



Milton Keynes Council
Terms and Conditions of Contract

Dated 2018

(1) MILTON KEYNES COUNCIL

-and-

(2) [REDACTED]

AGREEMENT

relating to the supply and installation of
audio visual equipment and related services

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ARTICLES OF AGREEMENT

THIS AGREEMENT is made on the [] day of [] 20[]

BETWEEN

- (1) **MILTON KEYNES COUNCIL** of Civic Offices 1 Saxon Gate East Milton Keynes MK9 3EJ (the “**Council**”); and
- (2) **[SERVICE PROVIDER]** (company registered number [] whose registered office is at [] (the “**Service Provider**”).

RECITALS:

- (A) The Council sought proposals for the supply and installation of audio visual equipment and related services by means of a public tender exercise.
- (B) The Council has, through a competitive process, selected the Service Provider to supply and install the relevant equipment and provide related services, and the Service Provider is willing and able to provide the same in accordance with the terms and conditions of this Contract.

IT IS AGREED:

1. This Contract is comprised of the following documents:
- 1.1 These Articles of Agreement;
 - 1.2 The Contract Particulars;
 - 1.3 The Special Conditions;
 - 1.4 The Conditions of Contract;
 - 1.5 The Schedules (excluding Schedule 4 (the Tender));
 - 1.6 The Appendices (where applicable); and
 - 1.7 Schedule 4 (the Tender)
- and (unless otherwise expressly stated) any inconsistency between them shall be resolved in accordance with the descending order of priority in which they are listed above.
2. Terms and expressions used in this Contract shall have the meanings given in clause 1.1 of the Conditions of Contract.
3. In consideration for payment of the Contract Price, the Service Provider undertakes to perform its obligations pursuant to this Contract with due skill, care and diligence throughout the Contract Period.

EXECUTION AS A DEED

IN WITNESS whereof this Agreement has been executed and delivered by the Parties as a deed:

THE COMMON SEAL of THE)
MILTON KEYNES COUNCIL)
was hereunto affixed in the)
presence of:

Authorised Signatory

EXECUTED AS A DEED by)
[NAME OF SERVICE)
PROVIDER] acting by two)
directors or by a director and
its secretary

Signature of:

.....

(Director)

Signature of :

.....

(Director/Company Secretary)

OR

EXECUTED AS A DEED by
[NAME OF SERVICE
PROVIDER] acting by a
director, in the presence of:

Signature of director:

.....

(Director)

Signature of witness:

.....

Name of witness (in BLOCK
CAPITALS):

Address of witness:

Post Code: _____

CONTRACT PARTICULARS

[Please ensure you obtain advice from Legal Services when completing this document]

1 Commencement [] (clauses 1.1 and
Date: 2.1)

2 Contract Period: [] months/years (clause 1.1)
(delete as appropriate)

3 Contract Price: £ [] excluding VAT (clause 1.1)

OR

As set out in Schedule 3

(delete as appropriate)

4 Contract Yes/No (delete as appropriate) (clause 2.2)
Extension:

If Yes, the period of the extension
shall not exceed [] months

5 Address for For the Council: (clause 5.3)
Service of
Notices

Civic Offices, 1 Saxon Gate East,
Central Milton Keynes MK9 3EJ

FAO []

For the Service Provider:

[insert address and contact details]

6 Key Personnel clause 10 applies/does not apply
(delete as appropriate)

The Key Personnel are:

(delete as appropriate)

7 Safeguarding clauses 12.2 -13.9 apply/do not apply

8 TUPE and Pensions clause 13 applies. (clause 13)

Pensions Bond value: £[]
applies/does not apply

9 Licence to Occupy Council Premises clause 15 applies/does not apply
(delete as appropriate)

10 Parent Company Guarantee clause 17 and Schedule 8 do not apply

11 Performance Bond clause 18 and 0 do not apply

12 Payment and VAT **A. Payment Periods:**
monthly/quarterly in arrears
Or
following achievement of the Payment Milestones set out in the

Schedule 3 (Pricing Schedule)

(delete as appropriate)

- 13 Price Adjustment clause 22 applies/does not apply
(delete as appropriate)

Relevant Index: means the index specified Schedule 3 (Pricing Schedule) or if none is specified, the Consumer Prices Index (CPI)

If clause 23 applies, the Price Review Date is: 1st/2nd/3rd anniversary of the Commencement Date and every anniversary thereafter *(delete or amend as appropriate)*

- 14 Audit Period for which records must be maintained after the end of the contract: (clause 21.7, 24.5, 33 and 34)
12 years

- 15 Liability and Indemnity The Service Provider's liability under this Contract shall be limited to the sum of £[] (clause 45.4)

for each and every claim arising under or in connection with this Contract

OR

in the aggregate over the Contract Period

(delete as appropriate)

16	Insurance	Public Liability Insurance: £5,000,000 per claim	(clause 46.1)
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		Employer's Liability Insurance: £5,000,000 per claim	(clause 47.1)
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17	Additional Insurances	Professional Indemnity Insurance is required/is not required	(clause 46.5 and 47.6)
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(delete as appropriate)

Where professional indemnity insurance is required:

Limit of indemnity is: £[]

On a per claim/aggregate basis

(delete as appropriate)

Period for which Professional Indemnity Insurance is required following expiry or termination:

12 years

[List other required insurances, including: indemnity limit, basis of cover and duration of cover here]

Fidelity Insurance

(clause 47.5)

Is required/is not required

(delete as appropriate)

Where fidelity insurance is required:

Limit of indemnity is: £[]

18 Break clause clause 50 applies/ does not apply

(delete as appropriate)

The notice period is [] months

19 Force Majeure clause 54 applies/ does not apply

(delete as appropriate)

The period referred to in clause 55.3 is []

20 Disaster Recovery clause 55 applies/ does not apply

(delete as appropriate)

21 Commercially Sensitive Information Schedule 11 applies/does not apply

(delete as appropriate)

CONDITIONS OF CONTRACT

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:

“Appendix”	means an appendix to this Contract.
“Approval”	means the written consent of the Council.
“Authority Confirmation”	means written confirmation by the Council that the Goods appear to have been correctly supplied, installed and commissioned ready for use;
“Catastrophic Failure”	means: <ul style="list-style-type: none"> (a) a failure by the Service Provider for whatever reason to implement the Disaster Recovery Plan successfully and in accordance with its terms on the occurrence of a Disaster; and/or (b) any action by the Service Provider, whether in relation to the Services, this Contract or otherwise, which in the reasonable opinion of the Council has or may cause significant harm to the reputation of the Council.
“Change”	means any change to this Contract arising from the Service Provider’s obligations in clause 34.3
“Change Control Note”	means the written record of a Change agreed or to be agreed by the Parties pursuant to the Change Control Procedure.
“Change Control Procedure”	means the procedure for changing this Contract as set out in Schedule 5.
“Council”	means Milton Keynes Council, Civic Offices, 1 Saxon Gate East, Central Milton Keynes MK9 3EJ.
“Commencement Date”	means the date stated in the Contract Particulars or if none is stated, the date of this Contract.
“Commercially Sensitive Information”	means the information listed in Schedule 11 (Commercially Sensitive Information) comprised of information: <ul style="list-style-type: none"> (a) which is provided by the Service Provider to the Council in confidence for the period set out in that Schedule; and/or (b) that constitutes a trade secret.
“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 the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA. Confidential Information shall not include information which:

- (a) was public knowledge at the time of disclosure (otherwise than by breach of clause 28 (Confidential Information));
- (b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (d) is independently developed without access to the Confidential Information.

“Contract”	means this written agreement between the Council and the Service Provider which is more particularly described in the Articles of Agreement.
“Contracting Authority”	means any contracting authority as defined in regulation 2 of the Public Contracts Regulations 2015.
“Contract Particulars”	means the contract particulars contained in this Contract.
“Contract Period”	means the period stated in the Contract Particulars and includes any extension to the Contract Period.
“Contract Price”	has the meaning given in the Contract Particulars.
“Contractor”	means the person, firm or company with whom the Council enters into the Contract.
“Data Controller”	shall have the same meaning as set out in the Data Protection Act 1998.
“Data Processor”	shall have the same meaning as set out in the Data Protection Act 1998.
“Data Protection Legislation”	the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.
“Data Subject”	shall have the same meaning as set out in the Data Protection Act 1998.
“Default”	means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other.
“Defective”	means all or any part of Goods which are defective or otherwise not in accordance with the requirements of this Contract, excluding those

Goods”	which are defective through the act or omission of the Council.
“Disaster”	means an event defined as a disaster in the Disaster Recovery Plan.
“Disaster Recovery Plan”	means a plan which sets out the procedures to be adopted by the Service Provider in the event that the Services are disrupted by reason of a Disaster (including the procedures to be taken by the Service Provider in planning and providing for any such event), the Disaster Recovery Plan at the date of this Contract being set out in Schedule 10.
“DPA”	means the Data Protection Act 1998 and any subordinate legislation made under such 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.
“Environmental Information Regulations”	means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.
“Equipment”	means the Service Provider's equipment, plant, materials and such other items supplied and used by the Service Provider in the performance of its obligations under the Contract.
“Exit Manager”	has the meaning set out in paragraph 4 of 0;
“Exit Obligations”	means the obligations set out in paragraph 2 of 0;
“Exit Period”	means the period determined in accordance with paragraph 5 of 0;
“FOIA”	means the Freedom of Information Act 2000 and any subordinate legislation made under this 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”	<p>means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:</p> <ul style="list-style-type: none"> (a) any industrial action occurring within the Service Provider's or any Sub-Contractor's organisation; or (b) the failure by any Sub-Contractor to perform its obligations under any sub-contract.
“Good Industry Practice”	means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.
“Goods”	means all goods, materials, equipment and items, as described in the Specification, to be supplied by the Service Provider pursuant to this

	Contract.
"Information"	has the meaning given under section 84 of the FOIA.
"Information Governance"	means the way organisations process or handle information relating to the service and/or service users
"Information Governance Toolkit Requirements"	means the requirements set out in the Local Authority model of the NHS Information Governance Toolkit as published by the Department of Health and amended from time to time for: <ul style="list-style-type: none"> (a) Information Governance management, (b) Confidentiality and data protection (c) Information security
"Intellectual Property Rights"	any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, 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.
"Installation and Commissioning"	means those Services relating to the installation and commissioning of Goods.
"Key Personnel"	means those persons named in the Specification as being key personnel.
"Law"	means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the Service Provider is bound to comply.
"Living Wage"	means the figure set annually for areas outside London by the Centre for Research and Social Policy currently at Loughborough University or its successor or any other body which subsequently takes up responsibility for setting the figure.
"Living Wage Criteria"	means circumstances where an individual works at any of the Premises owned or managed by the Council for at least 2 hours per day over a period of 8 consecutive weeks
"Losses"	shall mean all costs, losses, charges, expenses, damages, compensation, fines, claims, demands, liabilities, actions and proceedings (including the costs and expenses (including legal costs and expenses) of such actions and proceedings and the staff costs expended in requiring the discharge of an indemnity or payment of damages) arising from or relating to the contractual clause in question

	or to its breach
“Month”	means calendar month.
“Party”	means a party to the Contract.
“Personal Data”	shall have the same meaning as set out in the Data Protection Act 1998.
“Premises”	means the location where the Services are to be supplied, as set out in the Specification.
“Price Review Date”	has the meaning given in the Contract Particulars.
“Processing and process”	has the meaning given to it under the Data Protection Legislation and for the purposes of this Contract, it shall include both manual and automated processing.
“Procurement Legislation”	shall include the Public Contract Regulations 2015; the Concession Contracts Regulations 2016; Directive 2014/24/EU on public procurement; and Directive 2014/23/EU on the award of concession contracts.
“Prohibited Act”	<p>the following constitute Prohibited Acts:</p> <ul style="list-style-type: none"> (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to: <ul style="list-style-type: none"> (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 Contract; (c) committing any offence: <ul style="list-style-type: none"> (i) under the Bribery Act 2010; (ii) under legislation creating offences concerning fraudulent acts; (iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Council; or (iv) defrauding, attempting to defraud or conspiring to defraud the Council.
“Property”	means the property, other than real property, issued or made available to the Service Provider by the Council in connection with the Contract.
“Public Sector Contracting”	means public sector bodies that are subject to the Public Contracts

