

DATED 2023

THE LONDON BOROUGH OF HACKNEY

AND

[.....]

SERVICES AGREEMENT FOR [.....]

Legal Services
London Borough of Hackney
Hackney Town Hall
Mare Street
London E8 1EA

Dated the day of2023

BETWEEN:

- (1) **The London Borough of Hackney** of Town Hall, Mare Street, London E8 1EA (“**the Council**”)

and

- (2) [.....] (company registration number)
[.....] of/whose registered office is at
[.....] (“**the Service Provider**”)

BACKGROUND

- (a) The Council sought proposals for the provision of [.....] by means of a public tender exercise.
- (b) The Council has, through a competitive process, selected the Service Provider to provide these services and the Service Provider is willing and able to provide the services in accordance with the terms and conditions of this agreement.
- (c) The Council wishes to engage the Service Provider to provide the services (“the Services”) as more fully set out in the Services Specification (Schedule 1).
- (d) The Service Provider has agreed with the Council to provide the Services on the terms and conditions of this agreement (“the Agreement”).

TERMS OF AGREEMENT

1. DEFINITIONS AND INTERPRETATION

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

Authorised Representatives: the persons respectively designated by the Council and the Service Provider, the first such persons being set out in Schedule 3.

Charges: the charges which shall become due and payable by the Council to the Service Provider in respect of the Services in accordance with the provisions of this agreement, as such charges are set out in Schedule 2.

Commencement Date: means [.....].

Commercially Sensitive Information: the information relating to the Service Provider, its intellectual property rights or its business or which the Service Provider has indicated to the Council that, if disclosed by the Council, would cause the Service Provider significant commercial disadvantage or material financial loss.

Crown: the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales) including, but not limited to, government ministers and government departments and particular bodies, persons and government agencies.

Crown Body: any department, office or agency of the Crown.

Default Notice: is defined in clause 2.5.

Dispute Resolution Procedure: the procedure set out in clause 24.

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

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

Force Majeure: any cause affecting the performance by a party of its obligations under this agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial or labour dispute relating to the Service Provider, the Service Provider's Personnel or any other failure in the Service Provider's supply chain.

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

Initial Term: the period commencing on the Commencement Date and ending on [.....].

Intellectual Property: any and all intellectual property rights of any nature anywhere in the world whether registered or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

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

Payment Plan: the plan for payment of the Charges as set out in Schedule 2.

Prohibited Act: the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) committing any offence:
 - (i) under the Bribery Act 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.

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

Service Levels: the service levels to which the Services are to be provided, as set out in Schedule 1.

Service Provider's Personnel: all directors, officers, employees, agents, consultants and sub-contractors of the Service Provider and any of the Service Provider's sub-contractors who are engaged in the provision of the Services from time to time.

Service Provider's Tender: the tender submitted by the Service Provider and other associated documentation set out in Schedule 1.

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

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

- (a) any extensions to this agreement which are agreed pursuant to clause 2; or
- (b) the earlier termination of this agreement in accordance with its terms.

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

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

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

2. COMMENCEMENT, DURATION AND PERFORMANCE

- 2.1 This agreement shall take effect on the Commencement Date and shall continue for the Term and the Service Provider agrees to provide the Services to the Council for the Term in accordance with the provisions of this agreement.
- 2.2 The Council may extend this agreement beyond the Initial Term for further [annual] periods up to a maximum of [.....] additional years ("Extension Period(s)"). If the Council wishes to extend this agreement, it shall give the Service Provider [.....] months' written notice of such intention before the expiry of the Initial Term or Extension Period, as the case may be.
- 2.3 If the Council gives such notice then the Term shall be extended by the period set out in the notice.
- 2.4 If the Council does not wish to extend this agreement beyond the Initial Term this agreement shall terminate through effluxion of time on the expiry of the Initial Term and the provisions of clause 23 shall apply.
- 2.5 In the event that the Service Provider does not comply with the provisions of clause 2.1 in any way, the Council may serve the Service Provider with a notice in writing setting out the details of the Service Provider's default ("a Default Notice").

3. CONSENTS, SERVICE PROVIDER'S WARRANTY AND DUE DILIGENCE

- 3.1 The Service Provider shall ensure that all Necessary Consents are in place to provide the Services and the Council shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 3.2 Where there is any conflict or inconsistency between the provisions of the agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Service Provider has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services.
- 3.3 The Service Provider acknowledges and confirms that:
- 3.3.1 it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Council all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this agreement;
 - 3.3.2 it has received all information requested by it from the Council pursuant to clause 3.3.1 to enable it to determine whether it is

able to provide the Services in accordance with the terms of this agreement;

3.3.3 it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council pursuant to clause 3.3.2;

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

3.3.5 it has entered into this agreement in reliance on its own due diligence.

3.4 Save as provided in this agreement, no representations, warranties or conditions are given or assumed by the Council in respect of any information which is provided to the Service Provider by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

3.5 The Service Provider:

3.5.1 as at the Commencement Date, warrants and represents that all information contained in the Service Provider's Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the agreement; and

3.5.2 shall promptly notify the Council in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Council during such due diligence which materially and adversely affects its ability to perform the Services or meet any specified Service Levels as may be set out herein.

