**Dated 2022**

**(1)**

**(2)**

**Contract for the Collection of Waste from Derbyshire County Council Premises**

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**Date:**

**Parties:**

1. **Derbyshire County Council of County Hall, Matlock, Derbyshire, DE4 3AG** (**the “Council**”)
2. **[Name], of [Registered address] a company incorporated in England, Company number: [company number] (the "Contractor")**

**Introduction**

1. On [DATE] Derbyshire County Council placed a contract notice with reference number [NUMBER] in the Official Journal of the European Union seeking expressions of interest from potential service Contractors for the collection of waste from Derbyshire County Council premises.
2. The Contractor submitted a tender and was chosen as the preferred Contractor for the Services. This Contract has been entered into to document the relationship between the Council and the Contractor for the provision of the Services.

## Agreed terms

## Definitions and Interpretation

* 1. Definitions

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| **Affected Party** | means the Party seeking to claim relief in respect of a Force Majeure Event; |
| **Area** | means the geographical area within which the Contractor will provide the Services under this Contract; |
| **Best Value Duty** | means the duty imposed on the Council by Section 3 of the Local Government Act 1999 in relation to, inter alia, any one (1) or more of the Services; |
| **Business Day** | means a day other than a Saturday, Sunday or public holiday in England; |
| **Business Hours** | means between the hours of 09:00 and 17:00 on any Business Day; |
| **Charges** | means the charges payable by the Council to the  Contractor under the terms of this Contract, more particularly as described at [Schedule 2](#_bookmark92) |

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|  | (Payment); |
| **Commencement Date** | means [enter start date]; |
| **Confidential Information** | means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and Contractors of either Party, all personal data and sensitive personal data within the meaning of the Data Protection Act 1998 and the commercially sensitive information identified pursuant to clause [26.4](#_bookmark44); |
| **Conflict of Interest** | means any actual or potential conflict of interests between the personal or pecuniary interests of two or more Parties to this Contract; |
| **Contract Manager** | has the meaning given in clause [42](#_bookmark77); |
| **Contractor Personnel** | means all employees, volunteers, workers, staff, agents and consultants of the Contractor engaged in the provision of the Services at any time; |
| **Contractor’s Premises** | means premises, in accordance with the Service Specification, where the Contractor may perform the Services throughout the Initial Period and any Extension Period; |
| **Contractor’s Tender** | means the tender submitted in response to the Service Specification and attached as [Schedule 3](#_bookmark93); |
| **Council’s Premises** | means Council premises, as agreed with the Council, where the Contractor may perform the Services throughout the Initial Period and any Extension Period**;** |
| **Deputy Contract Manager** | has the meaning given in clause [42](#_bookmark77); |
| **Disaster** | means a sudden, calamitous event which disrupts the supply of the Services; |
| **Emergency** | means an event causing or, in the reasonable opinion of a Party, threatening to cause death or |

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|  | injury to any individual, or serious disruption to the lives of a number of people or extensive damage to property, or contamination of the environment in each case on a scale beyond the capacity of the emergency services, or preventing the Services operating under normal circumstances and requiring the mobilisation and organisation of the emergency services; |
| **Employee Liability Information** | means the employee liability information to be provided pursuant to Regulation 11 of TUPE; |
| **Employment Liabilities** | means all claims, including claims without limitation for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses; |
| **Expiry Date** | means 24 (twenty four) months following the Commencement Date, unless otherwise extended in accordance with clause [2](#_bookmark2); |
| **Force Majeure Event** | means any cause affecting the performance by a Party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, being acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or Regulatory Bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Contractor or any other failure in the Contractor’s supply chain; |
| **Future Contractor** | means a Contractor of services equivalent to the Services immediately following expiry or  termination of this Contractor; |

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| **Good Industry Practice** | means that degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced operator (engaged in the same type of undertaking as that of the Contractor) under the same or similar circumstances; |
| **Intellectual Property Rights** | means any and all patents, trade marks, service marks, copyright, database rights, moral rights, rights in a design, know-how, confidential information, the right to sue for passing off, and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto which is created, brought into existence, acquired, used or intended to be used by the Contractor for the purposes of providing the Services and/or otherwise for the purposes of this Contract; |
| **Law** | means any applicable law, 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 statute, bye-law, regulation, order, rule of Court or directives or requirements of any competent Council, delegated or subordinate legislation with which the Contractor or Council is bound to comply; |
| **Losses** | means all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses); |
| **Materials** | means any materials required for the provision of the Services; |
| **Party** | means either the Council or the Contractor as applicable; |
| **Personal Data** | has the meaning given to it in the Data protection Act 1998; |

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| **Prescribed Rate** | means four per cent (4%) above the base rate from time to time of Barclays Bank plc; |
| **Prohibited Act** | 1. offering or giving or agreeing to give to any person any gift or consideration of any kind as an inducement or reward for doing, or forbearing to do, or for having done, or refrained from doing any action in relation the obtaining of execution of the agreement or any other contract with the Council; 2. showing, or forbearing to show, favour or disfavour to any person in relation to any person in relation to this Council or any other agreement with the Council or if any like acts shall have been done by any person employed by the Contractor, or acting on the Contractor’s behalf (whether with or without the knowledge of the Contractor); 3. in relation to any contract with the Council the Contractor, or any person employed by the Contractor, or acting on the Contractor’s behalf commits any offence under the Bribery Act 2010 or any amendment to it; 4. gives any fee or reward the receipt of which is an offence under section 117 (2) of the Local Government Act 1972; 5. paying commission or agreeing to pay any commission to any employee or representative of the Council, or any employee or representative of the Contractor doing the same; 6. offering, giving or agreeing to give to any employee, office or member of the Council any gift or consideration of any kind as an inducement or reward:    1. for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with the Council; or    2. for showing or not showing favour or disfavour to any person in   relation to this Contract or any |

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|  | other contract with the Council;   1. entering into this Contract or any other contract with the Council in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Council; 2. committing any offence:    1. under the Prevention of Corruption Acts 1889-1916;    2. under Law creating offences in respect of fraudulent acts; or    3. at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Council; or   (i) defrauding or attempting to defraud or conspiring to defraud the Council. |
| **Regulatory Bodies** | means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Council or the Contractor and **"**Regulatory Body**"** shall be construed accordingly; |
| **Relevant Requirements** | means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010; |
| **Relevant Transfer** | means a relevant transfer for the purposes of TUPE; |
| **Representative** | are those employees, agents or otherwise of the Council and the Contractor listed at [Schedule 4](#_bookmark94) |

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|  | who will be involved in the management of this Contract; |
| **Returning Employees** | means those employees wholly or mainly engaged in the provision of the Services as the case may be as immediately before the expiry or termination of this Contract whose employment transfers to the Council or a Future Contractor pursuant to TUPE; |
| **Request for Information** | a request for information or an apparent request for information under the FOIA or the EIR; |
| **Service Specification** | means the specification for the Services in [Schedule 1](#_bookmark91); |
| **Services** | means the services to be delivered by or on behalf of the Contractor under this Contract, more particular described at [Schedule 1](#_bookmark91) (Service Specification); |
| **Site** | means any specific area within which the Contractor is providing the Services; |
| **Sub-Contract** | means any contract entered into by the Contractor with a third party for the provision of any of the Services or equipment in relation to the Services in accordance with clause [30](#_bookmark54); |
| **Sub-Contractor** | means any Contractors that enter into a Sub- Contract with the Contractor; |
| **Sub-Contractor Personnel** | means all employees, volunteers, workers, staff, agents and consultants of the Sub-Contractor engaged in the provision of the Services at any time; |
| **Termination Date** | means the date on which this Contract expires at the end of the Term, including any Extension Period or the date on which this Contract terminates following termination in accordance with clause [15.1](#_bookmark26), clause [16](#_bookmark27), clause [29](#_bookmark53) or clause  [31](#_bookmark56) ; |
| **Transferring Third Party Employees** | mean employees of current third party Contractors of all or some services similar or the same as the Services whose contracts of employment transfer with effect from the  Commencement Date to the Contractor by virtue of the application of TUPE. |

