



Dated 2017

(1) THE KENT COUNTY COUNCIL

-and-

(2) PROVIDER

AGREEMENT

relating to the supply of **Community Day Opportunities for
Individuals with Disabilities**

Contract Number: SS15087

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FORM OF AGREEMENT

THIS AGREEMENT is made on the **XX** day of **XX** 2017.

BETWEEN

- (1) **THE KENT COUNTY COUNCIL** of County Hall, Maidstone, Kent ME14 1XQ (the "Council"); and
- (2) **PROVIDER** (company registered number **XX**) whose registered office is at **XX**(the "Provider").

RECITALS:

- (A) The Council a local authority as defined by section 270 of the Local Government Act 1972.
- (B) Following a procurement process the Council has appointed the Provider to provide the Services in accordance with this Contract.

IT IS AGREED:

- 1. this Contract is comprised of the following documents:

- 1.1 This Form of Agreement;
- 1.2 The Contract Particulars;
- 1.3 The Special Conditions (if any);
- 1.4 The Conditions of Contract;
- 1.5 The Schedules (excluding Schedule 4 (the Tender));
- 1.6 The Appendices; and
- 1.7 Schedule 4 (the Tender)

and (unless otherwise expressly stated) any inconsistency between them shall be resolved in accordance with the descending order of priority in which they are listed above.

- 2. Terms and expressions used in this Contract shall have the meanings given in Clause 1.1 of the Conditions of Contract.
- 3. In consideration for payment of the Contract Price, the Provider undertakes to perform the Services with due skill, care and diligence throughout the Contract Period.

EXECUTION UNDER HAND

IN WITNESS whereof this Agreement has been executed by the Parties in accordance with their respective constitutions:

Signed for and on behalf of
THE KENT COUNTY COUNCIL

.....
Authorised Signatory

.....
Print Name of Authorised Signatory

Signed for and on behalf of **PROVIDER**

.....
Authorised Signatory

.....
Print Name of Authorised Signatory

CONTRACT PARTICULARS

1	Commencement Date:	XX 2017	(Clauses 1.1 and 2.1)
2	Contract Period:	48 months	(Clause 1.1)
3	Contract Price:	As set out in Schedule 3	(Clause 1.1)
4	Contract Extension:	No	(Clause 2.2)
5	Address for Service of Notices	<p>For the Council:</p> <p>The Kent County Council County Hall Maidstone Kent ME14 1XQ</p> <p>For the Provider:</p> <p>XX</p>	(Clause 5.3)
6	Service Levels and Service Credits	Clause 9 does not apply	(Clause 9, Schedule 6)
7	Key Personnel	Clause 11 does not apply	
8	Safeguarding	Clause 13 applies	
9	TUPE and Pensions	Clause 14 does not apply	(Clause 14 and Schedule 9)

10	Licence to Occupy Council Premises	Clause 16 does not apply	
11	Parent Company Guarantee	Clause 18.1 and Schedule 10 do not apply	
12	Performance Bond	Clause 19 and Schedule 11 do not apply	
13	Payment and VAT	A. Payment Periods: Monthly in arrears	
14	Price Adjustment	Clause 23 does not apply	
15	Audit	Period for which records must be maintained after the end of the Contract:	(Clause 34, 35, 21.7 and 24.5)
		Where the contract is signed under hand: 6 years	
16	Liability and Indemnity	The Contractor's liability under this Agreement shall be limited to the sum of contract value for each and every claim arising under or in connection with this Agreement	(Clause 47.4)
17	Insurance	Public liability insurance: £5 million per each and every claim Employer's liability insurance: £10 million per each and every claim	(Clause 48.1)
18	Additional Insurances	Professional Indemnity Insurance	(Clause 48.5 and 48.6)

is not required

- | | | |
|----|--|--|
| 19 | Break Clause | Clause 54 applies
The notice period is 3 months |
| 20 | Force Majeure | Clause 58 applies |
| 21 | Disaster
Recovery | Clause 59 applies |
| 22 | Commercially
Sensitive
Information | Schedule 13 applies |

CONDITIONS OF CONTRACT

1. DEFINITIONS AND INTERPRETATION

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

“Achieved Service Level”	means in respect of any Service in any measurement period, the standard of performance actually achieved by the Provider in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the Service Level for that Service is calculated and expressed in Schedule 6).
“Appendix”	means an appendix to this agreement.
“Approval”	means the written consent of the Council.
“Change”	means any change to this agreement including any Variations.
“Change Control Form”	means the written record of a Change agreed or to be agreed by the Parties pursuant to the Change Control Procedure.
“Change Control Procedure”	means the procedure for changing this agreement, as set out in Schedule 7.
Change of Control	shall have the same meaning as within section 416 of the Income and Corporation Taxes Act 1988 or section 574 of the Capital Allowances Act 2001.
“Commencement Date”	means the date stated in the Contract Particulars or if none is stated, the date of this Contract.
“Commercially Sensitive Information”	<p>means the information listed in Schedule 13 (Commercially Sensitive Information) comprised of information:</p> <ul style="list-style-type: none">(a) which is provided by the Provider to the Council in confidence for the period set out in that Schedule; and/or(b) that constitutes a trade secret.
“Confidential Information”	<p>means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA. Confidential Information shall not include information which:</p> <ul style="list-style-type: none">(a) was public knowledge at the time of disclosure (otherwise than by breach of

Clause 30 (Confidential Information));

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

“Contract”	means this written agreement between the Council and the Provider which is more particularly described in the Form of Agreement.
“Contracting Authority”	means any contracting authority as defined in section 2 of the Public Contracts Regulations 2015.
“Contract Extension”	means any extension to the Contract Period as set out in the Contract Particulars.
“Contract Particulars”	means the contract particulars contained in this Contract.
“Contract Period”	means the period stated in the Contract Particulars.
“Contract Price”	means the price (exclusive of any applicable VAT), payable to the Provider by the Council under the Contract, as set out in the Contract Particulars, for the full and proper performance by the Provider of its obligations under the Contract.
“Council”	means The Kent County Council of County Hall, Maidstone, Kent ME14 1XQ.
“Crown Body”	means a public body which has Crown status, such that the material which it produces is subject to Crown copyright protection under section 163 of the Copyright Designs and Patents Act 1988.
“Data Controller”	shall have the same meaning as set out in the Data Protection Act 1998 as amended.
“Data Processor”	shall have the same meaning as set out in the Data Protection Act 1998 as amended.
“Data Protection Legislation”	the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of

personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner, all as amended.

“Data Subject”

shall have the same meaning as set out in the Data Protection Act 1998 as amended.

“Default”

means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other.

“Disaster”

means an event defined as a disaster in the Disaster Recovery Plan.

“Disaster Recovery Plan”

means a plan which sets out the procedures to be adopted by the Provider in the event that the Services are disrupted by reason of a Disaster (including the procedures to be taken by the Provider in planning and providing for any such event), the Disaster Recovery Plan at the date of this agreement being set out in Schedule 12.

“DPA”

means the Data Protection Act 1998 as amended and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

“Environmental Information Regulations”

means the Environmental Information Regulations 2004 as amended and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

“Equipment”

means the Provider’s equipment, plant, materials and such other items supplied and used by the Provider in the performance of its obligations under the Contract.

“Exit Manager”

has the meaning set out in paragraph 4 of Schedule 8.

“Exit Obligations”

means the obligations set out in paragraph 2 of Schedule 8.

“Exit Period”

means the period determined in accordance with paragraph 5 of Schedule 8.

“Fees Regulations”

means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 as amended.

“FOIA”

means the Freedom of Information Act 2000 as amended and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant

government department in relation to such legislation.

“Force Majeure”

means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:

- (a) any industrial action occurring within the Provider's or any Sub-Contractor organisation; or
- (b) the failure by any Sub-Contractor to perform its obligations under any Sub-Contract.

“Good Industry Practice”

means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

“Information”

has the meaning given under section 84 of the FOIA.

“Information Commissioner”

shall have the same meaning as set out in the Data Protection Act 1998 as amended.

"Information Governance"

means the way organisations 'process' or handle information relating to the Service and/ or Service Users

"Information Governance Toolkit Requirements"

means the requirements set out in the Local Authority model of the NHS Information Governance Toolkit as published by the Department of Health and amended from time to time for:

- (a) Information Governance management,
- (b) Confidentiality and data protection
- (c) Information security

"Intellectual Property and Intellectual Property Rights"

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

feel" of any websites.

“Key Personnel”

means those persons named in the Specification as being key personnel.

“Law”

means any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body, all as amended, of which the Provider is bound to comply.

“Losses”

shall mean all costs, losses, charges, expenses, damages, compensation, fines, claims, demands, liabilities, actions and proceedings (including the costs and expenses (including legal costs and expenses) of such actions and proceedings and the staff costs expended in requiring the discharge of an indemnity or payment of damages) arising from or relating to the contractual Clause in question or to its breach.

“Month”

means calendar month.

“Party”

means a party to the Contract.

“Personal Data”

shall have the same meaning as set out in the Data Protection Act 1998 as amended.

“Premises”

means the location where the Services are to be supplied, as set out in the Specification.

“Price Review Date”

has the meaning given in the Contract Particulars.

“Processing and Process”

has the meaning given to it under the Data Protection Legislation and for the purposes of this agreement, it shall include both manual and automated processing.

