Dated

[*The date to be inserted is not the date on which the Services will commence, but is the date when both parties have signed the agreement, it may not be, and frequently is not, the date when the services commence*]

AGREEMENT FOR THE PROVISION OF asset evaluations

between

Derby City Council

and

[INSERT NAME OF SERVICE PROVIDER]

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**THIS AGREEMENT** is dated [*the date to be inserted is not the date on which the services will commence, but is the date when both parties have signed the agreement, it may not be, and frequently is not, the date when the services commence*]

Parties

1. **DERBY CITY COUNCIL** of the Council House, Corporation Street, Derby DE1 2FS (Council).
2. [***FULL COMPANY NAME***] incorporated and registered in England and Wales with company number [*NUMBER*] whose registered office is at [*REGISTERED OFFICE ADDRESS*] (Service Provider).

Background

1. [The Council published a contract notice [*REFERENCE*] on [*DATE*] on the Find A Tender Service e-notification service seeking expressions of interest from potential providers for the provision of Commercial and Residential Asset Evaluations.
2. 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.

Agreed terms

# Definitions and Interpretation

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

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

Authorised Representatives**:** the persons respectively designated as such by the Council and the Service Provider, the first such persons being set out in Schedule 4.

Best Industry Practice**:** the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the service levels, the term, the pricing structure and any other relevant factors.

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

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

Change Control Procedure**:** the procedure for changing this agreement, as set out in Schedule 5.

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 3.

Commencement Date**:** [*insert the date on which the Services are to commence*].

Commercially Sensitive Information**:** the information listed in Schedule 7 comprising the information of a commercially sensitive nature 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.

1. Confidential Information: means all confidential information (however recorded or preserved) disclosed by a party or its Representatives to the other party and that party's Representatives in connection with this agreement, including but not limited to:
	1. any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, suppliers or plans of the disclosing party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;
	2. any information developed by the parties in the course of carrying out this agreement;
	3. Personal Data;
	4. any Commercially Sensitive Information.

Contract Year**:** any 12-month period starting on the Commencement Date and on each anniversary of the Commencement Date.

Contracts Finder: the government’s publishing portal for public sector procurement opportunities.

**Controller:** as defined in the Data Protection Legislation.

Data Protection Legislation**:** all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.

Data Subject: as defined in the Data Protection Legislation.

1. Default: any breach of the obligations of the relevant party (including abandonment of this agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence of statement:
	1. in the case of the Council, of its employees, servants, agents;
	2. in the case of the Service Provider, of its Sub-contractors or any Service Provider Personnel,
2. in connection with or in relation to this agreement and in respect of which such party is liable to the other.

Default Notice**:** is defined in clause 6.2.

Dispute Resolution Procedure**:** the procedure set out in clause 19.

Domestic Law**:** the law of the United Kingdom or a part of the United Kingdom.

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

Extension Period: shall have the meaning given to it clause 4.

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.

Final Warning Notice: has the meaning set out in clause 29.2.

Find A Tender: the government’s publishing portal for above threshold public sector procurement opportunities.

1. Force Majeure Event: any circumstance not within a party's reasonable control including, without limitation:
	1. acts of God, flood, drought, earthquake or other natural disaster;
	2. epidemic or pandemic;
	3. terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
	4. nuclear, chemical or biological contamination or sonic boom;
	5. any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
	6. collapse of buildings, fire, explosion or accident; and
	7. any labour or trade dispute, strikes, industrial action or lockouts (excluding any labour or trade dispute, strike, industrial action or lockout confined to the Supplier's workforce or the workforce of any Subcontractor of the Supplier).
2. Insolvency Event: where:
	1. the Service Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 OR (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 OR (being a partnership) has any partner to whom any of the foregoing apply;
	2. the Service Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
	3. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Service Provider (being a company, limited liability partnership or partnership);
	4. an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Service Provider (being a company, partnership or limited liability partnership);
	5. the holder of a qualifying floating charge over the assets of the Service Provider (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
	6. a person becomes entitled to appoint a receiver over the assets of the Service Provider or a receiver is appointed over the assets of the Service Provider;
	7. a creditor or encumbrancer of the Service Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
	8. any event occurs, or proceeding is taken, with respect to the Service Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (h) (inclusive); or
	9. the Service Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

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

Initial Term**:** the period commencing on the Commencement Date and ending on the third anniversary of the Commencement Date.

Intellectual Property**:** patents, utility models, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Key Personnel**:** those personnel identified Schedule 4 for the roles attributed to such personnel, as modified pursuant to clause 12.

Law: the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services or with which the Service Provider must comply.

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 3.

