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|  | **DATED**  | **2019** |
|  |  |  |
|  | Lincolnshire County Council | **(1)** |
|  | and |  |
|  | [THE CONTRACTOR] | **(2)** |

|  |  |  |
| --- | --- | --- |
|  | **CONTRACT** relating to the Provision of Waste Material Reception Services in Lincolnshire |  |





Legal Services Lincolnshire

County Offices

Newland

LN1 1YL

THIS **CONTRACT** is made the day of 2019
BETWEEN

(1) **LINCOLNSHIRE COUNTY COUNCIL** of County Offices, Newland, Lincoln, LN1 1YL (the “Council”)

and

(2) **[INSERT NAME OF CONTRACTOR]** [Registered Company Number: ] whose registered office is situated at [ ] (the “Contractor”)

WHEREAS

1. The Council requires the disposal of material waste [details of Lot] from its Household Waste Recycling Centre(s) in Lincolnshire ("the Services") details of which are more particularly set out in the Specification at Schedule 1.
2. The Contractor has successfully tendered and been admitted upon the Provider List of the Dynamic Purchasing System to provide such Services

1. Following a call for competition from the Provider List operated on the Dynamic Purchasing System the Contractor has successfully tendered for and is willing to provide such Services in accordance with the Conditions of this Agreement.

1. The Council shall transfer the ownership and value in any waste which the Contractor accepts as part of the Services, as well as make to the Contractor the payments provided for in this Agreement in consideration for the Contractor's performance of their obligations under this Contract to the satisfaction of the Council.

1. The Contractor has agreed to provide the Services on the terms and conditions set out below.

IT IS HEREBY AGREED as follows:

GENERAL PROVISIONS

**A1 Definitions and Interpretation**

A1.1 In this Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:

 **Authority** or **Council** means Lincolnshire County Council.

**Authority’s Partners** means anyone to whom the contractor provides the service as detailed in this contract and directed by the authority to dispose of waste at the Authorities Facility.

**Authority Premises** means any Premises of the Council accessed by or made available to the Contractor by the Council in connection with the Agreement or the delivery of the Services

**Authority's Personnel** means an Individual from Environmental Services (Waste) to manage the Operation of the contract and service.

**Approval** means the prior written consent of the Council.

**Assets** means any moveable property such as furniture, IT equipment and any other tangible item provided by the Council for use by the Contractor in providing the Services.

**Best Value Duty** means the duty imposed on the Authority by Part 1 of the 1999 Act and under which the Authority is under a statutory duty to continuously improve the way its functions are exercised, having regard to a combination of economy, efficiency and effectiveness and to the guidance issued from time to time by the Secretary of State, the Audit Commission and the Chartered Institute of Public Finance and Accountancy pursuant to, or in connection with, Part 1 of the 1999 Act.

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

**Change** means any variation to this Contract including to any of the Services and Service Levels.

**Change Control Procedure** means the procedure for changing this Contract as set out in Clause F3.

**Commencement Date** means the [INSERT DATE]

 **Commercially Sensitive Information** means any Party's information that:

(a) if disclosed, could prejudice the other Party's commercial interests; and/or

(b) constitutes a trade secret.

**Confidential Information** means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA.

 **Contract** means this written agreement between the Council and the Contractor consisting of these clauses and the attached Schedules.

 **Contracting Authority** means any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015.

 **Contract Period** means the period from the Commencement Date to:

(a) the date of expiry in accordance with Clause A2 (Initial Contract Period), or

(b) following an extension pursuant to Clause A2.2, the date of expiry of the extended period,

or such earlier date of termination or partial termination of the agreement in accordance with the Law or the provisions of this Contract.

 **Contract Year** means a period of twelve (12) Months commencing on the Commencement Date and/or each anniversary of the Commencement Date.

 **Contractor** means the person, firm or company with whom the Council enters into this Contract including the Contractor's Staff, agents and contractors, including each Sub-Contractor.

 **Contractor Change Control Notice** means a notice served by the Contractor on the Council requesting a Change in accordance with Clause F3.

 **Contractor’s Representative** means the person identified as such in part 2 of Schedule 5 or any replacement person appointed by the Contractor pursuant to Clause B4, as the person responsible for managing the Contractor’s overall relationship with the Council.

 **Contractor’s Contract Manager** means the person identified as such in Part 2 of Schedule 5 or any replacement person appointed by the Contractor pursuant to Clause B4, being the person responsible for managing the delivery of the Services on behalf of the Contractor.

 **Conviction** means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1 (1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being made the subject of a prohibition or restriction under section 218(6) of the Education Reform Act 1988).

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

 **Council’s Change Control Notice** means a notice served by the Council on the Contractor requesting a Change in accordance with Clause F3.

 **Council's Personal Data** means the Personal Data supplied by the Council to the Contractor for the purposes of or in connection with the Contract.

 **Council’s Representative** means the person identified as such in Part 1 of Schedule 5 or any replacement person appointed by the Council pursuant to Clause B4, being the person responsible for managing the overall relationship with the Contractor.

 **Data Protection Legislation** means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time; (ii) the DPA to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy.

 **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 this Contract and in respect of which such Party is liable to the other.

 **Disaster** means an unplanned interruption of, or inaccessibility to, the Services provided by the Contractor.

 **DPA** means the Data Protection Act 2018 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.

 **Dynamic Purchasing System** means the dynamic purchasing system in relation to waste treatment created and maintained by the Council

 **Employment Checks** means the pre-appointment checks that are required by Law and applicable guidance, including without limitation, v[erification of identity checks](http://www.nhsemployers.org/RecruitmentAndRetention/Employment-checks/Employment-Check-Standards/Pages/VerificationOfIdentityChecks.aspx), r[ight to work checks,](http://www.nhsemployers.org/RecruitmentAndRetention/Employment-checks/Employment-Check-Standards/Pages/RightToWorkChecks.aspx) [registration and qualification checks,](http://www.nhsemployers.org/RecruitmentAndRetention/Employment-checks/Employment-Check-Standards/Pages/Registrationandqualificationchecks.aspx) e[mployment history and reference checks, c](http://www.nhsemployers.org/RecruitmentAndRetention/Employment-checks/Employment-Check-Standards/Pages/Employmenthistoryandreferencechecks.aspx)[riminal record checks](http://www.nhsemployers.org/RecruitmentAndRetention/Employment-checks/Employment-Check-Standards/Pages/CriminalRecordChecks.aspx)and [occupational health checks](http://www.nhsemployers.org/RecruitmentAndRetention/Employment-checks/Employment-Check-Standards/Pages/OccupationalHealthChecks.aspx) and the Contractor shall ensure that these meet the Council's Disclosure and Barring Service Policy which is available at [http://www.lincolnshire.gov.uk/jobs/manuals/employment-manual/recruitment-selection-and-induction/recruitment-and-selection-policy-(incorporating-safer-recruitment)/87476.article](http://www.lincolnshire.gov.uk/jobs/manuals/employment-manual/recruitment-selection-and-induction/recruitment-and-selection-policy-%28incorporating-safer-recruitment%29/87476.article)

 **Enhanced DBS & Barred List Check** means an Enhanced DBS & Barred List Check (child) or Enhanced DBS & Barred List Check (adult) or Enhanced DBS & Barred List Check (child & adult) (as appropriate) and the Contractor shall ensure that these meet the Council's Disclosure and Barring Service Policy.

 **Enhanced DBS Position** means any position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended), which also meets the criteria set out in the Police Act 1997 (Criminal Records) Regulations 2002 (as amended), and in relation to which an Enhanced DBS Disclosure or an Enhanced DBS & Barred List Check (as appropriate) is permitted as set out in the Council's Disclosure and Barring Service Policy.

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

**Equality Legislation** means the Equality Act 2010 and such other acts and legislation to ensure, among others equality of access to goods and services, promotion of good relations between groups in society, the provision of reasonable adjustments for people with disabilities and equality in employment.

 **Equipment** means the Contractor’s equipment, plant, and/or materials used by the Contractor in the performance of its obligations under this Contract.

 **Escalated Remediation Notice** means a written notice given by the Council to the Contractor pursuant to Clause H7A.1 to initiate the Remediation Plan Process.

 **Escalated Remediation Plan Process** means the process for resolving certain Defaults of the Contractor as set out in Clause H7A.

 **Final Disposal** means any method which renders, or is designed to render, the waste disposed of irretrievable.

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

 **Fraud** means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this Contract or defrauding or attempting to defraud or conspiring to defraud the Council.

 **GDPR** means the General Data Protection Regulation (*Regulation (EU) 2016/679)*.

 **General Change in Law** means a change in Law which comes into effect after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Contractor) or which would affect or relate to a comparable supply of services of the same or a similar nature to the supply of the Services.

**Hazardous Waste** has the meaning given to it in the Environmental Protection Act 1990 and the Hazardous Waste (England and Wales) Regulations 2005

 **HWRC** is the abbreviation for Household Waste Recycling Centre

 **Good Industry Practice** means standards, practices, methods and procedures (as practised in the United Kingdom) and conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced service provider, manager, operator or other person (as the case may be) engaged in a similar type of undertaking under this Contract under the same or similar circumstances.

