
HEREFORDSHIRE COUNCIL (1)

and

THE SUPPLIER (2)

[] SERVICES

STANDARD TERMS AND CONDITIONS FOR THE
PURCHASE OF SERVICES AND GOODS

[dated 202X]

Guiding Note: details highlighted Yellow are notes, guidelines or elements that require completion or review for the final contract version.

CONTRACT DETAILS – Contract Reference no []	
Supplier	[Add name of Supplier] and [Company Registered Number]
Supplier's Address for Notices:	[Add registered office address of Supplier]
Representatives:	<p>The Council: []</p> <p>Supplier: []</p> <p>or such other person as is notified by a party to the other in writing.</p>
Commencement Date:	[Add Commencement Date]
Expiry Date:	[Add Expiry Date]
Extension Period:	[Detail of any Extension Period]
Necessary Consents:	[Detail of any consent required]
As per Clause 4.2.2	[Note: you should state here whether any consents from a third party is required before the Supplier can perform the Services. This will be specified in the Invitation to Tender].
Schedule 1 - Optional Clauses to apply:	<p>[Note: Select one of the following:]</p> <p>No optional clauses shall apply to this Agreement.</p> <p>[OR]</p> <p>The following clauses shall apply to this Agreement:</p> <ul style="list-style-type: none"> • Optional Clause 1 – Price Variation • Optional Clause 2 – Safeguarding and Improper Conduct • Optional Clause 3 – Social Networking and Internet • Optional Clause 4 – No Fault Termination • Optional Clause 5 – Collaborative Procurement – Right of Other Bodies to Participate <p>[NOTE: if some, but not all, of the optional clauses apply to this Agreement, then delete any of the optional clauses listed above that will not apply. Delete all notes shaded in grey.]</p>
Schedule 2 – Supply of Goods	<p>Schedule 2 (Supply of Goods) shall [apply] [not apply] to this Agreement.</p> <p>[Note: select the correct option and delete the other. Remove square brackets and highlighting. Delete this note.]</p>

<p>Schedule 3 – TUPE</p>	<p>Schedule 3 (TUPE) shall [apply] [not apply] to this Agreement.</p> <p>[Note: (1) Select the correct option and delete the other. Remove square brackets and highlighting.]</p>
<p>Schedule 4 – Charges and Payments</p>	<p>Schedule 4 (Charges and Payments) shall apply</p>
<p>Schedule 5 – Specification</p>	<p>Schedule 5 (Specification) shall apply</p>
<p>Schedule 6 – Supplier's Tender Response/Quotation</p>	<p>Schedule 6 (Supplier's Tender Response) shall [apply] [not apply] to this Agreement.</p> <p>[Note: (1) Select the correct option and delete the other. Remove square brackets and highlighting.]</p>
<p>Schedule 7 – Other documentation</p>	<p>Schedule 7 (Other documentation) shall [apply] [not apply] to this Agreement.</p> <p>[Note: (1) Select the correct option and delete the other. Remove square brackets and highlighting.]</p>
<p>Schedule 8 – Data Processing, Personal Data and Data Subjects</p>	<p>Schedule 8 Data Processing, Personal Data and Data Subjects shall apply to this Agreement</p>
<p>Special Conditions:</p>	<p>[Add any special conditions applying to the Agreement]</p> <p>[Note: you should set out here any special conditions which will apply to this Agreement. These will be specified in the Invitation to Tender].</p>
<p>Liability Limit</p> <p>As per Clause 19.6</p>	<p>£ [AMOUNT]</p> <p>[Note: (1) the liability limit should be a fixed amount which could be related to the level of Public Liability insurance required or £17 million (the max level of fine which can be imposed by the ICO) if there is Personal Data of Service Users processed by the Supplier</p> <p>(2) Where the stated liability exceeds the Charges or differing caps of liability are required to apply to different risks then you must consult with the Council's legal team prior to completing this section of the Contract Details.]</p>
<p>Insurance:</p> <p>As per Clause 20</p>	<p>[Public liability insurance: £ [] million.] [Professional indemnity insurance: £ [] million.] [Employer's liability insurance: £ [] million.] [Product liability insurance: £ [] million.] [Vehicle's motor insurance: £ [] million.]</p> <p>[Note: you should add details of the insurance requirements which will apply to this Agreement. These will be specified in the Invitation to Tender].</p>

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AN AGREEMENT MADE BETWEEN:

- (1) **HEREFORDSHIRE COUNCIL** of Plough Lane, Hereford, HR4 0LE ("**the Council**"); and
- (2) **THE SUPPLIER** whose identity and address for service is set out in the **Contract Details** ("**the Supplier**")

each a **Party** and together the **Parties**.

