordance with Schedule 4.
- 10.2 The Supplier shall invoice the Council for payment of the Charges at the time the Charges are expressed to be payable in accordance with Schedule 4. All invoices shall be directed to the Council's Authorised Representative.
- 10.3 Where the Supplier submits an invoice to the Council in accordance with clause 10.2, the Council will consider and verify that invoice within 10 Working Days.
- 10.4 The Council shall pay the Supplier any sums due under such an invoice no later than a period of 30 Working Days from the date on which the Council has determined that the invoice is valid and undisputed.
- 10.5 Where the Council fails to comply with clause 10.3, the invoice shall be regarded as valid and undisputed 10 Working Days after the date on which it is received by the Council.

- 10.6 Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:
- (a) provisions having the same effect as clause 10.3 to clause 10.5 of this agreement; and
 - (b) a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clause 10.3 to clause 10.5 of this agreement.

In this clause 10.6, "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 agreement.

- 10.7 Where the Council 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 clause 18. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of 30 Working Days after resolution of the dispute between the parties.
- 10.8 Subject to clause 10.7, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Supplier shall not suspend the supply of the Services if any payment is overdue, such interest to be calculated at the rate of 4% above the prevailing Bank of England base rate for the time being, from the final date for payment to and including the date on which such amount is paid or discharged.
- 10.9 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 agreement.
- 10.10 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 agreement. 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.

- 10.11 The Council may retain or set off any sums owed to it by the Supplier which have fallen due and payable against any sums due to the Supplier under this agreement or any other agreement pursuant to which the Supplier or any Associated Company of the Supplier provides goods or services to the Council.
- 10.12 The Supplier shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Supplier.

STAFF

11. KEY PERSONNEL

- 11.1 Each party shall appoint the persons named as such in Schedule 5 as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each party as being key to the success of the implementation and/or operation of the Services and who 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 their respective party on the matters for which they are expressed to be responsible.
- 11.2 The Supplier shall not remove or replace any of the Key Personnel unless:
- (a) requested to do so by the Council;
 - (b) the person is on long-term sick leave or maternity/paternity leave;
 - (c) the element of the Services in respect of which the individual was engaged has been completed to the Council's satisfaction;
 - (d) the person resigns from their employment with the Supplier; or
 - (e) the Supplier obtains the prior written consent of the Council.
- 11.3 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.
- 11.4 Each party shall make best endeavours to ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than 30 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.

- 11.5 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.
- 11.6 If the Supplier replaces the Key Personnel as a consequence of this clause 11, the cost of effecting such replacement shall be borne by the Supplier.

12. OTHER PERSONNEL USED TO PROVIDE THE SERVICES

- 12.1 At all times, the Supplier shall ensure that:
- (a) Supplier Staff are 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 Staff to provide the Services properly;
 - (c) only those people who are authorised by the Supplier are involved in providing the Services; and
 - (d) all Supplier Staff comply with all of the Council's policies including those that apply to persons who are allowed access to the Council's premises.
- 12.2 The Council may refuse to grant access to, and remove, any Supplier Staff who do not comply with any such policies, or if they otherwise present a security threat.
- 12.3 The Supplier shall replace any Supplier Staff who the Council reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any Customer Support Assistant 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.
- 12.4 The Supplier shall maintain up-to-date personnel records on the Supplier Staff engaged in the provision of the Services and shall provide information to the Council as the Council reasonably requests on the Supplier 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.
- 12.5 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.

13. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS

- 13.1 The parties acknowledge that 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
- 13.2 The Supplier shall:
- (a) 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
 - (b) monitor the level and validity of the checks under this clause 13.2 for each member of staff;
 - (c) 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.
- 13.3 The Supplier warrants that at all times for 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.
- 13.4 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 13 have been met.
- 13.5 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 children and/or vulnerable adults (as defined by the 2006 Act).