In this Contract, unless the context otherwise requires:

* 1. headings and sub-headings are for ease of reference only and shall not be taken into account in the interpretation or construction of this Contract;
  2. all references to clauses and Schedules are references to the clauses of and the schedules to this Contract unless otherwise stated;
  3. the Schedules form part of this Contract;
  4. all references to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, documents or other instrument as amended, supplemented, substituted, novated or assigned from time to time;
  5. all references to any statutory provision shall include references to any statute or statutory provisions which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations, codes of practice, instruments or other sub-ordinate legislation made under the relevant statute or statutory provision;
  6. words importing the singular include the plural and vice versa;
  7. words importing a gender include all genders;
  8. "person" includes an individual, partnership, forum, trust, body corporate, government, governmental body, Council, agency or unincorporated body of persons or association;
  9. the words "include" and "including" are to be construed without limitation and the rule of construction known as ejusdem generis shall not apply to this Contract;
  10. any obligation on a Party to do any act, matter or thing includes, unless expressly stated otherwise, an obligation to procure that it is done;
  11. references to sub-Contractors shall be to sub-Contractors of any tier;
  12. any obligation on a Party to do any act, matter or thing includes, unless expressly stated otherwise, an obligation to procure that it is done;
  13. subject to any express provisions of this Contract to the contrary, the obligations of any Party are to be performed at that Party's own expense;
  14. in the event of, and only to the extent of any conflict or inconsistency between the terms and conditions of this Contract and any other terms and conditions, such conflict or inconsistency shall be resolved according to the following order of priority:
      1. the clauses of this Contract;
      2. The Service Specification;
      3. the Contractor’s Tender Response; and
      4. the other Schedules to this Contract

## Term

* 1. This Contract shall commence on the Commencement Date and shall continue in effect until the Expiry Date or until it is otherwise terminated in accordance with the provisions of this Contract (“the Term”).
  2. Prior to the expiry of this Contract, the Council may, at its absolute discretion, serve notice on the Contractor in writing extending the term of this Contract for a further three (3) twelve (12) month periods (the “Extension Period”) (i.e. a maximum contract period of 5 years in total). In the event that the Council serves notice under clause [2.2](#_bookmark3) the term of this Contract will be extended in accordance with the notice.
  3. Unless it is further extended under this clause [2](#_bookmark2) or terminated in accordance with clause [15.1](#_bookmark26) , clause [16](#_bookmark27), clause [29](#_bookmark53) or clause [31](#_bookmark56) the Contract shall terminate automatically at the end of the current Extension Period without further notice.

## Provision of the Services

* 1. The Contractor shall provide the Services throughout the Term in accordance with the provisions of this Contract, including, without limitation, the provisions of the Service Specification and [Schedule 2](#_bookmark92) (Payment).
  2. The Contractor is not given any sole or exclusive rights in relation to the provision of the Services.
  3. Without prejudice to the provisions of the Service Specification and the rest of this Contract, the Contractor shall provide the Services with effect from the Commencement Date.

## Equipment and Materials

* 1. All Materials shall be provided by the Contractor unless otherwise stated in the Service Specification or as directed by the Council.

## Standard of Performance

* 1. Without prejudice to the generality of clause [5.4](#_bookmark7) the Contractor will at all times ensure that the Services comply with and meet all the requirements of this Contract, the Service Specification, Guidance, and all applicable Council Policies and Law with effect from the Commencement Date.
  2. The Contractor shall ensure, and shall procure that any Contractor Personnel shall ensure, that the Services are carried out in compliance with race equality requirements.
  3. The Contractor shall ensure that at all times the Services are performed by appropriately qualified and trained personnel.
  4. The Contractor shall at all times in connection with this Agreement act in:
     1. good faith in the best interests of the Council;
     2. accordance with Good Industry Practice; and
     3. accordance with all relevant Law.

## Charges

* 1. In consideration for the Contractor’s compliance with its obligations under this Contract the Council shall pay to the Contractor the Charges calculated in accordance with [Schedule 2](#_bookmark92) (Payment).
  2. The Charges exclude any amount in respect of VAT and the Council shall, upon receipt of a valid and undisputed VAT invoice, pay such additional amounts in respect of VAT as are chargeable on the value of the Services.
  3. The Charges shall be paid by the Council in accordance with [Schedule 2](#_bookmark92) (Payment) and:
     1. The Council shall pay all sums properly due and payable to the Contractor in cleared funds within thirty (30) days of receipt of a valid and undisputed invoice;
     2. Where the Contractor enters into a Sub-Contract for the purpose of performing its obligations under this Contract, the Contractor shall ensure that a provision is included in such Sub-Contract which requires payment to be made of all sums due by the Contractor to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid and undisputed invoice; and
     3. Notwithstanding any other provision of this Contract, if the Contractor notifies the Council that the Contractor has failed to pay a valid and undisputed Sub-Contractor’s invoice within thirty (30) days of receipt, or the Council otherwise discovers the same, the Council shall be entitled to publish the details of the late payment or non-payment (including on government websites and in the press).
  4. Any invoice submitted by the Contractor shall be considered and verified by the Council in a timely manner.
  5. Where the Council fails to comply with clause [6.4](#_bookmark10) 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 [6.3.1](#_bookmark9) after a reasonable time has passed.

## Charges adjustment extension

* 1. The Charges are fixed until 31 March 2019.
  2. Prior to 31 March of each year of this Agreement (including any Extension Period), the Council shall issue an alteration to the Charges to the Contractor to be applicable from 1 April of that year to 31 March of the following year (a “Price Variance”).
  3. Any Price Variance shall be limited to the prevailing RPIX as at the January immediately preceding the alteration and the Council shall have the right to include any increase to the landfill tax within the Price Variance.
  4. A Price Variance shall be at the Council’s sole discretion and where agreed shall be set out in writing by the Council.

## Conduct of Contractor

* 1. Whilst engaged in the provision of the Services the Contractor shall comply with the Council’s Policies relating to the conduct of Contractor Personnel and security arrangements. The Council (acting reasonably) may:
     1. instruct the Contractor that disciplinary action is taken against any employee of the Contractor involved in the provision of the Services (in accordance with the terms and conditions of employment of the employee concerned) where such employee misconducts himself or is incompetent or negligent in his duties (in which case the Council shall co- operate with any disciplinary proceedings and shall be advised in writing of the outcome); or
     2. where the Council has reasonable grounds for considering that the presence or conduct of an employee at any location relevant to the performance of the Services is undesirable, require the exclusion of the relevant employee from the relevant location(s).
  2. Where the Contractor is unable (acting reasonably) to comply with clause

[8.1.2](#_bookmark13) by the time period specified in it then the Contractor shall comply with its obligations under that clause as soon as reasonably practicable and by no later than the end of the day on which the relevant individual first goes on Site. Until such time as the Contractor has complied with its obligations in respect of that individual, he or she shall at all times be accompanied on Site by a member of the Contractor's Personnel who has been properly notified to the Council in accordance with clause [8.1.2](#_bookmark13).