 **Information** has the meaning given under section 84 of the FOIA. Information Commissioner's Office means the office of the Information Commissioner whose role is to uphold information rights in the public interest, and responsible for data protection in England, Scotland and Wales in accordance with provisions set out in Section 6 of the DPA.

**Initial Contract Period** means the period from the Commencement Date to the date of expiry set out in Clause A2 (Initial Contract Period), or such earlier date of termination of the Contract in accordance with the Law or the provisions of the Contract.

 **Key Personnel** means those persons identified in Schedule 5 for the roles attributed to such personnel.

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

**LED** means the Law Enforcement Directive *(Directive (EU) 2016/680)*.

**Losses** means all demands, losses, charges, damages, costs and expenses and other liabilities (including, but not limited to, any professional and/or legal costs and disbursements).

**MDR** means Mixed Dry Recyclable material

 **Month** means calendar month.

 **Party** means a party to this Contract and the term Parties shall be construed accordingly.

 **Performance Deduction** means any deduction to the Service Charges calculated in accordance with the Performance Management Framework and Schedule 2.

**Performance Default Points** means the points to be applied for a Service Failure as set out in the Performance Management Framework

**Performance Management Framework** means the performance monitoring system set out at Schedule 3.

 **Premises** means any location where the whole or any part of the Services are to be performed whether Authority Premises or premises of the Contractor.

**Pricing Schedule** means the Schedule 2 containing details of the Service Charges.

Prohibited Act each of the following constitutes a Prohibited Act:

(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 Contract;

(c) committing any offence:

(i) under the Bribery Act;

(ii) under legislation creating offences concerning fraudulent acts;

(iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the Council; or

(iv) defrauding, attempting to defraud or conspiring to defraud the Council.

 **Provider List** means the list of contractors who have been accepted onto the Dynamic Purchasing Systemand are eligible to bid in any further competition for services similar to the Services, in accordance with the terms of the Dynamic Purchasing System

 **Public Contracts Regulations** means the Public Contracts Regulations 2015 which implemented the European Union Directive 2014/24/EU into English law with effect from 26 February 2015.

 **Quality Standards** means the quality standards published by BSI British Standards, 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 Contractor 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 detailed at Clause A5.3 or at any other address given by the Council to the Contractor for the submission of invoices.

**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 this Contract or any other affairs of the Council and “Regulatory Body” shall be construed accordingly.

 **Remediation Notice** means a written notice given by the Council to the Contractor pursuant to Clause H7.1 to initiate the Remediation Plan Process.

 **Remediation Plan** means the plan agreed in accordance with Clause H7 for the resolution of a Default of the Contractor.

 **Remediation Plan Process** means the process for resolving certain of the Defaults of the Contractor as set out in Clause H7.

**Replacement Contractor** 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 this Contract.

**Request for Information** shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply).

**Schedule** means a schedule attached to, and forming part of, this Contract.

**Services** means the services to be supplied as specified and detailed in the Specification at Schedule 1

 **Service Charges** means the charges levied by the Contractor for the Services in accordance with the tariffs, scales, charges, invoicing methods and terms of payment as set out in this Contract including Schedule 2.

**Service Failure** means a failure by the Contractor to deliver any part of the Services in accordance with the Service Levels

**Service Levels** means the levels to which the Services are to be performed as detailed in the Performance Management Framework.

**Specific Change in Law** means a change in Law which comes into effect after the Commencement Date that relates specifically to the business of the Authority, and which would not affect a comparable supply of services of the same or a similar nature to the supply of the Services.

**Specification** means the description of the Services to be supplied under this Contract as set out in Schedule 1.

**Staff** means all persons employed by the Contractor to perform its obligations under this Contract together with the Contractor’s servants, agents, Contractors and Sub-Contractors used in the performance of its obligations under this Contract.

**Staff Vetting Procedure** means the Council’s procedures for the vetting of Staff and as advised to the Contractor by the Council available at [http://www.lincolnshire.gov.uk/jobs/manuals/employment-manual/recruitment-selection-and-induction/recruitment-and-selection-policy-(incorporating-safer-recruitment)/87476.article](http://www.lincolnshire.gov.uk/jobs/manuals/employment-manual/recruitment-selection-and-induction/recruitment-and-selection-policy-%28incorporating-safer-recruitment%29/87476.article).

 Sub-Contract means any contract or agreement, or proposed contract or agreement between the Contractor and any third party whereby that third party agrees to provide to the Contractor the Services or any part of the Services, or facilities or services necessary for the provision of the Services or any part of the Services, or necessary for the management, direction or control of the Services or any part of the Services.

Sub-Contractor means the third parties that enter into a Sub-Contract with the Contractor.

**Tender** means the document(s) submitted by the Contractor to the Council in response to the Council’s invitation to Contractors for formal offers to supply it with the Services.

**VAT** means value added tax in accordance with the provisions of the Value Added Tax Act 1994.

**WDMS** means Waste Data Management System

 **WTS** means waste transfer station.

**Working Day** means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

A1.2 The interpretation and construction of this Contract shall be subject to the following provisions:

(a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;

(b) words importing the masculine include the feminine and the neuter;

(c) reference to a clause is a reference to the whole of that clause unless stated otherwise;

(d) 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;

(e) 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;

(f) the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and

(g) headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract.

(h) Where there is any conflict or inconsistency between the provisions of this Contract such conflict or inconsistency shall be resolved according to the following order of priority:

(i) the clauses of this Contract;

(ii) Schedule 1; and

(iii) the remaining Schedules to this Contract

**A2 Contract Period**

A2.1 This Contract shall take effect on the Commencement Date and shall expire at midnight on [INSERT DATE] unless it is otherwise terminated in accordance with the provisions of this Contract, or otherwise lawfully terminated, or extended under Clause A2.2.

A2.2 The Council may, extend this Contract on the same terms for a further period of [INSERT EXTENSION PERIOD] as agreed with the Contractor. The provisions of this Contract shall apply (subject to any variation or adjustment to the Service Charges pursuant to Clause C4 (Price adjustment on extension of the Initial Contract Period)) throughout any such extended period.

**A3 Contractor’s Status**

A3.1 At all times during the Contract Period the Contractor shall be an independent contractor and nothing in this 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 this Contract.

**A4 Council’s Obligations**

A4.1 Save as otherwise expressly provided, the obligations of the Council under this Contract are obligations of the Council in its capacity as a contracting counterparty and nothing in this Contract shall operate as an obligation upon, or in any other way fetter or constrain the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under this Contract (howsoever arising) on the part of the Council to the Contractor.

**A5 Notices**

A5.1 Except as otherwise expressly provided within this Contract, no notice or other communication from one Party to the other shall have any validity under this Contract unless made in writing by or on behalf of the Party concerned.

A5.2 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 A5.3. 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.

A5.3 For the purposes of Clause A5.2, the address of each Party shall be:

(a) For the Council: [ ]

Address:

For the attention of:

Tel:

Email:

(b) For the Contractor: [ ]

Address:

For the attention of:

Tel:

Email:

A5.4 Either Party may change its address for service by serving a notice in accordance with this clause.

**A6 Mistakes in Information**

 A6.1 The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Council by the Contractor in connection with the supply of the Services and shall pay the Council any extra costs occasioned by any discrepancies, errors or omissions therein.

**A7 Conflicts of Interest**

A7.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any of the Contractor’s Staff are 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 Contractor and the duties owed to the Council under the provisions of this Contract. The Contractor shall disclose to the Council full particulars of any such conflict of interest which may arise.

A7.2 The Council reserves the right to terminate this 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 Contractor and the duties owed to the Council under the provisions of this 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.

**A8 VOLUMES**

A8.1 The Contractor acknowledges that no guarantee is given by the Council in respect of levels or values of Services referred to in the Schedules which are indicative only and shall not be binding on the Council.

SUPPLY OF SERVICES

**B1 The Services**

B1.1 The Contractor shall supply the Services during the Contract Period in accordance with the Council’s requirements as set out in the Specification and the provisions of this Contract in consideration of the transfer of the value of waste forming part of the Services and the payment of the Service Charges. The Council may inspect and examine the manner in which the Contractor supplies the Services at any Premises during normal business hours on reasonable notice.

B1.2 If the Council informs the Contractor in writing that the Council reasonably believes that any part of the Services does not meet the requirements of this Contract or differ in any way from those requirements, and this is other than as a result of a Default by the Council, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of this Contract within such reasonable time as may be specified by the Council.

B1.3 Subject to the Council providing written consent in accordance with Clause B2.2 (Provision and Removal of Equipment), timely supply of the Services shall be of the essence of this Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.

**B2 Provision and Removal of Equipment**

B2.1 All Equipment brought onto the Authority Premises shall be at the Contractor’s own risk and the Council shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Council’s Default.

B2.2 The Contractor shall maintain all items of Equipment brought onto the Authority Premises in a safe, serviceable and clean condition.