3.6 The Service Provider shall not be entitled to recover any additional costs from the Council which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Council by the Service Provider in accordance with clause 3.5.2 save where such additional costs or adverse effect on performance have been caused by the Service Provider having been provided with fundamentally misleading information by or on behalf of the Council and the Service Provider could not reasonably have known that the information was incorrect or misleading at the time such information was provided.

3.7 Nothing in this clause 3 shall limit or exclude the liability of the Council for fraud or fraudulent misrepresentation.

4. THE COUNCIL'S OBLIGATIONS

The Council agrees in consideration of the performance by the Service Provider of the Services:

- 4.1 To afford to the Service Provider the services of such officers to assist in the Service Provider's performance of the Services as may be reasonably required.
- 4.2 To pay the Service Provider at the rate set out in Schedule 2 to this Agreement, subject to the satisfactory performance of the Services and the further terms as to payment in clause 7.
- 4.3 To comply with any applicable obligations imposed on it by any statutory provision or Code of Practice relating to health, safety and/or welfare at work.

5. THE SERVICE PROVIDER'S OBLIGATIONS

- 5.1 The Service Provider agrees as terms of this Agreement that:
 - 5.1.1 it will perform the Services in a proper, competent and professional manner and (unless prevented by circumstances outside the Service Provider's control) within the timescale specified herein and if so stated between the hours and/or the dates specified;
 - 5.1.2 it will provide such tools, equipment and other resources as may be necessary for the proper performance of the Services;
 - 5.1.3 it will familiarise itself with and comply with any applicable provisions of legislation (including Codes of Practice) relating to health, safety and/or welfare and discrimination at work.;
 - 5.1.4 it will familiarise itself with and comply with any applicable policies and procedures of the Council which have been drawn to the Service Provider's attention, including in particular (but without limitation) the Council's Equal Opportunities Policy and Code of Conduct;
 - 5.1.5 it will not do anything which could render the Council legally liable to any officer, employee or other person, or could otherwise damage the reputation of the Council or expose it to legal liability;
 - 5.1.6 it will indemnify the Council against any loss occasioned to its property by any willful or negligent act on the Service Provider's part and against any other liability incurred by the Council as a consequence of the Service Provider's breach of any of the

obligations undertaken by virtue of clauses 5.1.1, 5.1.3, 5.1.4 or 5.1.5 or the use of any resources supplied by the Service Provider pursuant to clause 5.1.2 or otherwise due to any wrongful or negligent act or omission by the Service Provider;

5.1.7 it will not delegate or sub contract the execution of the Service Provider's duties under this agreement to another person or persons without the Council's prior written agreement;

5.1.8 where any Service is stated to be subject to a specific Service Level, the Service Provider shall provide that Service in such a manner as will ensure that the achieved Service Level in respect of that Service is equal to or higher than such specific Service Level;

5.1.9 without prejudice to clause 5.1.8, the Service Provider shall provide the Services, or procure that they are provided:

5.1.9.1 in all respects in accordance with the Council's policies; and

5.1.9.2 in accordance with all applicable laws; and

5.1.10 it will account to HM Revenue and Customs for all payments made to it by the Council pursuant to this Agreement in a timely manner, and will pay by the due date any income tax and national insurance contributions to which the Service Provider is properly assessed (without prejudice to the Service Provider's rights to appeal against such assessments), and the Service Provider will if so required by law register for Value Added Tax.

5.2 The Service Provider warrants that its staff and Authorised Representative have the necessary skills and qualifications to perform the Services.

6. SERVICE PROVIDER'S PERSONNEL

6.1 The Service Provider shall ensure that:

6.1.1 each of the Service Provider's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;

6.1.2 there is an adequate number of Service Provider's Personnel to provide the Services properly;

6.1.3 only those people who are authorised by the Service Provider (under the authorisation procedure to be agreed between the parties) are involved in providing the Services; and

6.1.4 all of the Service Provider's Personnel comply with all of the Council's policies including those that apply to persons who are allowed access to the applicable Council's Premises.

- 6.2 The Council may refuse to grant access to, and remove, any of the Service Provider's Personnel who do not comply with any such policies, or if they otherwise present a security threat.
- 6.3 The Service Provider shall replace any of the Service Provider's Personnel who the Council reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Service Provider's Personnel for any reason, the Service Provider shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services. The removal and replacement of any Service Provider Personnel shall be at no additional cost to the Council.
- 6.4 The Service Provider shall maintain up-to-date personnel records on the Service Provider's Personnel engaged in the provision of the Services and, on request, provide reasonable information to the Council on the Service Provider's Personnel. The Service Provider shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.
- 6.5 The Service Provider shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good as the prevailing industry norm for similar services, locations and environments.
- 6.6 In the event that
- 6.6.1 any Service Provider Personnel engaged in the provision of the Services have access to children or vulnerable adults or are responsible for processing Personal Data, the Service Provider shall ensure that they are subject to a valid and appropriate 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/or
 - 6.6.2 the Service Provider is deemed to be a Regulated Activity Provider within the meaning of the Safeguarding Vulnerable Groups Act 2006 it shall have ultimate responsibility for the management and control of the Regulated Activity provided under this agreement.
- 6.7 The Service Provider warrants that at all times for the purposes of this agreement 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.