## Access to Council Premises

* 1. The Council shall provide the Contractor with access to such parts of the Council’s Premises as the Contractor reasonably requires for the purposes of properly providing the Services.
  2. The Contractor shall ensure that only those of the Contractor Personnel that are duly authorised and competent to enter upon the Council’s Premises for the purposes of providing the Services do so.
  3. Whilst on the Council’s Premises or, if applicable any other land or premises which the Contractor is required to access for the provision of the Services, the Contractor shall:
     1. adhere to all reasonable requests and instructions of the Council as may be provided from time to time;
     2. take steps to minimise and keep to a minimum interference with any other activities taking place;
     3. ensure that all Contractor Personnel are aware of and comply with the Council’s Health and Safety Policy and are aware of any potential risks to health and safety in relation to the Council’s Premises, Contractor’s Premises or any other land or Site to which access is required for the purposes of providing the Services;
     4. comply with all security measures implemented by the Council in relation to the Council’s Premises, including the provision of all Contractor Personnel entering the Council’s Premises with a form of identification acceptable to the Council, which shall be displayed visibly on that person’s clothing at all times whilst they are on the Council’s Premises or other premises used for the provision of the Services; and
     5. immediately remove any Contractor from the Council’s Premises or other premises used for the provision of the Services where the Council requests this.

## Meeting and Reporting

* 1. The Contractor’s Representatives will:
     1. provide the Council Representatives with annual summary reports setting out how the Services have been achieved for the preceding year and the costs that have been incurred and the first annual summary report shall be submitted twelve

(12) months from the Commencement Date and thereafter on each anniversary.

* + 1. attend meetings no more frequently than quarterly with the Council Representative to discuss the delivery of the Services and ensure that detailed notes are taken during each meeting and that these notes are circulated within two Business Days of the date of the meeting;
    2. ensure that the Contractor attends all meetings required under the dispute resolution process set out in clause [41](#_bookmark67).
    3. on request provide the Council with such further information, explanations and documents as the Council may reasonably require in order for it to establish that the Services are being provided properly in accordance with this Contract.

## Contract delay

* 1. If, at any time, the Contractor becomes aware of any circumstance or occurrence which may lead to a delay in the provision of the Services or otherwise adversely affect the Contractor’s performance of its obligations under this Contract it shall immediately notify the Council in writing, providing details of the potential or actual delay.
  2. The Contractor shall use its best endeavours to avoid and mitigate the impact of any circumstance or occurrence referred to in clause [11.1](#_bookmark18) upon the Council.

## Change

* 1. Should the Council wish to change any aspect of the provision of Services it shall provide the Contractor with written notice of the proposed change including sufficient detail to enable the Contractor to comply with its obligations under clause [12.2](#_bookmark21).
  2. Within fifteen (15) Business Days of receipt of the notice referred to in clause [12.1](#_bookmark20) the Contractor shall provide the Council with details of the proposed timetable for implementation and details of any changes to the Charges arising as a result of the proposed change on a transparent and open-book basis.
  3. In calculating any changes to the Charges the Contractor shall ensure that any alteration reflects a fair and proportionate change based upon the reasonable costs of a well-run Contractor of Services and the current profit margin achieved by the Contractor.
  4. After receipt of the information referred to in clause [12.2](#_bookmark21) the Council shall be entitled to abandon or continue with the proposed change. Should the Council decide to continue with the proposed change the Parties shall take steps such as are reasonably necessary to agree a variation to this Contract to reflect the proposed change.

## Best Value

* 1. The Contractor acknowledges that:
     1. the Council is subject to the Best Value Duty;
     2. the provisions of this clause [13](#_bookmark22) are intended to assist the Council in discharging its Best Value Duty in relation to the Services; and
     3. the provisions of this clause [13.1](#_bookmark23) shall apply in respect of the obligations of the Contractor and the Council concerning the Best Value Duty.
  2. The Contractor shall, throughout the Term, but only to the extent of its obligations in this Contract, make arrangements to secure continuous improvement in the way in which the Services are provided, having regard to a combination of economy, efficiency and effectiveness.
  3. The Contractor shall undertake or refrain from undertaking such actions as the Council shall reasonably request to enable the Council to comply with its Best Value Duty, including:
     1. complying with all requests by the Council to procure the attendance of specific officers or employees of the Contractor at any meetings of the Council at which the Services are to be discussed; and

## Emergencies

* + 1. permitting any officer or employee of the Council at all reasonable times and upon reasonable notice, access to:

1. any document or data relating to the Services; and
2. any Contractor Personnel.

If an Emergency arises during the Term which cannot be dealt with by performance of the Services, the Council may instruct the Contractor to use its best endeavours to procure that such additional or alternative services are undertaken by the Contractor as and when required by the Council to ensure that the Emergency is dealt with and normal provision of the Services resumes as soon as is reasonably practicable provided that the Contractor shall not be obliged to provide any service which it is neither qualified nor competent to provide.

## Contractor Warranties and Undertakings

* 1. The Contractor warrants and represents to the Council that on the date hereof:
     1. it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;
     2. it has the corporate power to enter into and to exercise its rights and perform its obligations under this Contract;
     3. it shall at all times comply with all relevant Law and all applicable codes of practice and other similar codes or recommendations, and shall notify the Council immediately of any significant departure from such Law, codes or recommendations;
     4. it has all necessary resources and expertise to deliver the Services;
     5. it is not aware of anything in its own affairs, which it has not disclosed to the Council or any of the Council's advisers, which might reasonably have influenced the decision of the Council to award this Contract;
     6. it has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;
     7. all relevant financial and other information concerning the Contractor has been disclosed to the Council and is to the best of the Contractor’s knowledge and belief is true and accurate;
     8. since the date of its last accounts there has been no material change in its financial position or prospects;
     9. it is not subject to any contractual or other restriction imposed by its own or any other organisation's rules or regulations or otherwise which may prevent or materially impede it from meeting its obligations in connection with the delivery of the Services;
     10. all action necessary on the part of the Contractor to authorise the execution of and the performance of its obligations under this Contract has been taken;
     11. the obligations expressed to be assumed by the Contractor under this Contract are legal, valid, binding and enforceable to the extent permitted by Law and is in the proper form for enforcement in England;
     12. it has not committed, and will not commit, and shall procure that the Contractor Personnel have not committed and shall not commit any Prohibited Act;
     13. it 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 employees and other persons delivering the Services;
     14. the execution, delivery and performance by it of the Services does not contravene any provision of:
         1. any existing Law either in force, or enacted but not yet in force binding on the Contractor;
         2. the Memorandum and Articles of Association of the Contractor;
         3. any order or decree of any court or arbitrator which is binding on the Contractor; or
         4. any obligation which is binding upon the Contractor or upon any of its assets or revenues;
     15. no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues; and
     16. it has not paid commission or agreed to pay any commission to any employee, agent, cub–Contractor, officer or member of the Council either directly or through another on its behalf;

and the Council relies upon such warranties and representations.

* 1. The Contractor warrants and undertakes to the Council that for so long as this Contract remains in full force:
     1. it will upon becoming aware that any litigation, arbitration, administrative or adjudication or mediation proceedings before or of any court, arbitrator or relevant council may be threatened or pending (and immediately after the commencement thereof) give the Council notice of all such litigation, arbitration, administrative or adjudication or mediation proceedings which would adversely affect, to an extent which is material in the context of the delivery of the Services, the Contractor’s ability to perform its obligations under this Contract;
     2. it will not without the prior written consent of the Council (and whether by a single transaction or by a series of transactions whether related or not) sell, transfer, lend or otherwise dispose of the whole or any part of its business or assets which would materially affect the ability of the Contractor to deliver the Services;
     3. it will not cease to be resident in the United Kingdom or transfer in whole or in part its undertaking, business or trade outside the United Kingdom;
  2. All warranties, representations, undertakings, indemnities and other obligations made, given or undertaken by the Contractor in this Contract are cumulative and none shall be given a limited construction by reference to any other.