BACKGROUND

- (A) The Council is a local authority and a best value authority with duties and powers to make arrangements to secure continuous improvement in the way it exercises its functions, having regard to a combination of economy, efficiency and effectiveness pursuant to Part I of the Local Government Act 1999.
- (B) The Council has advertised for providers of the Services (as defined in Clause 1.1 (Definitions) below) and [following a tender process] has selected the Supplier to provide the Services to the Council.
- (C) The Agreement sets out the terms and conditions on and subject to which the Supplier will provide the Services and Goods to the Council.

SECTION A: PRELIMINARIES

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless the context otherwise requires, capitalised terms shall have the meaning given to that term as set out below or the meaning given to such term where it is defined elsewhere in this Agreement.

Affected Party has the meaning given to the term in Clause 21.2 (Force Majeure).

Agreement means the agreement concluded between the Council and the Supplier for the provision of the Services comprising of the Agreement and Schedules and other documents as listed in the Contract Details;

Audit Agents means:

- (a) the Council's statutory and regulatory auditors and any other auditors appointed by the Council; and
- (b) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office.

Business Day means a day, other than Saturday, Sunday or a public holiday in England.

Charges means the charges for the provision of the Services set out in Schedule 4 of this Agreement.

Codes shall have the meaning given to that term in Clause 17.2 (Freedom of Information).

Commencement Date means the date the Agreement starts as set out in the Contract Details.

Commercially Sensitive Information means any information of a commercially sensitive nature relating to the Supplier, its Intellectual Property Rights or its business or which the Supplier has indicated to the Council that, if disclosed by the Council, would cause the Supplier significant commercial disadvantage or material financial loss.

Confidential Information means:

- (a) Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Agreement that relates to:
 - (i) the Disclosing Party; or
 - (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party;
- (b) other Information provided by the Disclosing Party pursuant to or in anticipation of this Agreement that is clearly designated as being confidential or equivalent (whether or not it is so marked) or that ought reasonably to be considered to be confidential which comes (or has come) to the Recipient's attention or into the Recipient's possession in connection with this Agreement;
- (c) discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Agreement and all matters arising therefrom; and
- (d) Information derived from any of the above,

but not including any Information which:

- (i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;
- (ii) the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient's knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;
- (iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or
- (iv) was independently developed without access to the Confidential Information.

Contract Details means the front sheet to this Agreement which sets out the particulars of the Agreement.

Contract Term means the period commencing on the Commencement Date and ending on the Expiry Date or on the expiry of any Extension Period or on earlier termination of this Agreement in accordance with Clause 23 (Termination for Breach).

Contract Year means a period of 12 months commencing on the Commencement Date and/or each anniversary of the Commencement Date.

Council Assets means any assets, equipment or other property which is owned by the Council and which is or may be used in connection with the provision or receipt of the Services.

Council Data means:

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are supplied to the Supplier by or on behalf of the Council pursuant to this Agreement; and
- (b) any Personal Data for which the Council is the Data Controller.

Council Premises means any Council premises which are to be made available for use by the Supplier for the provision of the Services on the terms set out in this Agreement.

Council Representative means the person appointed by the Council and identified in the Contract Details with authority to act on behalf of the Council in relation to all matters set out in, or in connection with this Agreement.

Data Controller means a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed.

Data Loss Event means any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

Data Processor, in relation to personal data, means any person (other than an employee of the data controller) who processes the data on behalf of the data controller.

Data Protection Impact Assessment means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

Data Protection Legislation: means the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

Data Subject means an individual who is the subject of personal data.