Personal Data**:** as defined in the Data Protection Legislation.

Processor: as defined in the Data Protection Legislation.

Prohibited Act**:** the following constitute Prohibited Acts:

* 1. to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage as an inducement or reward for any improper performance of a relevant function of activity;
	2. 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;
	3. committing any offence: (i) under the Bribery Act; (ii) under legislation or common law concerning fraudulent acts; or (iii) of defrauding, attempting to defraud or conspiring to defraud the Council;
	4. any activity, practice or conduct which would constitute one of the offences listed under (c) above, if such activity, practice or conduct had been carried out in the UK.

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.

Relevant Requirements: all applicable law relating to bribery, corruption and fraud including the Bribery At 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

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

Remediation Notice**:** a notice served by the Council in accordance with clause 30.1(a).

Replacement Services**:** any services that are identical or substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Council internally or by any Replacement Service Provider.

Replacement Service Provider**:** any third party supplier of Replacement Services appointed by the Council from time to time.

Representatives: means, in relation to a party, its employees, officers, contractors, sub-contractors, representatives and advisors.

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.

[Safeguarding Adults Policy: the Council’s policy for safeguarding vulnerable adults as set out in Schedule 8.

Safeguarding Children Policy: the Council’s policy for safeguarding children adults as set out in Schedule 8.]

Service Provider Party**:** the Service Provider's agents and contractors, including each Sub-Contractor.

Service Provider's Personnel**:** all employees, staff, other workers, agents and consultants of the Service Provider and of any 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 2.

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).

Sub-Contract**:** any contract or agreement, or proposed contract or agreement, between the Supplier and a third party pursuant to which that third party agrees to provide to the Supplier the Services or any part of the Services..

Sub-Contractor**:** the third parties that enter into a Sub-Contract with the Service Provider.

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

### any Extension Period; or

### the earlier termination of this agreement in accordance with its terms.

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

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

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4) of the Data Protection Act 2018.

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

## Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.

## A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

## 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.

## A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

## Unless the context otherwise requires, words in the singular shall include the plural and vice versa.

## Unless the context otherwise requires, a reference to one gender shall include a reference to other genders.

## Unless expressly provided otherwise in this agreement, a reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted and includes any subordinate legislation made under it, in each case from time to time.

## A reference to **writing** or **written** does not include faxes or email.

## 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.

## A reference to this agreement or to any other agreement or document is a reference to this agreement or such other agreement or document as varied from time to time. .

## References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.

## Any words following the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms

## Where there is any conflict or inconsistency between the provisions in the main body of this agreement and the schedules, such conflict or inconsistency shall be resolved according to the following order of priority:

### the clauses of the agreement;

### Schedule 1 to this agreement;

### the remaining schedules to this agreement other than Schedule 2;

### Schedule 2 to this agreement.

Commencement and duration

# Term

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

# Extending the initial term

## The Council may extend this agreement beyond the Initial Term by a further period or periods of up to two years (each such extension together with any such extensions, being the “**Extension Period**”). If the Council wishes to extend this agreement, it shall give the Service Provider at least three months' written notice of such intention before the expiry of the Initial Term or Extension Period.

## If the Council gives such notice then the Term shall be extended by the period set out in the notice.

## If the Council does not wish to extend this agreement beyond the Initial Term this agreement shall expire on the expiry of the Initial Term and the provisions of clause 34 shall apply.

# Consents, Service Provider's warranty and due diligence

## 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.

## 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 and the Service Provider has notified the Council in writing.

## The Service Provider acknowledges and confirms that:

### the Council has delivered or made available to the Service Provider all of the information and documents that the Service Provider considers necessary or relevant for the performance of its obligations under this agreement;

### it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied or made available to it by or on behalf of the Council pursuant to clause 5.3(a)

### it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Commencement Date) of all relevant details relating to the performance of its obligations under this agreement (including without limitation the suitability of Authority Premises); and

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

## 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.

##  The Service Provider:

### warrants and represents that all information and statements made by the Service Provider as part of the procurement process, including without limitation the Service Provider's Tender or response to any pre-qualification questionnaire (if applicable) 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

### 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.

## 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 5.5(b) 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. If this exception applies, the Service Provider shall be entitled to recover such reasonable additional costs from the Council or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.

## Nothing in this clause 5 shall limit or exclude the liability of the Council for fraud or fraudulent misrepresentation.

The services

# Supply of services

## The Service Provider shall provide the Services to the Council with effect from the Commencement Date and for the duration of this agreement in accordance with the provisions of this agreement, including without limitation Schedule 1.

## In the event that the Service Provider does not comply with the provisions of clause 6.1 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).