## Voluntary Termination by the Council

* 1. The Council may terminate the Contract at any time giving a minimum notice period of 2 months on or before its Expiry Date by complying with its obligations under clause [16.2](#_bookmark28).
  2. If the Council wishes to terminate the Contract under this clause [16](#_bookmark27), it must give notice to the Contractor stating:
     1. that the Council is terminating the Contract under this clause [16](#_bookmark27); and
     2. the date that the Contract will terminate.
  3. The Contract will terminate on the date specified in the notice given to the Contractor pursuant to clause [16.2](#_bookmark28).

## Consequences of termination/expiry

* 1. In the event that this Contract is terminated in accordance with clause [16](#_bookmark27) each Party shall bear its own costs and shall have no liability to the other Party.
  2. Immediately upon termination or expiry of this Contract the Contractor shall provide to the Council all documents, materials, correspondence, papers, specifications, information contained within databases, manuals, guidance and other information in its control or possession which the

Council may require or requests in writing in order to assist in the timely and efficient transfer of services to any third party providing the same or similar services to the Services or the adoption of such Services by the Council itself.

* 1. Termination or expiry of this Contract shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

## Survival of termination

* 1. On termination or expiry of this Contract, the following clauses shall continue in force: clause [3](#_bookmark4) (Provision of Services), clause [5](#_bookmark6) (Standard of Performance), clause [6](#_bookmark8) (Charges), clause [8](#_bookmark12) (Conduct of Contractor Personnel), clause [15](#_bookmark25) (Contractor Warranties and Undertakings), clause [19](#_bookmark31) (Indemnities), clause [20](#_bookmark33) (Limitation on Liability), clause [21](#_bookmark34) (Duty to Mitigate), clause [22](#_bookmark35) (Interest), clause [24](#_bookmark37) (Insurance), clause [25.1](#_bookmark40) (Freedom of Information and Confidentiality), clause [27](#_bookmark46) (Data Protection clause [29](#_bookmark53) (Discrimination), clause [30](#_bookmark54) (Sub-contracting) clause [31](#_bookmark56) (Human Rights), clause [34](#_bookmark59) (Records), clause [34.1](#_bookmark60) (Audit), clause [35](#_bookmark61) (Resources, Training and Policies), clause [36](#_bookmark62) (TUPE), clause [40](#_bookmark66) (Public Relations and Publicity) and clause [47](#_bookmark84) (Assistance in Legal Proceedings).

## Indemnities

* 1. Neither Party excludes or limits liability to the other Party for:
     1. death or personal injury;
     2. fraud; or
     3. fraudulent misrepresentation.
  2. The Contractor shall indemnify the Council against all Losses suffered or incurred by the Council arising out of or in connection with:
     1. the Contractor’s breach, negligent performance or non- performance of any of its obligations under this Contract;
     2. any breach of statutory duty arising in relation to this Contract;
     3. the enforcement of this Contract;
     4. any claim made against the Council for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with any act or omission by the Contractor, Contractor Personnel, professional advisors and consultants in the delivery of its obligations under this Contract; or
     5. any claim made against the Council by a third party arising out of or in connection with this Contract to the extent that

such claim arises out of the performance, breach, negligent performance or failure or delay in performance of this Contract by, or presence at the Council’s Premises of, the Contractor, Contractor Personnel, professional advisors and consultants.

## Limitation on Liability

Subject to clause [19.1](#_bookmark32), the Council’s total aggregate liability, in addition to its obligation to pay the Charges as and when they fall due for payment, shall be limited to one hundred per cent (100%) of the aggregate annual Charges paid, due or which would have been payable under this Contract in the twelve (12) month period immediately preceding the event giving rise to liability (or if such event occurs in the first twelve (12) months of the Term, the amount estimated to be paid in the first twelve (12) months).

## Duty to mitigate

Both Parties shall at all times throughout the duration of this Contract use reasonable endeavours to mitigate any loss, damage, costs or expenses suffered as a result of any acts or omissions of the other Party in relation to the performance of obligations under this Contract.

## Interest

* 1. Save where otherwise specifically provided, if a Party fails to make any payment due to the other Party under this Contract within twenty (20) Business Days of the due date for payment, the defaulting Party shall pay interest on the overdue amount at the Prescribed Rate from the due date until the date of actual payment.
  2. In relation to any payments that are disputed in good faith, interest under this clause shall be payable only after such dispute is resolved, and only on any sums found to be outstanding, from twenty (20) Business Days after such dispute is resolved until the date of actual payment.

## Right of Set-off

The Council may retain or set off any amount owed to it by the Contractor against any amount due to the Contractor under this Contract or under any other agreement between the Contractor and the Council.

## Insurance

* 1. The Contractor shall take out and maintain with a reputable insurance underwriter or companies a policy or policies of insurance which are adequate to cover its liability under this Contract, and any other insurances required in order to comply with the Law for the duration of the Initial Term and any Extension Period. These insurances must be effective in each case not later than the date on which the relevant risk commences.
  2. The insurances referred to in clause [24.1](#_bookmark38) shall include but not be limited to the following, in each case for any one occurrence or series of occurrences arising out of one event:
     1. Employers’ Liability Insurance to the value of £10,000,000 (ten million pounds);
     2. Public Liability Insurance to the value of £10,000,000 (ten million pounds);
     3. Professional Indemnity Insurance to the value of £10,000,000 (ten million pounds);
     4. Product Liability Insurance to the value of £10,000,000 (ten million pounds);
     5. Pollution Liability Insurance to the value of £10,000,000 (ten million pounds);
     6. Motor Insurance (Third Party Property Damage) to the value of £10,000,000 (ten million pounds); and
     7. Motor Insurance (Third Party Bodily Injury) – unlimited.
  3. The Contractor shall provide to the Council on request, copies of all insurance policies referred to in this clause [24](#_bookmark37) or a broker’s verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
  4. The Contractor shall not take any action or fail to take any reasonable action, or permit anything to occur, which would entitle any insurer to refuse to pay any claim under any insurance policy referred to in clause [24.1](#_bookmark38).
  5. Should the Contractor fail to take out any insurances in accordance with clause [24.1](#_bookmark38) the Council may purchase such insurances and recover the costs of such insurances from the Contractor.

## IPR

* 1. All Intellectual Property Rights
     1. owned by the Council before the Commencement Date or developed by the Council during the Term shall remain the property of the Council;
     2. owned by the Contractor before the Commencement Date shall remain the property of the Contractor; and
     3. developed or created by the Contractor during the Term that relate to the Services shall belong to the Council.
  2. Where the Council has provided the Contractor with any of its Intellectual Property Rights for use in connection with the Services (including without limitation its name and logo) the Contractor shall cease to use such Intellectual Property Rights immediately upon termination of this Contract and shall either return or destroy such Intellectual Property Rights as requested by the Council.
  3. The Contractor acknowledges and agrees that all rights, titles and interests in or to any information, documents, procedures, technology, know-how, reports or any other Intellectual Property Rights developed or created by the Contractor during the Term shall belong to the Council.