7. PAYMENTS

The following terms apply as to payments:

- 7.1 In consideration of the provision of the Services by the Service Provider in accordance with the terms and conditions of this agreement, the Council shall pay the Charges to the Service Provider in accordance with the Payment Plan set out in the Charges and Payment Schedule (Schedule 2). The amount or rate of payment as set out in the Payment Plan may only be varied by agreement in writing between the parties. The amount or rate so set out and/or as so varied comprises the Service Provider's entire entitlement to fees.
- 7.2 The Service Provider shall invoice the Council for payment of the Charges at [the end of each calendar month OR at the time the Charges are expressed to be payable in accordance with the Payment Plan]. All invoices shall be directed to the Council's Authorised Representative.
- 7.3 The Council shall pay the Charges which have become payable in accordance with the Payment Plan within thirty (30) days of receipt of an undisputed invoice from the Service Provider, subject to the Service Provider providing the Services in accordance with any specified or agreed standard (including any recognized industry standard) or where no standard is specified to a generally acceptable standard.
- 7.4 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 24. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of 21 days after resolution of the dispute between the parties.
- 7.5 Subject to clause 7.4, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Service Provider shall not suspend the supply of the Services if any payment is overdue unless it is entitled to terminate this agreement under clause 20.6 for failure to pay undisputed charges.
- 7.6 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Council following delivery of a valid VAT invoice. The Service Provider shall indemnify the Council against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Council at any time in respect of the Service Provider's failure to account for, or to pay, any VAT relating to payments made to the Service Provider under this agreement.

- 7.7 Where the Service Provider enters into a sub-contract with a supplier or contractor for the purpose of performing the agreement, it shall cause a term to be included in such a sub-contract that requires payment to be made of undisputed sums by the Service Provider to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the sub-contract requirements.
- 7.8 The Council reserves the right to recover any sum the Service Provider owes to it by deduction from or non-payment of invoices rendered by the Service Provider, and the Service Provider hereby authorises such deductions.
- 7.9 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 agreement. Such records shall be retained for inspection by the Council for six (6) years from the end of the contract year to which the records relate.
- 7.10 In the event that at any time undisputed Charges have been overdue for payment for a period of sixty (60) days or more, the Council will have committed a "Termination Payment Default".

8. CONTRACT MANAGEMENT

Reporting and meetings

- 8.1 The Service Provider shall provide such management reports in the form and at the reasonable intervals as shall be specified by the Council.
- 8.2 The Authorised Representatives shall meet in accordance with the reasonable requirements of the Council.

Monitoring

- 8.3 The Council may monitor the performance of the Services by the Service Provider.
- 8.4 The Service Provider shall co-operate, and shall procure that its sub-contractors co-operate, with the Council in carrying out the monitoring referred to in clause 8.3 at no additional charge to the Council.

9. PUBLICITY AND BRANDING

- 9.1 The Service Provider shall not make any press announcements, publicise this Agreement or its contents in any way or use the Council's logo without the prior written consent of the Council, which consent shall not be unreasonably withheld or delayed.

- 9.2 Each party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other party and each party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

10. INDEMNITIES

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

11. LIMITATION OF LIABILITY

- 11.1 Subject to clause 11.3, neither party shall be liable to the other party (as far as permitted by law) for indirect, special or consequential loss or damage in connection with the agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.
- 11.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this agreement.
- 11.3 In no circumstances shall the Council be liable to the Service Provider for any consequential, economic or financial loss sustained by the Service Provider in consequence of any failure on the Service Provider's part to place the volume of orders under the Agreement anticipated by the Service Provider.
- 11.4 The Service Provider accepts and acknowledges that any information given to the Service Provider by the Council by way of indicative quantities is given only as a guide. No claim shall be brought against the Council in tort, contract or otherwise with regard to such information.
- 11.5 Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:
- 11.5.1 fraud or fraudulent misrepresentation;
 - 11.5.2 death or personal injury caused by its negligence;

- 11.5.3 breach of any obligation as to title implied by statute; or
- 11.5.4 any other act or omission, liability for which may not be limited under any applicable law.

11.6 Any clause limiting the Service Provider's liability does not apply in relation to the breach of clause 16.

12. INSURANCE

12.1 The Service Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:

12.1.1 public liability insurance with a limit of indemnity of not less than £2 million (two million pounds) in relation to any one claim or series of claims;

12.1.2 employer's liability insurance with a limit of indemnity in accordance with any legal requirement for the time being in force in relation to any one claim or series of claims;

12.1.3 professional indemnity insurance of not less than £2 million (two million pounds) for each individual claim or series of claims during the term of this Agreement and shall ensure that all professional consultants or sub-contractors involved in the provision of the Services hold and maintain appropriate cover, with such insurance to be maintained for a minimum of six (6) years following the expiration or earlier termination of this Agreement,

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

12.2 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 Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