# Service standards

## The Service Provider shall provide the Services, or procure that they are provided:

### with reasonable skill and care and in accordance with Best Industry Practice;

### in all respects in accordance with the Council’s policies set out in Schedule 1 (if any); and

### in accordance with all applicable Law.

## Without limiting the general obligation set out in clause 7.1, the Service Provider shall (and shall procure that the Service Provider's Personnel shall):

### at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Service Provider shall also undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998; and

### not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination in employment.

# Health and Safety

## The Supplier shall (and shall procure that the Supplier Personnel shall) perform its obligations under this agreement (including those in relation to the Services) in accordance with:

### all applicable Law regarding health and safety; and

### the Council’s health and safety requirements as set out in this Agreement including but not limited to the requirements set out in Schedule 1.

## Each party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Council Premises of which is becomes aware and which relate to or arise in connection with the performance of this agreement. The Service Provider shall instruct the Service Provider’s Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

## While on the Council's Premises, the Service Provider shall comply with any health and safety measures implemented by the Council in respect of staff and other persons working on the Council's Premises.

## The Service Provider shall notify the Council immediately in the event of any incident occurring in the performance of the agreement on the Council's Premises where that incident causes any personal injury or damage to property that could give rise to personal injury.

## 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 engaged in the performance of the agreement.

## 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.

# Council's Premises and Assets

## The Council shall, subject to clause 8 and clause 13 set out in Schedule 9, provide the Service Provider (and its Sub-Contractors) with access to such parts of the Council's Premises as the Service Provider reasonably requires for the purposes only of properly providing the Services. The Supplier's right of access will terminate upon termination of this agreement, subject to clause 9.3

## The Council shall provide the Service Provider with such accommodation and facilities in the Council's Premises as is specified in Schedule 9 or which is otherwise agreed by the parties from time to time.

## The Service Provider shall ensure that:

### where using the Council's Premises and any Council Assets they are kept properly secure and it will comply and cooperate with the Council's security requirements from time to time regarding the security of the same;

### only those of the Service Provider's Personnel that are duly authorised to enter upon the Council's Premises for the purposes of providing the Services, do so;

## The Council shall maintain and repair the Council Assets, however, where such maintenance or repair arises directly from the act, omission, default or negligence of the Service Provider or its representatives (fair wear and tear excluded) the costs incurred by the Council in maintaining and repairing the same shall be recoverable from the Service Provider as a debt.

## The Service Provider shall notify the Council immediately on becoming aware of any damage caused by the Service Provider, its agents, employees or Sub-Contractors to any property of the Council, to any of the Council's Premises or to any property of any other recipient of the Services in the course of providing the Services.

Charges and payment

# Payment

## 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.

## Unless otherwise stated in Schedule 3, the Charges:

### shall remain fixed during the Term; and

### are the entire price payable by the Council to the Service Provider in respect of the Services and includes, without limitation, any royalties, licence fees, supplies and all consumables used by the Service Provider, travel costs, accommodation expenses and the cost of Service Provider Personnel.

## The Service Provider shall invoice the Council for payment of the Charges at *the end of each calendar month*. All invoices shall be directed to the Council's Authorised Representative and shall contain such information as the Council may inform the Service Provider from time to time.

## The Council shall accept and process for payment an electronic invoice submitted by the Service Provider, where it complies with the standard on electronic invoicing and is undisputed. For these purposes, an electronic invoice complies with the standard of electronic invoicing where it complies with the standard and any of the syntaxes published in the UK version of Commission Implementing Decision (EU) 2017/1870 as it forms part of English law under the European Union (Withdrawal) Act 2018.

## Where the Service Provider submits an invoice to the Council in accordance with clause 10.3, the Council will consider and verify that invoice in a timely fashion.

## The Council shall pay the Service Provider any sums due under such an invoice no later than a period of 30 days from the date on which the Council has determined that the invoice is valid and undisputed.

## Where the Council fails to comply with clause 10.5, and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of clause 10.6 after a reasonable time has passed after the date on which it is received by the Council.

## Where the Service Provider enters into a Sub-Contract, the Service Provider shall include in that Sub-Contract:

### provisions having the same effect as clause 10.5 to clause 10.7 of this agreement; and

### a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clause 10.5 to clause 10.7 of this agreement.

### In this clause 10.8, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the Council in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this agreement.

## For the avoidance of doubt, the Council will have no liability or responsibility for any fees or expenses incurred by the Service Provider in excess of the Charges save where the incursion of such fees has been approved in writing in advance by the Council.

## 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 19. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of 7 days after resolution of the dispute between the parties.