## Freedom of information and confidentiality

* 1. In respect of any Confidential Information it may receive from the other Party (“the Discloser”) and subject always to the remainder of this clause [26](#_bookmark41), each Party (“the Contractor”) undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party, without the Discloser’s prior written consent provided that:
     1. the Contractor shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of this Contract;
     2. the provisions of this clause [26.1](#_bookmark42) shall not apply to any Confidential Information which:-

1. is in or enters the public domain other than by breach of this Contract or other act or omissions of the Contractor;
2. is obtained by a third party who is lawfully authorised to disclose such information;
3. is authorised for release by the prior written consent of the Discloser;
4. the disclosure of which is required to ensure the compliance of the Council with the Freedom of Information Act 2000 (the “FOIA”) the Environmental Information Regulations 2004 (the “EIR”) or the Local Government Transparency Code 2015; and
5. the Council may, at its sole discretion, elect to publish this Contract (including any variations to this Contract) in its entirety.
   1. Nothing in this clause [26](#_bookmark41) shall prevent the Contractor from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law or, provided that the information is subject to confidentiality undertakings equivalent to those set out in clause [26.1](#_bookmark42), to its professional advisors or insurers.
   2. The Contractor acknowledges that the Council is subject to the FOIA and the EIR. The Contractor notes and acknowledges the FOIA, the EIR and the Codes of Practice under section 45 and 46 of the FOIA. The Contractor will act in accordance with the FOIA, the EIR and these Codes of Practice (and any other applicable codes of practice or guidance notified to the Contractor from time to time) to the extent that they apply to the Contractor's performance under this Contract.
   3. The Contractor agrees that:
      1. without prejudice to the generality of clause [26.3](#_bookmark43), the provisions of this clause [26.4](#_bookmark44) are subject to the obligations and commitments of the Council under the FOIA and the Codes of Practice issued under section 45 and 46 of the FOIA.
      2. where it considers that any information should not be available for disclosure, it will:
6. identify it specifically; and
7. explain the grounds for exemption from disclosure and the time period applicable to that sensitivity.
   1. All decisions regarding disclosure of information following a Request For Information will be made at the sole discretion of the Council. The Contractor acknowledges that, even where the Contractor has indicated that information is commercially sensitive, the Council may be required to disclose it under the FOIA or EIA, with or without consulting the Contractor and although the Council will use reasonable endeavours to consult with the Contractor prior to any disclosure, the Council shall not be under any further obligation to consult the Contractor prior to disclosure.
   2. The Contractor shall transfer to the Council any Request for Information it should receive, as soon as practicable after receipt and in any event within five (5) Business Days of receiving a Request for Information.
   3. Where the Council is managing a request as referred to in clause [26.5](#_bookmark45), the Contractor shall co-operate with the Council and shall respond together with copies of any documentation so requested within five (5) Business Days of any request by it for assistance.

## Data Protection Act 1998

The Contractor shall (and shall procure that the Contractor Personnel shall) comply with any notification requirements under the Data Protection Act 1998 (DPA) and both Parties will duly observe all their obligations under the DPA, which arise in connection with the Contract.

## Bribery and Fraud

* 1. The Contractor represents and warrants that neither it, nor to the best of its knowledge any Contractor Personnel, have at any time prior to the Commencement Date:
     1. committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; or
     2. 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.

* 1. The Contractor shall not during the term of this Contract:
     1. commit a Prohibited Act; and/or
     2. do or suffer anything to be done which would cause the Council or any of the Council’s employees, consultants, Contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
  2. The Contractor shall during the term of this Contract:
     1. establish, maintain and enforce policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
     2. keep appropriate records of its compliance with its obligations under clause [28.3.1](#_bookmark50) and make such records available to the Council on request.
  3. The Contractor shall immediately notify the Council in writing if it becomes aware of any breach of clause [28.1](#_bookmark48) and/or [28.2](#_bookmark49), or has reason to believe that it has or any of the Contractor Personnel have:
     1. been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
     2. 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
     3. received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or Party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.
  4. If the Contractor makes a notification to the Council pursuant to clause [28.4](#_bookmark51), the Contractor 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 [31](#_bookmark56).
  5. If the Contractor is in default under clauses [28.3.1](#_bookmark50) and/or [28.2](#_bookmark49), the Council may by notice:
     1. require the Contractor to remove from performance of this Contract any Contractor Personnel whose acts or omissions have caused the default; or
     2. immediately terminate this Contract.
  6. Any notice served by the Council under clause [28.6](#_bookmark52) shall specify the nature of the Prohibited Act, the identity of the Party who the Council believes has committed the Prohibited Act and the action that the Council has elected to take (including, where relevant, the date on which this Contract shall terminate).

## Discrimination

* 1. The Contractor acknowledges the Council’s obligations under equality Law and agrees to perform its obligations under this Contract, and agrees to procure that any Contractor Personnel shall perform its obligations in relation to the Services with regard to:
     1. all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
     2. the Council’s equality and diversity policy as updated from time to time;
     3. the Equality and Human Rights Commission’s Code of Practice in Employment as updated from time to time;
     4. any other relevant statutory code of practice in relation to equalities legislation or prevention of discrimination in the workplace; and
     5. any other requirements and instructions which the Council imposes in connection with any equality obligations imposed on the Council at any time under applicable equality Law or under the Council’s own policies or rules.
  2. The Contractor shall 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).
  3. To the extent that the Contractor’s obligations under this Contract involve the exercise of public functions of the Council, the Contractor shall, and shall procure that any Contractor Personnel shall comply to the extent permitted by Law with the provisions of:
     1. Sections 28 and 29 of the Equality Act 2010, as if they were a body within the meaning of those Sections 28 and 29; and
     2. Part 11 of Chapter 1 of the Equality Act 2010, as if they were a body within the meaning of Schedule 19 of that Act.
  4. The Contractor shall assist the Council in its performance of its obligations under the Equality Act 2010, including but not limited to the provision of information that the Council shall require in order to monitor:
     1. equality of access to the Services; and
     2. compliance with the Council’s obligation under the equality Law.
  5. The Contractor shall provide to the Council such information as the Council may require in order to confirm the Contractor’s compliance with its obligations under this clause [29](#_bookmark53) within five (5) Business Days of receipt of a request from the Council’s Representative.
  6. The Contractor shall ensure that any Contractor Personnel engaged in the provision of the Services shall comply with the requirements of this clause [29](#_bookmark53).
  7. Breach of this clause [29](#_bookmark53) by the Contractor shall entitle the Council to terminate the Contract with immediate effect.

## Sub-contracting

* 1. The Contractor shall not, without the prior written consent of the Council, sub-contract, whether in whole or in part, any one or more of its obligations under this Contract.
  2. In relation to any sub-contracting pursuant to clause [30.1](#_bookmark55):
     1. the Contractor shall be responsible to the Council in Law or otherwise for all such sub-contracted Services and such sub- contracting shall not modify, diminish, reduce or in any other way affect the liability and/or obligations of the Contractor under this Contract and/or at Law or otherwise;
     2. the Contractor's remuneration shall not be increased by any amounts payable by the Contractor to its Sub- Contractors; and
     3. the Contractor shall be liable to the Council for the tortious acts andomissions of the person performing any sub- contracted work and/or services.

## Human rights

* 1. The Contractor shall at all times comply with the provisions of the Human Rights Act 1998 (the “HRA 1998”) in the performance of this Contract.
  2. The Contractor shall undertake or refrain from undertaking, and shall procure that the Contractor Personnel shall undertake or refrain from undertaking, such acts as the Council requests in order to enable the Council to comply with its obligations under the HRA 1998.
  3. In the event that the Contractor or any Contractor Personnel does or omits to do, or permits or allows anything to be done which is incompatible with the provisions of the HRA 1998 which causes or may cause the Council to be in breach of its obligations under the HRA 1998 the Contractor shall immediately notify the Council in writing and the Council may terminate this Contract immediately upon notice in writing in its absolute discretion.
  4. The Contractor shall indemnify the Council against any Losses or liability (including any interest, penalties or costs incurred) which arises as a result of a breach by the Contractor of its obligations under this clause [31](#_bookmark56).