B2.3 The Contractor shall, at the Council’s written request, at its own expense and as soon as reasonably practicable:

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

(b) replace such item with a suitable substitute item of Equipment.

B2.6 On completion of the Services the Contractor shall remove the Equipment together with any other materials used by the Contractor and shall leave the Authority Premises in a clean, safe and tidy condition.

**B3 Manner of Carrying Out the Services**

B3.1 The Contractor shall perform its obligations under this Contract in accordance with the Law and Good Industry Practice.

**B4 Key Personnel**

B4.1 Each Party shall appoint the persons named as such in Schedule 5 as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those individuals who are identified by each Party as being key to the success of the delivery and operation of the Services and who shall be retained on the delivery and operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of their respective Party on matters for which they are expressed to be responsible.

B4.2 The Contractor acknowledges that the Contractor’s Key Personnel are essential to the proper provision of the Services to the Council.

B4.3 The Contractor’s 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.

B4.4 The Contractor shall ensure that the role of each of its Key Personnel is not vacant for more than ten (10) Working Days. Any replacements to the Contractor’s 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 Contractor’s Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services. A temporary replacement shall be identified with immediate effect from the Contractor becoming aware of the role becoming vacant.

B4.5 The Council shall not unreasonably withhold its agreement under Clauses B4.3 or B4.4. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on this Contract which could be caused by a change in Contractor’s Key Personnel.

B4.6 The Council may require the Contractor to remove or procure the removal of any of the Contractor’s Key Personnel whom the Council considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on delivery or management of the delivery of Services.

**B5 Contractor’s Staff**

B5.1 The Contractor shall ensure that it employs at all times a sufficient number of Staff for the delivery of the Services, who are competent, suitably qualified or suitably trained and experienced in the delivery of Services including any specialist based training that is required for the proper delivery of the Services.

B5.2 The Contractor shall notify its entire Staff about the Contractor’s obligations under the terms of this Contract and about any applicable Law.

B5.3 Upon receipt of a complaint against a member of Staff, the Council may, to the extent reasonably necessary to protect the standards and reputation of the Council, in consultation with the Contractor, request that the Contractor investigates the complaint and provides the Council with all requested information in relation to this investigation, in accordance with the Contractor’s own internal policy and procedures and Good Industry Practice.

B5.4 In the event of industrial disputes or action by any of the Staff, it remains the Contractor’s responsibility to meet the requirements of this Contract. The Contractor shall inform the Council immediately of impending or actual industrial disputes or action, which may affect the Contractor’s ability to deliver the Services and of the Contractor’s contingency plans for dealing with such disputes or action.

B5.5 The Council may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Authority Premises:

(a) any member of Staff; or

(b) any person employed or engaged by the Contractor,

 whose admission or continued presence would, in the reasonable opinion of the Council, be undesirable.

B5.6 At the Council’s written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in connection with this Contract to the Authority Premises, specifying the capacities in which they are concerned with this Contract and giving such other particulars as the Council may reasonably request.

B5.7 The Staff, engaged within the boundaries of the Authority Premises, shall comply with such rules, regulations 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 Authority Premises.

B5.8 The Contractor shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Services. The Contractor confirms that all persons employed or engaged by the Contractor were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.

B5.9 Subject to Clause B5.10, before the Contractor engages or employs any person in the provision of the Services, or in any activity related to, or connected with, the provision of the Services, the Contractor shall without limitation, complete:

1. the Employment Checks; and
2. if appropriate such other checks as required by the Council's Staff Vetting Procedure.

B5.10 Subject to Clause B5.11, the Contractor may engage a person in an Enhanced DBS Position (as applicable) pending the receipt of the Enhanced DBS & Barred List Check (as appropriate) with the agreement of the Council.

B5.11 Where Clause B5.10 applies, the Contractor shall ensure that until the Enhanced DBS & Barred List Check (as appropriate) is obtained, the following safeguards shall be put in place:

(a) an appropriately qualified and experienced member of Staff is appointed to supervise the new member of Staff; and

(b) wherever it is possible, this supervisor is on duty at the same time as the new member of Staff, or is available to be consulted; and

1. the new member of Staff is accompanied at all times by either the appointed supervisor or a member of Staff who has already been subjected to the Staff Vetting Procedure whilst providing the Services under this Contract; and
2. any other reasonable requirement of the Council.

B5.12 The Contractor shall (unless and to the extent agreed otherwise by the Council in writing) conduct such questioning and investigation as is reasonable regarding any Convictions, where the above required checks reveal a Conviction.

B5.13 Without prejudice to the provisions of this Clause B5 the Contractor shall not engage or continue to utilise in the provision of the Services involving or which are likely to involve access to children, vulnerable persons or other members of the public to whom the Council owes a special duty of care, any member of Staff whose Conviction means it would reasonably be regarded as inappropriate for them to be conducting such activity.

B5.14 If the Contractor fails to comply with Clause B5 and in the reasonable opinion of the Council, such failure may be prejudicial to the interests of the Council, then the Council may terminate this Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

B5.15 The decision of the Council as to whether any person is to be refused access to the Authority Premises and as to whether the Contractor has failed to comply with Clause B5 shall be final and conclusive.

**B6 Inspection of Premises**

B6.1 Save as the Council may otherwise direct, the Contractor 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.

**B7 Not Used**

**B8 Not Used**

**B9 Offers of Employment**

B9.1 For the duration of this Contract and for a period of twelve (12) Months thereafter neither the Council nor the Contractor shall employ or offer employment to any of the other Party’s staff who have been associated with the procurement and/or the contract management of the Services without that other Party’s prior written consent.

**B10 TUPE**

B10.1 The Parties hereby acknowledge that, pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended (“TUPE”), there may be a relevant transfer on the Commencement Date and the contracts of employment of those employees (by whomever employed) who are wholly or mainly assigned in the provision of services the same as or similar to the Services immediately before the Commencement Date (“the Transferring Employees”) shall take effect as if originally made between the Contractor and the employees (save for those who object pursuant to Regulation 4(7) of TUPE).

B10.2 In the event that a relevant transfer occurs, the Contractor shall be responsible for all emoluments and outgoings in respect of the Transferring Employees (including without limitation, all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions and pension contributions) which are attributable in whole or in part to the period after the Commencement Date (including any bonuses, commission, premiums, subscriptions and any other prepayments which are payable before the Commencement Date but which are attributable in whole or in part to the period after the Commencement Date).

B10.3 The Contractor shall fully and accurately disclose to the Council all information that the Council may reasonably request in relation to the Staff including the following:

(a) the total number of the Staff whose employment/engagement shall terminate at the end of the Contract Period, save for any operation of Law; and

(b) the age, gender, salary or other remuneration, future pay settlements and redundancy and pension entitlements of the Staff referred to in Clause B10.3(a); and

(c) the terms and conditions of the employment/engagement of the Staff referred to in Clause B10.3(a), their job titles and qualifications; and

(d) details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; and

(e) details of all collective agreements with a brief summary of the current state of negotiations with such bodies and with details of any current industrial disputes and claims for recognition by any trade union.

B10.4 At intervals to be stipulated by the Council (which shall not be more frequent than every thirty days) immediately prior to the end of the Contract Period the Contractor shall deliver to the Council a complete update of all such information which shall be disclosable pursuant to Clause B10.3

B10.5 At the time of providing the disclosed information pursuant to Clauses B10.3 and B10.4, the Contractor shall warrant the completeness and accuracy of all such information and the Council may assign the benefit of this warranty to any Replacement Contractor.

B10.6 The Council may use the information it receives from the Contractor pursuant to Clauses B10.3 and B10.4 for the purposes of TUPE and/or any retendering process in order to ensure an effective handover of all work in progress at the end of the Contract Period. The Contractor shall provide the Replacement Contractor with such assistance as it shall reasonably request.

B10.7 The Contractor shall indemnify and keep indemnified and hold the Council and the Crown (both for themselves and any Replacement Contractor) harmless from and against all Losses which the Council or the Crown or any Replacement Contractor may suffer or incur as a result of or in connection with:

(a) the provision of information pursuant to Clause B10; and

(b) any claim or demand by any Returning Employee as defined under TUPE (whether in contract, tort, under statute, pursuant to European Law or otherwise) in each and every case arising directly or indirectly from any act, fault or omission of the Contractor in respect of any Returning Employee on or before the end of the Contract Period; and

(c) any failure by the Contractor to comply with its obligations under Regulation 13 or 14 of TUPE or any award of compensation under Regulation 15 of TUPE save where such failure arises from the failure of the Council or a Replacement Contractor to comply with its duties under Regulation 13 of the Regulations; and

(d) any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Returning Employees as defined under TUPE arising from or connected with any failure by the Contractor to comply with any legal obligation to such trade union, body or person; and

(e) any claim by any person who is transferred by the Contractor to the Council and/or a Replacement Contractor whose name is not included in the list of Returning Employees as defined under TUPE.

B10.8 If the Contractor becomes aware that the information it provided pursuant to Clause B10.3 has become untrue, inaccurate or misleading, it shall notify the Council and provide the Council with up to date information.