Data Subject Access Request means a request made by a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access his Personal Data.

Defaults mean any failure by the Supplier to perform its material obligations under this Agreement.

Disclosing Party has the meaning given to it in Clause 16.1 (Confidentiality).

Dispute means any dispute, issue, difference or question of interpretation arising out of or in connection with this Agreement, including any dispute, issue, difference or question of interpretation relating to the Services or any matter where this Agreement directs the Parties to resolve a matter by reference to the Dispute Resolution Procedure.

Dispute Notice has the meaning given to it in Clause 13.2.2 (Disputes).

Dispute Resolution Procedure means the dispute resolution procedure set out in Clauses 13.2 to 13.8 (Disputes).

DOTAS means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992.

EIR means the Environmental Information Regulations 2004 and any subordinate legislation 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 Regulations.

Exit Plan means the plan for the transfer of Services to the Council and/or any Replacement Supplier in the event of the expiry or termination of this Agreement for any reason, which is to be developed by the Parties pursuant to Clause 23 (Consequences of Expiry or Termination).

Expiry Date means the date the Agreement expires as set out in the Contract Details.

Extension Period means any agreed extension period as set out in the Contract Details

FOIA means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 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 the Freedom of Information Act 2000.

Force Majeure Event means war, natural flood, exceptionally adverse weather, strike or lockout (other than a strike or lockout which is limited to the Supplier's Personnel), civil disorder, act of God, power cuts or delays or other wholly exceptional events outside the control of the parties which could not have been reasonably foreseen or avoided, but excluding:

- (a) any industrial action occurring within the Supplier
- (b) any industrial action occurring from any subcontractor for which the Supplier is responsible for

which directly causes either Party to be unable to comply with all or a material part of its obligations under this Agreement.

General Anti-Abuse Rule means:

- (a) the legislation in Part 5 of the Finance Act 2013; and
- (b) any future legislation introduced into Parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions.

Guidance means any applicable guidance or directions with which the Supplier is bound to comply.

Information means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form).

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

Intellectual Property Rights means any and all rights relating to Intellectual Property.

Invitation to Tender means the invitation to quote for, or tender for the supply of the Services by the Supplier to the Council.

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

LGA 1999 means the Local Government Act 1999.

Losses means all losses, liabilities, damages, demands, charges, costs, and expenses (including legal and other professional charges and expenses) litigation, settlement, judgement interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise and the term **Loss** shall be construed accordingly.

Necessary Consents means all approvals, certificates, authorisations, permissions, licences, permits and consents necessary from time to time for the performance of the Services (which shall include any listed in the Contract Details).

Occasion of Tax Non-Compliance means:

- (a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of:
 - (i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule;
 - (ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or
- (b) the Supplier's tax affairs give rise on or after 1 April 2013 to a conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a penalty for civil fraud or evasion.

Performance Levels means the performance levels against which the Council will monitor the Services supplied by the Supplier, if any, and where applicable as set out in the Services Specification.

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

Personal Data Breach means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed by the Supplier under this Agreement.

Process has the meaning given to that term under the Data Protection Legislation and **Processed** and **Processing** shall be construed accordingly.

Prohibited Act means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council or its members, a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) an offence:
 - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
 - (ii) under legislation or common law concerning fraudulent acts; or
 - (iii) defrauding, attempting to defraud or conspiring to defraud the Council; or
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;

Protected Characteristics has the meaning set out in Clause 27.1 (Equal Opportunities).

Protective Measures means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the measures adopted by it.

Recipient has the meaning set out in Clause 16.1 (Confidentiality and Transparency).

Records shall have the meaning given to that term in Clause 10.2 (The Supplier's Records and Provision of Information).

Relevant Authority means any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union.

Relevant Tax Authority means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is required to submit a tax return.

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

Replacement Supplier means any third party supplier of replacement services appointed by the Council from time to time.

Representatives means the Council Representative and the Supplier Representative and **Representative** shall mean either one of them as the context so requires as identified in the Contract Details.

Request for Information shall have the meaning set out in the FOIA or the EIR as relevant.

Required Insurance means the insurances to be taken out by the Supplier in accordance with Clause 20.1 (Insurance).