## Subject to clause 10.10, 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 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.

## 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 6 years from the end of the Contract Year to which the records relate.

## The Council may at any time, set off any liability of the Service Provider to the Council against any liability of the Council to the Service Provider, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this agreement. Any exercise by the Council of its rights under this clause shall not limit or affect any other rights or remedies available to it under this agreement or otherwise.

##  All amounts due under this agreement from the Service Provider to the Council shall be paid in full without any set-off, counterclaim, deduction or withholding (other than deduction or withholding tax as required by law)..

# Interest

## Each party shall pay interest on any sum due under this agreement, calculated as follows:

### Rate. 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

### Period. From when the overdue sum became due, until it is paid.

Staff

# Key personnel

## Each party shall appoint the persons named as such in Schedule 4 as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each party as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of their respective party on the matters for which they are expressed to be responsible.

## The Service Provider shall not remove or replace any of the Key Personnel unless:

###  requested to do so by the Council;

### the person is on long-term sick leave;

### the element of the Services in respect of which the individual was engaged has been completed to the Council's satisfaction;

### the person resigns from their employment with the Service Provider; or

### the Service Provider obtains the prior written consent of the Council.

## The Service Provider shall inform the Council of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified.

## Each party shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than 60 Working Days. Any replacement shall be as, or more, qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Service Provider or the Council becoming aware of the role becoming vacant.

## The Council may require the Service Provider to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities.

## If the Service Provider replaces the Key Personnel as a consequence of this clause 12, the cost of effecting such replacement shall be borne by the Service Provider.

# Other personnel used to provide the services

## At all times, the Service Provider shall ensure that:

### 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;

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

### 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

### all of the Service Provider's Personnel comply with all of the Council's policies, to the extent such policies have been made available to the Service Provider from time to time.

## 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.

## 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 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.

# Safeguarding children and vulnerable adults

## 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 agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006.

## The Service Provider shall:

### ensure that all individuals engaged in the provision of the Services are 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;

### monitor the level and validity of the checks under this clause 14.2 for each member of staff; and

### not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users.

## 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.

## The Service Provider shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 14 have been met.

## The Service Provider shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to any service users/children/vulnerable adults.

## The Service Provider will comply with the Safeguarding Adults Policy and the Safeguarding Children Policy and will ensure all Service Provider Personnel are aware of their duty to comply with such policies.

## The Service Provider shall co-operate and provide all necessary assistance to the Council in relation to any safeguarding issues that arise in relation to or in connection with this agreement, the Services or the Council’s Premises.

## The Service Provider acknowledges and understands the Council’s duties under section 26 and 29 of the Counter Terrorism and Security Act 2015 and shall co-operate and provide all necessary assistance to the Council to enable it to comply with such duties. For the avoidance of doubt no provision of this agreement (including but not limited to clauses 25 (Data Protection) and 26 (Confidentiality)) shall prevent the Service Provider from sharing all relevant information pertinent to the prevention of terrorism and/or radicalisation of vulnerable people with the Council.

## The parties recognise the importance of information sharing in the context of keeping vulnerable adults and children safe. For the avoidance of doubt no provision of this agreement (including but not limited to clauses 25 (Data Protection) and 26 (Confidentiality)) shall prevent the Service Provider from sharing all relevant information pertinent to the safety of any vulnerable adult or child with the Council and the Service Provider shall ensure that all Service Provider Personnel are aware of the primary importance of information sharing in order to prevent harm and ensure the safety of any vulnerable adult or child.

# TUPE

## The parties agree that the provisions of Schedule 6 shall apply to any Relevant Transfer of staff under this agreement.

Contract management

# Reporting and meetings

## The Service Provider shall provide the management reports in the form and at the intervals as specified in Schedule 1.

## The Authorised Representatives and where required other Key Personnel shall meet in accordance with the details set out in Schedule 1 and the Service Provider shall, at each meeting, present its management reports in the format set out in that Schedule.

## The Service Provider shall ensure that they notify the Council of any Personal Data breaches in accordance with applicable legislation, code of practice, policies or other associated contracts with the Council.

# Monitoring

## The Council may monitor the performance of the Services by the Service Provider.

## 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 17.1 at no additional charge to the Council.

# Change control and continuous improvement

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

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

### the emergence of new and evolving relevant technologies which could improve the Services;

### new or potential improvements to the Services;

### 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

### changes in ways of working that would enable the Services to be delivered at lower costs and/or at greater benefits to the Council.

## Any potential Changes highlighted as a result of the Service Provider's reporting in accordance with clause 18.2 shall be addressed by the parties using the Change Control Procedure.