B10.9 This Clause B10 applies during the Contract Period and indefinitely thereafter.

B10.10 The Contractor undertakes to the Council that, during the second half of the Contract Period, the Contractor shall not (and shall procure that any Sub-Contractor shall not) without the prior consent of the Council (such consent not to be unreasonably withheld or delayed):

(a) amend or vary (or purport or promise to amend or vary) the terms and conditions of the employment or engagement including for the avoidance of doubt pay of any Staff (other than where such amendment or variation has previously been agreed between the Contractor and the Staff in the normal course of business, and where any such amendment or variation is not in any way related to the transfer of the Services);

(b) terminate or give notice to terminate the employment or engagement of any of the Staff (other than in circumstances in which the termination is for reasons of misconduct or lack of capacity);

(c) transfer away, remove, reduce or vary the involvement of any of the Staff from or in the provision of the Services (other than where such transfer or removal: (i) was planned as part of the individual’s career development; (ii) takes place in the normal course of business; and (iii) shall not have any adverse impact upon the delivery of the Services by the Contractor, PROVIDED THAT any such transfer, removal, reduction or variation is not in anyway related to the transfer of the Services; and

(d) recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.

**B11 BEST VALUE**

B11.1 The Contractor shall provide to the Council all such assistance, information and documentation as the Council shall reasonably require for the purpose of compliance with its obligations of Best Value under the Local Government Act 1999 (“the Act”).

**B12 SERVICE IMPROVEMENT**

B12.1 The Contractor shall throughout the duration of this Contract identify and discuss any improvements and enhancements which would improve the Services and delivery of the Services. Without prejudice to the a foregoing, the Contractor shall, at its own cost submit a report to the Council within thirty (30) Working Days of the end of each Contract Year, which shall identify the emergence of new and evolving relevant technologies, processes and any other change which could improve the Services and the delivery thereof. Such report shall be provided in sufficient detail to enable the Council to evaluate properly the benefits of the change.

B12.2 If the Council wishes to incorporate any improvement identified by the Contractor pursuant to Clause B12.1, the Council shall send the Contractor a Council Change Control Notice and the Parties shall discuss the implementation of the associated Change in accordance with the Change Control Procedure provided always that if the Contractor’s costs in providing the Services to the Council are reduced as a result of any business change implemented by the Contractor, a saving as agreed between the Parties shall be passed on to the Council by way of a consequential and immediate reduction in the Service Charges.

**B13 NOT USED**

**B14 NOT USED**

**C PAYMENT AND SERVICE CHARGES**

**C1 Service Charges**

C1.1 The Council shall transfer the ownership and value of any waste which forms part of the Services and which the Contractor undertakes its obligations under this Contract and pay the Service Charges in accordance with this Clause 2, in consideration of the Contractor’s proper performance of its obligations under this Contract.

**C2 Payment and VAT**

C2.1 The Council shall pay the Contractor in accordance with the provisions set out in Schedule 2

C2.2 Where the Contractor enters into a Sub-Contract with a Contractor or contractor for the purpose of performing its obligations under this Contract, it shall ensure that a provision is included in such a Sub-Contract which requires

1. payment to be made of all sums due by the Contractor to the Sub-Contractor within a specified period not exceeding twenty eight (28) days from the Receipt of a valid invoice; and
2. the counterparty to that Sub-Contract to include in any sub-contract which it awards provisions having the same effect as the provisions of clause C2.2(a).

C2.3 All Service Charges and payments to be made by the Council under this Contract are stated to be exclusive of VAT which shall be additionally paid by the Council where relevant at the prevailing rate and from time to time in the manner prescribed by law.

##### C2.4 The Contractor 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 Contractor’s failure to account for or to pay any VAT relating to payments made to the Contractor under this Contract. Any amounts due under this Clause C2.4 shall be paid by the Contractor or to the Council not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Council.

C2.5 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate this Contract under Clause H2.3 (Termination on Default) for failure to pay undisputed sums of money.

C2.6 Interest shall be payable on the late payment of any undisputed sums of money due to either Party under this Contract such interest to be calculated at the rate of 4% over the Bank of England base rate for the time being, from the final date for payment to and including the date on which such amount is paid or discharged.

**C3 Recovery of Sums Due**

C3.1 Wherever under this Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Council in respect of any breach of this Contract), the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under this Contract or under any other agreement or contract with the Council.

C3.2 Any overpayment by either Party, whether of the Service Charges 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.

C3.3 The Contractor shall make all payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Contractor.

C3.4 All payments due shall be made within a reasonable time unless otherwise specified in this Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

C4 Price adjustment on extension of the Initial Contract Period

C4.1 The Service Charges shall apply for the Initial Contract Period. In the event that the Council agrees to extend the Initial Contract Period pursuant to Clause A2.2 the Council may in the three (3) Month period prior to the expiry of a six (6) month Contract Period, or six (6) Month period prior to the expiry of a twelve (12) month or greater Contract Period, enter into good faith negotiations with the Contractor for a period of not more than thirty (30) Working Days to agree a variation in the Service Charges.

C4.2 If a variation in the Service Charges is agreed between the Council and the Contractor, the revised Service Charges shall take effect from the first day of any period of extension and shall apply during such period of extension.

C4.3 Any increase in the Service Charges pursuant to Clause C4.1 shall not exceed the percentage change in the Office of National Statistics’ Consumer Prices Index (CPI) or the Retail Price Index (RPI), whichever is the lowest between the Commencement Date and the date (two) 2 Months before the end of the Initial Contract Period.

**C5 Service Levels**

C5.1 The Contractor shall ensure that the Services meet or exceed the Service Levels at all times from the Commencement Date.

C5.2 The Contractor shall provide the Council with a Monthly report detailing its performance in respect of each of the Service Levels. The Contractor shall provide each Monthly report to the Council no less than four (4) Working Days prior to the date of each Monthly meeting referred to in Clause 5.5.

C5.3 If the Contractor fails to provide the Services in accordance with the Service Levels measured Monthly, the Contractor shall incur Performance Default Points and undertake any actions outlined within the additional sanctions provided for in the Performance Management Framework as set out at Schedule 3. Such Performance Default Points shall be calculated Monthly and applied as a Performance Deduction. .

C5.4 The Contract Managers of both Parties shall have meetings when necessary to monitor and review the performance of this Contract, the achievement of the Service Levels and the provision of the Services. Such meetings shall be minuted by the Council and copies of the minutes shall be circulated to and approved by both Parties.

C5.5 Prior to the meeting, the Council shall notify the Contractor’s Contract Manager, and vice versa, of any problems relating to the provision of the Services for discussion at the meeting. At the meeting, the Parties shall agree a plan to address such problems. In the event of any problem being unresolved or a failure to agree a plan, the procedures set out in Clause H7 shall apply. Progress at implementing the plan shall be included in the agenda for the next meeting.

C5.6 A review meeting to assess the performance of the Contractor in the delivery of the Services shall be held dependant on the length of the contract i.e. if the contract duration is six (6) months then the review meeting will be three (3) months, if the contract duration is twelve months (12) or greater, then the review meeting would be at six (6) monthly intervals throughout the Contract Period. Each meeting shall be attended by senior representatives of the Council and the Contractor together with their respective Contract Managers.

C5.7 The Council and the Contractor, in addition to and meetings required under the operation of the Performance Management Framework as set out at Schedule 3, shall review the Service Levels on an ongoing basis throughout the Contract Period and make any changes in accordance with the Change Control procedure to reflect the changes in the Service Levels. Both parties will need to be in agreement.

C5.8 The Contractor shall attend all such other meetings and provide such reports as may reasonably be required by the Council including those reports and meetings as set out in Schedule 1.

STATUTORY OBLIGATIONS AND REGULATIONS

D1 Prevention of Bribery

The Contractor shall:

### D1.1 not, and shall procure that all Staff shall not, in connection with this Contract commit a Prohibited Act;

### D1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Contract.

### The Contractor shall:

### D1.3 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;

### D1.4 within five (5) 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 Contractor) compliance with this Clause D1 by the Contractor and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Contractor shall provide such supporting evidence of compliance as the Council may reasonably request.

## D1.5 The Contractor shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent it from committing a Prohibited Act and shall enforce it where appropriate.

## D1.6 If any breach of Clause D1 is suspected or known, the Contractor shall notify the Council immediately.

## D1.7 If the Contractor notifies the Council that it suspects or knows that there may be a breach of Clause D1, the Contractor must respond promptly and in any event within ten (10) Working Days 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 12 (twelve) years following the expiry or termination of this Contract.

### D1.8 The Council may terminate this Contract by written notice with immediate effect if the Contractor (in all cases whether or not acting with this Contractor's knowledge) breaches Clause D1.

### D1.9 Any notice of termination under Clause D1.8 must specify:

### the nature of the Prohibited Act;

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

### the date on which this Contract shall terminate.

### D1.10 Despite Clause I2 (Disputes), any dispute relating to:

###  the interpretation of Clause D1; or

###  the amount or value of any gift, consideration or commission, shall be determined by the Council and its decision shall be final and conclusive.