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

12.4 The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the agreement.

13. CONFIDENTIALITY

- 13.1 Subject to clause 13.2, the parties shall keep confidential all matters relating to this agreement and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.
- 13.2 Clause 13.1 shall not apply to any disclosure of information:
- 13.2.1 required by any applicable law, provided that clause 15.1 shall apply to any disclosures required under the FOIA or the Environment Information Regulations;
 - 13.2.2 that is reasonably required by persons engaged by a party in the performance of such party's obligations under this agreement;
 - 13.2.3 where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 13.1;
 - 13.2.4 by the Council of any document to which it is a party and which the parties to this agreement have agreed contains no Commercially Sensitive Information;
 - 13.2.5 to enable a determination to be made under clause 24;
 - 13.2.6 which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
 - 13.2.7 by the Council to any other department, office or agency of the Government; and
 - 13.2.8 by the Council relating to this agreement and in respect of which the Service Provider has given its prior written consent to disclosure.
- 13.3 Notwithstanding the provisions of clause 23, on or before the Termination Date the Service Provider shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the Council's employees, rate-payers or service users, are delivered up to the Council or securely destroyed.
- 13.4 Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 13.

14. DATA PROTECTION

- 14.1 In this Agreement the following definitions shall apply:-

“Data Loss Event” means any event that results, or may result, in unauthorised access to Personal Data held by the Service Provider

under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach (as defined by the Data Protection Legislation);

“Data Processor” has the meaning given in the Data Protection Legislation;

“Data Protection Impact Assessment” means an assessment by the Council of the impact of the envisaged processing on the protection of Personal Data;

“Data Protection Legislation” means for the periods in which they are in force in the United Kingdom, the Data Protection Act 2018, 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, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the GDPR 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, in each case as amended or substituted from time to time;

“Data Subject” has the meaning given in the Data Protection Legislation;

“Data Subject Request” means a request made by a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation in relation to his/her Personal Data;

“GDPR” means (a) the General Data Protection Regulation (Regulation (EU) 2016/679); and (b) any equivalent legislation amending or replacing the General Data Protection Regulation;

“Law” means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Service Provider is bound to comply;

“Personal Data” means personal data (as defined in the Data Protection Legislation) which is Processed by the Service Provider on behalf of the Council pursuant to or in connection with this Agreement;

“Process” has the meaning given to that term under the Data Protection Legislation and “Processed”, “Processes” and “Processing” shall be construed accordingly;

- 14.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the controller and the Service Provider is the processor. The only processing that the Service Provider is authorised to do is listed in Schedule 4 by the Council and may not be determined by the Service Provider.
- 14.3 The Service Provider shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.
- 14.4 The Service Provider shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment (being an assessment by the Council of the impact of the envisaged processing on the protection of Personal Data) prior to commencing any processing. Such assistance may, at the discretion of the Council, include:
- 14.4.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 14.4.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 14.4.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 14.4.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 14.5 The Service Provider shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- 14.5.1 process that Personal Data only in accordance with Schedule 4 unless the Service Provider is required to do otherwise by Law. If it is so required the Service Provider shall promptly notify the Council before processing the Personal Data unless prohibited by Law;
 - 14.5.2 ensure that it has in place protective measures (namely appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it), which have been reviewed and approved by the

Council as appropriate to protect against a Data Loss Event having taken account of the:

- (a) nature of the data to be protected;
- (b) harm that might result from a Data Loss Event;
- (c) state of technological development; and
- (d) cost of implementing any measures;

14.5.3 ensure that :

- (a) the Service Provider's Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 4);
- (b) it takes all reasonable steps to ensure the reliability and integrity of any Service Provider's Personnel who have access to the Personal Data and ensure that they:
 - (i) are aware of and comply with the Service Provider's duties under this clause;
 - (ii) are subject to appropriate confidentiality undertakings with the Service Provider or any sub-processor;
 - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council or as otherwise permitted by this Agreement; and
 - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data;

14.5.4 not transfer Personal Data outside of the EU unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:

- (a) the Council or the Service Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or Law Enforcement Directive (Directive (EU) 2016/680) Article 37 as determined by the Council);

- (b) the Data Subject has enforceable rights and effective legal remedies;
- (c) the Service Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Council in meeting its obligations); and
- (d) the Service Provider complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;

14.5.5 at the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the Agreement unless the Service Provider is required by Law to retain the Personal Data.

14.6 Subject to clause 14.7, the Service Provider shall notify the Council immediately if it:

14.6.1 receives a Data Subject Request (or purported Data Subject Request);

14.6.2 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

14.6.3 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;

14.6.4 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

14.6.5 becomes aware of a Data Loss Event.

14.7 The Service Provider's obligation to notify under clause 14.6 shall include the provision of further information to the Council in phases, as details become available.