Authorities”	Regulations 2015 and respective successor legislation.
“Quality Standards”	means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or European equivalent or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Service Provider would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification.
“Regulations”	The Public Contracts Regulations 2015.
“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.
“Regulatory Bodies”	means those government departments and regulatory, statutory and other entities, committees, ombudsmen 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 the Contract or any other affairs of the Council and “Regulatory Body” shall be construed accordingly.
“Rejected Goods”	means Goods found to be damaged or otherwise not in accordance with the requirements of this Contract, excluding those which are damaged through the act or omission of the Council.
"Relevant Convictions"	means a conviction that is relevant to the nature of the Services or as listed by the Council.
“Relevant Index”	means the index specified in the Contract Particulars;
“Relevant Transfer”	means a relevant transfer for the purposes of TUPE.
“Replacement Service Provider”	means any third party service provider appointed by the Council to supply any services which are substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract.
“Request for Information”	shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply).
“Requirement to Recall”	means where the Service Provider is required by Law and/or Good Industry Practice to order a product recall in respect of the Goods.
“Schedule”	means a schedule attached to, and forming part of, the Contract.
“Services”	means the whole of the service or any part of it (including Installation and Commissioning), as described in the Specification, to be provided by the Service Provider pursuant to this Contract, or such of it as may from time to time remain the subject of this Contract and includes any

	modification or variation made pursuant to the Contract.
“Service Provider Party”	means the Service Provider's agents and contractors, including each Sub-Contractor.
“Specification”	means the description of the Goods and Services to be supplied under the Contract as set out in the Specification including, where appropriate, the Key Personnel, the Premises and the Quality Standards.
“Special Conditions”	means the additional conditions set out in 0.
“Staff”	means all persons employed or engaged by the Service Provider in whatever capacity to perform its obligations under the Contract together with the Service Provider's servants, agents, suppliers and Sub-Contractors used in the performance of its obligations under the Contract.
“Staff Vetting Procedure”	means the Council's procedures for the vetting of personnel and as advised to the Service Provider by the Council.
“Sub-Contract”	means any contract between the Service Provider and a third party pursuant to which the Service Provider agrees to source the provision of any of the Goods and/or Services from that third party.
“Sub-Contractor”	means the contractors that enter into a Sub-Contract with the Service Provider.
“Tender”	means the document(s) submitted by the Service Provider to the Council in response to the Council's invitation to suppliers for formal offers to supply it with Goods and Services.
“TFEU”	means the Treaty on the Functioning of the European Union.
“the Treaties”	means the Treaty on European Union and TFEU.
“Variation”	has the meaning given to it in clause 37 (Variation) of the Conditions of Contract.
TUPE”	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).
“VAT”	means value added tax in accordance with the provisions of the Value Added Tax Act 1994.
“Working Day”	means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

- 1.2 The interpretation and construction of this Contract shall be subject to the following provisions:
- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
 - 1.2.2 words importing the masculine include the feminine and the neuter;
 - 1.2.3 reference to a clause is a reference to the whole of that clause unless stated otherwise;

- 1.2.4 reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted;
- 1.2.5 reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.2.6 the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
- 1.2.7 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

2. CONTRACT PERIOD AND EXTENSION

- 2.1 The Contract shall take effect on the Commencement Date and shall expire automatically at the end of the Contract Period unless it is otherwise terminated in accordance with the provisions of the Contract, or by operation of law, or extended under clause 2.2.
- 2.2 Where stipulated in the Contract Particulars, the Council may, by giving written notice to the Service Provider, extend the Contract for such further period as is stated in the Contract Particulars. The provisions of the Contract will apply (subject to any Variation or adjustment to the Contract Price pursuant to clause 22 (Price Adjustment)) throughout any such extended period.

3. SERVICE PROVIDER'S STATUS

At all times during the Contract Period the Service Provider shall be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

4. COUNCIL'S OBLIGATIONS

Save as otherwise expressly provided, the obligations of the Council under the Contract are obligations of the Council in its capacity as a contracting counterparty and nothing in the 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 the Contract (howsoever arising) on the part of the Council to the Service Provider.

5. NOTICES

- 5.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.
- 5.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, first class post, recorded delivery or special delivery), or electronic mail. Such letters shall be addressed to the other Party in the manner referred to in clause 5.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted, or 4 hours, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letters, or item of electronic mail.
- 5.3 For the purposes of clause 5.2, the address of each Party shall be the address stipulated in the Contract Particulars:

- 5.4 Either Party may change its address for service by serving a notice in accordance with this clause.

6. MISTAKES IN INFORMATION

The Service Provider shall be responsible for the accuracy of all drawings, documentation and information supplied to the Council by the Service Provider in connection with the supply of Goods and Services and shall pay the Council any extra costs occasioned by any discrepancies, errors or omissions therein.

7. CONFLICTS OF INTEREST

- 7.1 The Service Provider shall take appropriate steps to ensure that neither the Service Provider nor any Staff is placed in a position where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider and the duties owed to the Council under the provisions of the Contract. The Service Provider will disclose to the Council full particulars of any such conflict of interest which may arise.
- 7.2 The Council reserves the right to terminate the Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider and the duties owed to the Council under the provisions of the Contract. The actions of the Council pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

8. THE SERVICES

- 8.1 The Service Provider shall supply the Services during the Contract Period with due skill, care and diligence and in accordance with:
- 8.1.1 the Quality Standards (if any stipulated in the Specification);
 - 8.1.2 Good Industry Practice;
 - 8.1.3 the Law; and
 - 8.1.4 the requirements of the Contract.
- 8.2 The Council may inspect and examine the manner in which the Service Provider supplies the Services at the Premises during normal business hours on reasonable notice.
- 8.3 If the Council informs the Service Provider in writing that the Council reasonably believes that any part of the Services does not meet the requirements of the Contract or differs in any way from those requirements, and this is other than as a result of a Default by the Council, the Service Provider shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Council.

9. PROVISION AND REMOVAL OF EQUIPMENT

- 9.1 The Service Provider shall provide all the Equipment necessary for the supply of the Goods and Services.
- 9.2 The Service Provider shall not deliver any Equipment nor begin any work on the Premises without obtaining prior Approval.
- 9.3 All Equipment brought onto the Premises shall be at the Service Provider's own risk and the Council shall have no liability for any loss of or damage to any Equipment unless the Service

Provider is able to demonstrate that such loss or damage was caused or contributed to by the Council's Default. The Service Provider shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Service Provider.

9.4 The Service Provider shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.

9.5 The Service Provider shall, at the Council's written request, at its own expense and as soon as reasonably practicable:

9.5.1 remove from the Premises any Equipment which in the reasonable opinion of the Council is either hazardous, noxious or not in accordance with the Contract; and

9.5.2 replace such item with a suitable substitute item of Equipment.

9.6 On completion of the Services the Service Provider shall remove the Equipment together with any other materials used by the Service Provider to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Service Provider is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Service Provider or any Staff.

10. KEY PERSONNEL

10.1 This clause 10 (Key Personnel) shall apply if so stated in the Contract Particulars.

10.2 The Key Personnel shall not be released from supplying the Services without the agreement of the Council, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances.

10.3 Any replacements to the Key Personnel shall be subject to the agreement of the Council. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

10.4 The Council shall not unreasonably withhold its agreement under clauses 10.2 or 10.3. Such agreement shall be conditional on appropriate arrangements being made by the Service Provider to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

11. SERVICE PROVIDER'S STAFF

11.1 The Council may, by written notice to the Service Provider, refuse to agree to, or withdraw permission to remain involved in the delivery of the Services to:

11.1.1 any member of the Staff; or

11.1.2 any person employed or engaged by any member of the Staff,

whose admission or continued involvement with the delivery of the Services would, in the reasonable opinion of the Council, be undesirable.

11.2 At the Council's written request, the Service Provider shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Council may reasonably request.

11.3 The Service Provider's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations, policies and requirements (including those relating to security

arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Premises.

- 11.4 The Service Provider shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Services. The Service Provider confirms that all persons employed or engaged by the Service Provider were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.
- 11.5 In addition to any requirements specified in the Staff Vetting Procedures, the Council may require the Service Provider to carry out a Disclosure and Barring Service check in respect of any person to be employed or engaged in the provision of the Services. The Service Provider shall ensure that no person who discloses that he/she has a Relevant Conviction, or is found by the Service Provider to have a Relevant Conviction (whether as a result of or through a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Services.
- 11.6 If the Service Provider fails to comply with clause 11.2 within 21 days of the date of the request the Service Provider shall be in Default of its obligations under the Contract.
- 11.7 The decision of the Council as to whether any person is to be excluded from being employed or engaged in delivering the Services and as to whether the Service Provider has failed to comply with clause 11.2 shall be final and conclusive and the Service Provider shall indemnify the Council in respect of all claims, costs, losses or expenses arising from a decision under clause 11.1.
- 11.8 The Service Provider shall pay at least a Living Wage to all its employees who are employed in connection with the Contract and who meet the Living Wage Criteria.

12. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS

- 12.1 Clauses 12.2 to 12.9 shall apply where stipulated in the Contract Particulars. Notwithstanding clauses 12.1 – 12.9, Clause 12.10 shall apply to all Service Providers.
- 12.2 The Parties acknowledge that the Service Provider 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.
- 12.3 The Service Provider shall ensure that all individuals engaged in the provision of the Services are:
 - 12.3.1 subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service including a check against the adults' barred list or the children's barred list, as appropriate; and
 - 12.3.2 the Service Provider shall monitor the level and validity of the checks under this clause 12.3 for each member of staff.
- 12.4 The Service Provider 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 Service Provider 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.
- 12.5 The Service Provider shall immediately provide the Council with any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 12 have been met.
- 12.6 The Service Provider shall refer information about any person carrying out the Services to the Independent Safeguarding Authority 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 any service users/children/vulnerable adults.

- 12.7 The Service Provider shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users.
- 12.8 Where the Services are provided to any adult, the Service Provider shall comply at all times with the current Milton Keynes Safeguarding Adults Multi Agency Policy and Procedures (June 2015) and any amendments and additions there to.
- 12.9 Where the Services are provided to any persons aged 16 years and above, the Service Provider shall comply with and shall ensure that all its Staff comply with the Mental Capacity Act 2005 and with the current Milton Keynes Mental Capacity Act – Deprivation of Liberty Safeguards (DoLS) Policy and Practice Guidance (April 2015) and any amendments and additions there to.
- 12.10 To the extent that the Service Provider is not a Regulated Activity Provider within the meaning of Safeguarding Vulnerable Groups Act 2006, the Service Provider shall nevertheless ensure that, where delivery of the Services brings any of its Staff into contact with children and/or vulnerable adults, such Staff shall be appropriately checked and appropriately trained on issues of safe working practices and on issues of safeguarding children and vulnerable adults from harm.

13. TUPE AND PENSIONS

The parties agree that the provisions of 0 shall apply to any Relevant Transfer of staff under or in connection with this Contract.