# Dispute resolution

## If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (Dispute) then the parties shall follow the procedure set out in this clause:

### either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;

### if the Authorised Representatives are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Council's Chief Executive and the Service Provider’s Chief Executive who shall attempt in good faith to resolve it; and

### if the Council's Chief Executive and the Service Provider’s Chief Executive are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 60 days after the date of the ADR notice.

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

## 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.

## While the Dispute Resolution Procedure referred to in this clause 19 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.

# Sub-Contracting and assignment

## Subject to clause 20.3, 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, such consent not to be unreasonably withheld.

## 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;

### impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms; and

### provide a copy, at no charge to the Council, of any such Sub-Contract on receipt of a request for such by the Council's Authorised Representative.

## 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.

Liability

# Indemnities

## Subject to clause 21.2, the Service Provider shall indemnify and keep indemnified the Council against all liabilities, costs, expenses, damages and losses incurred by the Council arising out of or in connection with:

### the Service Provider's breach or negligent performance or non-performance of this agreement;

### any claim made against the Council arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Service Provider or Supplier Personnel;

###  the enforcement of this agreement.

## The indemnity under clause 21.1 shall apply except insofar as the liabilities, costs, expenses, damages and losses incurred by the Council are directly caused (or directly arise) from the negligence or breach of this agreement by the Council or its Representatives.

# Limitation of liability

## Neither party shall be liable to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with this agreement.

## Notwithstanding the provisions of clause 22.1, but subject to clause 22.5, the Service Provider assumes responsibility for and acknowledges that the Council may, amongst other things, recover:

### sums paid by the Council to the Service Provider pursuant to this agreement, in respect of any services not provided in accordance with the agreement;

### wasted expenditure;

### additional costs of procuring and implementing replacements for, or alternatives to, the Services, including consultancy costs, additional costs of management time and other personnel costs and costs of equipment and materials; and

### losses incurred by the Council arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third party (including any Subcontract, Supplier Personnel, regulator or customer of the Council) against the Council caused by the act or omission of the Service Provider.

## 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.

## Subject to clause 22.6, the Council's total aggregate liability:

### in respect of all claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this agreement (other than a failure to pay any of the Charges that are properly due and payable and for which the Council shall remain fully liable), shall in no event exceed £5 million in each Contract Year.

## Subject to clause 22.6, the Service Provider's total aggregate liability:

### in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this agreement, shall in no event exceed £5 million being the level of professional indemnity insurance cover required as set out in clause 23 in each Contract Year.

## Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:

### fraud or fraudulent misrepresentation;

### death or personal injury caused by its negligence;

### breach of any obligation as to title implied by statute; or

### any other act or omission, liability for which may not be limited under any applicable law.

# Insurance

## 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:

### public liability insurance with a limit of indemnity of not less than £5 million in relation to any one claim or series of claims;

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

### professional indemnity insurance with a limit of indemnity of not less than £5 million in relation to any one claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover;

(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.

## 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.

## 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.

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

Information

# Freedom of information

## 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.

## The Service Provider shall and shall procure that its Sub-Contractors shall:

### transfer the Request for Information to the Council as soon as practicable after receipt and in any event within 2 Working Days of receiving a Request for Information;

### provide the Council with a copy of all Information in its possession or power in the form that the Council requires within 5 Working Days (or such other period as the Council may specify) of the Council requesting that Information; and

### 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.

## The Council shall be responsible for determining at its absolute discretion 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; and/or

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

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

## The Service Provider acknowledges that the Council may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Service Provider. The Council shall take reasonable steps to notify the Service Provider of a Request For Information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the Council shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

## Notwithstanding any other term of this agreement, the Service Provider consents to the publication of this agreement in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA and EIRs.

## 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.

## 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 this clause 24.

# Data protection

## Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 25 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

## Where necessary, the parties will enter into an information sharing or an information processing agreement, with each other (and/or the end company) for the processing of Personal Data. Schedule 11 sets out the scope, nature and purpose of processing by the Service Provider, the duration of the processing and the types of Personal Data and categories of Data Subject (both as defined in the Data Protection Legislation).

## Without prejudice to the generality of clause 25.1, the Council will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purpose of this agreement.