## Conflict of interest

* 1. The Contractor acknowledges and agrees that no Conflict of Interest exists between the Contractor and the Council at the date stated on the face of this Contract. In the event that the Contractor becomes aware of a Conflict of Interest between its own interests and the Council, it shall notify the Council of the full details of any such Conflict of Interest immediately.
  2. The Council reserves the right to terminate this agreement immediately by notice in writing and/or take such steps as it shall deem necessary should it become aware of a Conflict of Interest between itself and the Contractor.

## Assignment/Novation

* 1. The rights and obligations of the Council under this Contract shall not be assigned, novated or otherwise transferred (whether by virtue of any Law or any scheme pursuant to any Law or otherwise) to any person other than to any public body (being a single entity) acquiring the whole of the Contract and having the legal capacity, power and Council to become a Party to and to perform the obligations of the Council under this Contract being:
     1. a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975;
     2. any Local Council which has sufficient financial standing or financial resources to perform the obligations of the Council under this Contract; or
     3. any other public body whose obligations under this Contract are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Contractor) by the Council or a Minister of the Crown having the legal capacity, power and Council to perform the obligations under the guarantee and the obligations of the Council under this Contract.
  2. The Contractor shall not assign, novate, subcontract or otherwise transfer its rights and obligations under this Contract in whole or in part except with the prior written consent of the Council.

## Records and Open Book Accounting

* 1. The Contractor shall:
     1. monitor the delivery and success of the Services throughout the Term to ensure the objectives and outcomes of the Services Specification are being met and that the Contractor is complying with the terms and conditions of this Contract.
     2. along with its financial report provided under clause [10.1.1](#_bookmark16), provide the Council with an insurance review in the format required by the Council.
     3. on request provide the Council with such further information, explanations and documents as the Council may reasonably require in order for it to establish that the Services are being properly delivered and that it is complying with all other obligations under the Contract.
     4. provide the Council with a final report on completion of the Term which shall confirm whether the delivery of the Services has been successfully and properly completed and if the Services have not been delivered successfully and properly the final report shall explain why.
     5. retain all information required for the Council, or any other body with statutory powers to do so.
  2. The Council may monitor the delivery of the Services by the Contractor and the Contractor shall co-operate with the Council in carrying out such monitoring as the Council considers necessary at no additional cost to the Council.
  3. The Contractor acknowledges and agrees it shall permit the Council (and any person authorised by the Council) reasonable access to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Contractor's fulfilment of the conditions of this Contract and shall, if so required, provide appropriate oral or written explanations from them.
  4. The Contractor shall permit any person authorised by the Council for the purpose to visit the Contractor once every quarter to monitor the delivery of the Services. Where, in its absolute discretion, the Council considers that additional visits are necessary to monitor the delivery of the Services, it shall be entitled to authorise any person to make such visits on its behalf.
  5. For the purpose of fulfilling its obligations under this clause the Contractor shall retain all information relevant to this Contract for a minimum of 6 years following the termination or expiry of this Contract.

## Resources, Training and Policies

* 1. The Contractor shall procure that all employees receive such training and supervision as is necessary to ensure the proper performance of the Services under this Contract.
  2. The Contractor shall procure that there are set up and maintained by it, personnel policies and procedures covering all relevant matters (including discipline, grievance, equal opportunities and health and safety). The Contractor shall procure that the terms and implementation of such policies and procedures comply with Law and Good Industry Practice and that they are published in written form and that copies of them (and any revisions and amendments to them) are issued to the Council when requested.
  3. The Contractor shall ensure that each of the Contractor Personnel shall comply at all times with each of the Council’s policies (which shall include rules, codes of practice, procedures and standards) as amended or updated from time to time and any additional policies which the Council may adopt from time to time.
  4. For the avoidance of doubt, the Contractor Personnel shall include any Sub-Contractors engaged by the Contractor at any time for the provision of the Services.
  5. The Contractor shall procure that any Sub-Contractor engaged in the provision of the Services shall ensure that the Sub-Contractor’s Personnel shall comply with this clause [35](#_bookmark61).

## TUPE Employees

The Contractor and the Council shall comply with all their obligations set out in [Schedule 5](#_bookmark95) (TUPE) of this Contract.

## Canvassing

The Contractor warrants that, up until the date of this Contract, it has not directly or indirectly canvassed any member, official or employee of the Council or their advisers in relation to this Contract or its subject matter.

## Capacity

Save as otherwise expressly provided, the obligations of the Council under this Contract are obligations of the Council in its capacity as a contracting counterparty and nothing in this Contract shall operate as an obligation upon, or in any other way fetter or constrain the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under this Contract (howsoever arising) on the part of the Council to the Contractor.

## Co-Operation

Each Party agrees to co-operate, at its own expense (but without being compelled to incur material additional expenditure), with the other Party in the fulfilment of

the purposes and intent of this Contract. To avoid doubt, neither Party shall be under any obligation to perform any of the other's obligations under this Contract.

## Public Relations and Publicity

* 1. The Contractor shall not make any announcement (including advertisements) in relation to or publicise in any way either the Contract (or any part thereof) or its activities under the Contract without obtaining the prior approval of the Council. Such approval shall not be unreasonably withheld and, if applicable, will be notified to the Contractor in accordance with the provisions of clause [44](#_bookmark80).
  2. The Contractor shall acknowledge the support of the Council in any materials that refer to the delivery of the Services and in any public communications about the Services.
  3. The Contractor shall ensure that Contractor Personnel and professional advisors and consultants comply with the provisions of this clause [40](#_bookmark66).
  4. In circumstances where an announcement is required by Law, any governmental or regulatory Council, or by any court or other competent Council, the Party required to make the announcement shall notify the other Party as soon as is reasonably practicable in accordance with the provisions of clause [44](#_bookmark80). The Party subject to the requirement shall use reasonable endeavours to agree the content of the announcement with the other Party before making it.
  5. The provisions of this clause [40](#_bookmark66) shall apply throughout the duration of this Contract and indefinitely beyond either its expiry or termination.

## Dispute resolution

* 1. The Parties shall attempt in good faith to negotiate a settlement to any dispute (a “Dispute”) between them arising out of or in connection with the Contract within ten (10) Business Days of either Party notifying the other of the dispute.
  2. In the event that the Dispute cannot be resolved within ten (10) Business Days of notification being provided in accordance with clause [41.1](#_bookmark68) the Parties shall escalate the dispute to the Chief Executive of the Council and the Managing Director (or equivalent) of the Contractor.
  3. If the Dispute cannot be resolved by the Parties pursuant to clauses [41.1](#_bookmark68) and [41.2](#_bookmark69) within twenty (20) Business Days of notification being provided in accordance with clause [41.1](#_bookmark68) the Dispute shall be referred to mediation pursuant to the procedure set out in clause [41.4](#_bookmark72) unless:
     1. the Council considers that the Dispute is not suitable for resolution by mediation; or
     2. the Contractor does not agree to mediation; in which case the provisions of clause [41.4.6](#_bookmark73) will apply.
  4. The procedure for mediation and consequential provisions relating to mediation are as follows:
     1. a neutral adviser or mediator (“the Mediator”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Business Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Business Days from the date of the proposal to appoint a Mediator or within ten (10) Business Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (“CEDR”) to appoint a Mediator.
     2. the Parties shall within ten (10) Business Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.
     3. unless otherwise agreed, all negotiations connected with the Dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
     4. if the Parties reach agreement on the resolution of the Dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is executed by their duly authorised representatives.
     5. failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Agreement without the prior written consent of both Parties.
     6. If:

1. the Parties fail to reach agreement in the structured negotiations within sixty (60) Business Days of the Mediator being appointed, or such longer period as may be agreed by the Parties; or
2. the provisions of clauses [41.3.1](#_bookmark70) or [41.3.2](#_bookmark71) apply
   * 1. The performance of the Contract shall not be suspended, cease or be delayed by the application of the procedures set out in this clause [41](#_bookmark67) and Contractor shall comply fully with the requirements of the Contract at all times.
   1. If the Dispute cannot be resolved by the Parties pursuant to clauses [41.1](#_bookmark68),

[41.2](#_bookmark69) and [41.4](#_bookmark72) then before the Contractor may commence any court

proceedings it shall serve written notice on the Council of its intention and the Council shall have fifteen (15) Business Days from receipt of the Contractor's notice in which to reply requiring the Dispute to be referred to arbitration in accordance with the provisions in clause [41.7](#_bookmark76).