14.8 Taking into account the nature of the processing, the Service Provider shall provide the Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 14.6 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:

- 14.8.1 the Council with full details and copies of the complaint, communication or request;
 - 14.8.2 such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - 14.8.3 the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 14.8.4 assistance as requested by the Council following any Data Loss Event;
 - 14.8.5 assistance as requested by the Council with respect to any request from the Information Commissioner's Office, or any consultation by the Council with the Information Commissioner's Office.
- 14.9 The Service Provider shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Service Provider employs fewer than 250 staff, unless:
- 14.9.1 the Council determines that the processing is not occasional;
 - 14.9.2 the Council determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - 14.9.3 the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 14.10 The Service Provider shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor.
- 14.11 The Service Provider shall designate a data protection officer if required by the Data Protection Legislation.
- 14.12 Before allowing any sub-processor to process any Personal Data related to this Agreement, the Service Provider must:
- 14.12.1 notify the Council in writing of the intended sub-processor and processing;
 - 14.12.2 obtain the written consent of the Council;

- 14.12.3 enter into a written agreement with the sub-processor which gives effect to the terms set out in this clause such that they apply to the sub-processor; and
- 14.12.4 provide the Council with such information regarding the sub-processor as the Council may reasonably require.
- 14.13 The Service Provider shall remain fully liable for all acts or omissions of any sub-processor.
- 14.14 The Service Provider may, at any time on not less than thirty (30) Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 14.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than thirty (30) Working Days' notice to the Service Provider amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

15. FREEDOM OF INFORMATION

- 15.1 The Service Provider acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Council (at the Service Provider's expense) to enable the Council to comply with these information disclosure requirements.
- 15.2 The Service Provider shall and ensure that its sub-contractors shall:
 - 15.2.1 transfer the Request for Information to the Council as soon as practicable after receipt and in any event within five Working Days of receiving a Request for Information;
 - 15.2.2 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 requesting that Information; and
 - 15.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 15.3 The Council shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:

15.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations; and/or

15.3.2 is to be disclosed in response to a Request for Information.

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

15.5 The Service Provider acknowledges that the Council may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:

15.5.1 without consulting with the Service Provider; or

15.5.2 following consultation with the Service Provider and having taken its views into account,

provided always that where clause 15.5.2 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.

15.6 The Service Provider shall ensure that all Information produced in the course of the agreement or relating to the agreement is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

15.7 The Service Provider acknowledges that any lists or Schedules provided by it outlining confidential information are of indicative value only and that the Council may nevertheless be obliged to disclose confidential information in accordance with clause 15.5.

16. BRIBERY, CORRUPTION AND GRATUITIES

16.1 The Service Provider shall not:

16.1.1 in connection with this Agreement commit a Prohibited Act and shall procure that all Service Provider's Personnel shall not commit a Prohibited Act,

16.1.2 offer or agree to give any person working for or engaged by the Council or any other Crown Body any gift or other consideration, which could act as an inducement or a reward for any act or failure to act connected to this agreement, or any other

agreement between the Service Provider and the Council or any Crown Body, including its award to the Service Provider and any of the rights and obligations contained within it; or

16.1.3 enter into this agreement if it has knowledge that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the Council or any other Crown Body by or for the Service Provider, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Council before execution of this agreement.

16.2 The Service Provider 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 Agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Agreement.

16.3 If the Service Provider, including any Service Provider employee, sub-contractor or agent, in all cases whether or not acting with the Service Provider's knowledge:

16.3.1 breach Clause 16.1; or

16.3.2 engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK,

in relation to this agreement or any other contract with the Council, the Council may terminate this agreement by written notice with immediate effect and recover from the Service Provider the amount of any loss resulting from such termination, including but not limited to any cost incurred by the Council in re-tendering the service hereunder.

16.4 Any termination under clause 16.3 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Council.

16.5 The Service Provider shall if requested, provide the Council with any reasonable assistance 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;

16.6 Notwithstanding clause 24, any dispute relating to:

16.6.1 the interpretation of clause 16.1 to clause 16.3 inclusive; or

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

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

- 16.7 The Service Provider shall not, whether itself or by any partner or director engaged in the provision of the Services or by any person employed by it to provide the Services, solicit or accept any gratuity, tip or any other form of money taking or reward, collection or charge for any of the Services other than charges properly approved by the Council in accordance with the provisions of this Agreement.

17. DISCRIMINATION

The Service Provider shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Service Provider shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 and Equality Act 2006 (as amended), the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

18. AUDIT

- 18.1 During the Term and for a period of five (5) years after the Termination Date, the Council may conduct or be subject to an audit for the following purposes:

- 18.1.1 to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all suppliers (including sub-contractors);
 - 18.1.2 to review the integrity, confidentiality and security of any data relating to the Council or any service users;
 - 18.1.3 to review the Service Provider's compliance with the DPA, the FOIA, in accordance with clause 14 (Data Protection) and clause 15 (Freedom of Information) and any other legislation applicable to the Services;
 - 18.1.4 to review any records created during the provision of the Services;
 - 18.1.5 to review any books of account kept by the Service Provider in connection with the provision of the Services;
 - 18.1.6 to carry out the audit and certification of the Council's accounts;
 - 18.1.7 to carry out an examination pursuant to sections 44 and 46 of the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Council has used its resources;
 - 18.1.8 to verify the accuracy and completeness of any reports delivered or required by this agreement.
- 18.2 Except where an audit is imposed on the Council by a regulatory body, the Council may not conduct an audit under this clause 18 more than twice in any calendar year.
- 18.3 The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Service Provider or delay the provision of the Services.
- 18.4 Subject to the Council's obligations of confidentiality, the Service Provider shall on demand provide the Council and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- 18.4.1 all information requested by the above persons within the permitted scope of the audit;
 - 18.4.2 reasonable access to any sites controlled by the Service Provider and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
 - 18.4.3 access to the Service Provider's Personnel.
- 18.5 The Council shall endeavour to (but is not obliged to) provide at least fifteen (15) days notice of its or, where possible, a regulatory body's, intention to conduct an audit.