14. TUPE

- 14.1 In the event of expiry or termination of this agreement or whenever reasonably requested by the Council in preparation for tendering arrangements the Supplier will provide the Council with such assistance as the Council may require and at no cost to the Council any information the Council may reasonably request (whether on its own behalf or on behalf of any potential or confirmed Replacement Supplier) in relation to any employee, worker (including voluntary and unpaid workers), contractor (including sub-

contractors), servant, agent or representative of the Supplier or any other person who may reasonably be considered to be carrying out duties of an employment nature for the Supplier, including but not limited to, providing liability information concerning any such person as required pursuant to Regulation 11 of TUPE.

- 14.2 The Supplier authorises the Council to pass any information supplied to any Replacement Supplier or potential Replacement Supplier and the Supplier will secure all necessary consents from all relevant persons referred to in clause 14.1 for these purposes.
- 14.3 The Supplier will keep the Council and any Replacement Supplier indemnified in full against all liabilities arising directly or indirectly in connection with any breach of this clause 14 or inaccuracies in or omissions from such information provided.

CONTRACT MANAGEMENT

15. REPORTING AND MEETINGS

- 15.1 The Supplier shall provide the Management Reports in the form and at the intervals set out in Schedule 5.
- 15.2 The Authorised Representatives and relevant Key Personnel shall meet in accordance with the details set out in Schedule 5 and the Supplier shall, at each meeting, present its previously circulated Management Reports in the format set out in that Schedule.

16. MONITORING

- 16.1 The Council may monitor the performance of the Services by the Supplier.
- 16.2 The Supplier shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Council in carrying out the monitoring referred to in clause 16.1 at no additional charge to the Council.

17. CHANGE CONTROL AND CONTINUOUS IMPROVEMENT

- 17.1 Any requirement for a Change shall be subject to the Change Control Procedure.

17.2 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 Authorised Representative quarterly in the first Contract Year and once every six months for the remainder of the Term on:

- (a) the emergence of new and evolving relevant technologies which could improve the Services;
- (b) new or potential improvements to the Services including the quality, responsiveness, procedures, performance mechanisms and customer support services in relation to the Services;
- (c) 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
- (d) changes in ways of working that would enable the Services to be delivered at lower costs and/or bring greater benefits to the Council.

17.3 Any potential Changes highlighted as a result of the Supplier's reporting in accordance with clause 17.2 shall be addressed by the parties using the Change Control Procedure.

18. DISPUTE RESOLUTION

18.1 If a dispute arises out of or in connection with this agreement 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 parties' Chief Executives (or equivalent) who shall attempt in good faith to resolve it; and
- (c) if the parties Chief Executives (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, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to

CEDR Solve. The mediation will start not later than 14 Working Days after the date of the ADR notice.

- 18.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 45 which clause shall apply at all times.

19. SUB-CONTRACTING AND ASSIGNMENT

- 19.1 The Supplier shall not assign, novate or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the Council, neither may the Supplier sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of the Council.

- 19.2 In the event that the Supplier enters into any Sub-Contract in connection with this agreement it shall:

- (a) remain responsible to the Council for the performance of its obligations under the agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;
- (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms; and
- (c) provide a copy, at no charge to the Council, of any such Sub-Contract on receipt of a request for such by the Council's Authorised Representative.

- 19.3 The Council shall be entitled to assign or novate this agreement or dispose of its right and obligations under this agreement to any other body which substantially performs any of the functions that previously had been performed by the Council.

- 19.4 Provided that the Council has given prior written consent, the Supplier shall be entitled to novate the agreement where:

- (a) the specific change in contractor was provided for in the procurement process for the award of this agreement;
- (b) there has been a universal or partial succession into the position of the Supplier, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this agreement.

LIABILITY

20. INDEMNITIES

The Supplier shall indemnify and keep indemnified the Council against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of this agreement, to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself or of its employees or of any of its representatives or sub-contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of this agreement or applicable law by the Council or its representatives.

21. LIMITATION OF LIABILITY

21.1 Subject to clause 21.3, neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.

21.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this agreement.