* 1. In its notice to the Council pursuant to clause [41.5](#_bookmark74), the Contractor may request that the Dispute is referred to arbitration, to which the Council may, in its sole discretion, consent.
  2. If:
     1. the Council requires the Dispute to be referred to arbitration in accordance with clause [41.5](#_bookmark74); or
     2. the Council consents to the Contractor’s request to refer the Dispute to arbitration in accordance with clause [41.6](#_bookmark75);

the Dispute shall be referred to arbitration and the Parties shall comply with the following provisions:

* + 1. the arbitration shall be governed by the provisions of the Arbitration Act 1996 and the London Court of International Arbitration ("LCIA") procedural rules shall be applied and are deemed to be incorporated into this Contract (save that in the event of any conflict between those rules and this Contract, this Contract shall prevail);
    2. the decision of the arbitrator shall be binding on the Parties (in the absence of any material failure by the arbitrator to comply with the LCIA procedural rules);
    3. the tribunal shall consist of a sole arbitrator to be agreed by the Parties and in the event that the Parties fail to agree the appointment of the arbitrator within ten (10) Business Days or, if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA; and
    4. the arbitration proceedings shall take place in London.
  1. Nothing in this clause [41](#_bookmark67) shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

## Representatives

* 1. The Council shall, prior to the Commencement Date, appoint both an Authorised Officer and a Deputy Authorised Officer (to act in those instances where the Authorised Officer is unavailable).
  2. The Contractor shall, prior to the Commencement Date, appoint both a Contract Manager and a Deputy Contract Manager (to act in those instances where the Contract Manager is unavailable).
  3. The contact details for the Authorised Officer, the Deputy Authorised Officer, the Contract Manager and the Deputy Contract Manager are as listed at [Schedule 4](#_bookmark94).
  4. Any changes to the contact details under clause [42.3](#_bookmark78) shall be notified to the other Party as soon as is reasonably practicable in accordance with the provisions of clause [44](#_bookmark80).
  5. The Authorised Officer and the Contract Manager (and where applicable the Deputy Authorised Officer and the Deputy Contract Manager) shall have authority to act on behalf of the Council and the Contractor respectively for all purposes in connection with this Contract unless otherwise notified to the other Party in accordance with clause [44](#_bookmark80).
  6. The Authorised Officer shall be entitled to give directions to the Contract Manager from time to time for any purpose under or in connection with this Contract.
  7. The Council reserves the right to reject the appointment of any individual as Contract Manager who, at the absolute discretion of the Council, either does not possess the necessary experience in the provision of the Services or is in any other way unsuitable for the role.

## No Agency

* 1. Nothing in this Contract shall be construed as creating a partnership or as a contract of employment between the Council and the Contractor.
  2. Save as expressly provided otherwise in this Contract, the Contractor shall not be, or be deemed to be, an agent of the Council and the Contractor shall not hold itself out as having Council or power to bind the Council in any way.
  3. Without limitation to its actual knowledge, the Contractor shall for all purposes of this Contract, be deemed to have such knowledge in respect of the provision of the Services as is held (or ought reasonably to be held) by any Contractor Personnel.

## Notices

* 1. A notice (or any other communication) from one Party to the other under or in connection with this Contract shall be:
     1. in writing;
     2. signed on behalf of the Party giving it;
     3. marked for the attention of the Representative of the receiving Party as provided for in clause [42](#_bookmark77); and
     4. sent by a delivery method listed in clause [44.2](#_bookmark81).
  2. The table below sets out the delivery methods by which a notice (or any other communication) in connection with this Contract may be sent as

well as the corresponding dates and times of deemed delivery that shall apply:

|  |  |
| --- | --- |
| **Delivery Method** | **Deemed Delivery** |
| By hand | On signature of a delivery receipt. |
| By pre-paid first class post, recorded delivery or other next Business Day delivery service | At 09:00 on the second Business Day after posting. |

* 1. All references to the time of deemed delivery in clause [44.2](#_bookmark81) are to local time in the place of deemed receipt.
  2. This clause shall not apply to the service of proceedings or any other document in connection with any legal action or, if applicable, in connection with any other method of dispute resolution as provided for in clause [41](#_bookmark67).

## Severability

If any term, condition or provision of this Contract shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this Contract.

## Waiver

* 1. A waiver of any right or remedy either by Law or under this Contract shall only be effective if it is notified to the other Party in accordance with the provisions of clause [44](#_bookmark80) and is expressly stated to be a waiver.
  2. No waiver of any right or remedy arising from a breach of this Contract shall be deemed to be a waiver of any right or remedy relating to any subsequent breach of this Contract.
  3. Any failure or delay by a Party to exercise any right or remedy either by law or under this Contract shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy either by law or under this Contract shall prevent or restrict the further exercise of that or any other right or remedy.

## Assistance in legal proceedings

* 1. The Contractor shall, when reasonably requested to do so by the Council, provide all information that is relevant to the performance of its obligations under this Contract to the Council free of charge in connection with any actual or expected legal proceedings in which the Council is or may be involved or any relevant internal disciplinary hearing at the Council.
  2. The Contractor shall ensure that its servants, employees, agents, sub- Contractors, Contractors, professional advisors and consultants are

available to be interviewed in connection with or to give evidence in relation to such proceedings or hearings.

* 1. In circumstances where:
     1. it is reported that Losses (incurred by any person or body) have either been caused by or have been contributed to by an act or omission on the part of the Contractor; and
     2. the Council decides to, in light of such finding, make a payment to or provide some other benefit to such person or body;

then the Contractor shall either reimburse the Council the amount of any such payment or pay to the Council the reasonable cost of any such benefit as is applicable and proportionate to the act or omission of the Contractor. The Council may also deduct any such amounts from any payment otherwise due to the Contractor under this Contract.

## Third Party Rights

No term of this Contract is enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to this Contract.

## Entire Agreement

* 1. This Contract, together with the documents referred to in it, constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels and nullifies any previous agreement between the Parties in relation to such matters.
  2. The Contractor acknowledges and agrees that in entering into this Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Contract.
  3. Nothing in this clause [49](#_bookmark86) shall operate to exclude any liability for fraud.

## Double recovery

Notwithstanding any other provisions of this Contract, neither Party shall be entitled to recover compensation or make a claim under this Contract in respect of any loss that it has incurred to the extent that it has already been compensated in respect of that loss pursuant to the provisions of this Contract or otherwise.

## Counterparts

* 1. This Contract may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.
  2. No single counterpart shall be effective until each Party has executed and delivered at least one counterpart.

## Variations

All additions, amendments and/or variations to this Contract must be annexed to this Agreement and be in writing and shall only be binding if signed by the Representatives of the Council and the Contractor.

## Governing Law and Jurisdiction

* 1. 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.
  2. Each Party irrevocably agrees that the Courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims.

|  |  |
| --- | --- |
| Signed by  for and on behalf of  **DERBYSHIRE COUNTY COUNCIL** | ...................................................................  Signature |
| Signed by  for and on behalf of | ...................................................................  Signature |

# Schedule 1 Service Specification

**Schedule 2 Payment**

## Part A

Subject to the provisions of this [Schedule 2](#_bookmark92) and any changes to Charges made under clause [7](#_bookmark11) of this Contract, all Charges shall be those set out in the attached Contractor’s Pricing Schedules.