- 18.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this agreement in any material manner by the Service Provider in which case the Service Provider shall reimburse the Council for all the Council's reasonable costs incurred in the course of the audit.
- 18.7 If an audit identifies that:
- 18.7.1 the Service Provider has failed to perform its obligations under this agreement in any material manner, the parties shall agree and implement a remedial plan. If the Service Provider's failure relates to a failure to provide any information to the Council about the Charges, proposed Charges or the Service Provider's costs, then the remedial plan shall include a requirement for the provision of all such information;
 - 18.7.2 the Council has overpaid any Charges, the Service Provider shall pay to the Council the amount overpaid within twenty (20) days. The Council may deduct the relevant amount from the Charges if the Service Provider fails to make this payment; and
 - 18.7.3 the Council has underpaid any Charges, the Council shall pay to the Service Provider the amount of the under-payment less the cost of audit incurred by the Council if this was due to a default by the Service Provider in relation to invoicing within twenty (20) days.

19. INTELLECTUAL PROPERTY

- 19.1 The parties agree that any trademarks, patents, trade names, logos, trade dress, domain names, copyright or licenses therein, or other enforceable intellectual property rights and whether in hard or electronic copy (collectively, "intellectual property") belonging to the other given to them under this agreement remains at all times the property of the other.
- 19.2 Upon termination of this agreement for any reason the parties will use reasonable endeavours to ensure that all such trade marks, trade names and material are removed from display and/or destroyed at the request of the other save where such items described at clause 19.1 are held by the parties in compliance with any statutory obligations and/or the maintenance of proper records.
- 19.3 The parties undertake that they have all necessary permissions, licences and rights to use the intellectual property of third parties for the purposes of this agreement.
- 19.4 Except as expressly provided in this agreement, no intellectual property rights shall be conveyed, transferred, or assigned by this agreement. Each party reserves the right to approve in advance the use of its

intellectual property by the other party in each and every instance. All intellectual property owned by either party will remain the exclusive property of such party and will be returned to such party promptly after the expiration of this agreement or destroyed, at the option of the other party.

- 19.5 Each party shall indemnify (for the purposes of this clause, “the indemnifying party”) the other party (for the purposes of this clause, “the indemnified party”) against all actions, claims, proceedings, costs and expenses (including legal fees) arising from any actual infringement of intellectual property rights of whatever nature insofar as these relate to the intellectual property rights developed and owned by the indemnifying party or licensed to the indemnifying party which claims, actions or proceedings arise as a result of the indemnified party’s use of any of the services within the United Kingdom except that the indemnity shall not apply to any actions, claims or proceedings which are attributable to any breach of contract or negligent act or omission on the part of the indemnified party or where such actions, claims or proceedings relate to any developments of the services carried out by or at the request of the indemnified party except where the indemnifying party knew or ought to have known that such development of the services requested by the indemnified party would result in an infringement of intellectual property rights.
- 19.6 The indemnified party shall notify the indemnifying party in writing of any such action, claim or proceeding and shall not make any admission unless the indemnifying party gives prior written consent.
- 19.7 At the indemnifying party’s request and expense, the indemnified party shall permit the indemnifying party to conduct all negotiations and litigation. The indemnified party shall give all assistance as the indemnifying party may reasonably request and the indemnifying party shall pay the indemnified party’s costs and expenses so incurred.
- 19.8 The indemnifying party may, at its expense; (i) obtain a licence to enable the indemnified party to continue to use the services, or (ii) modify or replace the services to avoid any alleged or actual infringement or breach or (iii) terminate the provision of the affected elements of the services. Where the indemnifying party exercises options (i) or (ii) the functionality of such modification or replacement shall not materially affect the performance of the services.

20. TERMINATION

- 20.1 This Agreement will continue in force unless terminated through the effluxion of time or earlier in accordance with the following provisions of this clause 20.