14. INSPECTION OF PREMISES

Unless the Council otherwise directs, the Service Provider is deemed to have inspected the Premises before submitting its Tender and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

15. LICENCE TO OCCUPY COUNCIL PREMISES

- 15.1 This clause 15 applies where stipulated in the Contract Particulars.
- 15.2 Any land or Premises made available from time to time to the Service Provider by the Council in connection with the Contract shall be made available to the Service Provider on a non-exclusive licence basis free of charge and shall be used by the Service Provider solely for the purpose of performing its obligations under the Contract. The Service Provider shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.
- 15.3 The Service Provider shall limit access to the land or Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Service Provider shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Council may reasonably request.
- 15.4 Should the Service Provider require modifications to the Premises, such modifications shall be subject to prior Approval. Ownership of such modifications shall rest with the Council.
- 15.5 The Service Provider shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Council, and the Service Provider shall pay for the cost of making good any damage caused by the Service Provider or its Staff other than fair wear and tear. For the

avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

- 15.6 The Parties agree that there is no intention on the part of the Council to create a tenancy of any nature whatsoever in favour of the Service Provider or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Council retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

16. PROPERTY

- 16.1 Where the Council issues Property free of charge to the Service Provider such Property shall be and remain the property of the Council and the Service Provider irrevocably licences the Council and its agents to enter upon any premises of the Service Provider during normal business hours on reasonable notice to recover any such Property. The Service Provider shall not in any circumstances have a lien or any other interest on the Property and the Service Provider shall at all times possess the Property as fiduciary agent and bailee of the Council. The Service Provider shall take all reasonable steps to ensure that the title of the Council to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Council's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Council.
- 16.2 The Property shall be deemed to be in good condition when received by or on behalf of the Service Provider unless the Service Provider notifies the Council otherwise within 5 Working Days of receipt.
- 16.3 The Service Provider shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without prior Approval.
- 16.4 The Service Provider shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Council's reasonable security requirements as required from time to time.
- 16.5 The Service Provider shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Council's Default. The Service Provider shall inform the Council within 2 Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

17. PARENT COMPANY GUARANTEE

- 17.1 This clause 17 shall apply where stipulated in the Contract Particulars.
- 17.2 The Service Provider shall procure the delivery of a parent company guarantee substantially in the form contained in 0, prior to the Commencement Date.

18. PERFORMANCE BOND

- 18.1 This clause 18 shall apply where stipulated in the Contract Particulars.
- 18.2 The Service Provider shall procure the delivery of a performance bond substantially in the form contained in 0, prior to the Commencement Date.

19. CONTRACT PRICE

- 19.1 In consideration of the Service Provider's performance of its obligations under the Contract, the Council shall pay the Contract Price in accordance with clause 20 (Payment and VAT).

- 19.2 The Council shall, in addition to the Contract Price and following receipt of a valid VAT invoice, pay the Service Provider a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

20. PAYMENT AND VAT

- 20.1 Unless otherwise specified in Schedule 3, the Council shall pay all sums due to the Service Provider within 30 days of receipt of a valid invoice, submitted monthly in arrears.
- 20.2 The Service Provider shall ensure that each invoice contains all appropriate references and a detailed breakdown of the relevant Goods and/or Services supplied and that it is supported by any other documentation reasonably required by the Council to substantiate the invoice.
- 20.3 Where the Service Provider enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Service Provider to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.
- 20.4 The Service Provider shall add VAT to the Contract Price at the prevailing rate as applicable.
- 20.5 The Service Provider shall indemnify the Council on a continuing basis 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 Service Provider's failure to account for or to pay any VAT relating to payments made to the Service Provider under the Contract. Any amounts due under this clause 20.5 shall be paid by the Service Provider to the Council not less than 5 Working Days before the date upon which the tax or other liability is payable by the Council.
- 20.6 The Service Provider shall not suspend the supply of the Services for failure to pay undisputed sums of money.
- 20.7 The Service Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Council pursuant to this Contract. Such records shall be retained for inspection by the Council during the Contract Period and following the end of the Contract for the period specified in the Contract Particulars.

21. RECOVERY OF SUMS DUE

- 21.1 Wherever under the Contract any sum of money is recoverable from or payable by the Service Provider (including any sum which the Service Provider is liable to pay to the Council in respect of any breach of the Contract), the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Service Provider under the Contract or under any other agreement or contract with the Council.
- 21.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 21.3 The Service Provider shall make all payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Service Provider has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Service Provider.
- 21.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

22. PRICE ADJUSTMENT

- 22.1 Unless otherwise indicated in the Contract Particulars, the Contract Price shall apply for the Contract Period without adjustment.
- 22.2 Where stipulated in the Contract Particulars, the Contract Price shall be adjusted on each Price Review Date by an amount equal to the annual percentage change which shall be the change in the latest published Relevant Index compared to the value of the Relevant Index as published twelve months before the relevant Price Review Date.

23. PREVENTION OF BRIBERY AND CORRUPTION

- 23.1 The Service Provider:
 - 23.1.1 shall not, and shall procure that any Service Provider Staff or Service Provider Party shall not, in connection with this Contract commit a Prohibited Act;
 - 23.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Contract.
- 23.2 The Service Provider shall:
 - 23.2.1 if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010;
 - 23.2.2 within 10 Working Days of the Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Service Provider) compliance with this clause 23 by the Service Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Service Provider shall provide such supporting evidence of compliance as the Council may reasonably request.
- 23.3 The Service Provider shall have an anti-bribery policy and shall ensure that its anti-bribery policy is provided to the Council on request.
- 23.4 If any breach of clause 23.1 is suspected or known, the Service Provider must notify the Council immediately.
- 23.5 If the Service Provider notifies the Council that it suspects or knows that there may be a breach of clause 23.1, the Service Provider must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation. This obligation shall continue for the period specified in the Contract Particulars following the expiry or termination of this Contract.
- 23.6 The Council may terminate this Contract by written notice with immediate effect if the Service Provider, Service Provider Party or Service Provider Personnel (in all cases whether or not acting with the Service Provider's knowledge) breaches clause 23.1.
- 23.7 Any notice of termination under clause 23.6 must specify:
 - 23.7.1 the nature of the Prohibited Act;
 - 23.7.2 the identity of the party whom the Council believes has committed the Prohibited Act
- 23.8 Despite clause 57 (Dispute resolution), any dispute relating to:

23.8.1 the interpretation of clause 23; or

23.8.2 the amount or value of any gift, consideration or commission,

shall be determined by the Council and its decision shall be final and conclusive.

23.9 Any termination under clause 23.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

24. EQUALITIES

24.1 The Service Provider shall and shall ensure its Sub-Contractors and Staff at all times comply with the requirements of the Equality Act 2010 and all other related statutory and regulatory requirements and the Council's policies and procedures copies of which are available on request relating to equal opportunities and shall not treat any person or group of people less favourably than another on the grounds of age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, pregnancy and maternity, marriage and civil partnerships..

24.2 The Service Provider shall fully indemnify the Council against all actions, claims demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Service Provider of this clause 24.

25. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Unless expressly stated in this Contract, a person who is not a Party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.

26. HEALTH AND SAFETY

26.1 The Service Provider shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract.

26.2 While on the Premises, the Service Provider shall comply with any health and safety measures implemented by the Council in respect of Staff and other persons working there.

26.3 The Service Provider shall notify the Council immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

26.4 The Service Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Contract.

26.5 The Service Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Council on request.

27. DATA PROTECTION ACT

Information Governance – General Responsibilities

27.1 For the purposes of this clause 27, the terms "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Process" and "Processing shall have the meaning prescribed under the DPA.

- 27.2 With respect to the Parties' rights and obligations under this Contract, the Parties agree that the Council is the Data Controller and that the Service Provider is the Data Processor.
- 27.3 The Parties acknowledge their respective obligations arising under the DPA and must assist each other as necessary to enable each other to comply with these obligations.
- 27.4 The Service Provider undertakes to:
- 27.4.1 Treat as confidential all Personal Data which may be derived from or be obtained in the course of the contract or which may come into the possession of the Service Provider or an employee, servant or agent or Sub-Contractor of the Service Provider as a result or in connection with the contract; and;
 - 27.4.2 Provide all necessary precautions to ensure that all such information is treated as confidential by the Service Provider, his employees, servants, agents or Sub-Contractors; and
 - 27.4.3 Ensure that he, his employees, servants, agents and Sub-Contractors are aware of the provisions of the Data Protection Act 1998 and the provisions of this clause 27 and that any personal information obtained from the Council shall not be disclosed or used in any unlawful manner; and
 - 27.4.4 Indemnify the Council against any loss arising under the Data Protection Act 1998 caused by any action, authorised or unauthorised, taken by himself, his employees, servants, agents or Sub-Contractors
 - 27.4.5 Nominate a data protection lead to be responsible for data protection and for providing the Council with regular reports on information security matters, including details of all incidents of data loss and breach of confidence;
 - 27.4.6 Have in place adequate mechanisms to ensure that Sub-Contractors, agents and subsidiaries to whom personal information is disclosed comply with their contractual obligations to keep personal data and information secure and confidential in accordance with data protection requirements;
 - 27.4.7 Ensure that the Council is kept informed at all times of the identities of the data protection lead;
- 27.5 The Service Provider as a Data Processor**
- 27.6 The Service Provider shall (and shall ensure that its Staff) comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Contract.
- 27.7 Notwithstanding the general obligation in clause 27.2, where the Service Provider is processing Personal Data (as defined by the DPA) as a Data Processor for the Council the Service Provider shall:
- 27.7.1 Process the Personal Data only in accordance with instructions from the Council (which may be specific instructions or instructions of a general nature) as set out in this Contract;
 - 27.7.2 Comply with all applicable laws;
 - 27.7.3 Process the Personal Data only to the extent; and in such manner as is necessary for the provision of the Provider's obligations under this Contract or as is required by Law or any Regulatory Body;
 - 27.7.4 Implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss,

destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

- 27.7.5 be able to demonstrate that employees, servants, or agents associated with the performance of this Contract are aware of their personal responsibilities under the Data Protection Act 1998 and under this Contract to maintain the security of the Personal Data controlled by the Council;
- 27.7.6 take reasonable steps to ensure the reliability of its staff and agents who may have access to the Personal Data;
- 27.7.7 obtain prior written consent from the Council in order to transfer the Personal Data to any Sub-Contractor for the provision of the Services;
- 27.7.8 Personal Data must not be copied for any other purpose than that agreed between the Service Provider and the Council.
- 27.7.9 Personal Data shall be returned to the Council at the end of the contract, or on completion of works or when requested by the Council.
- 27.7.10 The Council is required to comply with HMG Information Security Standards for the secure destruction of data processed on its behalf. The Service Provider must provide certificated evidence of secure destruction to the required standards when equipment is decommissioned or retired or at the end of the contract.

27.8 The Service Provider shall permit the Council or the Council's representative (subject to reasonable and appropriate confidentiality requirements), to inspect and audit, in accordance with clause 34 (Audit), the Service Provider's data processing activities (and/or those of its agents, subsidiaries and Sub-Contractors) and comply with all reasonable requests or directions by the Council to enable the Council to verify and/or procure that the Service Provider is in full compliance with its obligations under this Contract;

27.8.1 not process, cause or permit the Personal Data to be transferred outside of the European Economic Area without the prior consent of the Council and ;where the Council consents to the transfer, to comply with;

- (a) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
- (b) any reasonable instructions notified to it by the Council

27.8.2 ensure that all Staff and Service Provider Party required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 27;

27.8.3 ensure that none of the Staff and Service Provider Party publish disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the Council

27.8.4 ensure that none of the Staff and Service Provider Party disclose Personnel Data to any third parties in any circumstances other than with the written consent of the Council or in compliance with a legal obligation imposed upon the Council; and

27.9 notify the Council (within five Working Days) if it receives:

27.9.1 a request from a Data Subject to have access to that person's Personal Data; or

27.9.2 a complaint or request relating to the Council's obligations under the DPA;

27.9.3 The Service Provider shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Council to breach any of its applicable obligations under the Data Protection Legislation

27.10 The Service Provider agrees to indemnify and keep indemnified and defend at its own expense the Council against all costs, claims, damages or expenses incurred by the Council or for which the Council may become liable due to any failure by the Service Provider or its Staff or Service provider Party to comply with any of its obligations under this Contract.