Required Professional Standard means the exercise of that degree of skill, care and diligence which would reasonably and ordinarily be expected from a skilled and experienced professional provider of services similar to the Services to a customer like the Council, such provider seeking to comply at all times with their contractual and regulatory obligations and complying with applicable Laws;

Senior Representatives has the meaning given to term in Clause 13.2.3 (Disputes).

Service Users means users who consume or benefit from the Services.

Services means the whole of the services or any of them to be provided by the Supplier as identified in the Services Specification pursuant to this Agreement from time to time.

Services Specification means the specification of the Services set out in the Invitation to Tender;

Subcontract means any contract or agreement between the Supplier and any third party whereby that third party agrees to provide the Supplier all or any part of the Services.

Subcontractors means any third party with whom the Supplier enters into a Subcontract.

Sub-processor means any third party appointed to process Personal Data on behalf of the Supplier under the terms of this Agreement.

Successor Body shall have the meaning given to that term in Clause 32.2 (Assignment and Other Dealings).

Supplier's Equipment means any equipment belonging to the Supplier which is used by the Supplier in the supply of the Services to the Council.

Supplier Personnel means all directors, officers and employees of the Supplier engaged in the performance of the Supplier's obligations under this Agreement.

Supplier Representative means the person appointed by the Supplier and identified in the Contract Details, with authority to act on behalf of the Supplier in relation to all matters set out, or in connection with this Agreement.

Supplier's Tender Response means the Supplier's response to the Council's Invitation To Tender for the award of this Agreement to deliver the Services.

Transparency Code shall have the meaning given to that term in Clause 16.8 (Confidentiality and Transparency).

UK Data Protection Legislation means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679), the Data Protection Act 2018, the Privacy and Electronic Communications Directive 2002/58/EC (as update by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

Value Added Tax or VAT means value added tax as provided for in the Value Added Tax Act 1994 or such similar tax which may be imposed in place from time to time.

Working Day any day other than a Saturday, Sunday or public holiday in England.

1.2 In this Agreement, unless the context otherwise requires:

1.2.1 words in the singular include the plural and vice versa and words importing a gender includes the other gender and the neuter;

1.2.2 references to a person include an individual, Supplier, body corporate, corporation, unincorporated association, firm, partnership or other legal entity;

1.2.3 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;

1.2.4 any phrase introduced by the terms "**including**", "**include**", "**in particular**", "**for example**" or any similar expression shall be construed as illustrative and shall not limit the generality of the words preceding those terms;

1.2.5 references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly unless expressly stated otherwise in this Agreement;

1.2.6 references to Clauses and Schedules are, unless otherwise specified, references to the clauses and schedules of this Agreement and references in any Schedule to Paragraphs and Parts are, unless otherwise specified, references to the paragraphs and parts of the Schedule or the Part of the Schedule in which the references appear;

1.2.7 the Schedules form part of this Agreement; and

1.2.8 headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement.

- 1.3 If there is any conflict between the Clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
- 1.3.1 the Contract details
 - 1.3.2 the Clauses;
 - 1.3.3 the Services Specification;
 - 1.3.4 any other Schedules;
 - 1.3.5 the Supplier's Tender Response;
 - 1.3.6 the Tender Clarifications;
 - 1.3.7 Invitation to Tender.

2 CONTRACT TERM

- 2.1 Subject to Clauses 23 (Termination for Breach) and 41.1.4 where applicable, this Agreement shall take effect on the Commencement Date and shall continue in force for the Contract Term.
- 2.2 [optional cause The Agreement may be extended for a further period or periods as set out in the Contract Details by agreement in writing between the parties.]

3 DUE DILIGENCE

- 3.1 Subject to Clause 3.2, the Supplier acknowledges that it is the Supplier's responsibility to carry out such due diligence as it considers appropriate before entering into this Agreement and, in so doing, that it:
- 3.1.1 has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Council all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this Agreement;
 - 3.1.2 has received all information requested by it from the Council pursuant to Clause 3.1.1 to enable it to determine whether it is able to provide the Services in accordance with the terms of this Agreement;
 - 3.1.3 has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council pursuant to Clause 3.1.2;
 - 3.1.4 has raised all relevant due diligence questions with the Council before the Commencement Date; and
 - 3.1.5 has entered into this Agreement in reliance on its own due diligence alone.
- 3.2 Save as provided in this Agreement, no representations, warranties or conditions are given or assumed by the Council in respect of any information which is provided to the Supplier by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by Law.