21.3 Subject to clause 21.5, the Supplier's total aggregate liability:

- (a) is unlimited in respect of:
 - (i) the indemnities in clause 14;
 - (ii) any breach of clause 31; and
 - (iii) the Supplier's wilful default
- (b) in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this agreement, shall in no event exceed 150% of the aggregate Charges paid under or pursuant to this agreement in the subsequent Contract Year in respect of which the claim arises.

21.4 Subject to clause 21.5, the Council's maximum aggregate liability to the Supplier for all claims arising in any Contract Year (other than a failure to pay any of the Charges that are properly due and payable and for which the Council shall remain fully liable) shall not in any circumstances exceed 150% of the aggregate Charges paid under or pursuant to this agreement in the subsequent Contract Year in respect of which the claim arises.

- 21.5 Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:
- (a) fraud or fraudulent misrepresentation;
 - (b) death or personal injury caused by its negligence;
 - (c) breach of any obligation as to title implied by statute; or
 - (d) any other act or omission, liability for which may not be limited under any applicable law.

22. **INSURANCE**

- 22.1 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 following levels of cover:
- (a) public liability insurance with a limit of indemnity of not less than £5,000,000 (five million pounds sterling) in relation to any one claim or series of claims;
 - (b) employer's liability insurance with a limit of indemnity of not less than £5,000,000 (five million pounds sterling) in relation to any one claim or series of claims; and
 - (c) professional indemnity insurance with a limit of indemnity of not less than £2,000,000 (two million pounds sterling) in relation to any one claim or series of claims;
- 22.2 The Supplier shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover, (the **Required Insurances**) in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of the agreement, 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.
- 22.3 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.
- 22.4 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 plus a reasonable administration fee.

- 22.5 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the agreement.
- 22.6 The Supplier shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of the agreement.

INFORMATION

23. FREEDOM OF INFORMATION

- 23.1 The Supplier acknowledges that the Council is subject to the requirements of the FOIA and the EIRs. The Supplier 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 EIRs;
 - (b) transfer to the Council all Requests for Information relating to this agreement 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; and
 - (d) not respond directly to a Request For Information unless authorised in writing to do so by the Council.
- 23.2 The Supplier acknowledges that the Council may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Council shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the Council shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.
- 23.3 (a) In order to comply with the Government's policy on transparency in the areas of contracts and procurement the Council is required to publish information on its website detailing any item of expenditure over £500 and any contract with a value that exceeds £5,000. The information published will include the Supplier's details and the Charges to be paid. The Parties

acknowledge that this information is not Confidential Information or Commercially Sensitive Information.

(b)The parties acknowledge that, except for any information which is exempt from disclosures in accordance with the provisions of the FOIA, the content of this agreement is not Confidential Information or Commercially Sensitive Information. The Council shall be responsible for determining at its absolute discretion whether any of the content of this agreement is for disclosure in accordance with the FOIA. Notwithstanding any other term of this agreement, the Supplier hereby gives his consent for the Council to publish this agreement in its entirety (but with any information which is exempt from disclosure in accordance with the FOIA redacted) including from time to time agreed changes to this agreement, to the general public.

24. DATA PROTECTION

- 24.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 24.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Supplier is the Processor. **Error! Reference source not found.** 8 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 24.3 Without prejudice to the generality of clause 24.1, the Council will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement.
- 24.4 Without prejudice to the generality of clause 24.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:
- (a) process that Personal Data only on the documented written instructions of the Council which are set out in Schedule 8, unless the Supplier is required by Domestic Law to otherwise process that Personal Data. Where the Supplier is relying on Domestic Law as the basis for processing Personal Data, the Supplier shall promptly notify the Council of this before performing the processing required by Domestic Law unless the Domestic Law prohibits the Supplier from so notifying the Council;