Responsibilities when engaging Sub-Contractors

27.11 Subject always to clause 35 (Transfer and Sub-Contracting) if the Service Provider is to require any Sub-Contractor to process Personal Data on its behalf, the Service Provider must:

27.11.1 require that the Sub-Contractor provides sufficient guarantees in respect of its technical and organisational security measures governing the data processing to be carried out, and take reasonable steps to ensure compliance with those measures;

27.11.2 ensure that the Sub-Contractor is engaged under the terms of a written agreement requiring the Sub-Contractor to:

- (a) process such personal data only in accordance with the Service Provider's instructions;
- (b) comply at all times with obligations equivalent to those imposed on the Service Provider by virtue of the Seventh Data Protection Principle;
- (c) allow rights of audit and inspection in respect of relevant data handling systems to the Service Provider or to the Council or to any person authorised by the Service Provider or by the Council to act on its behalf; and
- (d) impose on its own Sub-Contractors (in the event the Sub-Contractor further sub- contracts any of its obligations under the Sub-Contract) obligations that are substantially equivalent to the obligations imposed on the Sub-Contractor by this clause 27

27.12 The provision of this clause 27 shall apply during the Contract Period and indefinitely after its expiry.

28. CONFIDENTIAL INFORMATION

28.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

28.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and

28.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

28.2 Clause 28.1 shall not apply to the extent that:

28.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 29 (Freedom of Information);

- 28.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- 28.2.3 such information was obtained from a third party without obligation of confidentiality;
- 28.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
- 28.2.5 it is independently developed without access to the other Party's Confidential Information.

28.3 The Service Provider may only disclose the Council's Confidential Information to the Staff who are directly involved in the provision of the Goods and/or Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

28.4 The Service Provider shall not, and shall procure that the Staff do not, use any of the Council's Confidential Information received otherwise than for the purposes of this Contract.

28.5 At the written request of the Council, the Service Provider shall procure that those members of the Staff identified in the Council's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Contract.

28.6 Nothing in this Contract shall prevent the Council from disclosing the Service Provider's Confidential Information:

- 28.6.1 to any government department, any Contracting Authority, any employee of the Council, consultant or any other person engaged by the Council in its ordinary course of business or in connection with the Contract;
- 28.6.2 for the purpose of the examination and certification of the Council's accounts; or
- 28.6.3 for any 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.

28.7 The Council shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or sub-contractor to whom the Service Provider's Confidential Information is disclosed pursuant to clause 28.6 is made aware of the Council's obligations of confidentiality.

28.8 Nothing in this clause 28 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.

29. FREEDOM OF INFORMATION

29.1 The Service Provider acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.

29.2 The Service Provider shall and shall procure that any Sub-Contractors shall transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;

- 29.2.1 provide the Council with a copy of all Information in its possession, or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council's request; and

29.2.2 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

29.3 The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations

29.4 In no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.

29.5 The Service Provider acknowledges that (notwithstanding the provisions of clause 29) the Council may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Service Provider or the Goods and/or Services in certain circumstances:

29.5.1 without consulting the Service Provider; or

29.5.2 following consultation with the Service Provider and having taken their views into account;

provided always that where 29.5.1 applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Service Provider advanced notice, or failing that, to draw the disclosure to the Service Provider's attention after any such disclosure.

29.6 The Service Provider shall ensure that all Information is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

29.7 The Service Provider acknowledges that the Commercially Sensitive Information listed in the Commercially Sensitive Information Schedule is of indicative value only and that the Council may be obliged to disclose it in accordance with this clause 29.

30. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

30.1 The Service Provider shall not make any press announcement or publicise the Contract, the Goods and/or Services or any aspects thereof in any way, except with the prior written consent of the Council.

30.2 The Service Provider shall take reasonable steps to ensure that its servants, employees, agents, Sub-Contractors, suppliers, professional advisors and consultants comply with clause 30.1.

31. SECURITY

31.1 The Council shall be responsible for maintaining the security of the Premises over which the Council has control in accordance with its standard security requirements. The Service Provider shall comply with all security requirements of the Council while on the Premises, and shall ensure that all Staff comply with such requirements.

32. INTELLECTUAL PROPERTY RIGHTS

32.1 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "**IP Materials**"):

- 32.1.1 furnished to or made available to the Service Provider by or on behalf of the Council shall remain the property of the Council; or
- 32.1.2 prepared by or for the Service Provider on behalf of the Council for use, or intended use, in relation to the performance by the Service Provider of its obligations under the Contract shall belong to the Council;

and the Service Provider shall not, and shall ensure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any Intellectual Property Rights in the IP Materials.

- 32.2 The Service Provider hereby assigns to the Council, absolutely with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause 32.1.2. This assignment shall take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by or for the Service Provider. The Service Provider shall execute and shall where necessary procure the execution of all documentation necessary to execute this assignment.
- 32.3 The Service Provider shall waive and/or procure a waiver of any moral rights subsisting in any copyright produced by the Contract or the performance of the Contract.
- 32.4 The Service Provider shall to the extent possible procure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Contract grants to the Council a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Council an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Council to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Service Provider or to any other third party supplying services to the Council.
- 32.5 The Service Provider shall not infringe any Intellectual Property Rights of any third party in supplying the Goods and/or Services and the Service Provider shall, during and after the Contract Period, indemnify and keep indemnified and hold the Council harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Council may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from:
 - 32.5.1 items or materials based upon designs supplied by the Council; or
 - 32.5.2 the use of data supplied by the Council which is not required to be verified by the Service Provider under any provision of the Contract.
- 32.6 The Council shall notify the Service Provider in writing of any claim or demand brought against the Council for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Service Provider.
- 32.7 The Service Provider shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Service Provider, provided always that the Service Provider:
 - 32.7.1 shall consult the Council on all substantive issues which arise during the conduct of such litigation and negotiations;
 - 32.7.2 shall take due and proper account of the interests of the Council; and
 - 32.7.3 shall not settle or compromise any claim without the Council's prior written consent (not to be unreasonably withheld or delayed).

- 32.8 The Council shall at the reasonable request of the Service Provider afford to the Service Provider all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Council or the Service Provider by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Service Provider's obligations under the Contract and the Service Provider shall indemnify the Council for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Service Provider shall not, however, be required to indemnify the Council in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in clause 32.5.1 or 32.5.2.
- 32.9 The Council shall not unreasonably make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Council or the Service Provider in connection with the performance of its obligations under the Contract.
- 32.10 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Service Provider is likely to be made, the Service Provider shall notify the Council and, at its own expense and subject to the consent of the Council (not to be unreasonably withheld or delayed), use its best endeavours to:
- 32.10.1 modify any or all of the Goods and/or Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutatis mutandis to such modified Services or to the substitute Services; or
 - 32.10.2 procure a licence to use and supply the Goods and/or Services, which are the subject of the alleged infringement, on terms which are acceptable to the Council,
- and in the event that the Service Provider is unable to comply with clauses 32.7.1 or 32.7.2 within 15 Working Days of receipt of the Service Provider's notification the Council may terminate the Contract with immediate effect by notice in writing.
- 32.11 The Service Provider grants to the Council a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights that the Service Provider owned or developed prior to the Commencement Date and which the Council reasonably requires in order to exercise its rights and take the benefit of this Contract including the Goods and Services provided.

33. CHANGE CONTROL AND CONTINUOUS IMPROVEMENT

- 33.1 The Service Provider shall keep and maintain for the period stipulated in the Contract Particulars, full and accurate records of the Contract including the Goods and Services supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Service Provider shall on request afford the Council or the Council's representatives such access to those records as may be requested by the Council in connection with the Contract
- 33.2 Any requirement for a Change shall be subject to the Change Control Procedure.
- 33.3 The Service Provider shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services. As part of this obligation the Service Provider shall identify and report to the Council's Authorised Representative quarterly in each Contract Year on:
- 33.3.1 the emergence of new and evolving relevant technologies which could improve the Goods and/or Services;

- 33.3.2 new or potential improvements to the Services including the quality, responsiveness, procedures, performance mechanisms and customer support services in relation to the Services;
- 33.3.3 new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Council which might result in efficiency or productivity gains or in reduction of operational risk; and
- 33.3.4 changes in ways of working that would enable the Services to be delivered at lower costs and/or at greater benefits to the Council.

33.4 Any potential Changes highlighted as a result of the Service Provider's reporting in accordance with clause 33.3 shall be addressed by the parties using the Change Control Procedure.

33.5 Notwithstanding anything which is contained within the provisions of this clause 33 or elsewhere in the Contract, any Change proposed by the parties under the provisions of this clause 33 must be lawful including within the meaning of any applicable Procurement Legislation for the time being in force.

34. AUDIT

34.1 The Service Provider shall keep and maintain for the period stipulated in the Contract Particulars, full and accurate records of the Contract including but not limited to the Goods and Services supplied under it, and all payments made by the Council. The Service Provider shall on request afford the Council or the Council's representatives such access to those records as may be requested by the Council in connection with the Contract.

35. TRANSFER AND SUB-CONTRACTING

35.1 The Service Provider shall not assign, sub-contract novate or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Service Provider of any of its obligations or duties under the Contract.

35.2 The Service Provider shall be responsible for the acts and omissions of its Sub-Contractors as though they are its own.

Where the Council has consented to a sub-contract(s), copies of each sub-contract shall, at the request of the Council, be sent by the Service Provider to the Council as soon as reasonably practicable.

35.3 The Council may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

35.3.1 any Contracting Authority; or

35.3.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Council; or

35.3.3 private sector body which substantially performs the functions of the Council,
(the “**Transferee**”)

provided that any such assignment, novation or other disposal shall not increase the burden of the Service Provider's obligations under the Contract.

35.4 Any change in the legal status of the Council such that it ceases to be a Contracting Authority shall not affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Council.

35.5 The Council may disclose to any Transferee any Confidential Information of the Service Provider which relates to the performance of the Service Provider's obligations under the Contract. In such circumstances the Council shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Service Provider's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

35.6 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other party the full benefit of the provisions of the Contract.

36. WAIVER

36.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

36.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 5 (Notices).

36.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

37. VARIATION

37.1 Subject to the provisions of this clause 37, the Council may request a variation to the Specification including a change to the Specification. Such a change is hereinafter called a "Variation".

37.2 The Council may request a Variation by notifying the Service Provider in writing of the "Variation" and giving the Service Provider sufficient information to assess the extent of the Variation and consider whether any change to the Contract Price is required in order to implement the Variation. The Council shall specify a time limit within which the Service Provider shall respond to the request for a Variation. Such time limits shall be reasonable having regard to the nature of the Variation. If the Service Provider accepts the Variation it shall confirm the same in writing.

37.3 In the event that the Service Provider is unable to accept the Variation to the Specification or where the Parties are unable to agree a change to the Contract Price, the Council may;

37.3.1 allow the Service Provider to fulfil its obligations under the Contract without the variation to the Specification;

37.3.2 terminate the Contract with immediate effect.

37.4 The Service Provider may propose variations to the Contract, provided that the Council shall be under no obligation whatsoever to accept any request for a variation. A variation proposed by the Service Provider shall not give rise to any increase to the Contract Price, unless expressly agreed by the Council (in its absolute discretion) in writing.

38. SEVERABILITY

If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

39. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE

- 39.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Service Provider's obligations under the Contract, then the Council shall be entitled to investigate the complaint in accordance with the contract monitoring and management procedures contained in 0 (Contract Management).
- 39.2 In the event that the Council is of the reasonable opinion that there has been a fundamental breach of the Contract by the Service Provider, then the Council may, without prejudice to its rights under clause 48 (Termination on Default), do any of the following:
- 39.2.1 without terminating the Contract, suspend the Service Provider from performing all or part of the Services and itself supply or procure the supply of all or part of the Services until such time as the Service Provider shall have demonstrated to the reasonable satisfaction of the Council that the Service Provider will once more be able to supply all or such part of the Services in accordance with the Contract;
 - 39.2.2 without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or
 - 39.2.3 terminate, in accordance with clause 48 (Termination on Default), the whole of the Contract.
- 39.3 Without prejudice to its right under clause 21 (Recovery of Sums Due), the Council may charge the Service Provider for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Council or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Service Provider for such part of the Services and provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- 39.4 If the Service Provider fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Council shall instruct the Service Provider to remedy the failure and the Service Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as the Council may direct.
- 39.5 In the event that:
- 39.5.1 the Service Provider fails to comply with clause 39.4 above and the failure is materially adverse to the interests of the Council or prevents the Council from discharging a statutory duty; or
 - 39.5.2 the Service Provider persistently fails to comply with clause 39.4 above,
- the Council may terminate the Contract with immediate effect by notice in writing.