“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 as amended;
- (ii) under legislation creating offences concerning fraudulent acts;
- (iii) at common law concerning fraudulent acts relating to this agreement or any other contract with the Council; or
- (iv) defrauding, attempting to defraud or conspiring to defraud the Council.

“Property”	means the property, other than real property, issued or made available to the Provider by the Council in connection with the Contract.
“Provider”	means the person, firm or company with whom the Council enters into the Contract.
“Provider Party”	means the Provider's agents and contractors, including each Sub-Contractor.
“Public Sector Contracting Authorities”	means public sector bodies that are subject to the Public Contracts Regulations 2015 and respective successor legislation.
“Public Contracts Directive”	means Directive 2014/24/EU of 26 February 2014 of the European Parliament and of the Council of the European Union.
“Quality Standards”	means the quality standards published by BSI (British Standards Institute), the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Provider would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification.
“Receipt”	means the physical or electronic arrival of the invoice at the address of the Council set out in the Contract Particulars or at any other address given by the Council to the Provider for the submission of invoices.

“Regulations”	means The Public Contracts Regulations 2015 and respective successor legislation.
“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 as amended 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 as amended.
“Regulated Activity Provider”	shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006 as amended.
“Regulatory Bodies”	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Council and “Regulatory Body” shall be construed accordingly.
"Relevant Convictions"	means a conviction that is relevant to the nature of the Services or as listed by the Council.
“Relevant Index”	means, where used, the index specified Schedule 3 (Pricing and Payment Schedule) or if none is specified, the Consumer Prices Index (CPI).
“Relevant Transfer”	means a relevant transfer for the purposes of TUPE.
“Replacement Provider”	means any third party Service Provider appointed by the Council to supply any services which are substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract.
“Request for Information”	shall have the meaning set out in FOIA or the Environmental Information Regulations 2014 as amended as relevant (where the meaning set out for the term “request” shall apply).
“Schedule”	means a schedule attached to, and forming part of, the Contract.
“Services”	means the services to be supplied as specified in the Specification.
“Service Credits”	means the sums attributable to a Service Failure as specified in Schedule 6.
“Service Failure”	means a failure by the Provider to provide the Services in accordance with any individual Service Level
“Service Levels”	means the service levels to which the Services are to be provided, as set out in Schedule 6.

“Service Users”	means the users of the Services.
“Specification”	means the description of the Services to be supplied under the Contract as set out in Schedule 2 and elsewhere in the Contract, as appropriate, including, where appropriate, the Key Personnel, the Premises and the Quality Standards.
“Special Conditions”	means the special conditions (if any) set out in Schedule 1.
“Staff”	means all persons employed or engaged by the Provider to perform its obligations under the Contract together with the Provider’s servants, agents, suppliers and Sub-Contractors used in the performance of its obligations under the Contract.
“Staff Vetting Procedure”	means the Council’s procedures for the vetting of personnel and as advised to the Provider by the Council.
“Sub-Contract”	means any contract between the Provider and a third party pursuant to which the Provider agrees to source the provision of any of the Services from that third party.
“Sub-Contractor”	means the contractor or contractors that enter into a Sub-Contract with the Provider.
“Tender”	means the document(s) submitted by the Provider to the Council in response to the Council’s invitation to suppliers for formal offers to supply it with the Services.
“TFEU”	means the Treaty on the Functioning of the European Union.
“the Treaties”	means the Treaty on European Union and TFEU.
“TUPE”	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended.
“Variation”	means a Change only to the Specification, and, if required, an associated Change of Contract Price.
“VAT”	means value added tax in accordance with the provisions of the Value Added Tax Act 1994 as amended.
“Working Day”	means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

1.2 The interpretation and construction of this Contract shall be subject to the following provisions:

- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2 words importing the masculine include the feminine and the neuter;
- 1.2.3 reference to a Clause is a reference to the whole of that Clause unless stated otherwise;

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

2. CONTRACT PERIOD AND EXTENSION

- 2.1 The Contract shall take effect on the Commencement Date and shall expire automatically at the end of the Contract Period unless it is otherwise terminated in accordance with the provisions of the Contract, or by operation of law, or extended under Clause 2.2.
- 2.2 Where stipulated in the Contract Particulars, the Council may, by giving written notice to the Provider extend the Contract for such further period as is stated in the Contract Particulars. The provisions of the Contract will apply (subject to any Variation or adjustment to the Contract Price pursuant to Clause 23 (Price Adjustment)) throughout any such extended period.

3. PROVIDER'S STATUS

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

4. COUNCIL'S OBLIGATIONS

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

5. NOTICES

- 5.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.
- 5.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, first class post, recorded delivery or special

delivery), or by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in Clause 5.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted, or 4 hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

5.3 For the purposes of Clause 5.2, the address of each Party shall be the address stipulated in the Contract Particulars.

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

6. MISTAKES IN INFORMATION

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

7. CONFLICTS OF INTEREST

7.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any Staff is placed in a position where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Council under the provisions of the Contract. The Provider will disclose to the Council full particulars of any such conflict of interest which may arise.

7.2 The Council reserves the right to terminate the Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Council under the provisions of the Contract. The actions of the Council pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

8. THE SERVICES

8.1 The Provider shall supply the Services during the Contract Period with due skill, care and diligence and in accordance with:

8.1.1 the Quality Standards (if any stipulated in the Specification)

8.1.2 Good Industry Practice;

8.1.3 the Law; and

8.1.4 the requirements of the Contract.

8.2 The Council may inspect and examine the manner in which the Provider supplies the Services at the Premises during normal business hours on reasonable notice.

- 8.3 If the Council informs the Provider in writing that the Council reasonably believes that any part of the Services does not meet the requirements of the Contract or differs in any way from those requirements, and this is other than as a result of a Default by the Council, the Provider shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Council.

9. SERVICE LEVELS AND SERVICE CREDITS

- 9.1 This Clause 9 shall apply where stated in the Contract Particulars.
- 9.2 Where any part of the Services is stated in Schedule 6 to be subject to a specific Service Level, the Provider shall provide that part of the Services 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.
- 9.3 The Provider shall provide records of and management reports summarising the Achieved Service Levels as provided for in Clause 43.
- 9.4 If the Provider fails to provide the Services in accordance with any individual Service Level, the Provider shall pay to the Council the Service Credit set out in Schedule 6.
- 9.5 The Parties agree that any such Service Credit has been calculated as, and is, a genuine pre-estimate of the loss likely to be suffered by the Council. The Provider has taken the Service Credit into account in setting the level of the Contract Price.

10. PROVISION AND REMOVAL OF EQUIPMENT

- 10.1 The Provider shall provide all the Equipment necessary for the supply of the Services.
- 10.2 The Provider shall not deliver any Equipment nor begin any work on the Premises without obtaining prior Approval.
- 10.3 All Equipment brought onto the Premises shall be at the Provider's own risk and the Council shall have no liability for any loss of or damage to any Equipment unless the Provider is able to demonstrate that such loss or damage was caused or contributed to by the Council's Default. The Provider shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Provider.
- 10.4 The Provider shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- 10.5 The Provider shall, at the Council's written request, at its own expense and as soon as reasonably practicable:
- 10.5.1 remove from the Premises any Equipment which in the reasonable opinion of the Council is either hazardous, noxious or not in accordance with the Contract; and
- 10.5.2 replace such item with a suitable substitute item of Equipment.
- 10.6 On completion of the Services the Provider shall remove the Equipment together with any other materials used by the Provider to supply the Services and shall

leave the Premises in a clean, safe and tidy condition. The Provider is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Provider or any Staff.

11. KEY PERSONNEL

- 11.1 This Clause 11 (Key Personnel) shall apply if so stated in the Contract Particulars.
- 11.2 The Key Personnel shall not be released from supplying the Services without the agreement of the Council, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances.
- 11.3 Any replacements to the Key Personnel shall be subject to the agreement of the Council. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 11.4 The Council shall not unreasonably withhold its agreement under Clauses 11.2 or 11.3. Such agreement shall be conditional on appropriate arrangements being made by the Provider to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

12. PROVIDER'S STAFF

- 12.1 The Council may, by written notice to the Provider, refuse to admit onto, or withdraw permission to remain involved in the delivery of the Services:
- 12.1.1 any member of the Staff; or
- 12.1.2 any person employed or engaged by any member of the Staff,
- whose admission or continued involvement with the delivery of the Services would, in the reasonable opinion of the Council, be undesirable.
- 12.2 At the Council's written request, the Provider shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Council may reasonably request.
- 12.3 The Provider's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations, policies and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Premises.
- 12.4 The Provider shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Services. The Provider confirms that all persons employed or engaged by the Provider were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.
- 12.5 In addition to any requirements specified in the Staff Vetting Procedures, the Council may require the Provider to carry out an appropriate Disclosure and Barring Service (DBS) check in respect of any person to be employed or engaged in the provision of the Services. The Provider shall ensure that no person who discloses that he/she has a Relevant Conviction, or is found by the Provider to

have a Relevant Conviction (whether as a result of or through a DBS check or otherwise) is employed or engaged in the provision of any part of the Services.