## Without prejudice to the generality of clause 25.1, the Service Provider shall in relation to any Personal Data processed in connection with the performance by the Service Provider of its obligations under this agreement;

### process that Personal Data only on the documented written instructions of the Council which are set out in Schedule 11, unless the Service Provider is required by Domestic Law to otherwise process that Personal Data. Where the Service Provider is relying on Domestic Law as the basis for processing Personal Data, the Service Provider shall promptly notify the Council of this before performing the processing required by Domestic Law unless the Domestic Law prohibits the Supplier from so notifying the Council;

### ensure that it has in place appropriate technical and organisational measures (as defined in the Data Protection Legislation), reviewed and approved by the Council, to protect against unauthorised or unlawful processing of Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the costs of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

### not transfer any Personal Data outside of the UK unless the prior written consent of the Council has been obtained and the following conditions are fulfilled;

#### the Council or the Service Provider has provided appropriate safeguards in relation to the transfer;

#### the Data Subject has enforceable rights and effective legal remedies;

#### 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; and

#### the Service Provider complies with reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;

### notify the Council immediately if it receives:

#### a request from a Data Subject to have access to that person’s Personal Data;

#### a request to rectify, block or erase any Personal Data;

#### receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);

### assist the Council, at the Service Provider’s costs, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect of security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

### at the written direction of the Council, delete or return Personal Data and copies thereof to the Council on termination of the agreement unless required by Applicable Data Processing Law to store the Personal Data; and

### maintain complete and accurate records and information to demonstrate its compliance with this clause 25 and allow for audits by the Council or the Council’s designated auditor in order that the Council may reasonably satisfy itself that the Service Provider is complying with its obligations under the Data Protection Legislation;

### notify the Authority without undue delay on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this agreement; and

### ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the Data Protection Legislation.

## The Service Provider shall indemnify the Council against any losses, damages, cost or expenses incurred by the Council arising from, or in connection with, any breach of the Service Provider's obligations under this clause 25.

## Where the Service Provider intends to engage a Sub-Contractor pursuant clause 20 and intends for that Sub-Contractor to process any Personal Data relating to this agreement, it shall:

### notify the Council in writing of the intended processing by the Sub-Contractor;

### obtain prior written consent from the Council to the processing;

### enter into a written agreement incorporating terms which are substantially similar to those set out in this clause 25.

## The Council will collect and process information relating to you in accordance with the privacy notice which is on its website.

## The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

# Confidentiality

## Subject to clause 26.2(a), each party shall keep the other party's Confidential Information confidential and shall not:

### use such Confidential Information except for the purpose of performing its rights and obligations under or in connection with this agreement; or

### disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 26.

## The obligation to maintain confidentiality of Confidential Information does not apply to any Confidential information:

### which the other party confirms in writing is not required to be treated as Confidential Information;

### which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;

### which a party is required to disclose by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law, including the FOIA or the EIRs;

### which is in or enters the public domain other than through any disclosure prohibited by this agreement;

### which a party can demonstrate was lawfully in its possession prior to receipt from the other party; or

### which is disclosed by the Authority on a confidential basis to any central government or regulatory body.

## A party may disclose the other party's Confidential information to those of its Representatives who need to know such Confidential Information for the purposes of performing or advising on the party's obligations under this agreement, provided that:

### it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and

### it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to this agreement,

### and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this clause 26.3.

## 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 Authorities' employees, rate-payers or service users, are delivered up to the Council or securely destroyed.

## The provisions of this clause 26 shall survive for a period of 6 years from the Termination Date.

# Audit

## During the Term and for a period of 6 years after the Termination Date, the Council (acting by itself or through its Representatives) may conduct or be subject to an audit for the following purposes:

### to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all suppliers (including Sub-Contractors) of the Services;

### to review the integrity, confidentiality and security of any data relating to the Council or any service users;

### to review the Service Provider's compliance with Data Protection Legislation, the FOIA, in accordance with clause 25 (Data Protection) and clause 24 (Freedom of Information) and any other legislation applicable to the Services;

### to review any records created during the provision of the Services;

### to review any books of account kept by the Service Provider in connection with the provision of the Services;

###  to carry out the audit and certification of the Council's accounts;

###  to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources;

### to verify the accuracy and completeness of the management reports delivered or required by this agreement.

## Except where an audit is imposed on the Council by a regulatory body or where the Council has reasonable grounds for believing that the Service Provider has not complied with its obligations under this agreement, the Council may not conduct an audit under this clause 27 more than once in any calendar year.

## 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.

## 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:

### all information requested by the above persons within the permitted scope of the audit;

### 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

### access to the Service Provider's Personnel.

## The Council shall endeavour to (but is not obliged to) provide at least 15 Working Days’ notice of its or, where possible, a regulatory body's, intention to conduct an audit.

## 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.

##  If an audit identifies that:

### 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;

### the Council has overpaid any Charges, the Service Provider shall pay to the Council the amount overpaid within 20 days. The Council may deduct the relevant amount from the Charges if the Service Provider fails to make this payment; and

### the Council has underpaid any Charges, the Council shall pay to the Service Provider the amount of the under-payment within 20 days.