40. REMEDIES CUMULATIVE

Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

41. CONTRACT MANAGEMENT

The Service Provider shall comply with the monitoring and contract management arrangements set out in the 0 (Contract Management) including, but not limited to, providing such data and information as the Service Provider may be required to produce under the Contract.

42. ANNUAL REVIEW

42.1 The Service Provider shall in good faith comply with the provisions of this clause 42.

42.2 Throughout the Contract Period the parties shall, acting reasonably, work together to ensure that the Contract and the Service Provider's performance of the Services represents value for money and best value generally for the benefit of the Council.

42.3 The Service Provider shall prepare a written report and submit it to the Council by each anniversary of the Commencement Date (Annual Review Report). The Service Provider shall also submit an Annual Review Report for the final year of the Contract Period.

42.4 All reports prepared by the Service Provider pursuant to this clause 42 shall contain, inter alia and to the extent reasonably possible, the following matters:

42.4.1 An analysis of the performance of the Service throughout the past contract year to the date of the report focusing on those areas which are considered successful, in comparison to the requirements of the Contract, and those areas which require improvement or which could be improved;

42.4.2 The reasons for the successes and/or weaknesses identified;

42.4.3 An action plan setting out the Service Provider's suggested measures that might be taken by either party, to improve on the Services;

42.5 The Service Provider and the Council shall discuss the contents of each Annual Review Report and the Council may, in its absolute discretion, accept or reject any of the recommendations contained in the report, implement any other measures which it might reasonably consider necessary to ensure value for money and/or where appropriate issue modifications or variations in accordance with the provisions of the Contract.

42.6 For the avoidance of doubt the presentation of the Annual Review Report by the Service Provider to the Council shall be without prejudice to any monitoring, performance review or Default measures which may be carried out by the Council under the terms of the Contract

43. ENTIRE AGREEMENT

43.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any fraud or fraudulent misrepresentation.

44. COUNTERPARTS

This Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

45. LIABILITY AND INDEMNITY

45.1 Neither Party excludes or limits liability to the other Party for:

- 45.1.1 death or personal injury caused by its negligence; or
- 45.1.2 Prohibited Act; or
- 45.1.3 fraudulent misrepresentation; or
- 45.1.4 any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

45.2 Subject to clause 45.3 and 45.4 the Service Provider shall indemnify the Council and keep the Council indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of:

- 45.2.1 the supply, or the late or purported supply, of the Services or the performance or non-performance by the Service Provider of its obligations under the Contract;
- 45.2.2 the act, omission or default of the Service Provider, any Sub-Contractor or any member of Staff including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by any such party; and
- 45.2.3 any other loss which is caused directly or indirectly by any act or omission of the Service Provider.

45.3 The Service Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Council or by breach by the Council of its obligations under the Contract.

45.4 Subject to clause 45.1, the Service Provider's liability under this Contract shall be limited to the amount stated in Contract Particulars.

46. INSURANCE

46.1 The Service Provider shall throughout the Contract Period effect and maintain with a reputable insurance company the following policies of insurance:

- 46.1.1 public liability insurance;
- 46.1.2 employer's liability insurance,
- 46.1.3 professional indemnity insurance
- 46.1.4 fidelity insurance

with the levels of indemnity cover for each claim stipulated in the Contract Particulars.

46.2 The Service Provider 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 appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

46.3 If, for whatever reason, the Service Provider fails to give effect to and maintain the insurances required by the provisions of the Contract the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.

46.4 The provisions of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the Contract.

- 46.5 Where stipulated in the Contract Particulars, the Service Provider shall effect the additional insurances stipulated in the Contract Particulars.
- 46.6 Where professional indemnity insurance is required in accordance with the Contract Particulars the Service Provider shall maintain appropriate professional indemnity insurance cover during the Contract Period and shall ensure that all agents, professional consultants and Sub-Contractors involved in the supply of the Services do the same. To comply with its obligations under this clause and as a minimum, the Service Provider shall ensure professional indemnity insurance held by the Service Provider and by any agent, Sub-Contractor or consultant involved in the supply of the Services has a limit of indemnity of not less than the amount stated in the Contract Particulars. Such insurance shall be maintained for a minimum of the period specified in the Contract Particulars following the expiration or earlier termination of the Contract.

47. WARRANTIES AND REPRESENTATIONS

The Service Provider warrants and represents that:

- 47.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Service Provider;
- 47.1.2 in entering the Contract it has not committed any Prohibited Act;
- 47.1.3 as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the Contract;
- 47.1.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- 47.1.5 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- 47.1.6 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Service Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Service Provider's assets or revenue;
- 47.1.7 it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- 47.1.8 in the three 3 years prior to the date of the Contract:
- (a) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (b) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - (c) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

48. TERMINATION FOR DEFAULT

- 48.1 The Council may terminate the Contract with immediate effect by the service of written notice on the Service Provider in the following circumstances:
- 48.1.1 if the Service Provider has committed a Default under the Contract provided that if the Default is capable of remedy, the Council may only terminate the Contract under this clause 48.1 if the Service Provider has failed to remedy such Default within [28 days] of receipt of notice from the Council (a **Remediation Notice**) to do so; or
 - 48.1.2 if the Service Provider commits a Default which in the reasonable opinion of the Council is not capable of being remedied; or
 - 48.1.3 if the Service Provider commits a Default which is a fundamental breach of Contract; or
 - 48.1.4 if a consistent failure has occurred; or
 - 48.1.5 if a Catastrophic Failure has occurred; or
 - 48.1.6 if the Service Provider ceases or threatens to cease to carry on business in the United Kingdom;
 - 48.1.7 if this Contract has been subject to a substantial modification which would have required a new procurement procedure pursuant to regulation 72 of the Regulations; or
 - 48.1.8 if the Service Provider has, at the time of this Contract's award, been in one of the situations referred to in regulation 57(1) to (3) of the Regulations and should therefore have been excluded from the procurement procedure.
- 48.2 The Council may terminate the Contract in accordance with the provisions of clause 23 (Prevention of Bribery and Corruption) and clause 54 (Force Majeure).
- 48.3 If this Contract is terminated by the Council for cause such termination shall be at no loss or cost to the Council and the Service Provider shall indemnify the Council against any such losses or costs which the Council may suffer as a result of any such termination for cause.
- 48.4 If the Council fails to pay the Service Provider undisputed sums of money when due, the Service Provider shall notify the Council in writing of such failure to pay. If the Council fails to pay such undisputed sums within 90 Working Days of the date of such written notice, the Service Provider may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Council exercising its rights under clause 21 (Recovery of Sums Due).

49. TERMINATION ON INSOLVENCY AND CHANGE OF CONTROL

- 49.1 The Council may terminate the Contract with immediate effect by notice in writing where the Service Provider is a company and in respect of the Service Provider:
- 49.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
 - 49.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
 - 49.1.3 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or

- 49.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
 - 49.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
 - 49.1.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
 - 49.1.7 being a “small company” within the meaning of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
 - 49.1.8 any event similar to those listed in clauses 49.1.1-49.1.7 occurs under the law of any other jurisdiction.
- 49.2 The Council may terminate the Contract with immediate effect by notice in writing where the Service Provider is an individual and:
- 49.2.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Service Provider’s creditors; or
 - 49.2.2 a petition is presented and not dismissed within 14 days or order made for the Service Provider’s bankruptcy; or
 - 49.2.3 a receiver, or similar officer is appointed over the whole or any part of the Service Provider’s assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
 - 49.2.4 the Service Provider is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
 - 49.2.5 a creditor or encumbrancer 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 Service Provider’s assets and such attachment or process is not discharged within 14 days; or
 - 49.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or
 - 49.2.7 he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.
- 49.3 The Service Provider shall notify the Council immediately if the Service Provider undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 (“**change of control**”). The Council may terminate the Contract by notice in writing with immediate effect within six months of being notified that a change of control has occurred; or
- 49.3.1 where no notification has been made, the date that the Council becomes aware of the change of control,
- but shall not be permitted to terminate where an Approval was granted prior to the change of control.

50. BREAK CLAUSE

- 50.1 Where stipulated in the Contract Particulars, the Council shall have the right to terminate the Contract at any time by giving written notice (of not less than the period specified in the Contract Particulars) to the Service Provider

50.2 Where the Council exercises its right to terminate the Contract under clause 50.1, the Service Provider shall only be entitled to payment for Services duly rendered up to the date of termination and the Council shall incur no liability to the Service Provider in respect of any other losses whatsoever whether:

50.2.1 loss of future profits;

50.2.2 redundancy or Sub-Contractor breakage costs; or

50.2.3 any other costs whatsoever incurred by the Service Provider as a consequence of such termination.

51. CONSEQUENCES OF EXPIRY OR TERMINATION

51.1 Where the Council terminates the Contract under clause 49 (Termination on Default):

51.1.1 the Council may recover from the Service Provider the cost reasonably incurred of making other arrangements for the delivery of replacement services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period. The Council shall take all reasonable steps to mitigate such additional expenditure.

51.1.2 no further payments shall be payable by the Council to the Service Provider (for Services supplied by the Service Provider prior to termination and in accordance with the Contract but where the payment has yet to be made by the Council), until the Council has established the final cost of making the other arrangements envisaged under this clause.

51.1.3 In the event that through any Default of the Service Provider, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Service Provider shall be liable for the cost of reconstitution of that data and shall reimburse the Council in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

51.2 Save as otherwise expressly provided in the Contract:

51.2.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

51.2.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Council or the Service Provider under clauses 20 (Payment and VAT), 21 (Recovery of Sums Due), 23 (Prevention of Bribery and Corruption), 27 (Data Protection Act), 28 (Confidential Information), 29 (Freedom of Information), 32 (Intellectual Property Rights), 34 (Audit), 40 Remedies Cumulative), 45 (Liability and Indemnity), 46 (Insurance), 51 (Consequences of Expiry or Termination), 53 (Recovery upon Termination) and 56 (Governing Law and Jurisdiction).

52. DISRUPTION

52.1 The Service Provider shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Council, its employees or any other contractor employed by the Council.

52.2 The Service Provider shall immediately inform the Council of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.

52.3 In the event of industrial action by the Staff, the Service Provider shall seek Approval to its proposals to continue to perform its obligations under the Contract.

- 52.4 If the Service Provider's proposals referred to in clause 52.3 are considered insufficient or unacceptable by the Council acting reasonably, then the Contract may be terminated with immediate effect by the Council by notice in writing.
- 52.5 If the Service Provider is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business of the Council, the Service Provider may request a reasonable allowance of time and in addition, the Council will reimburse any additional expense reasonably incurred by the Service Provider as a direct result of such disruption.

53. RECOVERY UPON TERMINATION

- 53.1 On the termination of the Contract for any reason, the Service Provider shall:
- 53.1.1 immediately return to the Council all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Services;
 - 53.1.2 immediately deliver to the Council all Property (including materials, documents, information and access keys) provided to the Service Provider under clause 16. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
 - 53.1.3 assist and co-operate with the Council at no additional cost to ensure an orderly transition of the provision of the Services to the Replacement Service Provider and/or the completion of any work in progress, such assistance and co-operation to include the supply by the Service Provider of any passwords and/or codes necessary for the operation of the Goods and/or delivery of the Services;
 - 53.1.4 promptly provide all information concerning the provision of the Services which may reasonably be requested by the Council for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Council or the Replacement Service Provider to conduct due diligence.
- 53.2 If the Service Provider fails to comply with clause 53.1.1 and 53.1.2, the Council may recover possession thereof and the Service Provider grants a licence to the Council or its appointed agents to enter (for the purposes of such recovery) any premises of the Service Provider or its permitted suppliers or Sub-Contractors where any such items may be held.
- 53.3 Where the end of the Contract Period arises due to the Service Provider's Default, the Service Provider shall provide all assistance under clause 53.1.3 and 53.1.4 free of charge. Otherwise, the Council shall pay the Service Provider's reasonable costs of providing the assistance and the Service Provider shall take all reasonable steps to mitigate such costs.