- (b) ensure that it has in place appropriate technical and organisational measures (as defined in the Data Protection Legislation), reviewed and approved by the Council, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- (d) not transfer any Personal Data outside of the UK unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
 - (i) the Council or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Supplier complies with the reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
- (e) notify the Council immediately if it receives:
 - (i) a request from a Data Subject to have access to that person's Personal Data;
 - (ii) a request to rectify, block or erase any Personal Data;
 - (iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
- (f) assist the Council in responding to any request from a Data Subject and in ensuring compliance with the Council's obligations under the Data Protection Legislation with respect to security, breach

notifications, impact assessments and consultations with supervisory authorities or regulators;

- (g) notify the Council without undue delay on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this agreement;
- (h) at the written direction of the Council, delete or return Personal Data and copies thereof to the Council on termination or expiry of the agreement unless required by Domestic Law to store the Personal Data;
- (i) maintain complete and accurate records and information to demonstrate its compliance with this and allow for audits by the Council or the Council's designated auditor pursuant to and immediately inform the Council if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

24.5 The Supplier's liability for losses arising from breaches of this clause is as set out in clause 20.

24.6 Where the Supplier wishes to appoint a subprocessor to process any Personal Data relating to this agreement, such subprocessor shall constitute a Sub-Contractor and the Supplier shall:

- (a) notify the Council in writing of the intended processing by the Sub-Contractor;
- (b) obtain prior written consent from the Council;
- (c) enter into a written agreement incorporating terms which are substantially similar to those set out in this contract.

24.7 [Either party may, at any time on not less than 30 Working Days' written notice to the other party, revise this schedule by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).]

25. CONFIDENTIALITY

25.1 Subject to clause 25.2, the parties shall keep confidential all matters relating to this agreement and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.

25.2 Clause 25.1 shall not apply to any disclosure of information:

- (a) required by any applicable law, provided that clause 23.2 shall apply to any disclosures required under the FOIA or the EIRs;
- (b) that is reasonably required by persons engaged by a party in the performance of such party's obligations under this agreement;
- (c) where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 25.1;
- (d) by the Council of any document to which it is a party and which the parties to this agreement have agreed contains no commercially sensitive information;
- (e) to enable a determination to be made under clause 18;
- (f) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- (g) by the Council to any other department, office or agency of the Government; and
- (h) by the Council relating to this agreement and in respect of which the Supplier has given its prior written consent to disclosure.

25.3 On or before the Termination Date the Supplier shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the Council's employees, rate-payers or service users, are delivered up to the Council or securely destroyed.

26. AUDIT

26.1 During the Term and for a period of 6 years after the Termination Date, the Council may conduct or be subject to an audit for the following purposes:

- (a) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all suppliers (including Sub-Contractors) of the Services;
- (b) to review the integrity, confidentiality and security of any data relating to the Council or any service users;
- (c) to review the Supplier's compliance with the DPA, the FOIA, in accordance with clause 24 (Data Protection) and clause 23 (Freedom of Information) and any other legislation applicable to the Services;
- (d) to review any records created during the provision of the Services;
- (e) to review any books of account kept by the Supplier in connection with the provision of the Services;
- (f) to carry out the audit and certification of the Council's accounts;

- (g) to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources;
 - (h) to verify the accuracy and completeness of the Management Reports delivered or required by this agreement.
- 26.2 Except where an audit is imposed on the Council by a regulatory body, the Council may not conduct an audit under this clause 26 more than once in any calendar year.
- 26.3 The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.
- 26.4 Subject to the Council's obligations of confidentiality, the Supplier shall on demand provide the Council and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
 - (a) all information requested by the above persons within the permitted scope of the audit;
 - (b) reasonable access to any sites controlled by the Supplier and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
 - (c) access to the Supplier's staff.
- 26.5 The Council shall endeavour to (but is not obliged to) provide at least 15 Working Days' notice of its or, where possible, a regulatory body's, intention to conduct an audit.
- 26.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this agreement in any material manner by the Supplier in which case the Supplier shall reimburse the Council for all the Council's reasonable costs incurred in the course of the audit.
- 26.7 If an audit identifies that:
 - (a) the Supplier has failed to perform its obligations under this agreement in any material manner, the parties shall agree and implement a remedial plan. If the Supplier's failure relates to a failure to provide any information to the Council about the Charges, proposed Charges or

the Supplier's costs, then the remedial plan shall include a requirement for the provision of all such information;

- (b) the Council has overpaid any Charges, the Supplier shall pay to the Council the amount overpaid within 30 Working Days. The Council may deduct the relevant amount from the Charges if the Supplier fails to make this payment; and
- (c) the Council has underpaid any Charges, the Council shall pay to the Supplier the amount of the under-payment within 30 days.