- 20.2 The Council may terminate this Agreement at any time by giving one month's notice in writing.
- 20.3 The Council may at any time terminate this Agreement by notice in writing with immediate effect or with effect from such date as the notice may state, for Cause as defined in clause 20.4. The effect of such notice shall be to terminate, with effect from the date stated in the notice, any obligation on the Service Provider's part to perform services and any right to continue to perform services, and to remove any obligation of the Council to pay for services performed after that date. The termination of this Agreement for Cause shall not give rise to any obligation by the Council to compensate the Service Provider for any loss arising.
- 20.4 'Cause' in clause 20.3 means any of the following:
- 20.4.1 Any serious breach of any obligation owed by the Service Provider to the Council under this Agreement, including without limitation any serious breach of the Code of Conduct.
 - 20.4.2 Any repeated or continuing breach of any obligation following notice in writing identifying a breach of that obligation and requiring the Service Provider to rectify, or not repeat, the breach.
 - 20.4.3 Any conduct on the Service Provider's part, whether or not in the course of performing services under this Agreement, which is likely to cause damage to the reputation or standing of the Council.
 - 20.4.4 Any act of insolvency by the Service Provider.
 - 20.4.5 if a resolution is passed or an order is made for the winding up of the Service Provider (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Service Provider becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the Service Provider's property or equipment;
 - 20.4.6 if the Service Provider ceases or threatens to cease to carry on business in the United Kingdom;
 - 20.4.7 if there is a change of control (as defined in section 574 of the Capital Allowances Act 2001) of the Service Provider to which the Council reasonably objects.
 - 20.4.8 Conviction of a criminal offence other than an offence under road traffic legislation not resulting in imprisonment or disqualification from driving.
- 20.5 If this agreement is terminated by the Council for Cause such termination shall be at no loss or cost to the Council and the Service Provider hereby

indemnifies the Council against any such losses or costs which the Council may suffer as a result of any such termination for Cause.

- 20.6 The Service Provider may terminate this agreement in the event that the Council commits a Termination Payment Default (as defined in clause 7.10) by giving thirty (30) days' written notice to the Council. In the event that the Council remedies the Termination Payment Default in the thirty (30) day notice period, the Service Provider's notice to terminate this agreement shall be deemed to have been withdrawn.

21. FORCE MAJEURE

- 21.1 Subject to the remaining provisions of this clause 21, neither party to this agreement shall be liable to the other for any delay or non-performance of its obligations under this agreement to the extent that such non-performance is due to a Force Majeure event.

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

21.2.1 give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;

21.2.2 use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this agreement; and

21.2.3 resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

- 21.3 A party cannot claim relief if the Force Majeure event is attributable to that parties wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure event.

- 21.4 The Service Provider cannot claim relief if the Force Majeure event is one where a reasonable service provider should have foreseen and provided for the cause in question.

- 21.5 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure event and to facilitate the continued performance of this agreement. Where the Service Provider is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure event in accordance with accepted industry practice.

- 21.6 The affected party shall notify the other party as soon as practicable after the Force Majeure event ceases or no longer causes the affected party to be unable to comply with its obligations under this agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure event unless agreed otherwise by the parties.
- 21.7 The Council may, during the continuance of any Force Majeure event, terminate this agreement by written notice to the Service Provider if a Force Majeure event occurs that affects all or a substantial part of the Services and which continues for more than twenty (20) Working Days.
- 21.8 For the avoidance of doubt, a Force Majeure event shall not include any labour dispute between the Service Provider and its employees or failure to provide the Services by any of its agents, contractors or sub-contractors.

22. NOTICES

- 22.1 Any notice given under this agreement shall be in writing in English and signed by or on behalf of the party giving it and shall be served by delivering it personally, or sending it by pre-paid recorded delivery or registered post to the relevant party at the address set out at the beginning of this Agreement, or by sending it by fax to the fax number notified by the relevant party to the other party. Any such notice shall be deemed to have been received:

22.1.1 if delivered personally, at the time of delivery;

22.1.2 in the case of pre-paid recorded delivery or registered post, two (2) days from the date of posting; and

22.1.3 in the case of fax, at the time of successful receipt by the recipient,

provided where receipt occurs outside normal office hours (17:00) on a particular day or is not on a Working Day, receipt shall be deemed to have taken place the next Working Day.

- 22.2 In proving such service it shall be sufficient to prove that the envelope containing the notice was addressed to the address of the other party and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery or registered post or that the notice was transmitted by fax to the fax number of the other party (provided that an automated response does not indicate otherwise).

23. CONSEQUENCES OF TERMINATION

- 23.1 On the expiry or termination of this agreement whether in whole or in part and for any reason the Service Provider shall co-operate fully with the Council to ensure an orderly migration of the Services to the Council or, at the Council's request, a replacement service provider.
- 23.2 On termination of this agreement or when so reasonably so required by the Council before such completion, the Service Provider shall procure that all data and other material belonging to the Council (and all media of any nature containing information and data belonging to the Council or relating to the Services), shall be delivered to the Council forthwith and will permanently delete any data or electronic material from any computer equipment not in the possession of the Council on which such copy is recorded, provided that where the Service Provider is required by any law, regulation, or government or regulatory body to retain any documents or materials which it would otherwise be required to return or destroy, it shall notify the Council in writing of such retention, giving details of the documents or materials that it must retain.
- 23.3 The provisions of clause 10 (Indemnities), clause 12 (Insurance), clause 14 (Data Protection), clause 15 (Freedom of Information), clause 18 (Audit), clause 20 (Termination) and this clause 23 (Consequences of termination) shall survive termination or expiry of this agreement.