12.6 If the Provider fails to comply with Clause 12.2 within 21 days of the date of the request the Provider shall be in Default of its obligations under the Contract.

12.7 The decision of the Council as to whether any person is to be excluded from being employed or engaged in delivering the Services and as to whether the Provider has failed to comply with Clause 12.2 shall be final and conclusive and the Provider shall indemnify the Council in respect of all claims, costs, losses or expenses arising from a decision under Clause 12.1.

13. **SAFEGUARDING CHILDREN AND VULNERABLE ADULTS**

13.1 Without prejudice to the provisions of this Clause 13 the Provider shall at all times in providing the Services comply with the provisions of all Law and guidance that are relevant to the Services and shall take all steps necessary to promote preserve and ensure the wellbeing of the Service Users.

13.2 This Clause 13 shall apply where stipulated in the Contract Particulars.

13.3 The Parties acknowledge that the 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.

13.4 The Provider shall ensure that all individuals engaged in the provision of the Services are:

13.4.1 subject to a valid enhanced disclosure check undertaken through the DBS including a check against the adults' barred list or the children's barred list, as appropriate; and

13.4.2 the Provider shall monitor the level and validity of the checks under this Clause 13.3 for each member of Staff.

13.5 The 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 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.

13.6 The 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 13 have been met.

13.7 The 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.

13.8 The Provider shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Service Users.

14. TUPE AND PENSIONS

The Parties agree that the provisions of Schedule 9 shall apply to any Relevant Transfer of staff under or in connection with this Contract.

15. INSPECTION OF PREMISES

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

16. LICENCE TO OCCUPY COUNCIL PREMISES

16.1 This Clause 16 applies where stipulated in the Contract Particulars.

16.2 Any land or Premises made available from time to time to the Provider by the Council in connection with the Contract shall be made available to the Provider on a non-exclusive licence basis free of charge and shall be used by the Provider solely for the purpose of performing its obligations under the Contract. The Provider shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.

16.3 The Provider shall limit access to the land or Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Provider shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Council may reasonably request.

16.4 Should the Provider require modifications to the Premises, such modifications shall be subject to prior Approval and shall be carried out by the Council at the Provider's expense. The Council shall undertake approved modification work without undue delay. Ownership of such modifications shall rest with the Council.

16.5 The Provider shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Council, and the Provider shall pay for the cost of making good any damage caused by the Provider or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

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

17. PROPERTY

17.1 Where the Council issues Property free of charge to the Provider such Property shall be and remain the property of the Council and the Provider irrevocably licences the Council and its agents to enter upon any premises of the Provider during normal business hours on reasonable notice to recover any such Property. The Provider shall not in any circumstances have a lien or any other interest on the Property and the Provider shall at all times possess the Property as fiduciary agent and bailee of the Council. The Provider shall take all reasonable steps to ensure

that the title of the Council to the Property and the exclusion of any such lien or other interest are brought to the notice of all Staff and other appropriate persons and shall, at the Council's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Council.

- 17.2 The Property shall be deemed to be in good condition when received by or on behalf of the Provider unless the Provider notifies the Council otherwise within 5 Working Days of receipt.
- 17.3 The Provider shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without prior Approval.
- 17.4 The Provider shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Council's reasonable security requirements as required from time to time.
- 17.5 The Provider shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Council's Default. The Provider shall inform the Council within 2 Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

18. PARENT COMPANY GUARANTEE

- 18.1 Where stipulated in the Contract Particulars the Provider shall procure the delivery of a parent company guarantee substantially in the form contained in Schedule 10.

19. PERFORMANCE BOND

Where stipulated in the Contract Particulars the Provider shall procure the delivery of a performance bond substantially in the form contained in Schedule 11.

20. CONTRACT PRICE

- 20.1 In consideration of the Provider's performance of its obligations under the Contract, the Council shall pay the Contract Price in accordance with Clause 21 (Payment and VAT).
- 20.2 The Council shall, in addition to the Contract Price and following Receipt of a valid VAT invoice, pay the Provider a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

21. PAYMENT AND VAT

- 21.1 Unless otherwise specified in Schedule 3, the Council shall pay all sums due to the Provider within 30 days of receipt of a valid invoice, submitted monthly in arrears.
- 21.2 The Provider shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation reasonably required by the Council to substantiate the invoice.
- 21.3 Where the Provider enters into a Sub-Contract with a supplier or Sub-Contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a Sub-Contract which requires payment to be made

of all sums due by the Provider to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.

- 21.4 The Provider shall add VAT to the Contract Price at the prevailing rate as applicable.
- 21.5 The Provider shall indemnify the Council on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Council at any time in respect of the Provider's failure to account for or to pay any VAT relating to payments made to the Provider under the Contract. Any amounts due under this Clause 21.5 shall be paid by the Provider to the Council not less than 5 Working Days before the date upon which the tax or other liability is payable by the Council.
- 21.6 The Provider shall not suspend the supply of the Services unless the Provider is entitled to terminate the Contract under Clause 52.3 (Termination on Default) for failure to pay undisputed sums of money.
- 21.7 The 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 during the Contract Period and following the end of the Contract for the period specified in the Contract Particulars.

22. RECOVERY OF SUMS DUE

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

23. PRICE ADJUSTMENT

- 23.1 Unless otherwise indicated in the Contract Particulars, the Contract Price shall apply for the Contract Period without adjustment.
- 23.2 Where stipulated in the Contract Particulars, the Contract Price shall be adjusted on each Price Review Date by an amount equal to the annual percentage change in the Relevant Index as published in the December preceding the relevant Price Review Date.

24. PREVENTION OF BRIBERY AND CORRUPTION

24.1 The Provider:

24.1.1 shall not, and shall procure that any Provider Staff or Provider Party shall not, in connection with this agreement commit a Prohibited Act;

24.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this agreement.

24.2 The Provider shall:

24.2.1 if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010;

24.2.2 within 10 Working Days of the Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Provider) compliance with this Clause 24 by the Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Provider shall provide such supporting evidence of compliance as the Council may reasonably request.

24.3 The Provider shall ensure that its anti-bribery policy is provided to the Council on request.

24.4 If any breach of Clause 24.1 is suspected or known, the Provider must notify the Council immediately.

24.5 If the Provider notifies the Council that it suspects or knows that there may be a breach of Clause 24.1, the Provider must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation. This obligation shall continue for the period specified in the Contract Particulars following the expiry or termination of this agreement.

24.6 The Council may terminate this agreement by written notice with immediate effect if the Provider, Provider Party or Provider Staff (in all cases whether or not acting with the Provider's knowledge) breaches Clause 24.1.

24.7 Any notice of termination under Clause 24.6 must specify:

24.7.1 the nature of the Prohibited Act;

24.7.2 the identity of the party whom the Council believes has committed the Prohibited Act; and

24.7.3 the date on which this agreement will terminate.

24.8 Despite Clause 61 (Dispute Resolution), any dispute relating to:

24.8.1 the interpretation of Clause 24; or

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

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

24.9 Any termination under Clause 24.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

25. EQUALITIES

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

25.2 The Provider shall fully indemnify the Council against all actions, claims demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Provider of this Clause 25.

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

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

27. ENVIRONMENTAL REQUIREMENTS

The Provider shall, when working on the Premises, perform its obligations under the Contract in accordance with the Council's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

28. HEALTH AND SAFETY

28.1 The Provider shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Council shall promptly notify the Provider of any health and safety hazards which may exist or arise at the Premises and which may affect the Provider in the performance of its obligations under the Contract.

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

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

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

28.5 The 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.

29. DATA PROTECTION ACT

Information Governance – General Responsibilities

29.1 For the purposes of this Clause 29, the terms “Data Controller”, “Data Processor”, “Data Subject”, “Personal Data”, “Process” and “Processing” shall have the meaning prescribed under the DPA.

29.2 With respect to the Parties' rights and obligations under this agreement, the Parties agree that the Council is the Data Controller and that the Provider is the Data Processor.

29.3 The Parties acknowledge their respective obligations arising under the DPA and must assist each other as necessary to enable each other to comply with these obligations.

29.4 The Provider undertakes to:

29.4.1 Treat as confidential all Personal Data which may be derived from or be obtained in the course of the Contract or which may come into the possession of the Provider or an employee, servant or agent or Sub-Contractor of the Provider as a result or in connection with the contract; and;

29.4.2 Provide all necessary precautions to ensure that all such information is treated as confidential by the Provider, his employees, servants, agents or Sub-Contractors; and

29.4.3 Ensure that he, his employees, servants, agents and Sub-Contractors are aware of the provisions of the DPA and that any personal information obtained from the Council shall not be disclosed or used in any unlawful manner; and

29.4.4 Indemnify the Council against any loss arising under the DPA caused by any action, authorised or unauthorised, taken by himself, his employees, servants, agents or Sub-Contractors

29.4.5 Nominate a data protection lead to be responsible for data protection and for providing the Council with regular reports on information security matters, including details of all incidents of data loss and breach of confidence;

29.4.6 Have in place adequate mechanisms to ensure that Sub-Contractors, agents and subsidiaries to whom personal information is disclosed comply with their contractual obligations to keep personal data and information secure and confidential in accordance with data protection requirements;

- 29.4.7 Ensure that the Council is kept informed at all times of the identities of the data protection lead.