27. INTELLECTUAL PROPERTY

27.1 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.

27.2 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.

TERMINATION

28. TERMINATION FOR BREACH

28.1 The Council may terminate this agreement 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 breach of any material obligation under this agreement provided that if the breach is capable of remedy, the Council may only terminate this agreement under this clause 28.1 if the Supplier has failed to remedy such breach within 28 Working Days of receipt of notice from the Council (a **Remediation Notice**) to do so;
- (b) if a Consistent Failure has occurred;
- (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;
- (f) if the Supplier is convicted of a criminal offence;
- (g) if there is a risk or a genuine belief that reputational damage to the Council will occur as a result of the continuation of this agreement.

28.2 The Council may terminate this agreement in accordance with the provisions of clause 30 and clause 31.

28.3 If this agreement is terminated by the Council for cause 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.

29. TERMINATION ON NOTICE

Without affecting any other right or remedy available to it, the Council may terminate this agreement at any time by giving three months' written notice to the Supplier.

30. FORCE MAJEURE

30.1 Subject to the remaining provisions of this clause 30, neither party to this agreement shall be liable to the other for any delay or non-performance of its obligations under this agreement to the extent that such non-performance is due to a Force Majeure Event.

30.2 In the event that either party is delayed or prevented from performing its obligations under this agreement by a Force Majeure Event, such party shall:

- (a) give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
- (b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this agreement; and
- (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

- 30.3 A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 30.4 The Supplier cannot claim relief if the Force Majeure Event is one where a reasonable supplier should have foreseen and provided for the cause in question.
- 30.5 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this agreement. Where the Supplier is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.
- 30.6 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
- 30.7 The Council may, during the continuance of any Force Majeure Event, terminate this agreement by written notice to the Supplier if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than 20 Working Days.

31. PREVENTION OF BRIBERY

- 31.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Customer Support Assistant, have at any time prior to the Commencement Date:
- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - (b) 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.
- 31.2 The Supplier shall not during the term of this agreement:
- (a) commit a Prohibited Act; and/or

- (b) do or suffer anything to be done which would cause the Council or any of the Council's employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.
- 31.3 The Supplier shall during the term of this agreement:
 - (a) establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and
 - (b) keep appropriate records of its compliance with its obligations under clause 31.3(a) and make such records available to the Council on request.
- 31.4 The Supplier shall immediately notify the Council in writing if it becomes aware of any breach of clause 31.1 and/or clause 31.2, or has reason to believe that it has or any Supplier Staff have:
 - (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - (b) 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; and/or
 - (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this agreement or otherwise suspects that any person or Party directly or indirectly connected with this agreement has committed or attempted to commit a Prohibited Act.
- 31.5 If the Supplier makes a notification to the Council pursuant to clause 31.4, the Supplier shall respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit any books, records and/or any other relevant documentation in accordance with clause 26.
- 31.6 If the Supplier is in default under clause 31.1 and/or clause 31.2, the Council may by notice:
 - (a) require the Supplier to remove from performance of this agreement any Customer Support Assistant whose acts or omissions have caused the default; or
 - (b) immediately terminate this agreement.

- 31.7 Any notice served by the Council under clause 31.6 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 agreement shall terminate).