54. FORCE MAJEURE

- 54.1 This clause 54 shall apply where stipulated in the Contract Particulars.
- 54.2 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for the period stipulated in the Contract Particulars, either Party may terminate the Contract with immediate effect by notice in writing.
- 54.3 Any failure or delay by the Service Provider in performing its obligations under the Contract which results from any failure or delay by an agent, Sub-Contractor or supplier shall be

regarded as due to Force Majeure only if that agent, Sub-Contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Service Provider.

- 54.4 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in clause 54.2 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

55. DISASTER RECOVERY

- 55.1 This clause 55 shall apply where stipulated in the Contract Particulars.
- 55.2 The Service Provider shall comply at all times with the relevant provisions of the Disaster Recovery Plan.
- 55.3 Following the declaration of a Disaster in respect of any of the Services, the Service Provider shall:
- 55.3.1 implement the Disaster Recovery Plan;
 - 55.3.2 continue to provide the affected Services to the Council in accordance with the Disaster Recovery Plan; and
 - 55.3.3 restore the affected Services to normal within the period laid out in the Disaster Recovery Plan.
- 55.4 To the extent that the Service Provider complies fully with the provisions of this clause 55 (and the reason for the declaration of a Disaster was not breach of any of the other terms of this Contract on the part of the Service Provider), the Service Levels (if any) to which the affected Services are to be provided during the continuation of the Disaster shall not be the Service Levels as referred to in Schedule 6 but shall be the service levels set out in the Disaster Recovery Plan or (if none) the best service levels which are reasonably achievable in the circumstances.

56. GOVERNING LAW AND JURISDICTION

Subject to the provisions of clause 57, the Council and the Service Provider accept the exclusive jurisdiction of the English courts and agree that the Contract and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

57. DISPUTE RESOLUTION

- 57.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 10 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director (or equivalent) of each Party.
- 57.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 57.3 If the dispute cannot be resolved by the Parties pursuant to clause 57.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause 57.5 unless (a) the Council considers that the dispute is not suitable for resolution by mediation; or (b) the Service Provider does not agree to mediation.
- 57.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation and the Service Provider and the Staff shall comply fully with the requirements of the Contract at all times.

57.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

- 57.5.1 a neutral adviser or mediator (the “**Mediator**”) shall be appointed by the Centre for Effective Dispute Resolution.
- 57.5.2 The Parties shall within 10 Working 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 the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure.
- 57.5.3 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.
- 57.5.4 If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- 57.5.5 Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.
- 57.5.6 If the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

58. **TRANSPARENCY**

The Council may disclose to other Public Sector Contracting Authorities any of the Service Providers information, tender documentation and supporting documentation (including any that the Service Provider has indicated to be confidential and/or Commercially Sensitive Information) such as specific tender information which has been submitted by the Service Provider as part of the tender process. The Service Provider shall ensure that such information shall not be disclosed to any other party except to other Public Sector Contracting Authorities. The Service Provider acknowledges and agrees that by virtue of taking part in the tender process they hereby consent to such disclosure by the Council as a part of the tender process and the Council shall have no liability to the Service Provider under this clause or otherwise and the Service Provider shall indemnify and keep indemnified the Council against any Losses in respect of the same.

SCHEDULE 1

SPECIAL CONDITIONS

Conditions relating to the delivery, installation and commissioning of Goods

1. SUPPLY OF GOODS

- 1.1 The Service Provider shall supply the Goods:
 - 1.1.1 promptly and in any event within any time limits as may be set out in this Contract;
 - 1.1.2 in accordance with all other provisions of this Contract;
 - 1.1.3 using reasonable skill, care and diligence; and
 - 1.1.4 in accordance with the Quality Standards (if any stipulated in the Specification), Good Industry Practice and all applicable Law.
- 1.2 The Service Provider shall comply fully with its obligations in relation to the Goods set out in the Specification and Tender including, without limitation, all obligations in relation to the quality, performance characteristics, supply, delivery, installation, commissioning, and maintenance of the Goods.
- 1.3 The Service Provider shall ensure that all relevant consents, authorisations, licences and accreditations required to supply the Goods are in place prior to the delivery of any Goods to the Council.
- 1.4 If there are any quality, performance and/or safety related reports, notices, alerts or other communications issued by any regulatory or other body in relation to the Goods, the Service Provider shall promptly provide the Council with a copy of the same.
- 1.5 The Service Provider shall cooperate with, and respond promptly to, the Council in relation to any reasonable and proportionate queries, questions and/or requests for information that the Council may have in relation to the Goods.

2. DELIVERY OF THE GOODS AND PASSING OF RISK AND OWNERSHIP IN THE GOODS

- 2.1 The Service Provider shall deliver the Goods in accordance with any delivery timescales, delivery dates and delivery instructions (to include, without limitation, as to delivery location and delivery times) set out in the Specification and Tender, or as otherwise agreed with the Council in writing.
- 2.2 Delivery shall be completed when the Goods have been unloaded at the location specified by the Council and such delivery has been received by a duly authorised agent, employee or location representative of the Council. The Council shall procure that such duly authorised agent, employee or location representative of the Council is at the delivery location at the agreed delivery date and times in order to accept such delivery.
- 2.3 The Service Provider shall ensure that a delivery note accompanies each delivery of the Goods. Such delivery note shall contain the information specified in the Specification and Tender or as otherwise agreed with the Council in writing. Where such information requirements as to the content of delivery notes are not specified or separately agreed, such delivery notes shall, as a minimum, contain the Council's order number, the name and address of the Council, a description and quantity of the Goods.
- 2.4 Part deliveries and/or deliveries outside of the agreed delivery times/dates may be refused by the Council unless the Council has previously agreed in writing to accept such deliveries.

Where delivery of the Goods is refused by the Council in accordance with this clause, the Service Provider shall be responsible for all risks, costs and expenses associated with the re-delivery of the Goods in accordance with the agreed delivery times/dates. Where the Council accepts delivery more than five (5) days before the agreed delivery date, the Council shall be entitled to charge the Service Provider for the costs of insurance and storage of the Goods until the agreed date for delivery.

- 2.5 Unless otherwise set out in the Specification, the Service Provider shall be responsible for carriage, insurance, transport, all relevant licences (including in relation to export and import), all related costs, and all other costs associated with the delivery of the Goods to the delivery location and unloading of the Goods at that location. In the case of any Goods supplied from outside the United Kingdom, the Service Provider shall ensure that accurate information is provided to the Council as to the country of origin of the Goods, and the Service Provider shall be liable to the Council for any extra duties or taxes relating to the Goods for which the Council becomes accountable.
- 2.6 The Service Provider shall be responsible for the acts and omissions of any third party carriers engaged to deliver the Goods, as if they were the acts and omissions of the Service Provider. Any third party carrier engaged to deliver the Goods shall at no time be an agent of the Council.
- 2.7 Risk in the Goods shall pass to the Council when the Goods are installed pursuant to this Contract or, in the case of Goods which do not require installation by the Service Provider, when delivered as specified in this Contract.
- 2.8 Ownership of the Goods shall pass to the Council upon full payment for such Goods.
- 2.9 All tools, equipment and materials of the Service Provider required in the performance of the Service Provider's obligations under this Contract shall be and remain at the sole risk of the Service Provider, whether or not they are situated at a delivery location.

3. INSPECTION, REJECTION, RETURN AND RECALL OF THE GOODS

- 3.1 As relevant and proportionate to the Goods in question and subject to reasonable written notice, the Service Provider shall permit any person authorised by the Council, to inspect work being undertaken in relation to the Goods and/or the storage facilities used in the storage of the Goods at all reasonable times at the Service Provider's premises or at the premises of any Sub-contractor or agent of the Service Provider in order to confirm that the Goods are being manufactured and/or stored in accordance with Good Industry Practice and in compliance the requirements of this Contract and/or that stock holding and quality assurance processes are in accordance with the requirements of this Contract.
- 3.2 The Council may perform, and the Service Provider shall facilitate, a visual inspection of the Goods within a reasonable time following delivery and before the Service Provider undertakes the Installation and Commissioning of such Goods (or such other period as may be set out in the Specification).
- 3.3 The Council may by written notice and within a reasonable time reject any Rejected Goods. The whole of any delivery may be rejected by the Council if a reasonable sample of the Goods taken indiscriminately from that delivery is found not to conform in all material respects to the requirements of the Contract.
- 3.4 Subject to clause 3.5 of this Schedule 1, upon the rejection of any Goods in accordance with the preceding clause, the Service provider shall at the Council's written request:
 - 3.4.1 collect the Rejected Goods at the Service Provider's risk and expense within ten (10) Working Days of issue of the Council's written request; and
 - 3.4.2 without extra charge, promptly (and in any event within twenty (20) Working days or such other time agreed by the Parties in writing) supply replacements for the Rejected

Goods to the Council subject to the Council not cancelling its purchase obligations in accordance with clause 3.7 of this Schedule 1.

3.5 If the Service Provider requests and the Council accepts that the Rejected Goods should be disposed of by the Council rather than returned to the Service Provider, the Council reserves the right to charge the Service Provider for the costs associated with the disposal of the Rejected Goods and the Service Provider shall promptly pay any such costs.

3.6 Risk and title in respect of any Rejected Goods shall pass to the Service Provider on the earlier of:

3.6.1 collection by the Service Provider in accordance with clause 3.4.1 of this Schedule 1; or

3.6.2 immediately following the expiry of ten (10) Working days from the Council issuing written notification rejecting the Goods.

If Rejected Goods are not collected within ten (10) Working days of the Council issuing written notification rejecting the Goods, the Council may return the Rejected Goods at the Service Provider's risk and expense and charge the Service Provider for the cost of storage from the expiry of ten (10) Working days from the date of notification of rejection.

3.7 Where the Council rejects any Goods in accordance with clauses 3.2 and/or 3.8 of this Schedule 1 and the Council no longer requires replacement Goods, the Council may by written notice cancel its purchase obligations in relation to such quantity of Rejected Goods. Should the Council have paid for such Rejected Goods the Service Provider shall refund such payment to the Council within thirty (30) days of the Council cancelling such purchase obligations.

3.8 Without prejudice to any other provisions of this Contract or any other warranties or guarantees applicable to the Goods supplied, if within ninety (90) days following the date of the delivery of any Goods, all or any part of such Goods are found to be Defective Goods, the Service Provider shall, at the Council's discretion:

3.8.1 upon written request and without charge, promptly (and in any event within ten (10) Working days or such other time as may be agreed by the Parties in writing) remedy the deficiency by repairing such Defective Goods; or

3.8.2 upon written notice of rejection from the Council, treat such Defective Goods as Rejected Goods in accordance with clauses 3.2 to 3.6 of this Schedule 1.

3.9 If a Requirement to Recall occurs, the Service Provider shall:

3.9.1 promptly (taking into consideration the potential impact of the continued use of the Goods on members of the public, the Council and employees of the Council, as well as compliance by the Service Provider with any regulatory requirements) notify the Council in writing of the Requirement to Recall together with the circumstances giving rise to it;

3.9.2 from the date of the Requirement to Recall, treat the Goods the subject of such recall as Defective Goods, and the Council may exercise its rights under clauses 3.8.1 and 3.8.2 of this Schedule 1 in respect of the same;

3.9.3 consult with the Council as to the most efficient method of executing the recall of the Goods and use its best endeavours to minimise the impact on the Council of the recall; and

3.9.4 indemnify and keep the Council indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or

proceedings suffered or incurred by the Council as a result of such Requirement to Recall.

4. INSTALLATION AND COMMISSIONING OF GOODS

- 4.1 The Service Provider shall install and commission the Goods at the relevant locations and premises as set out in the Specification or as otherwise agreed by the Council in writing.
- 4.2 The Service Provider shall undertake the Installation and Commissioning:
- 4.2.1 promptly and in any event within any time limits as may be set out in this Contract;
 - 4.2.2 in accordance with all other provisions of this Contract;
 - 4.2.3 using reasonable skill, care and diligence;
 - 4.2.4 in accordance with the Quality Standards (if any stipulated in the Specification), Good Industry Practice and all applicable Law;
 - 4.2.5 in accordance with the original manufacture's guidelines and recommendations relating to the Goods being installed and commissioned;
 - 4.2.6 using appropriately skilled, trained and experienced Staff.
- 4.3 The Service Provider shall promptly notify the Council of any health and safety hazard which arises, or the Service Provider is aware may arise, in connection with the Installation and Commissioning and shall take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards.