24. DISPUTE RESOLUTION

- 24.1 Either party may call an extraordinary meeting of the parties by service of not less than five (5) Working Days' written notice and each party agrees to procure that its Authorised Representative together with any other personnel requested to attend by the Council (if any) shall attend all extraordinary meetings called in accordance with this clause.
- 24.2 The members of the relevant meeting shall use their best endeavours to resolve disputes arising out of this agreement. If any dispute referred to a meeting is not resolved at that meeting then either party, by notice in writing to the other, may refer the dispute to senior officers of the two parties who shall co-operate in good faith to resolve the dispute as amicably as possible within fourteen (14) days of service of such notice. If the senior officers fail to resolve the dispute in the allotted time, the parties shall, within that period, on the written request of either party enter into an alternative Dispute Resolution Procedure with the assistance of a mediator agreed by the parties or, in default of such agreement within seven (7) days of receipt of such request, appointed, at the request of either party, by the Centre for Dispute Resolution or such other similar body as is agreed.
- 24.3 The parties shall then submit to the supervision of the mediation by the Centre for Dispute Resolution or similar body for the exchange of relevant information and for setting the date for negotiations to begin.

- 24.4 Recourse to this Dispute Resolution Procedure shall be binding on the parties as to submission to the mediation but not as to its outcome. Accordingly all negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the parties in any future legal proceedings. Except for any party's right to seek interlocutory relief in the courts, no party may commence other legal proceedings under the jurisdiction of the courts or any other form of arbitration until twenty one (21) days after the parties have failed to reach a binding settlement by mediation (at which point the Dispute Resolution Procedure shall be deemed to be exhausted).
- 24.5 If, with the assistance of the mediator, the parties reach a settlement, such settlement shall be reduced to writing and, once signed by the duly Authorised Representative of each of the parties, shall remain binding on the parties.
- 24.6 The parties shall bear their own legal costs of this Dispute Resolution Procedure, but the costs and expenses of mediation shall be borne by the parties equally.
- 24.7 While the Dispute Resolution Procedure referred to in this clause 24 is in progress and any party has an obligation to make a payment to another party or to allow a credit in respect of such payment, the sum relating to the matter in dispute shall be paid into an interest bearing deposit account to be held in the names of the relevant parties at a clearing bank and such payment shall be a good discharge of the parties' payment obligations under this agreement. Following resolution of the dispute, whether by mediation or legal proceedings, the sum held in such account shall be payable as determined in accordance with the mediation or legal proceedings, and the interest accrued shall be allocated between the parties pro rata according to the split of the principal sum as between the parties.

25. NO PARTNERSHIP OR AGENCY

Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party except as may expressly be provided in writing and then only for the purpose set out therein.

26. THIRD PARTY RIGHTS

Nothing in this contract confers or purports to confer on any third party any benefit or any right to enforce any term of this Agreement.

27. SUB-CONTRACTING AND ASSIGNMENT

- 27.1 Subject to clause 27.3, neither party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the other party, neither may the Service Provider sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of the Council.
- 27.2 In the event that the Service Provider enters into any sub-contract in connection with this agreement it shall remain responsible to the Council for the performance of its obligations under the agreement notwithstanding the appointment of any sub-contractor and be responsible for the acts, omissions and neglects of its sub-contractors as if they were the acts, omissions and neglects of the Service Provider.
- 27.3 The Council shall be entitled to novate the agreement to any other body which substantially performs any of the functions that previously had been performed by the Council.

28. ENTIRE AGREEMENT

- 28.1 This Agreement constitutes the complete agreement between the Parties with respect to the subject matter hereof and supersedes all previous communication, representation understandings and any representation promise or condition not incorporated herein shall not be binding on any party.
- 28.2 No variation of this agreement shall be effective unless it is in writing and signed by the parties.

29. WAIVER AND SEVERANCE

- 29.1 A waiver of any right or remedy under this agreement is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.
- 29.2 No single or partial exercise of any right or remedy provided under this agreement or by law shall preclude or restrict the further exercise of that or any other right or remedy.
- 29.3 If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions

of this Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

30. GOVERNING LAW AND JURISDICTION

30.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales.

30.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of

30.3 or in connection with this agreement or its subject matter.

SIGNED BY THE PARTIES

.....
Signed on behalf of the Council

.....
Signed on behalf of the Service Provider

Schedule 1

Services Specification

Schedule 2

Charges and Payment

[Insert details of amount and timings payments/charges and submission of invoices]

Schedule 3

Contract Management

Authorised representatives

The Council's initial Authorised Representative:-

[.....]

The Service Provider's initial Authorised Representative:-

[.....]

SCHEDULE 4

Processing, Personal Data and Data Subjects

- 1 The Service Provider shall comply with any further written instructions with respect to processing by the Council.
- 2 Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	<i>[This should be a high level, short description of what the processing is about i.e. its subject matter]</i>
Duration of the processing	<i>[Clearly set out the duration of the processing including dates]</i>
Nature and purposes of the processing	<p><i>[Please be as specific as possible, but make sure that you cover all intended purposes.]</i></p> <p><i>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i></p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc.</i></p>
Type of Personal Data	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.]</i>
Categories of Data Subject	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), Councils/ clients, suppliers, patients, students / pupils, members of</i>

	<i>the public, users of a particular website etc.</i>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<i>[Describe how long the data will be retained for, how it be returned or destroyed]</i>