29.5 The Provider as a Data Processor

- 29.6 The Provider shall (and shall ensure that all of its Staff) comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Contract.

- 29.7 Notwithstanding the general obligation in Clause 29.2, where the Provider is processing Personal Data as a Data Processor for the Council the Provider shall:

- 29.7.1 Process the Personnel Data only in accordance with instructions from the Council (which may be specific instructions or instructions of a general nature) as set out in this Contract or as otherwise notified by the Contracting Authority;
- 29.7.2 Comply with all applicable Laws;
- 29.7.3 Process the Personal Data only to the extent; and in such manner as is necessary for the provision of the Provider's obligations under this Contract or as is required by Law or any Regulatory Body;
- 29.7.4 Implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
- 29.7.5 must be able to demonstrate that employees, servants, or agents associated with the performance of this contract are aware of their personal responsibilities under the DPA to maintain the security of the Personal Data controlled by the Council;
- 29.7.6 take reasonable steps to ensure the reliability of its Staff and agents who may have access to the Personal Data;
- 29.7.7 obtain prior written consent from the Contracting Authority in order to transfer the Personal Data to any Sub-Contractor for the provision of the Services;
- 29.7.8 Personal Data must not be copied for any other purpose than that agreed between the Provider and the Council.
- 29.7.9 Personal data shall be returned to the Council at the end of the contract, or on completion of works or when requested by the Council.
- 29.7.10 The Council is required to comply with Her Majesty's Government information security standards for the secure destruction of data processed on its behalf. The Provider must provide certificated evidence of secure destruction to the required standards when equipment is decommissioned or retired or at the end of the Contract.

- 29.8 The Provider shall permit the Council or the Council 's representative (subject to reasonable and appropriate confidentiality requirements), to inspect and audit, in accordance with Clause 36 (Audit), the Provider's data Processing activities (and/or those of its agents, subsidiaries and Sub-Contractors) and comply with all reasonable requests or directions by the Council to enable the Council to verify and/or procure that the Provider is in full compliance with its obligations under this agreement;
- 29.8.1 not Process, cause or permit the Personal Data to be transferred outside of the European Economic Area without the prior consent of the Council and, where the Council consents to the transfer, to comply with;
- (a) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the DPA by providing an adequate level of protection to any Personal Data that is transferred; and
- (b) any reasonable instructions notified to it by the Council;
- 29.8.2 ensure that all Staff and agents required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause 29;
- 29.8.3 ensure that none of the Staff and agents publish disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the Council;
- 29.8.4 not disclose Personnel Data to any third parties in any circumstances other than with the written consent of the Council or in compliance with a legal obligation imposed upon the Council; and
- 29.9 notify the Council (within five Working Days) if it receives:
- 29.9.1 a request from a Data Subject to have access to that person's Personal Data; or
- 29.9.2 a complaint or request relating to the Council's obligations under the DPA;
- 29.9.3 The Provider shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this agreement in such a way as to cause the Council to breach any of its applicable obligations under the Data Protection Legislation.
- 29.10 The Provider agrees to indemnify and keep indemnified and defend at its own expense the Council against all costs, claims, damages or expenses incurred by the Council or for which the Council may become liable due to any failure by the Provider or its employees or agents to comply with any of its obligations under this agreement.
- Responsibilities when engaging Sub-Contractors**
- 29.11 Subject always to Clause 37 (Transfer and Sub-Contracting) if the Provider is to require any Sub-Contractor to process Personal Data on its behalf, the Provider must:

- 29.11.1 require that the Sub-Contractor provides sufficient guarantees in respect of its technical and organisational security measures governing the data processing to be carried out, and take reasonable steps to ensure compliance with those measures;
- 29.11.2 ensure that the Sub-Contractor is engaged under the terms of a written agreement requiring the Sub-Contractor to:
 - (a) process such personal data only in accordance with the Provider 's instructions;
 - (b) comply at all times with obligations equivalent to those imposed on the Provider by virtue of the Seventh Data Protection Principle of the DPA;
 - (c) allow rights of audit and inspection in respect of relevant data handling systems to the Provider or to the Council or to any person authorised by the Provider or by the Council to act on its behalf; and
 - (d) impose on its own Sub-Contractors (in the event the Sub-Contractor further Sub-Contracts any of its obligations under the Sub-Contract) obligations that are substantially equivalent to the obligations imposed on the Sub-Contractor by this Clause 29.
- 29.12 The provision of this Clause 29 shall apply during the Contract Period and indefinitely after its expiry.
- 30. **CONFIDENTIAL INFORMATION**
- 30.1 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
 - 30.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
 - 30.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 30.2 Clause 30.1 shall not apply to the extent that:
 - 30.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause 31 (Freedom of Information);
 - 30.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 30.2.3 such information was obtained from a third party without obligation of confidentiality;
 - 30.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or

- 30.2.5 it is independently developed without access to the other Party's Confidential Information.
- 30.3 The Provider may only disclose the Council's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- 30.4 The Provider shall not, and shall procure that the Staff do not, use any of the Council's Confidential Information received otherwise than for the purposes of this agreement.
- 30.5 At the written request of the Council, the Provider shall procure that those members of the Staff identified in the Council's notice sign a confidentiality undertaking prior to commencing any work in accordance with this agreement.
- 30.6 Nothing in this agreement shall prevent the Council from disclosing the Provider's Confidential Information:
- 30.6.1 to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
 - 30.6.2 to any consultant, contractor or other person engaged by the Council or any person conducting an Office of Government Commerce gateway review as amended or superseded;
 - 30.6.3 for the purpose of the examination and certification of the Council's accounts; or
 - 30.6.4 for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources.
- 30.7 The Council shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Provider's Confidential Information is disclosed pursuant to Clause 30.6 is made aware of the Council's obligations of confidentiality.
- 30.8 Nothing in this Clause 30 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights .

31. FREEDOM OF INFORMATION

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

- 31.2 The Provider shall and shall procure that any Sub-Contractors shall transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
- 31.2.1 provide the Council with a copy of all Information in its possession, or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council's request; and
- 31.2.2 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- 31.3 The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 31.4 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 31.5 The Provider acknowledges that (notwithstanding the provisions of Clause 31) the Council may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Provider or the Services in certain circumstances:
- 31.5.1 without consulting the Provider; or
- 31.5.2 following consultation with the Provider and having taken their views into account;
- provided always that where Clause 31.5.1 applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.
- 31.6 The Provider shall ensure that all Information is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.
- 31.7 The Provider acknowledges that the Commercially Sensitive Information listed in the Commercially Sensitive Information Schedule is of indicative value only and that the Council may be obliged to disclose it in accordance with this Clause 31.
32. **PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES**
- 32.1 The Provider shall not make any press announcement or publicise the Contract, the Services or any aspects thereof in any way, except with the prior written consent of the Council.
- 32.2 The Provider shall take reasonable steps to ensure that its servants, employees, agents, Sub-Contractors, suppliers, professional advisors and consultants comply with Clause 32.1.

33. **SECURITY**

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

34. **INTELLECTUAL PROPERTY RIGHTS**

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

34.1.1 furnished to or made available to the Provider by or on behalf of the Council shall remain the property of the Council; and

34.1.2 prepared by or for the Provider on behalf of the Council for use, or intended use, in relation to the performance by the Provider of its obligations under the Contract shall belong to the Council;

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

- 34.2 The Provider hereby assigns to the Council, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with Clause 34.1.2. This assignment shall take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Provider. The Provider shall execute all documentation necessary to execute this assignment.

- 34.3 The Provider shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Contract or the performance of the Contract.

- 34.4 The Provider shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Contract grants to the Council a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Council an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Council to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Provider or to any other third party supplying services to the Council.

- 34.5 The Provider shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Provider shall, during and after the Contract Period, indemnify and keep indemnified and hold the Council and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Council or the Crown may suffer or incur as a result of or in connection with any breach of this Clause, except where any such claim arises from:

34.5.1 items or materials based upon designs supplied by the Council; or

- 34.5.2 the use of data supplied by the Council which is not required to be verified by the Provider under any provision of the Contract.
- 34.6 The Council shall notify the Provider in writing of any claim or demand brought against the Council for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Provider.
- 34.7 The Provider shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Provider, provided always that the Provider:
- 34.7.1 shall consult the Council on all substantive issues which arise during the conduct of such litigation and negotiations;
- 34.7.2 shall take due and proper account of the interests of the Council; and
- 34.7.3 shall not settle or compromise any claim without the Council's prior written consent (not to be unreasonably withheld or delayed).
- 34.8 The Council shall at the request of the Provider afford to the Provider all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Council or the Provider by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Provider's obligations under the Contract and the Provider shall indemnify the Council for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Provider shall not, however, be required to indemnify the Council in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in Clause 34.5.1 or 34.5.2.
- 34.9 The Council shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Council or the Provider in connection with the performance of its obligations under the Contract.
- 34.10 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Provider is likely to be made, the Provider shall notify the Council and, at its own expense and subject to the consent of the Council (not to be unreasonably withheld or delayed), use its best endeavours to:
- 34.10.1 modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutatis mutandis to such modified Services or to the substitute Services; or
- 34.10.2 procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Council,
- and in the event that the Provider is unable to comply with Clauses 34.10.1 or 34.10.2 within 15 Working Days of receipt of the Provider's notification the Council may terminate the Contract with immediate effect by notice in writing.