32. CONSEQUENCES OF TERMINATION

- 32.1 On the expiry of the Term or if this agreement is terminated in whole or in part for any reason the Supplier shall 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.
- 32.2 On termination of this agreement the Supplier shall procure that all data 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 and the Supplier's Authorised Representative shall certify full compliance with this clause.
- 32.3 The provisions of clause 6.3 (provision of records), clause 20 (Indemnities), clause 22 (Insurance), clause 23 (Freedom of Information), clause 24 (Data Protection), clause 26 (Audit), clause 28 (Termination for Breach) and this clause 32 (Consequences of termination) shall survive termination or expiry of this agreement.

GENERAL PROVISIONS

33. NON-SOLICITATION

Neither party shall (except with the prior written consent of the other) during the term of this agreement, and for a period of one year thereafter, solicit the services of any senior staff of the other party who have been engaged in the provision of the Services or the management of this agreement or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other party.

34. WHISTLEBLOWING

The parties agree to adhere to the Council's whistleblowing policy as detailed in the Council's constitution from time to time.

35. ENVIRONMENTAL REQUIREMENTS

The Supplier shall perform its obligations under this agreement in accordance with the Council's environmental policy [https://www.newark-sherwooddc.gov.uk/media/nsdc-redesign/documents-and-images/your-council/our-policies/policies-and-procedures/Newark-and-Sherwood-District-Council---Climate-Emergency-Strategy-2020-v7---FINAL-\(002\).pdf](https://www.newark-sherwooddc.gov.uk/media/nsdc-redesign/documents-and-images/your-council/our-policies/policies-and-procedures/Newark-and-Sherwood-District-Council---Climate-Emergency-Strategy-2020-v7---FINAL-(002).pdf) which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

36. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

37. RIGHTS AND REMEDIES

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

38. SEVERABILITY

38.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

38.2 If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

39. PARTNERSHIP OR AGENCY

39.1 Nothing in this agreement 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.

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

40. THIRD PARTY RIGHTS

No one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

41. PUBLICITY

The Supplier shall not:

- (a) make any press announcements or publicise this agreement or its contents in any way; or
- (b) use the Council's name or logo in any promotion or marketing or announcement of orders,

except as required by law, any government or regulatory Council, any court or other Council of competent jurisdiction, without the prior written consent of the Council.

42. NOTICES

- 42.1 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 at its registered office (if a company) or its principal place of business (in any other case); or

- 42.2 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;
- (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.
- (c) For the purposes of Clause 42.1, the address of each Party shall be:
For the Council

Name of Council's Authorised Representative - Business Manager
David Price, Housing Income & Leasehold Management

Address: Castle House, Great North Road, Newark, NG24 1BY

Email address: David.Price@newark-sherwooddc.gov.uk

- (d) if sent by e-mail, at the time of transmission or, if after 5.00 pm on a Working Day, at 9.00 am the following Working Day or, if on a non-Working Day, at 9.00 am the following Working Day.

- 42.3 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.

43. ENTIRE AGREEMENT

- 43.1 This agreement, the schedules and the documents annexed to it or otherwise referred to in it constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

- 43.2 Each party agrees that it 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 agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

44. COUNTERPARTS

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement.

45. GOVERNING LAW

This agreement 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.

46. JURISDICTION

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 agreement or its subject matter or formation (including non-contractual disputes or claims).

TENDER

This agreement has been executed as a Deed on the date stated at the beginning of it.

**Executed as a Deed by affixing the
Common Seal of Newark & Sherwood
District Council**

.....
Authorised Signatory

Hereto affixed in the presence off:

Print Name
Date

**Executed as a Deed by [] by
2 authorised signatories or 1
authorised signatory in the
presence of an independent
witness**

.....
Authorised Signature

Print name
Title
Date

Authorised Signature

Print name
Title
Date

OR

Witness Signature

Witness name
Title
Date

Schedule 1 Specification

Scope and Requirement

TENDER

Schedule 2 KPIs

1. THE KPIs

- 1.1 Performance of this agreement shall be managed and monitored by the Council on a quarterly basis to ensure the standard of Services meets the following KPIs.