4 WARRANTIES

- 4.1 The Supplier represents and warrants that:
- 4.1.1 it has full capacity and authority to enter into and to perform its obligations under this Agreement;

- 4.1.2 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might adversely affect its ability to perform its obligations under this Agreement;
- 4.1.3 it has not done, and in performing its obligations under this Agreement, it shall not do, any act or thing that contravenes the Bribery Act 2010 or any other applicable anti-bribery or anti-money laundering laws and/or regulations and it has maintained and monitored, and will maintain and monitor, policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance with the Bribery Act 2010 and related applicable Laws; and
- 4.1.4 its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or Law).
- 4.2 The Supplier represents and warrants that as at the Commencement Date:
- 4.2.1 (as appropriate) it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- 4.2.2 it has obtained all Necessary Consents;
- 4.2.3 all information contained in the Supplier's **[Tender Response]** or **[quotation]** remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to the Commencement Date and separately warrants to inform the Council in the event there are any changes to such information during the Contract Term; and
- 4.2.4 shall promptly notify the Council in writing if it becomes aware during the performance of this Agreement of any inaccuracies in any information provided to it by the Council during such due diligence which materially and adversely affects its ability to perform the Services or meet any Performance Levels.
- 4.3 Each of the representations and warranties set out in Clauses 4.1 to 4.2 (inclusive) shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Agreement.
- 4.4 Save as expressly set out in this Agreement, all warranties, representations, conditions and other terms implied by Law (whether statutory or otherwise), are hereby excluded to the fullest extent permitted by Law.

SECTION B: THE SERVICES

5 THE SERVICES

- 5.1 The Supplier shall commence the provision of the Services on the Commencement Date and shall thereafter continue to provide the Services throughout the Contract Term in accordance with the terms of this Agreement.
- 5.2 The Supplier shall at all times during the Contract Term perform the Services under this Agreement in accordance with:
- 5.2.1 all applicable Law and Guidance;
- 5.2.2 the Required Professional Standard;
- 5.2.3 the Services Specification;

- 5.2.4 the Performance Levels;
- 5.2.5 all relevant rules, codes, policies, procedures and standards of the Councils which may be referred to in the Services Specification;
- 5.2.6 the Council's reasonable instruction; and
- 5.2.7 the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 5.2.1 to 5.2.6.

5.3 The Supplier shall:

- 5.3.1 pay proper regard to (and, where appropriate, ensure compliance with) the statutory duties of the Council insofar as the Supplier is required to perform such statutory duties on the Council's behalf;
- 5.3.2 at all times allocate sufficient resources with the appropriate professional expertise to provide the Services in accordance with this Agreement;
- 5.3.3 obtain and maintain throughout the Contract Term, all Necessary Consents;
- 5.3.4 as far as reasonably practicable minimise any disruption to the Council's operations when providing the Services;
- 5.3.5 not wilfully engage in any act or omission which is reasonably likely to bring the Council into disrepute; and
- 5.3.6 cooperate with the Council in all matters relating to the Services

SUPPLIER PERSONNEL

5.4 The Supplier shall at all times ensure that, in respect of the Supplier Personnel engaged in the provision of the Services:

- 5.4.1 each of such Supplier Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged
- 5.4.2 there is an adequate number of the Supplier Personnel to properly provide the Services; and
- 5.4.3 all of the Supplier Personnel who require access to the Council's Premises in connection with the provision of the Services comply with the relevant Council policies relating to access and/or use of the Council's Premises, provided always that such policies (including any updates thereto) are brought to the attention of the Supplier and the Supplier is provided with copies of such policies.

5.5 The Council reserves the right to refuse to admit (acting reasonably) to the Council's Premises any person employed or engaged by the Supplier (including any Subcontractor) where admission would, in the reasonable opinion of the Council:

- 5.5.1 present a risk to the Council or to Service Users; or
- 5.5.2 would be a threat to the security or operations of the Council.