- 34.11 The Provider grants to the Council a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights that the Provider owned or developed prior to the Commencement Date and which the Council reasonably requires in order exercise its rights and take the benefit of this Contract including the Services provided.

35. CHANGE CONTROL AND CONTINUOUS IMPROVEMENT

- 35.1 The Provider shall keep and maintain for the period stipulated in the Contract Particulars, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Provider shall on request afford the Council or the Council's representatives such access to those records as may be requested by the Council in connection with the Contract

- 35.2 Any requirement for a Change shall be subject to the Change Control Procedure detailed in Schedule 7 (Change Control).

- 35.3 The Provider shall have an ongoing obligation throughout the Contract Period to identify new or potential improvements to the Services. As part of this obligation the Provider shall identify and report to the Council's authorised representative quarterly in each Contract year on:

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

35.3.2 new or potential improvements to the Services including the quality, responsiveness, procedures, performance mechanisms and customer support services in relation to the Services;

35.3.3 new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Council which might result in efficiency or productivity gains or in reduction of operational risk; and

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

- 35.4 Any potential Changes highlighted as a result of the Provider's reporting in accordance with Clause 35.3 shall be addressed by the Parties using the Change Control Procedure.

36. AUDIT

- 36.1 The Provider shall keep and maintain for the period stipulated in the Contract Particulars, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Provider shall on request afford the Council or the Council's representatives such access to those records as may be requested by the Council in connection with the Contract.

37. TRANSFER AND SUB-CONTRACTING

- 37.1 The Provider shall not assign, Sub-Contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the

Contract shall not relieve the Provider of any of its obligations or duties under the Contract.

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

37.3 Where the Council has consented to the placing of Sub-Contracts, copies of each Sub-Contract shall, at the request of the Council, be sent by the Provider to the Council as soon as reasonably practicable.

37.4 The Provider shall ensure that the assignee notifies the Council of the assignee's contact information and bank account details to which the Council shall make payment.

37.5 The provisions of Clause 21 (Payment and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Council.

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

37.6.1 any Contracting Authority; or

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

37.6.3 private sector body which substantially performs the functions of the Council,

("the Transferee")

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

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

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

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

38. WAIVER

- 38.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.
- 38.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 5 (Notices).
- 38.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

39. VARIATION

- 39.1 Subject to the provisions of this Clause 39, the Council may request a Change to the Specification. Such a Change to the Specification is hereinafter called a Variation and may include a Change to the Contract Price.
- 39.2 The Council may request a Variation by notifying the Provider in writing of the Variation and giving the Provider sufficient information to assess the extent of the Variation and consider whether any change to the Contract Price is required in order to implement the Variation. The Council shall specify a time limit within which the Provider shall respond to the request for a Variation. Such time limits shall be reasonable having regard to the nature of the Variation. If the Provider accepts the Variation it shall confirm the same in writing.
- 39.3 In the event that the Provider is unable to accept the Variation to the Specification or where the Parties are unable to agree a change to the Contract Price, the Council may;
- 39.3.1 allow the Provider to fulfil its obligations under the Contract without the variation to the Specification;
- 39.3.2 terminate the Contract with immediate effect.
- 39.4 The Provider may propose Variations to the Contract, provided that the Council shall be under no obligation whatsoever to accept any request for a Variation. A Variation proposed by the Provider shall not give rise to any increase to the Contract Price, unless expressly agreed by the Council (in its absolute discretion) in writing.
- 39.5 Variations will be dealt with according to the process defined in Schedule 7 (Change Control).

40. SEVERABILITY

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

41. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE

- 41.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Provider's obligations under the Contract, then the Council shall be entitled to investigate the complaint in accordance with the contract monitoring and management procedures contained in Schedule 14 (Contract Management). The Council may, in its sole discretion, uphold the complaint and take further action in accordance with Clause 52 (Termination on Default) of the Contract.
- 41.2 In the event that the Council is of the reasonable opinion that there has been a material breach of the Contract by the Provider, then the Council may, without prejudice to its rights under Clause 52 (Termination on Default), do any of the following:
- 41.2.1 without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Council that the Provider will once more be able to supply all or such part of the Services in accordance with the Contract;
 - 41.2.2 without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or
 - 41.2.3 terminate, in accordance with Clause 52 (Termination on Default), the whole of the Contract.
- 41.3 Without prejudice to its right under Clause 22 (Recovery of Sums Due), the Council may charge the Provider for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Council or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Services and provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- 41.4 If the Provider fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Council shall instruct the Provider to remedy the failure and the Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as the Council may direct.
- 41.5 In the event that:
- 41.5.1 the Provider fails to comply with Clause 41.4 above and the failure is materially adverse to the interests of the Council or prevents the Council from discharging a statutory duty; or
 - 41.5.2 the Provider persistently fails to comply with Clause 41.4 above,
- the Council may terminate the Contract with immediate effect by notice in writing.

42. **REMEDIES CUMULATIVE**

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

43. **CONTRACT MANAGEMENT**

The Provider shall comply with the monitoring and contract management arrangements set out in the Schedule 14 (Contract Management) including, but not limited to, providing such data and information as the Provider may be required to produce under the Contract.

44. **ANNUAL REVIEW**

44.1 On each anniversary of the Commencement Date, the Council shall be entitled to carry out a review of the Contract and of the Council's requirements for the Services. As a result of the review, the Council shall (in its discretion) be entitled to:

44.1.1 affirm that the Contract shall continue in accordance with its terms; or

44.1.2 reduce the Contract Period; or

44.1.3 exercise the option to terminate the Contract in accordance with Clause 54; or

44.1.4 require a reduction in the volume or scope of the Services (which shall take effect as a Variation in accordance with Clause 39) in return for a reduction in the Contract Price; or

44.1.5 require a reduction in the Contract Price, where there has been a reduction in the Council's budget for the provision of the Services.

44.2 The Council shall notify the Provider in writing of the results of the annual review and the Provider shall take all necessary steps to implement the review within 4 weeks of receiving such notice (or such other reasonable period as may be specified by the Council).

45. **ENTIRE AGREEMENT**

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

46. **COUNTERPARTS**

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

47. **LIABILITY AND INDEMNITY**

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

- 47.1.1 death or personal injury caused by its negligence; or
 - 47.1.2 Prohibited Act; or
 - 47.1.3 fraudulent misrepresentation; or
 - 47.1.4 any breach of any obligations implied by section 2 of the Supply of Goods and Services Act 1982.
- 47.2 Subject to Clause 47.3 and 47.4 the Provider shall indemnify the Council and keep the Council indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of:
 - 47.2.1 the supply, or the late or purported supply, of the Services or the performance or non-performance by the Provider of its obligations under the Contract;
 - 47.2.2 the act, omission or default of the Provider, any Sub-Contractor or any member of Staff including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by any such party; and
 - 47.2.3 any other loss which is caused directly or indirectly by any act or omission of the Provider.
- 47.3 The Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Council or by breach by the Council of its obligations under the Contract.
- 47.4 Subject to Clause 47.1, the Provider's liability under this agreement shall be limited to the amount stated in Contract Particulars.
- 48. **INSURANCE**
- 48.1 The Provider shall throughout the Contract Period effect and maintain with a reputable insurance company the following policies of insurance:
 - 48.1.1 public liability insurance; and
 - 48.1.2 employer's liability insurancewith the levels of indemnity cover for each claim stipulated in the Contract Particulars.
- 48.2 The Provider shall give the Council, on request, copies of all insurance policies referred to in this Clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 48.3 If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by the provisions of the Contract the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.
- 48.4 The provisions of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Contract.

48.5 Where stipulated in the Contract Particulars, the Provider shall effect the additional insurances stipulated in the Contract Particulars.

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

49. **WARRANTIES AND REPRESENTATIONS**

The Provider warrants and represents that:

49.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Provider;

49.1.2 in entering the Contract it has not committed any Prohibited Act;

49.1.3 as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the Contract;

49.1.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;

49.1.5 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;

49.1.6 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue;

49.1.7 it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;

49.1.8 in the three 3 years prior to the date of the Contract:

(a) it has conducted all financial accounting and reporting activities in compliance in all material respects with the

generally accepted accounting principles that apply to it in any country where it files accounts;

- (b) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- (c) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

50. TERMINATION FOR BREACH

50.1 The Council may terminate this agreement with immediate effect by the service of written notice on the Provider in the following circumstances:

- 50.1.1 if the 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 50.1 if the Provider has failed to remedy such breach within 28 days of receipt of notice from the Council (a **Remediation Notice**) to do so;
- 50.1.2 if a consistent failure has occurred;
- 50.1.3 if a catastrophic failure has occurred;
- 50.1.4 if a resolution is passed or an order is made for the winding up of the Provider (otherwise than for the purpose of solvent amalgamation or reconstruction) or the 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 Provider's property or equipment;
- 50.1.5 if the Provider ceases or threatens to cease to carry on business in the United Kingdom;
- 50.1.6 if there is a Change of Control of the Contractor to which the Council reasonably objects;
- 50.1.7 if this agreement has been subject to a substantial modification which would have required a new procurement procedure pursuant to regulation 72 of the Regulations;
- 50.1.8 if the Provider has, at the time of this agreement's award, been in one of the situations referred to in regulation 57(1) to (3) of the Regulations and should therefore have been excluded from the procurement procedure; or
- 50.1.9 if this agreement should not have been awarded to the Provider in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the EU in a procedure pursuant to Article 258 of TFEU.