## D1.11 Any termination under Clause D1.8 shall be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

**D2 Anti-Discrimination**

D2.1 The Contractor shall not unlawfully discriminate within the meaning and scope of Equality Legislation or other any Law, enactment, order, or regulation relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in employment.

D2.2 The Contractor shall take all reasonable steps to secure the observance of Clause D2.1 by all Staff employed in performance of this Contract.

D2.3 The Contractor shall notify the Council forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Contractor under Equality Legislation or other any Law, enactment, order or regulation.

D2.4 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Contractor’s performance of this Contract being in contravention of Equality Legislation or other any Law, enactment, order or regulation relating to discrimination, the Contractor shall, free of charge provide any information requested in the timescale allotted, attend any meetings as required and permit the Staff to attend, promptly allow access to and investigation of any documents or data deemed to be relevant; allow the Contractor and any of the Staff to appear as witness in any ensuing proceedings, and cooperate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.

D2.5 Where any investigation is conducted or proceedings are brought under Equality Legislation or other any Law, enactment, order or regulation relating to discrimination which arise directly or indirectly out of any act or omission of the Contractor, and where there is a finding against the Contractor in such investigation or proceedings, the Contractor shall indemnify the Council with respect to all Losses arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Council may have been ordered or required to pay to a third party.

D2.6 The Contractor must ensure that all written information produced or used in connection with this Contract is as accessible as possible to people with disabilities and to people whose level of literacy in English is limited.

D2.7 The Contractor acknowledges that the Council may carry out an impact analysis as defined under the Equality Act 2010 in respect of any aspect of the provision of the Services and the Contractor shall provide all necessary assistance and information to the Council as may be required in relation to the performance of an impact analysis by the Council. The Contractor shall implement any changes or adjustments that are required as a result of, or in connection with the outcome of the impact analysis undertaken by the Council.

D2.8 In performing this Contract the Contractor shall comply with the Equality Act 2010 and have due regard to the obligations contemplated by section 149 of the Equality Act 2010 to:-

* + - 1. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act 2010;
			2. advance equality of opportunity between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it; and
			3. foster good relations between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it

and for the avoidance of doubt this obligation shall apply whether or not the Contractor is a public authority for the purposes of section 149 of the Equality Act 2010.

**D3 The Contracts (Rights of Third Parties) Act 1999**

D3.1 A person who is not a Party to this 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.

#### D4 Environmental Requirements

 D4.1 The Contractor shall perform its obligations under this 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.

**D5 Health and Safety**

D5.1 The Contractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other Law relating to health and safety, which may apply to the Staff and other persons working in the performance of its obligations under this Contract.

D5.2 The Contractor 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.

D5.3 The Contractor shall notify the Council immediately in the event of any incident occurring in the performance of its obligations under this Contract where that incident causes any personal injury and/or damage to property which could give rise to personal injury claim and/or other claim in relation to such damage to property.

D5.4 The Contractor shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of its obligations under this Contract. The Council shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Authority Premises and which may affect the Contractor in the performance of its obligations under this Contract.

D5.5 While on the Authority Premises, the Contractor shall comply with any health and safety measures implemented by the Council in respect of its staff and other persons working there.

D5.6 The Contractor shall co-operate with officers of the Council, or its representatives, investigating any health and safety matter.

**D6 Safeguarding**

Safeguarding Children/Vulnerable Adults

D6.1 The Contractor shall make the necessary arrangements to ensure compliance with all Laws relevant to the duty to safeguard and promote the welfare of children and vulnerable adults in the delivery of all aspects of the Service including but not limited to the Section 11 of the Children Act 2004, Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012) and The Mental Health Act 1983.

D6.2 The Contractor shall make the necessary arrangements to ensure compliance with registration requirements with the Disclosure and Barring Service.

D6.3 To fulfil the commitment to safeguard and promote the welfare of children and vulnerable adults, as appropriate, the Contractor shall have:

1. Clear priorities for safeguarding and promoting the welfare of children/vulnerable adults explicitly stated in strategic policy documents;
2. A clear commitment by senior management to the importance of safeguarding and promoting children/vulnerable adults’ welfare;
3. A clear line of accountability within the organisation for work on safeguarding and promoting the welfare of children/vulnerable adults;
4. Recruitment and human resources procedures that take account of the need to safeguard and promote the welfare of children/vulnerable adults;
5. Procedures for dealing with allegations of abuse against members of staff and volunteers;
6. Arrangements to ensure all Staff undertake appropriate training and refesher training to enable them to carry out their responsibilities effectively;
7. Policies for safeguarding and promoting the welfare of children/vulnerable adults and procedures that are in accordance with guidance and locally agreed inter-agency procedures;
8. Arrangements to work effectively with other organisations to safeguard and promote the welfare of children/vulnerable adults including sharing of information;
9. A culture of listening to and engaging in dialogue with children/vulnerable adults; and
10. Appropriate whistle-blowing procedures.

PROTECTION OF INFORMATION

E1 Data Protection Act

E1.1 The Parties acknowledge and shall comply with their obligations under Data Protection Legislation and shall not do or permit anything to be done which might cause or otherwise result in breach of the same by either Party.

E2 Not used

E3 Confidential Information

E3.1 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

1. treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
2. not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

E3.2 Clause E3.1 shall not apply to the extent that:

(a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to Clause E4 (Freedom of Information);

(b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

(c) such information was obtained from a third party without obligation of confidentiality;

(d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or

(e) it is independently developed without access to the other Party's Confidential Information.

E3.3 The Contractor may only disclose the Council's Confidential Information to 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 of confidentiality.

E3.4 The Contractor shall not use any of the Council's Confidential Information received otherwise than for the purposes of this Contract.

E3.5 At the written request of the Council, the Contractor shall procure that the Staff identified in the Council's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Contract.

E3.6 Nothing in this Contract shall prevent the Council from disclosing the Contractor's Confidential Information:

(a) 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;

(b) to any consultant, contractor or other person engaged by the Council or any person conducting an Office of Government Commerce gateway review;

(c) for the purpose of the examination and certification of the Council's accounts; or

(d) 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.

 (e) to the extent that the Council (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

E3.7 The Council shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Contractor's Confidential Information is disclosed pursuant to Clause E3.6 is made aware of the Council's obligations of confidentiality.

E3.8 Nothing in this Clause E3 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of this 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.

E3.9 Any breach by the Contractor of Clauses E3.1 – E3.4 shall be a breach incapable of remedy for the purposes of Clause H2 and shall entitle the Council (at its absolute discretion) to exercise its rights under the corresponding provisions of Clause H2.

E3.10 The Parties acknowledge that except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Council shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.

E3.11 Notwithstanding any other term of this Contract, the Contractor hereby gives consent for the Council to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) including from time to time agreed changes to the Contract, to the general public.

E4 Freedom of Information

E4.1 The Contractor 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.

E4.2 The Contractor 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 (2) Working Days of receiving a Request for Information:

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

(b) 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.

E4.3 The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

E4.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Council.

E4.5 The Contractor acknowledges that (notwithstanding the provisions of Clause E4.2) 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 Contractor or the Services in certain circumstances:

1. without consulting the Contractor; or
2. following consultation with the Contractor and having taken their views into account;

provided always that where E4.5(a) applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor’s attention after any such disclosure.

E4.6 The Contractor shall ensure that all Information is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

E4.7 The Contractor acknowledges that the Council may be obliged to disclose Commercially Sensitive Information in accordance with Clauses E3 and E4.

E5 Publicity, Media and Official Enquiries

E5.1 Without prejudice to the Council’s obligations under the FOIA, neither Party shall make any press announcement or publicise this Contract or any part thereof in any way, except with the written consent of the other Party.

E5.2 Both Parties shall take reasonable steps to ensure that their servants, employees, agents, Sub-Contractors, Contractors, professional advisors and consultants comply with Clause E5.1.

E6 Security

E6.1 The Contractor shall observe and comply with such rules and regulations as may be in force at any time for attendance at or the use of the Authority Premises as determined by the Council, and the Contractor shall pay for the cost of making good any damage caused by the Contractor at or to the Authority Premises.

E7 Not Used

**E8 Audit**

E8.1 The Contractor shall keep and maintain until twelve (12) years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of this Contract including the Services supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Contractor 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 this Contract.

E8.2 The Council may at any time during the Contract Period and for a period of twelve (12) Months after the Contract Period, conduct an audit for the following purposes:-

1. to verify the accuracy of the Service Charges that become due and payable by the Council to the Contractor in respect of the Services (and proposed or actual Changes to them in accordance with the Contract) or the costs of all suppliers (including Sub-Contractors) of the Services;
2. to review the integrity, confidentiality and security of the Council Personal Data;
3. to review the Contractor's compliance with the DPA, FOIA and other Law applicable to the Services;
4. to review the Contractor's compliance with its obligations under the Contract;
5. to review any records created during the provision of the Services;
6. to review any books of account kept by the Contractor in connection with the provisions of the Services;
7. to carry out the audit and certification of the Council's accounts;
8. to carry out an examination of the economy efficiency and effectiveness with which the Council has used its resources; and
9. to verify the accuracy and completeness of any management information delivered or required by this Contract.