5.6 Where the Council exercises its right to refuse admission to any person employed or engaged by the Supplier pursuant to Clause 5.5, the Council shall notify the Supplier in writing of such refusal without delay, including the identity of the person who has been refused such admission and the Council's reasons for refusing admission to such persons.

6 COUNCIL'S PREMISES AND ASSETS

- 6.1 Where the Supplier (and its Subcontractors) are required by the Council to access parts of the Council's Premises, for the purposes only of properly providing the Services, then the Council shall provide such necessary access to the Council Premises to the Supplier for this purpose.
- 6.2 In the event of the expiry or termination of the Agreement, the Council shall on reasonable notice provide the Supplier with such access as the Supplier reasonably requires to the Council's Premises to remove any of the Supplier's Equipment. All such equipment shall be promptly removed by the Supplier.
- 6.3 The Supplier shall ensure that:
- 6.3.1 where using the Council's Premises and any Council Assets they are kept properly secure and it will comply and cooperate with the Council's Representative's reasonable directions regarding the security of the same;
 - 6.3.2 only those of the Supplier's Personnel that are duly authorised to enter upon the Council's Premises for the purposes of providing the Services, do so; and
 - 6.3.3 any Council Assets used by the Supplier are maintained (or restored at the end of the Term) in the same or similar condition as at the Commencement Date (fair wear and tear excepted) and are not removed from Council Premises unless expressly permitted under this Agreement or by the Council's Representative.
- 6.4 The Council shall maintain and repair the Council Assets, however, where such maintenance or repair arises directly from the act, omission, default or negligence of the Supplier or its representatives (fair wear and tear excluded) the costs incurred by the Council in maintaining and repairing the same shall be recoverable from the Supplier as a debt.
- 6.5 The Supplier shall notify the Council immediately on becoming aware of any damage caused by the Supplier, its agents, employees or Subcontractors to any property of the Council, to any of the Council's Premises or to any property of any other recipient of the Services in the course of providing the Services.

SECTION C: PAYMENT, TAXATION AND BEST VALUE PROVISIONS

7 CHARGES AND INVOICING

- 7.1 The Supplier shall comply with the Council's charging, invoicing and payment requirements as set out in this Clause 7 and Schedule 4.
- 7.2 In consideration of the provision of the Services by the Supplier in accordance with this Agreement, the Council shall pay any undisputed Charges to the Supplier in accordance with the provisions of Schedule 4.
- 7.3 The Supplier shall invoice the Council for payment of the Charges at the time the Charges are expressed to be payable as set out in **Schedule 4**.
- 7.4 The invoicing provisions set out in Clauses 7.2 to 7.3 shall be included in any Subcontract.
- 7.5 If the Council fails to pay any undisputed Charges properly invoiced under this Agreement, the Supplier shall have the right to charge interest on the overdue amount at 2% above the Bank of England Base Rate accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 7.6 The Council may at any time, without limiting any of its other rights or remedies, withhold or set off any liability of the Supplier to the Council against any liability of the Council to the Supplier.

7.7 The Council shall, in its absolute discretion but at all times acting reasonably, consider whether and to what extent the Charges will be adjusted. The Council shall notify the Supplier of its discretion in writing and any adjustments shall apply to this Agreement with effect from the following anniversary of the Commencement Date. Both Parties agree to act reasonably and in good faith with respect to the operation of this Clause.

8 VALUE ADDED TAX AND PROMOTING TAX COMPLIANCE

8.1 Charges are stated exclusive of VAT. Where VAT is chargeable in respect of any of the Services, the Supplier shall calculate the amount of VAT to be paid by the Council at the applicable prevailing rate, which shall be added to the Charges and paid by the Council following the submission of a VAT invoice by the Supplier in respect of the same.