TENDER

Schedule 3 Supplier's Tender

TENDER

Schedule 4 Charges and payment

TENDER

Schedule 5 Contract management

1. AUTHORISED REPRESENTATIVES

1.1 The Council's initial Authorised Representative:

1.2 The Supplier's initial Authorised Representative:

[REDACTED]

2. KEY PERSONNEL

Council

Supplier

[REDACTED]

3. MEETINGS

4. REPORTS

The Management Reports shall include the following:

Schedule 6 Change control

1. GENERAL PRINCIPLES

- 1.1 Where the Council or the Supplier sees a need to change this agreement, the Authorised Representatives shall meet to discuss such change.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Council and the Supplier shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the Council and the Supplier in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 1.4 Any work undertaken by the Supplier and the Supplier Staff which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 6, shall be undertaken entirely at the expense and liability of the Supplier.

2. PROCEDURE

- 2.1 Where any discussion results in the Authorised Representatives agreeing a Change, the following Change Control Procedure shall apply.
- 2.2 As agreed between the Authorised Representatives, the Council or the Supplier shall send written notification of the agreed Change to the other, such written notification constituting a Change Control Note.
- 2.3 Each Change Control Note shall contain:
 - (a) the title of the Change;
 - (b) the originator and date of the request or recommendation for the Change;
 - (c) the reason for the Change;
 - (d) full details of the Change, including any specifications;
 - (e) the price, if any, of the Change;
 - (f) details of the likely impact, if any, of the Change on other aspects of this agreement including:
 - (i) the timetable for the provision of the Change;

- (ii) the personnel to be provided;
- (iii) the Charges;
- (iv) the documentation to be provided;
- (v) the training to be provided;
- (vi) working arrangements;
- (vii) other contractual issues; and
- (g) provision for signature by the Council and the Supplier.

2.4 A Change Control Note signed by the Council and by the Supplier shall constitute an amendment to this agreement.

Schedule 7 Commercially sensitive information

TENDER

Schedule 8 Data processing

This schedule shall be completed by the Council as the Controller, who may take account of the view of the Processor, however the final decision as to the content of this Schedule shall be with the Council at its absolute discretion.

1.1 The contact details of the Councils Data Protection Officer are:
privacy@newark-sherwooddc.gov.uk

1.2 The contact details of the Processor are: [REDACTED]

1.3 The Processor, shall comply with any further written instructions with respect to Processing by the Council as the Controller.

1.4 Any such further instructions shall be incorporated into this Schedule.

Descriptions	Details
Identity of Controller for each Category of Personal Data	For the purposes of the Data Protection Legislation, the Council is Controller and Supplier is Processor of the following Personal Data: <ul style="list-style-type: none">• postcode, age, sex and gender, ethnicity, disability, socio-economic status, sexual orientation, name, telephone number, email address
Duration of the Processing	For the Term of this agreement.
Nature and purposes of the Processing	<p>Please be as specific as possible, but make sure that you cover all intended purposes.</p> <p>The nature of the Processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</p> <p>The purpose will include: [REDACTED]</p> <p>Data collected by the Supplier will be shared with the Council to maintain accurate records.</p> <p>If the participants removes their consent, the Supplier must return all data collected to the</p>

	Council and delete any records that the Supplier holds.
Type of Personal Data	<p>Basic personal identifiers and special category data as defined in the UK GDPR</p> <ul style="list-style-type: none"> • name, • address • contact number, • brief description of the status based on factual data known at the time • postcode, • age, • sex and gender, • ethnicity, • disability, • socio-economic status, • sexual orientation, • email address.
Categories of Data Subject	[Participants, including Local Government Officials, Members of Organised Community Groups, Stakeholders in Key Community Services, Voluntary Sector Workers and Local Residents]
Plan for return and destruction of the data once the Processing is complete	<p>The Supplier will return a copy of all Council data and delete the data upon termination of this agreement and confirm deletion to the Council.</p> <p>If the participants withdraws consent the Supplier must act upon Council instructions to be compliant with data subject rights.</p>

TENDER