E8.3 The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services.

E8.4 Subject to the Council's obligation of confidentiality, the Contractor shall on demand provide the Council and any other Regulatory Body (and/or their agents or representatives) with all reasonable co-operation, access and assistance in relation to each audit, including:-

1. all Information requested within the permitted scope of the audit;

1. reasonable access to any premises or sites controlled by the Contractor and to any Equipment and Assets used (whether exclusively or non-exclusively) in the performance of the Services;

1. access to the Staff;

1. accommodation (including desks) at the Contractor's premises as reasonably required to conduct the audit.

E8.5 The Council shall endeavour to (but shall not be obliged to) provide at least fourteen (14) calendar days' notice of its intention to conduct an audit.

E8.6 If an audit identifies that:-

1. the Contractor has committed a material Default which is capable of remedy, the Contractor shall correct such Default as soon as reasonably practicable and implement a Remediation Plan in accordance with the Remediation Plan Process;

1. the Council has overpaid any charges that became due and payable by the Council to the Contractor in respect of the Services properly rendered, the Contractor shall pay to the Council the amount overpaid within twenty (20) Working Days. The Council may deduct the relevant amount from any further payment when due if the Contractor fails to make the payment; and

1. the Council has underpaid any charges that become due and payable by the Council to the Contractor in respect of the Services properly rendered, the Council shall pay to the Contractor the amount of the under-payment less the cost incurred by the Council of the audit if this was due to a Default by the Contractor within twenty (20) Working Days.

**E9 Records and Open Book Accounting**

E9.1The Contractor shall (and shall procure that each Sub-Contractor shall):

(a) at all times maintain a full record of particulars of the costs of performing the Services;

(b) upon request by the Council, provide a written summary of any of the costs referred to in Clause E9.1(a), in such form and detail as the Council may reasonably require to enable the Council to monitor the performance by the Contractor of its obligations under the Contract;

(c) provide such facilities as the Council may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this Clause E9.1; and

(d) provide to the Council copies of its annual report and accounts within twenty (20) Working Days of publication.

E9.2 Compliance with Clause E9.1 shall require the Contractor to keep (and where appropriate to procure that each Sub-Contractor shall keep) books of account in accordance with best accountancy practices with respect to the Contract, showing in detail:

(a) administrative overheads;

(b) payments made to the Sub-Contractors and from the Sub-Contractors to their sub-contractors;

(c) capital and revenue expenditure; and

(d) such other items as the Council may reasonably require from time to time to conduct costs audits for verification of cost expenditure or estimated expenditure, for the purpose of the Contract,

and the Contractor shall have (and procure that its Sub-Contractors shall have) the books of account evidencing the items listed in sub-clauses E9.2(a) to E9.2(d) inclusive, available for inspection by the Council (and its advisers) upon reasonable notice pursuant to Clause E8, and shall provide a copy of these to the Council as and when requested from time to time.

E9.3The Contractor shall maintain that detailed records relating to the performance of the Services, in each case in accordance with Good Industry Practice and any applicable Law.

E9.4 Without prejudice to Clause E9.3, the Contractor shall ensure that the following are maintained:

(a) a full record of all incidents relating to health, safety and security which occur during the Contract Period;

(b) full records of all maintenance procedures carried out during the Contract Period; and

(c) full records of all staff matters including turnover, pay and disciplinary matters

and the Contractor shall have the items referred to in clauses E9.4(a) to E9.4(c) available for inspection by the Council (and its advisers) upon reasonable notice, and shall provide copies of these to the Council as and when requested from time to time.

E9.5 Upon termination or expiry of the Contract, and in the event that the Council wishes to enter into an agreement with any Replacement Contractor, the Contractor shall (and shall ensure that the Sub-Contractors will) comply with all reasonable requests of the Council to provide information relating to the Contractor's costs of providing the Services (if applicable for the Services).

E9.6 All information referred to in this Clause E9 is subject to the obligations set out in Clauses E3 and E4.

CONTROL OF THE CONTRACT

F1 Transfer and Sub-Contracting

F1.1 Except where F1.4 and F1.5 applies, the Contractor shall not assign, sub-contract or in any other way dispose of this Contract or any part of it without prior Approval. Sub-contracting any part of this Contract shall not relieve the Contractor of any of its obligations or duties under this Contract.

F1.2 The Contractor shall be responsible for the acts and omissions of its Sub-Contractors as though they are its own.

F1.3 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 Contractor to the Council as soon as reasonably practicable.

F1.4 Subject to Clause F1.6, the Council may assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof to:

(a) any Contracting Authority; or

(b) 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

(c) any private sector body which substantially performs the functions of the Council,

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

F1.5 Any change in the legal status of the Council such that it ceases to be a Contracting Authority shall not, subject to Clause F1.4, affect the validity of this Contract. In such circumstances, this Contract shall bind and inure to the benefit of any successor body to the Council.

F1.6 The Council may disclose to any Transferee as defined under TUPE any Confidential Information of the Contractor which relates to the performance of the Contractor’s obligations under this Contract. In such circumstances the Council shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor’s obligations under this 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.

F1.7 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 this Contract.

F2 Waiver

F2.1 The failure of either Party to insist upon strict performance of any provision of this 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 this Contract.

F2.2 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 A5 (Notices).

F2.3 A waiver of any right or remedy arising from a breach of this Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Contract.

**F3 Change Control Procedure**

##  Without prejudice to any other provision contained in the Contract:

######

######  **COUNCIL CHANGE**

### F3.1 The Council has the right to propose a Change in the Services in accordance with this Clause F3.1. If the Council requires a Change, it must serve a Council Change Control Notice on the Contractor. The Council shall not propose a Change that:

#### (a) requires the Services to be performed in a way that infringes any Law or is inconsistent with Good Industry Practice;

#### (b) would cause any consent to be revoked (or unobtainable);

#### (c) would, if implemented, result in a material change in the nature of the Services; and/or

#### (d) would materially and adversely affect the Contractor's ability to perform the Services or cause or be likely to cause loss of revenue or incur expenditure in a way that is not adequately compensated for.

### F3.2 The Council Change Control Notice shall:

#### set out the Change required in sufficient detail to enable the Contractor to calculate and provide an estimate of the variation in costs and or loss in revenue (the “Contractor’s Change Control Response”); and

#### (b) require the Contractor to provide the Council within ten (10) Working Days (or such other reasonable period of time as the Parties shall agree) of receipt of the Council Change Control Notice with the Contractor’s Change Control Response.

### F3.3 As soon as practicable and in any event within ten (10) Working Days (or such other reasonable period of time as the Parties shall agree) after having received the Council Change Control Notice, the Contractor shall deliver to the Council the Contractor’s Change Control Response. The Contractor’s Change Control Response shall include the opinion of the Contractor on:

#### (a) whether relief from compliance with obligations is required, including the obligations of the Contractor to meet the Service Levels contained in the Contract during the implementation of the Change;

#### (b) any impact on the provision of the Services;

#### (c) any amendment required to this Contract as a result of the Change; and

#### (d) any loss of revenue or prospective revenue to the Contractor or Sub-Contractor that results from the Change.

### F3.4 As soon as practicable after the Council receives the Contractor’s Change Control Response, the Parties shall discuss and agree the issues set out in the Contractor’s Change Control Response, including:

#### (a) providing evidence that the Contractor has used all reasonable endeavours (including the use of competitive quotes) to oblige its Sub–Contractors (if any) to minimise any increase in costs and maximise any reduction in costs;

#### (b) demonstrating that the relevant Changes shall be implemented in the most cost effective manner; and

#### (c) in such discussions the Council may modify the Council Change Control Notice, in which case the Contractor shall, as soon as practicable, and in any event not more than seven (7) Working Days (or such other reasonable period of time as the Parties shall agree) after receipt of such modification, notify the Council of any consequential changes to the Contractor’s Change Control Response.

### F3.5 If the Parties cannot agree on the contents of the Contractor’s Change Control Response then the dispute shall be determined in accordance with Clause I2 (Dispute).

### F3.6 As soon as practicable after the contents of the Contractor’s Change Control Response has been agreed or otherwise determined pursuant to Clause I2 (Dispute), the Council shall:

#### (a) confirm in writing the Contractor’s Change Control Response (as modified); or

#### (b) withdraw the Council Change Control Notice.

### F3.7 If the Council does not confirm in writing the Contractor’s Change Control Response (as modified) within fifteen (15) Working Days (or such other reasonable period of time as the Parties shall agree) of the contents of the Contractor’s Change Control Response having been agreed in accordance with Clause F3.4 above or determined pursuant to Clause F3.6 above, then the Council Change Control Notice shall be deemed to have been withdrawn.