50.2 The Council may terminate this agreement in accordance with the provisions of Clause 24 and Clause 58.

50.3 If this agreement is terminated by the Council for cause such termination shall be at no loss or cost to the Council and the 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.

51. TERMINATION ON INSOLVENCY AND/OR CHANGE OF CONTROL

51.1 The Council may terminate the Contract with immediate effect by notice in writing where the Provider is a company and in respect of the Provider:

51.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or

51.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or

51.1.3 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or

51.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or

51.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or

51.1.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or

51.1.7 being a "small company" within the meaning of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

51.1.8 any event similar to those listed in Clauses 51.1.1 -51.1.7 occurs under the law of any other jurisdiction.

51.2 The Council may terminate the Contract with immediate effect by notice in writing where the Provider is an individual and:

51.2.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Provider's creditors; or

51.2.2 a petition is presented and not dismissed within 14 days or order made for the Provider's bankruptcy; or

51.2.3 a receiver, or similar officer is appointed over the whole or any part of the Provider's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or

- 51.2.4 the Provider is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
 - 51.2.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider's assets and such attachment or process is not discharged within 14 days; or
 - 51.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or
 - 51.2.7 he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.
- 51.3 The Provider shall notify the Council immediately if the Provider undergoes a Change of Control. The Council may terminate the Contract by notice in writing with immediate effect within six months of being notified that a Change of Control has occurred; or
 - 51.3.1 where no notification has been made, the date that the Council becomes aware of the Change of Control,

but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.
- 52. **TERMINATION ON DEFAULT**
- 52.1 The Council may terminate the Contract by written notice to the Provider with immediate effect if the Provider commits a Default and if:
 - 52.1.1 the Provider has not remedied the Default to the satisfaction of the Council within 15 Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the Default and requesting it to be remedied; or
 - 52.1.2 the Default is not, in the opinion of the Council, capable of remedy; or
 - 52.1.3 the Default is a material breach of the Contract.
- 52.2 In the event that through any Default of the Provider, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Provider shall be liable for the cost of reconstitution of that data and shall reimburse the Council in respect of any charge levied for its transmission and any other costs charged in connection with such Default.
- 52.3 If the Council fails to pay the Provider undisputed sums of money when due, the Provider shall notify the Council in writing of such failure to pay. If the Council fails to pay such undisputed sums within 90 Working Days of the date of such written notice, the Provider may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Council exercising its rights under Clause 22 (Recovery of Sums Due).

53. TERMINATION NOTICE

- 53.1 Where the Council terminates the Contract under Clause 52 (Termination on Default), the Council may terminate this agreement at any time by giving three months' written notice to the Provider.

54. BREAK CLAUSE

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

- 54.2 Where the Council exercises its right to terminate the Contract under Clause 54.1, the Provider shall only be entitled to payment for Services duly rendered up to the date of termination and the Council shall incur no liability to the Provider in respect of any other losses whatsoever whether:

54.2.1 loss of future profits;

54.2.2 redundancy or Sub-Contractor breakage costs; or

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

55. CONSEQUENCES OF EXPIRY OR TERMINATION

- 55.1 Where the Council terminates the Contract under Clause 52 (Termination on Default):

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

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

- 55.2 Save as otherwise expressly provided in the Contract:

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

55.2.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Council or the Provider under Clauses 21 (Payment and VAT), 22 (Recovery of Sums Due), 24 (Prevention of Bribery and Corruption), 29 (Data Protection Act), 30 (Confidential Information), 31 (Freedom of Information), 34 (Intellectual Property Rights), 36 (Audit), 42 Remedies Cumulative), 47 (Liability and Indemnity), 48 (Insurance), 55 (Consequences of Expiry or Termination),

57 (Recovery upon Termination) and 60 (Governing Law and Jurisdiction).

56. DISRUPTION

- 56.1 The Provider shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Council, its employees or any other contractor employed by the Council.
- 56.2 The Provider shall immediately inform the Council of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- 56.3 In the event of industrial action by the Staff, the Provider shall seek Approval to its proposals to continue to perform its obligations under the Contract.
- 56.4 If the Provider's proposals referred to in Clause 56.3 are considered insufficient or unacceptable by the Council acting reasonably, then the Contract may be terminated with immediate effect by the Council by notice in writing.
- 56.5 If the Provider is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business of the Council, the Provider may request a reasonable allowance of time and in addition, the Council will reimburse any additional expense reasonably incurred by the Provider as a direct result of such disruption.

57. RECOVERY UPON TERMINATION

- 57.1 On the termination of the Contract for any reason, the Provider shall:
- 57.1.1 immediately return to the Council all Confidential Information, Personal Data and intellectual property materials in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Services;
 - 57.1.2 immediately deliver to the Council all Property (including materials, documents, information and access keys) provided to the Provider under Clause 17. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
 - 57.1.3 assist and co-operate with the Council to ensure an orderly transition of the provision of the Services to the Replacement Provider and/or the completion of any work in progress.
 - 57.1.4 promptly provide all information concerning the provision of the Services which may reasonably be requested by the Council for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Council or the Replacement Provider to conduct due diligence.
- 57.2 If the Provider fails to comply with Clause 57.1.1 and 57.1.2, the Council may recover possession thereof and the Provider grants a licence to the Council or its appointed agents to enter (for the purposes of such recovery) any premises of the

Provider or its permitted suppliers or Sub-Contractors where any such items may be held.

- 57.3 Where the end of the Contract Period arises due to the Provider's Default, the Provider shall provide all assistance under Clause 57.1.3 and 57.1.4 free of charge. Otherwise, the Council shall pay the Provider's reasonable costs of providing the assistance and the Provider shall take all reasonable steps to mitigate such costs.

58. FORCE MAJEURE

- 58.1 This Clause 58 shall apply where stipulated in the Contract Particulars.

- 58.2 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of 6 Months, either Party may terminate the Contract with immediate effect by notice in writing.

- 58.3 Any failure or delay by the Provider in performing its obligations under the Contract which results from any failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to Force Majeure only if that agent, Sub-Contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Provider.

- 58.4 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in Clause 58.2 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

59. DISASTER RECOVERY

- 59.1 This Clause 59 shall apply where stipulated in the Contract Particulars.

- 59.2 The Provider shall comply at all times with the relevant provisions of the Disaster Recovery Plan.

- 59.3 Following the declaration of a Disaster in respect of any of the Services, the Provider shall:

59.3.1 implement the Disaster Recovery Plan;

59.3.2 continue to provide the affected Services to the Council in accordance with the Disaster Recovery Plan; and

59.3.3 restore the affected Services to normal within the period laid out in the Disaster Recovery Plan.

- 59.4 To the extent that the Provider complies fully with the provisions of this Clause 59 (and the reason for the declaration of a Disaster was not breach of any of the other terms of this agreement on the part of the Provider), the Service Levels (if any) to which the affected Services are to be provided during the continuation of the

Disaster shall not be the Service Levels as referred to in Schedule 6 but shall be the Service Levels set out in the Disaster Recovery Plan or (if none) the best Service Levels which are reasonably achievable in the circumstances.

60. **GOVERNING LAW AND JURISDICTION**

Subject to the provisions of Clause 61, the Council and the Provider accept the exclusive jurisdiction of the English courts and agree that the Contract and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

61. **DISPUTE RESOLUTION**

61.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 10 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director (or equivalent) of each Party.

61.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

61.3 If the dispute cannot be resolved by the Parties pursuant to Clause 61.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 61.5 unless (a) the Council considers that the dispute is not suitable for resolution by mediation; or (b) the Provider does not agree to mediation.

61.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation and the Provider and the Staff shall comply fully with the requirements of the Contract at all times.

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

61.5.1 a neutral adviser or mediator (the “**Mediator**”) shall be appointed by the Centre for Effective Dispute Resolution.

61.5.2 The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure.

61.5.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

61.5.4 If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.

61.5.5 Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in

evidence in any proceedings relating to the Contract without the prior written consent of both Parties.

- 61.5.6 If the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

62. TRANSPARENCY

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

63. EXTREMISM AND RADICALISATION

- 63.1 This Clause is to be read in conjunction with Clause 13 (Safeguarding Children & Vulnerable Adults) and all requirements of that Clause are to be adopted herein.
- 63.2 The Provider must comply with the requirements and principles in relation to section 26 Counter Terrorism and Security Act 2015 and Prevent to include:
- 63.2.1 in its policies and procedures, and comply with, the principles contained in the Government Prevent Strategy, the Prevent Guidance and Channel Guidance; and
- 63.2.2 in relevant policies and procedures a programme to raise awareness of the Government Prevent Strategy among Staff and volunteers in line with the Contracting Authorities Prevent Training and Competencies Framework;
- 63.2.3 the Council's policies and procedures in relation to the Prevent agenda.