5. TESTING

- 5.1 Once the Service Provider has completed the Installation and Commissioning of the Goods, the Service Provider shall inform the Council in writing that the Goods are ready for use. The following process shall then apply:
- 5.1.1 within five (5) Working days of receipt of such written confirmation from the Service Provider that the Goods are ready to use, the Council may carry out any such reasonable inspections and testing of the Goods as the Council deems appropriate (in accordance with the relevant manufacturers' technical manuals relating to the Goods and/or as otherwise set out in the Specification and/or as otherwise agreed by the Parties in writing) to confirm that the Goods comply with the requirements of this Contract and are ready for use;
 - 5.1.2 the Service Provider shall at no additional cost provide the Council with all assistance and/or information reasonably requested by the Council in relation to any such inspections and testing of the Goods;
 - 5.1.3 if the Council on inspection and testing is of the view that the Goods have been supplied, installed and commissioned (as appropriate) in conformance with the requirements of this Contract and are ready for use, it shall issue an Authority Confirmation to the Service Provider;
 - 5.1.4 if the Council on inspection and testing is of the view that the Goods have not been supplied, installed and commissioned (as appropriate) in conformance with the requirements of this Contract and are ready for use, it shall inform the Service Provider in writing and clauses 5.3 and 5.4 of this Schedule 1 shall apply; and
 - 5.1.5 if the Council chooses not to inspect and/or test the Goods, then the Council shall be deemed to have provided an Authority Confirmation in relation to such Goods on the sixth (6th) Working day following receipt by the Council of the written confirmation from

the Service Provider in accordance with clause 5.1 of this Schedule 1 that the Goods are ready to use.

- 5.2 The issue by the Council of any Authority Confirmation shall be a confirmation that the relevant Goods appear to have been supplied and reasonable installation and commissioning procedures look to have been followed by the Service Provider in accordance with the requirements and standards of this Contract. It does not confirm, imply or infer any acceptance of such Goods or any endorsement of such installation and commissioning procedures. Responsibility for supplying the Goods in accordance with the requirements and standards of the Contract and the appropriateness of any installation and commissioning procedures shall remain with the Service Provider notwithstanding any related Authority Confirmation.
- 5.3 Without prejudice to any other rights and remedies of the Council under this Contract, in relation to any failure by the Service Provider to supply, install and/or commission the correct Goods in accordance with the requirements and standards of this Contract:
- 5.3.1 the Service Provider shall forthwith and at no additional cost to the Council, re-supply, re-install and/or re-commission Goods; and
- 5.3.2 the Council may (at the Council's sole discretion) withhold the Contract Price payable under this Contract in full or part,
- until such time as Goods in compliance with the requirements of this Contract are delivered, installed, and commissioned to the reasonable satisfaction of the Council and an Authority Confirmation to this effect is issued.
- 5.4 In the event of any dispute between the Council and the Service Provider regarding the issue of an Authority Confirmation, the dispute shall be dealt with in accordance with clause 57 (Dispute Resolution) in the Conditions of Contract.
- 5.5 In the event that the Specification states that Goods shall be installed and commissioned on a phased basis and/or upon request, then the process for the inspection and testing of Goods set out above shall apply to the Goods within each phase and/or instance of supply.
- 5.6 In the event that the Specification stipulates a refresh programme and/or that substitute or replacement Goods shall otherwise be installed in accordance with the requirements of this Contract (including, without limitation, in connection with any Services pertaining to maintenance of Goods), then, following the installation and commissioning of the substitute or replacement Goods, the process for the inspection and testing of Goods set out above in this clause 5 shall apply in relation to the inspection and testing of such substitute or replacement Goods.
- 5.7 The Service Provider shall make good at the Service Provider's expense any damage to any property or equipment caused by the installation, commissioning, removal and/or relocation of the Goods by the Service Provider.

SCHEDULE 2
SPECIFICATION

[Insert Specification]

SCHEDULE 3

TENDER

[This will be the tender submission by the Service Provider]

SCHEDULE 4

PRICING SCHEDULE

[Insert any additional pricing provisions as appropriate]

Frequency of payments:

Payment process:

Please ensure all invoices are made out to Milton Keynes Council in accordance with pricing schedule and are sent directly to the address shown below:

Milton Keynes Council
Central Payments
PO Box 5388
Saxon Court
502 Avebury Boulevard
Central Milton Keynes
MK9 3WJ

You must also ensure that when sending invoices to the above address, you quote a Milton Keynes Council purchase order number (an example of a purchase order is provided overleaf).

Please direct all queries about this letter to centralpayments@milton-keynes.gov.uk or via your usual service contact.

SCHEDULE 5

CHANGE CONTROL

1. GENERAL PRINCIPLES

- 1.1 Where the Council or the Service Provider sees a need to change this Contract pursuant to the provisions of clause 33 (Change Control and Continuous Improvement), the Council may at any time request, and the Service Provider may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this schedule 5.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Council and the Service Provider 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 Service Provider 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 Service Provider and the Service Provider's Personnel 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 5, shall be undertaken entirely at the expense and liability of the Service Provider

2. PROCEDURE

- 2.1 Discussion between the Council and the Service Provider concerning a Change shall result in any one of the following:
- (a) no further action being taken; or
 - (b) a request to change this Contract by the Council; or
 - (c) a recommendation to change this Contract by the Service Provider
- 2.2 Where a written request for an amendment is received from the Council, the Service Provider shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Service Provider to the Council within three weeks of the date of the request.
- 2.3 A recommendation to amend this Contract by the Service Provider shall be submitted directly to the Council in the form of two copies of a Change Control Note signed by the Service Provider at the time of such recommendation. The Council shall give its response to the Change Control Note within three weeks.
- 2.4 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) a timetable for implementation, together with any proposals for acceptance of the Change;
 - (g) a schedule of payments if appropriate;

- (h) details of the likely impact, if any, of the Change on other aspects of this Contract 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;
- (i) the date of expiry of validity of the Change Control Note; and
- (j) provision for signature by the Council and the Service Provider

2.5 For each Change Control Note submitted by the Service Provider the Council shall, within the period of the validity of the Change Control Note:

- (a) allocate a sequential number to the Change Control Note; and
- (b) evaluate the Change Control Note and, as appropriate:
 - (i) request further information;
 - (ii) arrange for two copies of the Change Control Note to be signed by or on behalf of the Council and return one of the copies to the Service Provider ;
or
 - (iii) notify the Service Provider of the rejection of the Change Control Note.

2.6 A Change Control Note signed by the Council and by the Service Provider shall constitute an amendment to this Contract.

SCHEDULE 6

EXIT ARRANGEMENTS

1. General

- (a) The Service Provider acknowledges that it is of critical importance to the Council to ensure on termination or expiry of this Contract an orderly transfer of the Services either back to the Council or to a Replacement Service Provider and for this reason the Council relies significantly on the Service Provider fulfilling its obligations under this Schedule.
- (b) If this Contract is terminated in whole or part or expires in accordance with its terms, the Service Provider shall at no additional cost, during the Exit Period, assist and co-operate with the Council and where applicable any Replacement Service Provider to ensure the orderly migration of and transfer of responsibility for the Services, such such assistance and co-operation to include the supply by the Service Provider of any passwords and/or codes necessary for the operation of the Goods and/or delivery of the Services.

2. Exit Obligations

- (a) During the Exit Period the Service Provider shall:
 - (i) provide all reasonable assistance and appropriate resources to the Council and any Replacement Service Provider to facilitate the orderly transfer of the Services to the Council or the Replacement Service Provider ;
 - (ii) continue to provide the Services in accordance with any relevant Service Levels in force at the date of termination or expiry on the terms set out in this Contract;
 - (iii) provide such information and assistance as detailed in paragraph 4;
 - (iv) provide such copies of the Council's data in its possession as are requested by the Council and at no additional charge to the Council;
 - (v) carry out such security tasks necessary to identify security and operator risks inherent in the transfer of the Services and inform the Council of such risks and possible preventative and curative measures necessary to deal with such risks;
 - (vi) immediately prior to the end of the Exit Period provide the Council with a detailed description and status report of all errors which have not been corrected, problems not resolved or agreed changes to the Services which have not been fully implemented at the termination of the Exit Period.
- (b) The Service Provider shall carry out the Exit Obligations in such a manner so as to cause as little disruption as possible to the Council's business.

3. Documentation and Due Diligence

- (a) During the Exit Period, the Service Provider will comply with any reasonable request by the Council for any information in relation to the Services to ensure the smooth transition of the Services. Following such a request the Service Provider will within two (2) days of such request make the relevant information available to the Council for inspection or on the Council's authorisation to the Replacement Service Provider and shall within two (2) days of such inspection provide copies of the relevant information

to the Council and/or (if so requested by the Council) the Replacement Service Provider.

- (b) The Service Provider shall promptly and diligently answer any questions about the Goods and Services which may be asked by the Council or by any Replacement Service Provider as necessary in order (i) to explain the manner in which the Services have been provided; and (ii) to allow the Council or Replacement Service Provider to conduct all such due diligence as is reasonably required to enable it to take over responsibility for the provision of the Services (or any part thereof).
- (c) The Council shall procure that any Replacement Service Provider agrees to be bound by (i) an obligation of confidentiality in respect of any confidential information of the Service Provider which is made available to it under this Schedule and (ii) an obligation to use any of the Service Provider's confidential information solely for the purpose of evaluating and/or providing to the Council the services which will replace the Services.

4. Exit Manager

- (a) The Service Provider will appoint a person as Exit Manager at the commencement of the Exit Period and will notify the Council as soon as possible of the name and contact details of such person. The Council shall have the right to require the replacement of the Exit Manager if it reasonably believes that such person is unsuitable for the position.
- (b) The Exit Manager will be the Council's primary point of contact in connection with the matters referred to in this Schedule. The Service Provider shall ensure that the Exit Manager liaise with the Council in relation to all issues relevant to the termination (in whole or part) or expiry of this Contract and all matters connected with this Schedule.

5. Exit Period

- (a) The Exit Period shall be:
 - (i) a period of up to twelve (12) months prior to the end of the Contract;

provided that the Council may terminate the Exit Period at any time by giving ninety (90) days' notice in writing to the Service Provider

SCHEDULE 7

TUPE AND PENSIONS

1. DEFINITIONS

1.1. In this Schedule the following words and expressions shall have the meanings set out below -

PHRASE	MEANING
Appropriate Pension Protection	means in respect of Eligible Employees, the protection referred to in Annex A of the Cabinet Office Statement entitled 'Staff Transfers in the Public Sector Statement of Practice 2000' (as interpreted/updated by the HM Treasury Guidance Note dated June 2004) and the Best Value Authorities staff Transfers (Pensions) Direction 2007.
Directive	means the European Directive 2001/23/EC as amended;
Eligible Employees	means; <ul style="list-style-type: none"> • Transferring Employees who are active members of or eligible to join the LGPS on the date of a Relevant Transfer; or • Transferring Original Employees who are active or eligible to join the LGPS or a broadly comparable scheme provided by their existing employer on the date of a Relevant Transfer; or • any other individuals nominated by the Service Provider or Sub-Contractor (as applicable) for so long as they are employed in connection with the provision of the Services or part of it.
First Contractor	means the person or entity with whom the Council initially contracted for the provision of services which were the equivalent of or similar to the Services;
Intervening Contract	means a contract with the Council for the provision of services which were the equivalent of or similar to the Services, at times after they were provided under a contract with the First Contractor and before they are to be provided by the Contractor;
Regulations	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or modified from time to time;
Relevant Employees	means the employees who are the subject of a Relevant Transfer including any Transferring Employee and Third Party Employees;
Relevant Transfer	means a relevant transfer for the purposes of the Regulations;
Replacement Service Provider	means any subsequent contractor or supplier engaged by the Council in substitution or replacement of the Service Provider to provide services in whole or in part that are identical to or substantially similar to the Services;

PHRASE	MEANING
Third Party Employees	means employees of Third Party Employers whose contracts of employment transfer with effect from the Transfer Date to the Service Provider by virtue of the application of the Regulations.
Sub-Contractor	means the contractors that enter into a Sub-Contract with the Service Provider;
Third Party Employer	means a service provider engaged by the Council to provide the service or any part of it to the Council before the Commencement Date and whose employees will transfer to the Service Provider on the Transfer Date.
Transfer Date	means any date when any of the Relevant Employees are transferred to the employment of the Service Provider or a Sub-Contractor;
Transferring Employee	means an employee of the Council whose contract of employment becomes, by virtue of the application of the Regulations in relation to what is done for the purposes of carrying out this Contract between the Council and the Service Provider, a contract of employment with someone other than the Council;
Transferring Original Employee	means employees who are former employees of the Council and who were active members (or who were eligible to join) the LGPS on the date of a previous Relevant Transfer.
LGPS	means the relevant fund of the Local Government Pension Scheme.
LGPS Regulations	means the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) as may be amended from time to time.