### F3.8 In the event that the Contractor’s Change Control Response has been confirmed by the Council, the Services shall thereafter be performed in accordance with the Contractor’s Change Control Response (as modified).

###### **CONTRACTOR CHANGE**

### F3.9 If the Contractor wishes to introduce a Change, it must serve a Contractor Change Control Notice on the Council.

### F3.10 The Contractor Change Control Notice must:

#### (a) set out the proposed Change in Services in sufficient detail which detail shall include but not be limited to impact on Service delivery and financial implications so as to enable the Council to evaluate it in full;

#### (b) specify the Contractor’s reasons for proposing the Change;

#### (c) request the Council to consult with the Contractor with a view to deciding whether to agree to the Change in Services and, if so, what consequential changes the Council requires as a result;

#### (d) indicate any implications of the changes in Services; and

#### (e) indicate if there are any dates by which a decision by the Council is critical.

### F3.11 The Council shall evaluate the Contractor’s proposed Change in Services in good faith, taking into account all relevant issues, including whether:

#### (a) the Change affects the quality of the Services or the likelihood of successful delivery of the Services;

#### (b) the Change shall interfere with the relationship of the Council with third parties;

#### (c) the financial strength of the Contractor is sufficient to perform the Change in Services; and

#### (d) the Change materially affects the risks or costs to which the Council is exposed.

### F3.12 As soon as practicable after receiving the Contractor Change Control Notice, the Parties shall meet and discuss the matter referred to in it. During their discussions the Council may propose modifications or accept or reject the Contractor Change Control Notice.

### F3.13 If the Council accepts the Contractor Change Control Notice (with or without modification), the relevant Change shall be implemented within seven (7) Working Days of the Council’s acceptance. Within this period, the Parties shall consult and agree the remaining details as soon as practicable and shall enter into any documents to amend this Contract which are necessary to give effect to the Change.

### F3.14 If the Council rejects the Contractor Change Control Notice, it shall give its reasons for such a rejection.

### F3.15 The Council cannot reject a Change that is required in order to conform to change in Law relating to the Services which was not reasonably foreseeable at the Commencement Date provided that such a Change does not materially affect the quality or performance of the Services as required under the Contract.

F4 Severability

F4.1 If any provision of this 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 this Contract shall continue in full force and effect as if this Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

F5 Remedies in the event of inadequate performance

F5.1 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 Contractor’s obligations under this Contract, then the Council shall notify the Contractor, and where considered appropriate by the Council, investigate the complaint. The Council may, in its sole discretion, uphold the complaint and take further action in accordance with Clause H2 (Termination on Default) of this Contract.

F5.2 In the event that the Council is of the reasonable opinion that there has been a material breach of this Contract by the Contractor, then the Council may, without prejudice to its rights under Clause H2 (Termination on Default), do any of the following:

(a) without terminating this Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Council that the Contractor shall once more be able to supply all or such part of the Services in accordance with this Contract;

(b) without terminating the whole of this Contract, terminate this Contract in respect of part of the Services only (whereupon a corresponding reduction in the Service Charges shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or

(c) terminate, in accordance with Clause H2 (Termination on Default), the whole of this Contract.

F5.3 Without prejudice to its rights under Clause C3 (Recovery of Sums Due), the Council may charge the Contractor 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 Contractor for such part of the Services and provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

F5.4 If the Contractor fails to supply any of the Services in accordance with the provisions of this Contract and such failure is capable of remedy, then the Council shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within ten (10) Working Days or such other period of time as the Council may direct.

F5.5 In the event that:

 (a) the Contractor fails to comply with Clause F5.4 above and the failure is materially adverse to the interests of the Council or prevents the Council from discharging a statutory duty; or

(b) the Contractor persistently fails to comply with Clause F5.4 above,

the Council may terminate this Contract with immediate effect by notice in writing.

F6 Remedies Cumulative

F6.1 Except as otherwise expressly provided by this Contract, all remedies available to either Party for breach of 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.

**F7 Entire Agreement**

F7.1 This Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. This 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.

**F8 Counterparts**

F8.1 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.

**F9 Financial Assurance**

F9.1 The Contractor shall immediately disclose to the Council any material changes to the organisation that impacts on its ongoing financial viability including details of the revenue replacement strategy and impact awareness on the organisation's profitability and stability where significant contracts are due to end.

F9.2 The Contractor shall notify the Council immediately of proposed changes to the organisational control or group structure, proposed mergers or acquisitions or proposed changes to the Contractor's financial viability.

F9.3 Only where requested by the Council, shall the Contractor be obliged to provide any financial information which could include but is not limited to a copy of the Contractor's annual accounts and annual returns.

LIABILITIES

G1 Liability, Indemnity and Insurance

G1.1 Neither Party excludes or limits liability to the other Party for:

(a) death or personal injury caused by its negligence; or

(b) Fraud; or

(c) fraudulent misrepresentation; or

(e) any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

G1.2 Not used.

G1.3 Subject to Clauses G1.4 and G1.5, the Contractor shall indemnify the Council and keep the Council indemnified fully against all Losses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under this Contract or the presence of the Contractor on the Authority Premises, 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 the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.

G1.4 The Contractor 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 this Contract.

G1.5 Without prejudice to the Council’s rights under this Contract, the Contractor shall in respect of the performance of its obligations under this Contract effect and maintain the following insurances at the following indemnity levels with a reputable insurance company:

(a) public liability insurance to a minimum of five million pounds (£5,000,000);

(b) employer’s liability insurance to a minimum of five million pounds (£5,000,000); and

(c) any other insurances as may be required by Law.

G1.6 The minimum amounts set out in Clause G1.5 shall, in each case, apply in respect of any single act or occurrence or a series of acts or occurrences arising from a single event but with no aggregate limit during any one period of cover. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of twelve (12) years following the expiration or earlier termination of this Contract

G1.7 Subject always to Clause G1.1, in no event shall either Party be liable to the other for any:

(a) loss of profits, business, revenue or goodwill; and/or

(b) loss of savings (whether anticipated or otherwise); and/or

(c) indirect or consequential loss or damage.

G1.8 The Contractor shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Contractor.

G1.9 The Contractor 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.

G1.10 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of this Contract the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

G1.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under this Contract.

**G2 Warranties and Representations**

 G2.1 The Contractor warrants and represents that:

(a) it has full capacity, 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 this Contract and that this Contract is executed by a duly authorised representative of the Contractor;

1. in entering this Contract it has not committed any Fraud;

(c) 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 this Contract;

(d) 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 shall or might have a material adverse effect on its ability to perform its obligations under this Contract;

(e) 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 this Contract;

(f) 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 Contractor 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 Contractor’s assets or revenue;

(g) in the three 3 years prior to the date of this Contract:

(i) 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;

(ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and

(iii) 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 this Contract.

**DEFAULT, DISRUPTION AND TERMINATION**

H1 Termination on insolvency and change of control

H1.1 The Council may terminate this Contract with immediate effect by notice in writing where the Contractor is a company and in respect of the Contractor:

(a) 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

(b) 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

(c) 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

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

(e) 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

(f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or

(g) being a “small company” within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

(h) any event similar to those listed in H1.1(a)-(g) occurs under the Law of any other jurisdiction.

H1.2 The Council may terminate this Contract with immediate effect by notice in writing where the Contractor is an individual and:

(a) 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 Contractor’s creditors; or

(b) a petition is presented and not dismissed within 14 days or order made for the Contractor’s bankruptcy; or

(c) a receiver, or similar officer is appointed over the whole or any part of the Contractor’s assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or

(d) the Contractor 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

(e) a creditor or encumbrance 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 Contractor’s assets and such attachment or process is not discharged within 14 days; or

(f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or

(g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

H1.3 The Contractor shall notify the Council immediately if the Contractor undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 (“change of control”). The Council may terminate this Contract by notice in writing with immediate effect within six (6) Months of:

 (a) being notified that a change of control has occurred; or

(b) 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.

H2 Termination on Default

H2.1 The Council may terminate this Contract by written notice to the Contractor with immediate effect if the Contractor commits a Default and if:

(a) the Contractor has not (where applicable) remedied the Default to the satisfaction of the Council in accordance with a Remediation Plan; or

(b) the Default is not, in the opinion of the Council, capable of remedy; or

(c) the Default is a material breach of this Contract.

H2.2 The Council may terminate this Contract with immediate effect by written notice to the Contractor if it becomes apparent that the Contractor should have been excluded from the procurement process leading to the award of this Contract in accordance with the Public Contracts Regulations.

#### H2.3 In the event that through any Default of the Contractor, data transmitted or processed in connection with this Contract is either lost or sufficiently degraded as to be unusable, the Contractor 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.

#### H2.3 If the Council fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify the Council in writing of such failure to pay. If the Council fails to pay such undisputed sums within thirty (30) Working Days of the date of such written notice, the Contractor may terminate this 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 Clauses C3.1 (Recovery of Sums Due).