SCHEDULE 1
SPECIAL CONDITIONS

Not used

SCHEDULE 2
SERVICE SPECIFICATION

SCHEDULE 3
PRICING AND PAYMENT SCHEDULE

SCHEDULE 4

TENDER

SCHEDULE 5
SCHEDULE OF AGREEMENTS

Not Used

SCHEDULE 6

SERVICE LEVELS AND SERVICE CREDITS

Not used

SCHEDULE 7
CHANGE CONTROL

1. GENERAL PRINCIPLES

- 1.1 Where the Council or the Provider sees a need to change this Contract, the Council may at any time request, and the Provider may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 7.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Council and the Provider shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the Council and the Provider in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either Party.
- 1.4 Any Change-related work undertaken by the Provider and the Provider's Staff which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 7, shall be undertaken entirely at the expense and liability of the Provider. Should the Council not authorize such work the Provider may, at the Council's absolute discretion, be required to reverse such work and the cost for so doing will be borne by the Provider alone.

2. PROCEDURE

- 2.1 A Change request must be submitted to the Council's Contract manager in the case of a request by the Provider and to the Provider's manager in the case of a request by the Council.
- 2.2 Either Party may raise a change request in the form annexed (the "**Contract Change Control Form**"). All Contract Change Control Forms should where practicable be supported by additional information which should accompany the Contract Change Control Form. Where a Party requires additional information from the other Party in order to complete the Contract Change Control Form as fully as possible then that other Party shall respond to such request for additional information as soon as practicable and in any event shall use all reasonable endeavours to supply the necessary details within 3 Working Days, or such other timescales as may be agreed between the Parties.
- 2.3 The minimum information required to be submitted on the Contract Change Control Form is as follows:
 - (a) Date of Change request
 - (b) Name of Party making the change request
 - (c) Date of proposed implementation of Change request
 - (d) If appropriate, changes to the requirement, or any other aspect of this Contract to be changed
 - (e) Any changes to existing documentation or any new documentation that may be required

- (f) A description of the change or the new requirement (as appropriate).
- (g) Justification for making the Change
- (h) Detailed cost implications
- (i) Impact on exit plan
- (j) If necessary and so far as possible a description of any future impact analysis work to be undertaken together with anticipated time scales and costs if any.
- (k) So far as possible, a description of the impact of the Change or new requirement (as appropriate) quantified in terms of input required from each Party, timescales, performance and cost.

2.4 Discussions between the Council and the Provider concerning a Change shall result in any one of the following:

- (a) No further action being taken; or
- (b) A request to change this agreement by the Council; or
- (c) A recommendation to change this agreement by the Provider

2.5 Where a written request for an amendment is received from the Council, the Provider shall, unless otherwise agreed, submit two copies of a Change Control Form signed by the Provider to the Council within three weeks of the date of the request or such other timescales as may be agreed between the Parties.

2.6 A recommendation to amend this agreement by the Provider shall be submitted directly to the Council in the form of two copies of a Change Control Form signed by the Provider at the time of such recommendation. The Council shall give its response to the Change Control Form within three weeks or such other timescales as may be agreed between the Parties.

2.7 A Change Control Form signed by the Council and by the Provider shall constitute an amendment to this agreement.

Annex 1

Contract Change Control Form (“CCF”)

CCF NO.:

TITLE:

DATE RAISED:

ORIGINATOR:

REQUIRED BY DATE:

DETAILED DESCRIPTION OF CONTRACT CHANGE BEING PREPARED AND DETAILS OF ANY RELATED CONTRACT CHANGES:

DETAILED JUSTIFICATION FOR MAKING THE CHANGE:

PROPOSED ADJUSTMENT TO THE PRICING WITH DETAILED COSTINGS RESULTING FROM THE CONTRACT CHANGE:

DETAILS OF PROPOSED ONE-OFF ADDITIONAL PRICING AND MEANS FOR DETERMINING THESE – THESE WILL BE BASED ON PROVIDER COSTS PLUS ACCEPTABLE MARGIN:

DETAILS OF ANY PROPOSED CONTRACT AMENDMENTS:

DETAILS OF ANY KEY PERFORMANCE INDICATOR'S AFFECTED:

DETAILS OF IMPACT ON EXIT PLAN:

DETAILS OF IMPACT ON REQUIREMENT:

DETAILS OF IMPACT ON DOCUMENTATION :

DETAILS OF ANY OPERATIONAL SERVICE IMPACT:

DETAILED RISK ASSESSMENT:

EXECUTION AS A DEED

Executed as a Deed by the Council

The COMMON SEAL of

THE KENT COUNTY COUNCIL

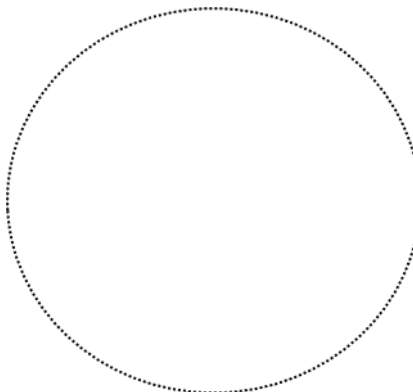
was affixed in the presence of:

.....

Authorised Signatory

.....

Print Name of Authorised Signatory



Executed as a Deed by the Provider

namely

(A) EXECUTED as a deed by the Provider acting by a Director and the Company Secretary / two Directors of the Company

.....

Print Name of Director

.....

Signature Director

.....

Print Name of Director / Company Secretary

.....

Signature Director / Company Secretary

(B) EXECUTED as a Deed by the Provider By affixing hereto the common seal **of the company**

The COMMON SEAL of

(PROVIDER'S NAME)

was affixed in the presence of

.....

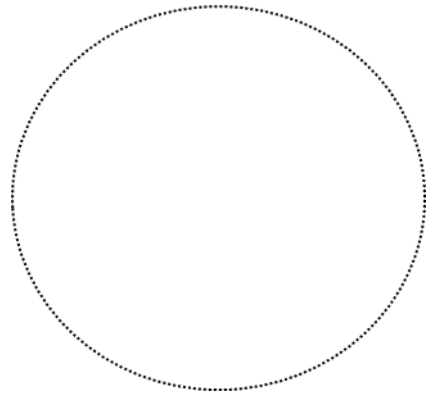
Signature Director

.....

Print Name of Director

.....

Signature Company Secretary/Director



.....

Print Name of Company Secretary/Director

(C) EXECUTED as a deed by the Provider by attested signature of a single Director **of the Company**

.....

Print Name of Director

.....

Signature Director

In the presence of

Witness' signature (Print Name)

Witness' address

Witness' occupation

(D) EXECUTED as a deed by the Provider by attested signature **of the individual**

.....

Print Name of Individual

.....

Signature Individual

In the presence of

Witness' signature (Print Name)

Witness' address

Witness' occupation

EXECUTION UNDER HAND

IN WITNESS whereof this Agreement has been executed by the Parties in accordance with their respective constitutions:

Signed for and on behalf of
THE KENT COUNTY COUNCIL

.....

Authorised Signatory

.....

Print Name of Authorised Signatory
Signed for and on behalf of

[THE PROVIDER] in the presence of:

.....

Authorised Signatory

.....

Print Name of Authorised Signatory

SCHEDULE 8

EXIT ARRANGEMENTS

1. General

- (a) The Provider acknowledges that it is of critical importance to the Council to ensure on termination or expiry of this Contract an orderly transfer of the Services either back to the Council or to a Replacement Provider and for this reason the Council relies significantly on the Provider fulfilling its obligations under this Schedule.
- (b) If this Contract is terminated in whole or part or expires in accordance with its terms, the Provider will, during the Exit Period, co-operate with the Council and where applicable any Replacement Provider to ensure the orderly migration of, and transfer of responsibility for, the Services.

2. Exit Obligations

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

3. Documentation and Due Diligence

- (a) During the Exit Period, the Provider will comply with any reasonable request by the Council for any information in relation to the Services to ensure the smooth transition of the Services. Following such a request the Provider will within two (2) days of such request make the relevant

information available to the Council for inspection or on the Council's authorisation to the Replacement Provider and shall within two (2) days of such inspection provide copies of the relevant information to the Council and/or (if so requested by the Council) the Replacement Provider.

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

4. Exit Manager

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

5. Exit Period

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

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

SCHEDULE 9
TUPE AND PENSIONS

Not used

SCHEDULE 10
PARENT COMPANY GUARANTEE

Not used

SCHEDULE 11
PERFORMANCE BOND

Not used

SCHEDULE 12

DISASTER RECOVERY PLAN

Schedule 12 – Disaster Recovery Plan

A Disaster Recovery Plan is obligatory and must contain the required information in accordance with the Civil Contingencies Act 2004. The Council is required to continue providing essential services at all times regardless of emergencies or business interruptions. Providers must have their own resilient contingency arrangements in place.

The provider is required to assist the Council in meeting these duties by:

- Developing and adopting a Business Continuity Plan which complies with the Civil Contingencies Act 2004;
- Operating the Business Continuity Plan for the duration of this Contract;
- Providing the Council with a copy of any such plan upon request.

It should be acknowledged that provider commitments under this contract shall include regular risk assessments and business impact analysis in relation to this Contract to be carried out on an annual basis or more frequently if the Council requests that additional testing be undertaken.