# Intellectual property

## In the absence of prior written agreement by the Council to the contrary, all Intellectual Property created by the Service Provider or Service Provider Personnel:

### in the course of performing the Services; or

### exclusively for the purpose of performing the Services,

shall vest in the Council on creation.

## The Service Provider shall indemnify the Council against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Council's acts or omissions.

Termination

# Persistent breach

## If a particular breach has occurred more than six (6) times in any six (6) month period then the Council may serve a notice on the Service Provider:

### specifying that it is a formal warning notice;

### giving reasonable details of the breach;

### stating that the breach is a breach which, if it recurs frequently or continues, may result in a termination of this agreement; and

### requiring the Service Provider to provide to the Council, within ten (10) Business Days of service of the formal warning notice, a rectification plan specifying how the Service Provider will address the breach and the causes of the breach and prevent its reoccurrence.

## If, following service of a warning notice the breach specified has continued beyond thirty (30) days or recurred in three (3) or more months within the six (6) month period after the date of service, then the Council may serve another notice (a “**Final Warning Notice**”) on the Service Provider:

### specifying that it is a Final Warning Notice;

### stating that the breach specified has been the subject of a warning notice served within the six (6) month period prior to the date of service of the Final Warning Notice; and

### stating that if the breach continues for more than (15) fifteen Business Days or recurs in three (3) or more months within the six (6) month period after the date of service of the Final Warning Notice, this agreement may be terminated.

## A warning notice may not be served in respect of any incident of breach which has previously been counted in the making of a separate warning notice.

# Termination for breach

## The Council may terminate this agreement in whole or part with immediate effect by the service of written notice on the Service Provider in the following circumstances:

### if the Service Provider is in breach of any material obligation under this agreement provided that if the breach is capable of remedy, the Council may only terminate this agreement under this clause 30.1 if the Service Provider has failed to remedy such breach within 28 days of receipt of notice from the Council (a Remediation Notice) to do so;

### if a Persistent Breach has occurred;

### if there is an Insolvency Event;

### if the Service Provider ceases or threatens to cease to carry on business in the United Kingdom;

### if there is a change of control of the Service Provider within the meaning of section 1124 of the Corporation Tax Act 2010.

## The Council may terminate this agreement in accordance with the provisions of clause 32 and clause 33.

## 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.

## The Service Provider may terminate this agreement in the event that the Council fails to pay any undisputed sum due to the Service Provider by giving 30 days' written notice to the Council (“Payment Default”). In the event that the Council remedies the Payment Default in the 30 day notice period, the Service Provider's notice to terminate this agreement shall be deemed to have been withdrawn.

# Termination on notice

## The Council may terminate this agreement at any time by giving three months' written notice to the Service Provider.

# Force majeure

## Provided it has complied with the remaining provisions of this clause 32, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (Affected Party), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations.

## The corresponding obligations of the other party will be suspended to the same extent as those of the Affected Party.

## The Affected Party shall:

### as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and

### use all reasonable endeavours to mitigate the effect of the Force Majeure Event.

## An Affected Party cannot claim relief if the Force Majeure Event is attributable to the Affected Party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event. The Service Provider cannot claim relief if the Force Majeure Event is one which, in accordance with Best Industry Practice, the Service Provider should have foreseen and provided for the cause in question.

## The Affected Party shall notify the other party in writing 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.

## If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 24 weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving 4 weeks' notice to the Affected Party.

# Prevention of bribery

## The Service Provider represents and warrants that neither it, nor any Service Provider Personnel:

### has committed a Prohibited Act;

### to the best of its knowledge has been or is subject to an investigation, inquiry or enforcement proceedings by a governmental, administrative or regulatory body regarding any Prohibited Act or alleged Prohibited Act; or

### has been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

## The Service Provider shall promptly notify the Council if, at any time during the Term, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in clause 33.1 at the relevant time.

## The Suppler shall (and shall procure that its Supplier Personnel shall) during the Term:

### not commit a Prohibited Act; and/or

### not do or omit to do anything that would cause the Council or any of the Council's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements;

### notify the Council (in writing) if it becomes aware of any breach of clause 33.3(a) or clause 33.3(b), or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage.

## The Service Provider shall maintain appropriate and up to date records showing all payments made by the Service Provider in connection with this agreement and the steps taken to comply with its obligations under clause 33.3.

## The Service Provider shall allow the Council and its third party representatives to audit any of the Service Provider's records and any other relevant documentation in accordance with clause 28.