H3 Substantial Modification and Public Contract Regulations

H3.1 the Council may by no less than three (3) Months' written notice to the Contractor terminate this Contract where it becomes apparent that:

1. this Contract has been subject to substantial modification which would have required a new procurement procedure pursuant to the Public Contracts Regulations; or
2. this Contract should not have been awarded for the reasons specified in the Public Contract Regulations.

H3.2 In the event that the Council terminates the Contract in accordance with clause H1, H2 or H3 howsoever and where the Contractor is providing the Services at one or more Authority Premises, for the avoidance of doubt the Contract for the provision of Services at all Authority Premises by the Contractor under this contract shall be terminated.

H4 Consequences of Expiry or Termination

H4.1 Where the Council terminates this Contract under Clause H2 (Termination on Default) and then makes other arrangements for the supply of Services, the Council may recover from the Contractor the cost reasonably incurred of making those other arrangements 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.

H4.2 Where this Contract is terminated under Clause H2 (Termination on Default), no further payments shall be payable by the Council to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with this 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.

H4.3 Save as otherwise expressly provided in this Contract:

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

(b) termination of this Contract shall not affect the continuing rights, remedies or obligations of the Council or the Contractor under Clauses C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Bribery), D2 (Anti Discimination), E1 (Data Protection Act), E2 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), E3 (Confidential Information), E4 (Freedom of Information), E7 (Intellectual Property Rights), E8 (Audit), F6 (Remedies Cumulative), G1 (Liability, Indemnity and Insurance), H4 (Consequences of Expiry or Termination), H6 (Recovery upon Termination) and I1 (Governing Law and Jurisdiction).

H5 Disruption

H5.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under this Contract it does not disrupt the operations of the Council, its employees or any other Contractor employed by the Council.

H5.2 The Contractor shall immediately inform the Council of any actual or potential industrial action, whether such action is by the Contractor or others for whom the Contractor is responsible, which affects or might affect its ability at any time to perform its obligations under this Contract.

H5.3 In the event of industrial action by the Staff, the Contractor shall seek Approval as to its proposals to continue to perform its obligations under this Contract.

H5.4 If the Contractor’s proposals referred to in Clause H5.3 are considered insufficient or unacceptable by the Council acting reasonably, then this Contract may be terminated with immediate effect by the Council by notice in writing.

H5.5 If the Contractor is temporarily unable to fulfil the requirements of this Contract owing to disruption of normal business of the Council, the Contractor may request a reasonable allowance of time.

H6 Recovery upon Termination

H6.1 On the termination of this Contract for any reason, the Contractor shall:

(a) immediately return to the Council all Confidential Information, Personal Data, IP Materials, records and any other documentation and information in its possession or in the possession or under the control of any permitted Contractors or Sub-Contractors, which was obtained or produced in the course of providing the Services;

 (b) immediately deliver to the Council all Assets (including materials, documents, information and access keys) provided to the Contractor under Clause B8. Such Assets shall be handed back in good working order (allowance shall be made for reasonable wear and tear);

 (c) assist and co-operate with the Council to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress; and

 (d) promptly provide all information concerning the provision of the Services including records as referred to in Clause E9 which may reasonably be requested by the Council for the purposes of adequately understanding the manner in which Services have been provided or for the purpose of allowing the Council or the Replacement Contractor to enable the continued provision of the Services.

H6.2 If the Contractor fails to comply with Clause H6.1 (a) and (b), the Council may recover possession thereof and the Contractor grants a licence to the Council or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted Contractors or Sub-Contractors premises where any such items may be held.

H6.3 Where the end of the Contract Period arises due to the Contractor’s Default, the Contractor shall provide all assistance under Clause H6.1 free of charge.

H7 Remediation Plan Process

H7.1 Where this clause H7 is triggered in accordance with the Performance Management Framework as set out at Schedule 3 or, if the Contractor commits a Default and the Default is in the reasonable opinion of the Council capable of remedy, the Council may not terminate the Contract but elect to operate the Remediation Plan Process. If the Contractor commits such a Default, the Council shall give a Remediation Notice to the Contractor which shall specify the Default in outline and the actions the Contractor needs to take with respect to remedying the Default.

H7.2 Within seven (7) Working Days of receipt of the Remediation Notice, the Contractor shall either:

1. submit a draft Remediation Plan even if it disputes that it is responsible for the matters which are the subject of the Remediation Notice; or
2. inform the Council that it does not intend to submit a Remediation Plan in which event the Council shall be entitled to terminate the Contract by written notice.

H7.3 The Council shall either approve the draft Remediation Plan within seven (7) Working Days of its receipt pursuant to Clause H7.2 or it shall inform the Contractor within the same time period why it cannot accept the draft Remediation Plan. In such circumstances, the Contractor shall address all such concerns in a revised Remediation Plan which it shall submit to the Council within three (3) Working Days of its receipt of the Council’s comments. Once agreed the Contractor shall immediately start work on the actions set out in the Remediation Plan.

H7.4 If, despite the measures taken under Clause H7.3 or H7A.2 a Remediation Plan cannot be agreed within twenty one (21) Working Days, then the Council may elect to end the Remediation Plan Process and serve a notice to terminate the Contract.

H7.5 If a Remediation Plan is agreed between the Parties but the Contractor fails to implement or successfully complete the Remediation Plan by the required Remediation Plan completion date, the Council may:

1. terminate this Contract by serving a notice of termination; or
2. give the Contractor a further opportunity to resume full implementation of the Remediation Plan; or
3. escalate any issue arising out of the failure to implement the Remediation Plan to the Contractor’s Representative under the dispute resolution procedure set out in Clause I2.

H7.6 If, despite the measures taken under Clause H7.5 the Contractor fails to implement the Remediation Plan in accordance with its terms, the Council may elect to end the Remediation Plan Process and refer the matter to resolution in accordance with Clause I2 or serve a notice of termination of the Contract.

H7.7 The Council shall be under no obligation to initiate the Remediation Plan Process if it issues a notice of termination as provided for under this Contract.

H7A Escalated Remediation Process

H7A.1 Where this Clause H7A is triggered in accordance with the Performance Management Framework as set out at Schedule 3, and the Default is in the reasonable opinion of the Council capable of remedy, the Council may issue an Escalated Remediation Notice in accordance with Clause H7.1 and H7A.1 and the Contractor shall attend a meeting within two (2) Working Days of the Escalated Remediation Notice as provided for in this Clause H7A.1.

H7A.2 At the meeting provided for within Clause H7A.1, the Parties shall agree a Remediation Plan in accordance with Clause H7 to remedy the Default and draw up a Remediation Plan. The Remediation Plan shall then be regarded as a Remediation Plan as if it was agreed in accordance with Clause H7 and Clauses H7.4 – H7.7 shall apply accordingly.

DISPUTES AND LAW

I1 Governing Law and Jurisdiction

 Subject to the provisions of Clause I2, the Council and the Contractor accept the exclusive jurisdiction of the English courts and agree that this 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.

I2 Dispute Resolution

I2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Contract within twenty one (21) Working Days of either Party notifying the other of the dispute. Any dispute shall in the first instance be referred to the Contract Managers of each Party for resolution. If the dispute cannot be resolved by the Contract Managers of the Parties within ten (10) Working Days after the dispute has been referred to the Contract Managers, either Party may give notice to the other Party in writing (Dispute Notice) that a dispute has arisen and within five (5) Working Days of the date of the Dispute Notice each Party shall refer the dispute to the Council’s Representative and the Contractor’s Representative for resolution.

I2.2 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.

I2.3 If the dispute cannot be resolved by the Parties pursuant to Clause I2.1 within ten (10) Working Days of the Dispute Notice the Parties shall refer it to mediation pursuant to the procedure set out in Clause I2.5.

I2.4 The obligations of the Parties under this Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation and the Contractor shall comply fully with the requirements of this Contract at all times.

I2.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

(a) a neutral adviser or mediator (the “Mediator”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within five (5) Working Days from the date of the proposal to appoint a Mediator or within five (5) Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution or other mediation provider to appoint a Mediator.

(b) The Parties shall within ten (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 or other mediation provider to provide guidance on a suitable procedure.

(c) 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.

(d) 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.

(e) 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 this Contract without the prior written consent of both Parties.

1. If the Parties fail to reach agreement in the structured negotiations within twenty (20) 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.

IN WITNESS WHEREOF the Parties hereto have executed this Contract with effect from the date first above written

Signed for and on behalf of

**Lincolnshire County Council**

………………………

Authorised Signatory

Signed for and on behalf of

**[THE CONTRACTOR]**

acting by:-

………………………………………

Director's Signature

Print name:

**SCHEDULE 1**

**SPECIFICATION – SECTION 6 HWRC DPS USER GUIDE**

**SCHEDULE 2**

**PAYMENT MECHANISM – SECTION 8 HWRC DPS USER GUIDE**

**SCHEDULE 3**

**PERFORMANCE MANAGEMENT FRAMEWORK – SECTION 7 HWRC DPS USER GUIDE**

**SCHEDULE 4**

**NOT USED**

**SCHEDULE 5**

**KEY PERSONNEL – SECTION 9 HWRC DPS USER GUIDE**