The appropriate Charges will be paid monthly in arrears.

# Schedule 3 Contractor’s Tender

**Schedule 4 Council and Contractor Representatives**

**PART A**

**Council**

|  |  |  |  |
| --- | --- | --- | --- |
| **Job Role** | **Name and email** | **Telephone Number** | **Address** |
| Authorised Officer |  |  | Derbyshire County Council, Matlock, Derbyshire, DE4 3AG |
| Deputy Authorised Officer |  |  | Derbyshire County Council, Matlock, Derbyshire, DE4 3AG |

**PART B**

**Contractor**

**INSERT DETAILS OF CONTRACTOR REPRESENTATIVES**

|  |  |  |  |
| --- | --- | --- | --- |
| **Job Role** | **Name** | **Telephone Number** | **Address** |
| Contract Manager |  |  |  |
| Deputy Contract Manager |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

**Schedule 5 TUPE**

## TRANSFER OF EMPLOYEES TO THE CONTRACTOR ON THE COMMENCEMENT DATE

* 1. The Council and the Contractor agree that where the identity of the Contractor of any of the Services changes, this shall constitute a Relevant Transfer and the contracts of employment of any Transferring Third Party Employees shall transfer to the Contractor. The Contractor shall comply with its obligations under TUPE. The first Relevant Transfer shall occur on the Commencement Date.
  2. The Contractor shall be liable for and indemnify and keep indemnified the Council against any Employment Liabilities arising from or as a consequence of:
     1. any proposed changes to terms and conditions of employment the may consider making on or after the Commencement Date;
     2. any of the employees informing the Council and any third party employer they object to being employed by the Contractor; and
     3. any change in identity of the Transferring Third Party Employees' employer as a result of the operation of TUPE or as a result of any proposed measures the Contractor may consider taking on or after the Commencement Date.
  3. The Contractor shall be liable for and indemnify and keep indemnified the Council against any failure to meet all remuneration, benefits, entitlements and outgoings for the Transferring Third Party Employees and any other person who is or will be employed or engaged by the Contractor in connection with the provision of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, National Insurance contributions, pension contributions, termination costs and otherwise from and including the Commencement Date.
  4. The Contractor shall immediately on request by the Council provide details of any measures that the Contractor envisages it will take in relation to any Transferring Third Party Employees including any proposed changes to terms and conditions of employment. If there are no measures, the Contractor will give confirmation of that fact, and shall indemnify the Council against all Employment Liabilities resulting from any failure by it to comply with this obligation.

## EMPLOYMENT EXIT PROVISIONS

* 1. The Contractor shall as soon as reasonably practicable and in any event within five (5) Business Days following a written request by the Council provide to the Council details of any measures which the Contractor envisages it or they will take in relation to any employees who are or who will be the subject of a subsequent Relevant Transfer, and if there

are no measures, confirmation of that fact, and shall indemnify the Council against all Losses resulting from any failure by the Contractor to comply with this obligation.

* 1. The Contractor within fourteen (10) Business Days of a request by the Council or following the service of a termination notice under clause [15.1](#_bookmark26) or as a consequence of the Council notifying the Contractor of its intention to retender this Contract:
     1. on receiving a request from the Council provide in respect of any person engaged or employed by the Contractor or any Sub-Contractor in the provision of the Services (the Assigned Employees) full and accurate details regarding the identity, number, age, sex, length of service, job title, grade and terms and conditions of employment of and other matters affecting each of those Assigned Employees who it is expected, if they remain in the employment of the Contractor until immediately before the Termination Date, would be Returning Employees (the Retendering Information);
     2. provide the Retendering Information promptly and at no cost to the Council;
     3. notify the Council forthwith in writing of any material changes to the Retendering Information promptly as and when such changes arise;
     4. be precluded from making any material increase or decrease in the numbers of Assigned Employees;
     5. be precluded from making any increase in the remuneration or other change in the terms and conditions of the Assigned Employees other than in the ordinary course of business and with the Council's prior written consent;
     6. be precluded from transferring any of the Assigned Employees to another part of its business or moving other employees from elsewhere in its or their business who have not previously been employed or engaged in providing the Services to provide the Services save with the Council's prior written consent;
     7. Without prejudice to paragraphs [2.2.1](#_bookmark98) and [2.2.7](#_bookmark99) the Contractor shall provide the Employee Liability Information to the Council at such time or times as are required by TUPE, and shall warrant at the time of providing such Employee Liability Information that such information will be updated to take account of any changes to such information as is required by TUPE; and
     8. The Contractor shall indemnify and shall keep indemnified in full the Council and at the Council's request any Future Contractor against all Losses arising from any claim by any party as a result of the Contractor failing to provide or promptly to provide the Council and/or any Future Contractor

where requested by the Council with any Retendering Information and/or Employee Liability Information or to provide full Retendering Information and/or Employee Liability Information or as a result of any material inaccuracy in or omission from the Retendering Information and/or Employee Liability Information provided that this indemnity shall not apply in respect of the Retendering Information to the extent that such information was originally provided to the Contractor by the Council and was materially inaccurate or incomplete when originally provided.

* 1. On the expiry or earlier termination of this Contract, the Council and the Contractor agree that it is their intention that TUPE shall apply in respect of the provision thereafter of any service equivalent to a Service but the position shall be determined in accordance with the Law at the date of expiry or termination as the case may be and this clause is without prejudice to such determination.
  2. Upon expiry or termination of this Contract for whatever reason (the “Return Date”), the provisions of this clause [Schedule 5](#_bookmark95) will apply:

1. The Contractor shall or shall procure that all wages, salaries and other benefits of the Returning Employees and other employees or former employees of the Contractor (who had been engaged in the provision of the Services) and all PAYE tax deductions, pension contributions and national insurance contributions relating thereto in respect of the employment of the Returning Employees and such other employees or former employees of the Contractor up to the Return Date are satisfied;
2. Without prejudice to paragraph [2.4](#_bookmark100), the Contractor shall:
   1. remain responsible for all the Contractor's employees (other than the Returning Employees) on or after the time of expiry or termination of this Contract and shall indemnify the Council and any Future Contractor against all Losses incurred by the Council or any Future Contractor resulting from any claim whatsoever whether arising before on or after the Return Date by or on behalf of any of the Contractor's employees who do not constitute the Returning Employees;
   2. in respect of those employees who constitute Returning Employees indemnify the Council and any Future Contractor against all Losses incurred by the Council or any Future Contractor resulting from any claim whatsoever by or on behalf of any of the Returning Employees in respect of the period on or before the Return Date (whether any such claim, attributable to the period up to and on the Return Date, arises before, on or after the Return Date) including but not limited to any failure by the Contractor to comply with its or their obligations

under Regulations 13 and 14 of TUPE and any award of compensation under Regulation 15 of TUPE and/or Article 6 of the Directive as if such legislation applied, even if it does not in fact apply save to the extent that any such failure to comply arises as a result of an act or omission of the Council or any Future Contractor.

1. The Council shall be entitled to assign the benefit of this indemnity to any Future Contractor.
   1. In the event that the Contractor enters into any sub-contract in connection with this Contract, it shall impose obligations on its Sub- Contractors in the same terms as those imposed on it pursuant to this Schedule and shall procure that the Sub-Contractor complies with such terms. The Contractor shall indemnify and keep the Council indemnified in full against all Losses, incurred by the Council or any Future Contractor as a result of or in connection with any failure on the part of the Contractor to comply with this clause and/or the Sub-Contractor's failure to comply with such terms.