2. TUPE COMPLIANCE (GENERAL) EMPLOYEES AND EMPLOYMENT MATTERS

2.1. Application of TUPE

- 2.1.1. The Council and the Service Provider agree subject to the provisions of any relevant legislation that where the identity of a provider (including the Council) of any service which constitutes or which will constitute part of the Services is changed pursuant to this Contract then the change shall constitute a Relevant Transfer.
- 2.1.2. On the occasion of each Relevant Transfer the Contractor shall comply and shall ensure that each Sub-contractor shall comply with all of its obligations under the Regulations and the Directive in respect of the Relevant Employees. The first Relevant Transfer shall occur on the Commencement Date.

2.2. Emoluments and Outgoings

- 2.2.1. The Council shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees, including without limitation all wages, holiday pay, bonuses, commissions, payment of PAYE, national insurance contributions, pension contributions and otherwise, up to the Transfer Date and shall use reasonable endeavours to procure that any Third Party Employer of a Relevant Employee is responsible for the same in relation to the Third Party Employees.

- 2.2.2. The Service Provider shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees, including without limitation all wages, holiday pay, bonuses, commissions, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the Transfer Date.

2.3. Pension Protection

- 2.3.1. The Service Provider shall ensure, and shall procure in relation to any Sub-Contractor that all Eligible Employees are offered Appropriate Pension Provision with effect from the Transfer Date up to and including the Expiry Date or the date of termination or any later completion of the provision of the Services.

- 2.3.2. The provision of this paragraph 2.3 shall be directly enforceable by an affected employee against the Service Provider.

2.3.3. Admission to the LGPS

- 2.3.4. Where the Service Provider wishes to offer the Eligible Employees membership to the LGPS, the Service Provider shall procure that it shall prior to the Transfer Date enter into an admission agreement to have effect from and including the Transfer Date. The Service Provider shall comply with the terms of such admission agreement and the all regulations governing the LGPS, including any requirement to provide such information as may be requested by the administering authority of the LGPS in respect of participation in the LGPS. The Service Provider shall bear the costs of any actuarial assessment required in order to assess the employer's contribution rate (including any bond value) in respect of Eligible Employees.

- 2.3.5. The Service Provider shall award benefits (where permitted) to the Eligible Employees under the LGPS Regulations in circumstances where Eligible Employees would have received such benefits had they been employed by the Council. The Service Provider shall be responsible for meeting all costs associated with the award of such benefits.

2.3.6. Broadly Comparable Scheme

- 2.3.7. Where the Service Provider does not offer the Eligible Employees membership to or continued membership of the LGPS, the Service Provider shall with effect from the Transfer Date;

- Offer the Eligible Employees membership of an occupational pension scheme that is certified by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the LGPS or such other broadly comparable scheme in which the Eligible Employees may have participated prior to the Relevant Transfer;
- Provide benefit credits for Eligible Employees who transfer their accrued benefits to the Service Provider's broadly comparable scheme which in the view of the actuary will be equivalent in value to the rights that such employees had prior to the transfer.
- Procure that any subsequent bulk transfer from the Service Provider's broadly comparable scheme will be calculated on the basis that is equal or no less favourable (as determined by the actuary to the LGPS) to the calculation of the transfer value to the broadly comparable scheme. If the transfer amount payable under the broadly comparable scheme is less (in the opinion of the actuary to the LGPS) than the transfer amount calculated on this basis, the Service Provider will procure payment to the broadly comparable scheme of the larger amount in a manner determined by the Council in consultation with the Service Provider.
- The Service Provider shall award benefits (where permitted) to the Eligible Employees in circumstances where the Eligible Employees would have received such benefits prior to the transfer.
- The Service Provider will comply with the guidance set out in the HM Treasury guidance note dated June 2004 in respect of the provision of the broadly comparable scheme.

- The Service Provider shall produce evidence of compliance with this paragraph 2.3 to the Council and shall be responsible for the costs of obtaining the necessary certificate of comparability.

2.3.8. Where the employment of an Eligible Employee transfers to a Sub-contractor, the Service Provider shall procure and shall ensure that the Sub-Contractor complies with the provisions of this paragraph 2.3 as if it were the Service Provider in respect of the Eligible Employees transferring to it.

2.3.9. Without prejudice to any other rights of the Council, the Council shall have the right to set off against any payments due to the Contractor under this Contract or any other contract with the Council, an amount equal to any unpaid employer and employee contributions including pension contributions for which the Service Provider or any of its Sub- Contractors is responsible under the Contract.

2.4. Provision of Information

The Council has provided the information set out in Schedule B5 relating to the Relevant Employees but does not warrant that the information is accurate and complete as at the date of this Contract, and undertakes to advise the Service Provider on a monthly basis up to the Transfer Date of any changes in the information provided, but again will not warrant the accuracy or completeness of such changed information.

2.5. Service Provider to Inform Council of any Measures

The Service Provider shall within 10 (ten) days of receiving a request from the Council, furnish to the Council any information deemed by the Council necessary concerning any measures (within the meaning of the Regulations and the Directive) that the Service Provider intends to take in relation to any Relevant Employee and shall indemnify the Council against all losses, costs, claims, demands, actions, fines, penalties, liabilities and expenses (including legal expenses) in relation to any breach of this obligation.

2.6. Indemnities

2.6.1. The Council shall indemnify the Service Provider from and against all losses, costs, claims, demands, actions, fines, penalties, liabilities and expenses (including legal expenses), which the Service Provider shall take all reasonable steps to mitigate, in connection with or as a result of any claim or demand by any Transferring Employee arising out of the employment of any Transferring Employee provided that this arises from any act, negligence, fault or omission of the Council in relation to any Employee prior to the Transfer Date and any such claim is not in connection with the Relevant Transfer.

2.6.2. The Service Provider shall indemnify and keep indemnified the Council and/or any Replacement Service Provider and in each case, their service providers from and against all direct losses suffered or incurred by it or them which arises from the failure by the Service Provider to comply with the provisions of this schedule B10. The limitations set out in Section 14 of the Contracts (Rights of Third Parties) Act 1999 shall not apply to the extent necessary to enable any Replacement Service Provider to enforce this indemnity in its own right.

2.6.3. The Service Provider shall indemnify and hold harmless the Council from and against all losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) which the Council shall take all reasonable steps to mitigate, in connection with or as a result of any claim including a claim by any trade union or staff association or employee representative (whether or not recognised by the Service Provider in respect of all or any of the Relevant Employees) arising from or connected with any failure by the Service Provider to comply with any legal obligation to such trade union staff associated or other employee representative whether under Regulation 10 of the Regulations, under the Directive or otherwise and, whether any such claim arises or has its origin before or after the date of the Relevant Transfer.

2.6.4. The Service Provider shall indemnify the Council from and against all losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) which the Council shall take all reasonable steps to mitigate, in connection with or as a result of any claim by any Relevant Employee that the identity of the Service Provider or Sub-

Contractor is to that Relevant Employee's detriment or that the terms and conditions to be provided by the Service Provider or any Sub-Contractor or any proposed measures of the Service Provider or any Sub-Contractor are to that employee's detriment whether such claim arises before or after the Transfer Date.

3. TUPE COMPLIANCE ON TERMINATION

3.1. Handover on Termination

- 3.1.1. During the 12 months preceding the expiry of this Contract or after the Council has given notice to terminate this Contract or at any other time as directed by the Council, and within 15 (fifteen) days of being so requested by the Council, the Service Provider shall fully and accurately disclose to the Council any and all information in relation to all personnel engaged in providing the Service including all Relevant Employees who are to transfer as a consequence of a Relevant Transfer as the Council may reasonably request, in particular but not necessarily restricted to any of the following:-
 - 3.1.1.1. a list of employees employed by the Service Provider in the provision of the Service ;
 - 3.1.1.2. a list of agency workers, agents and independent contractors engaged by the Service Provider in the provision of the Service and who may transfer pursuant to any Relevant Transfer;
 - 3.1.1.3. the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of the personnel to which paragraphs 3.1.1.1 and 3.1.1.2 refer;
 - 3.1.1.4. the terms and conditions of employment of the Relevant Employees, their age, salary, date continuous employment commenced and (if different) the commencement date, enhancement rates, any other factors affecting their redundancy entitlement and any outstanding claims arising from employment.
- 3.1.2. The Service Provider shall warrant the accuracy and completeness of all the information provided to the Council pursuant to paragraph 3.1.1 and authorises the Council to use any and all the information as it may consider necessary for the purposes of its businesses or for informing any tenderer for any services which are substantially the same as the Service (or any part thereof).
- 3.1.3. During the 12 months preceding the expiry of the Contract or at any time where notice to terminate this Contract for whatever reason has been given, the Service Provider shall allow the Council or such other persons as may be authorised by the Council to communicate with and meet the Relevant Employees and their trade union or employee representatives as the Council may reasonably request.
- 3.1.4. During the 12 months preceding the expiry of this Contract or where notice to terminate this Contract for whatever reason has been given, the Service Provider shall not without the prior written consent of the Council unless bona fide in the ordinary course of business:
 - 3.1.4.1. vary or purport or promise to vary the terms and conditions of employment of any employee employed in connection with the Service;
 - 3.1.4.2. increase or decrease the number of employees employed in connection with the Service; or
 - 3.1.4.3. assign or redeploy any employee employed in connection with the Service to other duties unconnected with the Service.

3.2. Indemnities

The Service Provider shall indemnify the Council and any new contractor appointed by the Council and keep the Council and any new contractor appointed by the Council indemnified in full from and against all direct, indirect or consequential liability, loss, damages, injury, claims, costs and expenses (including legal expenses) which the Council and any new contractor appointed by the Council shall take all reasonable steps to mitigate, awarded against or incurred or paid by the Council or any new

contractor appointed by the Council as a result of or in connection with the employment or termination of employment of any employee of the Service Provider during any period prior to the date of expiry or termination of this Contract.

3.3. **Sub-Contractors**

In the event that the Service Provider enters into any sub-contract in connection with this Contract, it shall impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this paragraph 3 and shall procure that the Sub-Contractor complies with such terms. The Service Provider shall indemnify the Council and keep the Council indemnified in full from and against all direct, indirect or consequential liability, loss, damages, injury, claims, costs and expenses (including legal expenses) awarded against or incurred or paid by the Council as a result of or in connection with any failure on the part of the Sub-Contractor to comply with such terms.

SCHEDULE 8
PARENT COMPANY GUARANTEE

Not Used

SCHEDULE 9
PERFORMANCE BOND

Not Used

SCHEDULE 10
DISASTER RECOVERY PLAN

[if not used state "Not Used"]

SCHEDULE 11
COMMERCIALLY SENSITIVE INFORMATION

[if not used state "Not Used"]

SCHEDULE 12
CONTRACT MANAGEMENT

[if not used state "Not Used"]