Disaster Recovery Plan must include but is not limited to the following:

Distribution list

Note all the individuals to whom the completed business continuity plan has been sent. Your list should include the number of their copy, along with their name and their location

Table of contents

This enables information in the plan to be located quickly. The number and name of the section should be given along with a page reference.

Aims and objectives

You should be clear about why you are completing this plan and what you aim to achieve if the plan is activated.

Considerations:

Your aim is to prepare your business to cope with the effects of an emergency or extended disruption;

- Your organisation must know how to act in the event of an emergency or crisis;
- You intend that your usual working patterns will recover as quickly as possible and with as little impact as possible;
- Specific objectives of the plan may be:
 - To prevent customers going elsewhere;
 - To ensure that your credit rating is unaffected; and

- To prevent cash-flow problems.

Note: requirements specific to your organisation should also be listed.

Critical Function Analysis and Recovery Process

- A critical function is an operation your business cannot survive without. Each of your 'critical functions' should be analysed, and you should assign a level of importance to each.
- You need to work out the effect of disruption of a 'critical function' over time - after 24 hours, between 24-48 hours, up to a week and up to two weeks.
- This allows you to identify the actions you may need to take in the short-term (immediately following an emergency) and in the long-term (to fully recover).
- You will also need to identify what resources, including people, will be required to recover your business from the emergency.

Priority List of Critical Functions

- In the event of an emergency or extended period of disruption you may need to refer to your list of priorities in order to prepare an Action Plan.
- This will serve as a reminder about which functions must be reinstated first and will be most crucial in the recovery process.
- By prioritising and organising in advance, your course of action will be clearer if a crisis occurs.

Emergency Response Checklist

- This should include all actions that need to be completed to ensure the most efficient method of recovery. You will need to note who has completed each action, and the date it was completed.

Actions may include:

- Liaison with emergency services;
- Noting damage to the organisation, including staff, premises, equipment, data or records;
- Identification of disrupted "critical functions"; and
- Provision of briefings to staff, customers, public and interested parties.

Key Contacts lists

- You should keep a list of people who need to be informed in case of an emergency, or will need to be involved in action planning following a disruption.
- Details should include name, email, mobile number and other details as appropriate. Next of kin details for staff members within your organisation may also be relevant.

Layout/map

- You should consider including with your business continuity document up-to-date plans of any premises your organisation may occupy.

- This is of use to the emergency services and should include locations of main water stop-cock; switches for gas and electricity supply; any hazardous substances; and items that would have priority if salvage became a possibility.

Emergency Pack

- As part of the recovery plan for your organisation, you should hold copies of all important documents, records and/or equipment off-site. Their location should be recorded in your business continuity plan.
- This emergency pack may be crucial to the recovery process.

Expenses Log

- All expenses incurred should be recorded. Details of who made the decision and reasons why should be given.

Keep your plan up to date.

Your organisation should not only prepare a business continuity plan, but must ensure it is kept up to date. Plans should be updated:

- If there are any changes to your organisation, including restructuring;
- If you change the method of delivery of your critical activities;
- If there is a change to the external environment in which the organisation operates;
- With lessons learned from an incident or exercise; and
- If there are changes to staff.

SCHEDULE 13

COMMERCIALLY SENSITIVE INFORMATION

SCHEDULE 14
CONTRACT MANAGEMENT

SCHEDULE 15
MOBILISATION AND TRANSITION

Not used

SCHEDULE 16
INTERFACE AGREEMENT

Not used

SCHEDULE 17

CALDICOTT PRINCIPLES

Part A Summary of the 6 Caldicott General Principles

Principle 1: Justify the purpose(s)

Every proposed use or transfer of personally-identifiable information within or from an organisation should be clearly defined and scrutinised with continuing uses regularly reviewed by an appropriate Guardian.

Principle 2: Don't use personally identifiable information unless it is absolutely necessary

Personally identifiable information items should not be used unless there is no alternative.

Principle 3: Use the minimum necessary personally identifiable information

Where use of personally identifiable information is considered to be essential each individual item of information should be justified with the aim of reducing identifiability.

Principle 4: Access to personally-identifiable information should be on a strict need to know basis

Only those individuals who need access to personally identifiable information should have access to it and they should only have access to the information items that they need to see.

Principle 5: Everyone should be aware of their responsibilities

Action should be taken to ensure that those handling personally identifiable information – both practitioner and non-practitioner staff – are aware of their responsibilities and obligations to respect an individual's confidentiality.

Principle 6: Understand and comply with the law

Every use of personally-identifiable information must be lawful. Someone in each organisation should be responsible for ensuring that the organisation complies with legal requirements.

Part B Information Governance

Information Security Requirements

The Provider shall apply appropriate technical and organisational measures to adequately secure the Council's personal data during processing, storage and transfer. These measures must fulfil the Council's legal obligation to comply with data protection principle 7 (Information Security) of the Data Protection Act 1998. In furtherance of this the Provider shall indemnify the council for loss or damages caused by any action, authorised or unauthorised, taken by himself, his employees, servants, agents or Sub-Contractors.

1. Information security policy shall be in place, approved by management, communicated to employees and Sub-Contractors and available for inspection.
2. Information security responsibilities shall be assigned to one or more competent individuals.
3. The Provider shall notify the Council's Information Security Officer of any incidents of breach or loss of the Council's data as soon as reasonably practical and in any case no later than 72 hours after becoming aware of an incident.
4. Background checks are undertaken and employment contracts and sub-contracts include appropriate terms, conditions and disciplinary sanctions to minimise risks to the confidentiality and integrity of Council data.
5. Business continuity / Disaster recovery plan(s) shall be in place (or will be at service commencement) to address unavailability event(s) or incident(s).
6. The Provider shall comply with any reasonable request for change to its service that is required to ensure the council's continued compliance with the Public Service Network (PSN) Code of Connection (CoCo). This applies a baseline security standard to which all PSN connected parties are required to adhere.
7. Appropriate controls shall be in place to protect Council data from malicious code or cyber-attacks.
8. Assets storing or processing Council data shall be appropriately protected against physical tampering, loss, damage or seizure.
9. Audit logs shall record relevant user activity, exceptions and information security events such that incidents or suspicious activity can be adequately investigated and attributed.
10. Measures shall be in place to identify and treat technical vulnerabilities (e.g. patching and updates) in a timely and appropriate manner.
11. Controls shall be in place to ensure other customers of your service are unable to access the Council's data or threaten its service (either maliciously or as a result of their own service being compromised).
12. Controls shall be in place to minimise the risk of portable or online storage devices and/or services being used by the Provider's employees or Sub-Contractor for the unauthorised copying or removal of Council data.
13. Provider employee and Sub-Contractor accounts shall be revoked in a timely manner in the event of termination of employment or change of role.
14. System Administrator accounts shall not be shared and shall only be allocated to named individuals who are accountable for their actions.

15. User accounts shall be created or revoked in a timely manner in response to requests from the Council or on your termination of employee agent or Sub-Contractor.
16. Secure Remote Access shall be available as an option.
17. The Provider shall agree to supply to the Council personal information relating to employees, agents and sub-Provider s with access to Council information for the purpose of completing background checks in accordance with our obligations under PSN CoCo.
18. The Provider's employees, agents and sub-Provider s shall complete specialist data protection training designed for those who handle data at this classification within the first six months of service commencement.
19. Networks shall be managed and controlled in a way that is appropriate to this classification of data.
20. Measures shall be in place to enable the detection and attribution of misuse or unauthorised activity.

Cloud Security Requirements

The Provider shall comply with ALL of the following requirements for any part of their service that uses web hosting, web applications or cloud services:

Requirements for OFFICIAL or Personal Data	
1.	User access via browsers shall be configured to use HTTPS security and using Transport Layer Security version 1.2 as a minimum (TLS1.2).
2.	Cryptography certificates shall be issued by a current member of the Certificate Authority Security Council (CASC).
3.	A Penetration Test of web facing services shall be performed by a CREST registered tester and high risk issues remediated before service commencement.
4.	Appropriate controls shall be in place to protect Council data from malicious code or cyber-attacks.
5.	Appropriate technical controls shall be in place to protect Council data in the event of the theft, loss or transfer of ownership of a privately owned device previously used to access the service.
6.	Two-factor authentication (2FA) shall available as an option.

**Requirements for
OFFICIAL-SENSITIVE or Sensitive Personal Data¹ or CONFIDENTIAL INFORMATION²**

1. Extended Validation (EV or Green Bar) cryptography certificates shall be provided (or will be at service commencement) by a current member of the Certificate Authority Security Council (CASC).
2. The Provider shall supply to the Council such personal information relating to employees with access to Council data in this classification as is necessary for background checks to be initiated as required for the council to comply with its PSN Code of Connection.
3. The Provider's employees will complete specialist data protection training designed for those who handle data at this classification within the first six months of service commencement.
4. Networks shall (or will at service commencement) be managed and controlled in a way that is appropriate to this classification of data.
5. Web applications and/or Cloud services shall (or will be prior to service commencement) be penetration tested by a CREST approved Provider at annual intervals. Test results shall be made available to the contracting Council on request.
6. Two-factor authentication (2FA) shall be provided.

¹ 'Sensitive Personal Data' means Data Protection Act definition relating to an individual's health, race, ethnicity, political or religious beliefs.

² 'Confidential Information' relates to an individual's health or ADULT social care (Health and Social Care Act 2012).