## If the Service Provider is in Default under this clause 33 the Council may by notice:

### require the Service Provider to remove from performance of this agreement any Supplier Personnel whose acts or omissions have caused the Default; or

### immediately terminate this agreement.

## Any notice served by the Council under clause 33.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Council believes has committed the Prohibited Act and the action that the Council has elected to take (including, where relevant, the date on which this agreement shall terminate).

# Consequences of termination

## On the expiry of the Term or if this agreement is terminated in whole or in part 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.

## On termination of this agreement 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 the Service Provider's Authorised Representative shall certify full compliance with this clause. In the event of the termination or expiry of the agreement the Council will have the right to all work undertaken by the Service Provider in the provision of the Services.

## The provisions of clause 21 (Indemnities), clause 23 (Insurance), clause 24 (Freedom of Information), clause 25 (Data Protection), clause 27 (Audit), clause 29 (Termination for Breach) and this clause 34 (Consequences of termination) shall survive termination or expiry of this agreement.

General provisions

# Non-solicitation

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

# Waiver

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

# Rights and remedies

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

# Severability

## If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

## If any provision or part-provision of this agreement is deemed deleted under clause 38.1, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

# 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, or authorise any party to make or enter into any commitments for or on behalf of any other party.

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

# Third party rights

## No term of this agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this agreement.

# Publicity

The Service Provider shall not:

### make any press announcements or publicise this agreement or its contents in any way; or

### use the Council's name or brand in any promotion or marketing or announcement of orders,

except as required by law, any government or regulatory authority, any court or other authority of competent jurisdiction, without the prior written consent of the Council, which shall not be unreasonably withheld or delayed.

# Notices

## Any notice given to a party under or in connection with this contract shall be in writing marked for the attention of the party's Authorised Representative and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

## Any notice shall be deemed to have been received:

### if delivered by hand, at the time the notice is left at the proper address; or

### if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting.

## This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

# Entire agreement

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

## Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this agreement.

# Counterparts

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

# Governing law and jurisdiction

## This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

## 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 or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

**Signed for and on behalf of DERBY CITY COUNCIL:**

Print Name: Print Name:

**………………………………………… …………………………………………**

Signature: Signature:

………………………………………… ..........................................................

Title: Title:

…………………………………………. ...........................................................

Date: Date:

…………………………………………. ...........................................................

**Signed for and on behalf of [SERVICE PROVIDER]:**

Print Name:

**…………………………………………**

Signature:

…………………………………………

Title:

………………………………………….

Date:

………………………………………….

1. Specification
2. Service Provider's Tender
3. Charges and payment
4. Charges
5. Contract management
6. Authorised representatives
	1. The Council's initial Authorised Representative: [INSERT DETAILS]
	2. The Service Provider's initial Authorised Representative: [INSERT DETAILS]
7. Key personnel

[INSERT DETAILS]

1. Change control
2. General principles
	1. Where the Council or the Service Provider sees a need to change this agreement, 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.
	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.
	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.
	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.
3. Procedure
	1. Discussion between the Council and the Service Provider concerning a Change shall result in any one of the following:
		1. no further action being taken; or
		2. a request to change this agreement by the Council; or
		3. a recommendation to change this agreement by the Service Provider.
	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.
	3. A recommendation to amend this agreement 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.
	4. Each Change Control Note shall contain:
		1. the title of the Change;
		2. the originator and date of the request or recommendation for the Change;
		3. the reason for the Change;
		4. full details of the Change, including any specifications;
		5. the price, if any, of the Change;
		6. a timetable for implementation, together with any proposals for acceptance of the Change;
		7. a schedule of payments if appropriate;
		8. details of the likely impact, if any, of the Change on other aspects of this agreement including:
			1. the timetable for the provision of the Change;
			2. the personnel to be provided;
			3. the Charges;
			4. the Documentation to be provided;
			5. the training to be provided;
			6. working arrangements;
			7. other contractual issues;
		9. the date of expiry of validity of the Change Control Note; and
		10. provision for signature by the Council and the Service Provider.
	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:
		1. allocate a sequential number to the Change Control Note; and
		2. evaluate the Change Control Note and, as appropriate:
			1. request further information;
			2. 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
			3. notify the Service Provider of the rejection of the Change Control Note.
	6. A Change Control Note signed by the Council and by the Service Provider shall constitute an amendment to this agreement.
4. Commercially sensitive information

DETAILS OF ANY SERVICE PROVIDER INFORMATION TO BE CLASSIFIED AS COMMERCIALLY SENSITIVE]

1. Safeguarding Policies
2. Council's Premises and Assets
3. Data Processing Agreement/Information Sharing Agreement