8.2 All amounts due under this Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by Law).

8.3 The Supplier shall indemnify the Council against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Council at any time in respect of the Supplier's failure to account for, or to pay, any VAT relating to payments made to the Supplier under this Agreement

8.4 If, at any point during the Contract Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:

8.4.1 notify the Council in writing of such fact within five Working Days of its occurrence; and

8.4.2 promptly provide to the Council:

(a) details of the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and prevent the same from recurring, together with any mitigating factors that it considers relevant; and

(b) such other information in relation to the Occasion of Tax Non-Compliance as the Council may reasonable require.

SECTION D: CONTRACT GOVERNANCE

9 GOVERNANCE

9.1 The Supplier shall comply with the provisions of the Services Specification in relation to the reporting requirements, provision of management information and governance of the Services under this Agreement.

10 THE SUPPLIER'S RECORDS AND PROVISION OF INFORMATION

10.1 During the Contract Term the Supplier shall retain and maintain at its own expense all Records within the United Kingdom in accordance with Required Professional Standard in a form that is capable of audit and such Records shall be retained by the Supplier for a period of at least [six] [twelve] years from the end of the Contract Term or for such longer period as may be required by any applicable Law.

10.2 The records that shall be retained and maintained by the Supplier pursuant to Clause 10.1 are:

10.2.1 this Agreement, its Schedules and all amendments to such documents;

10.2.2 invoices (including any VAT invoices) prepared by the Supplier and submitted to the Council in respect of claims for the Charges under this Agreement;

10.2.3 records required to be retained by the Supplier by Law, including records of incidents relating to health and safety;

- 10.2.4 personnel records on the Supplier Personnel engaged in the provision of the Services; and
- 10.2.5 all documents relating to the Required Insurances and any claims in respect of them, together the "**Records**".

10.3 The Supplier shall at reasonable times and within normal business hours:

- 10.3.1 make the relevant Records available for inspection by the Audit Agents; and
- 10.3.2 provide or procure access to such facilities to enable the Audit Agents to visit any place where the Records are held for the purposes of such inspection,

provided always that the Council shall give the Supplier reasonable notice of such inspection and afford the Supplier a reasonable period of time to collate any relevant information and/or Records where this is required for the purposes of the inspection.

10.4 All information and Records referred to in this Clause 10 are subject to the provisions of Clauses 15 (Data Protection), 16 (Confidentiality and Transparency) and 17 (Freedom of Information).

11 AUDIT

- 11.1 Subject always to Clauses 15 (Data Protection) and 16 (Confidentiality and Transparency) of this Agreement, the Supplier shall at all reasonable times during the Contract Term and during normal business hours, afford to or procure for any Audit Agent access to and permission to copy and remove any copies of any books records information and data in the possession or control of the Supplier which relate to or have been used in connection with the performance of the Services.
- 11.2 The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services by the Supplier or adversely affect the performance by the Supplier of its obligations under this Agreement.
- 11.3 Subject to the Supplier's obligations of confidentiality, the Supplier shall provide the Council (and its Audit Agents) with all reasonable co-operation, access and assistance in relation to each audit.
- 11.4 The Council shall provide at least ten Working Days' notice of any audit unless such audit is conducted in respect of a suspected fraud, in which event no notice shall be required.
- 11.5 The Parties shall bear their own costs and expenses incurred in respect of compliance with their obligations under this Clause 11.

12 SCRUTINY/CABINET ATTENDANCE

- 12.1 Where the value of the Services to be supplied under the Agreement exceeds one hundred thousand pounds (£100,000) in value during the Contract Term and for a period of **six** **twelve** years after termination of expiry of the Agreement the Council reserves the right to require the Supplier to:
 - 12.1.1 provide all reasonable assistance for the purposes of answering the Council's questions pertaining to the operation of the Agreement (including but not limited to the Supplier's performance of the Agreement); and,
 - 12.1.2 attend the Council's Scrutiny Committee and/or Cabinet as and when reasonably required by the Council,

and the Supplier shall comply with any such requirements. Wherever possible, the Council will aim to give the Supplier reasonable advanced notice if the Supplier's attendance is required at the Council's Scrutiny Committee and/or Cabinet.

- 12.2 If, pursuant to Clause 12.1 the Council requires the Supplier to attend the Council's Scrutiny Committee and/or Cabinet following termination or expiry of the Agreement, the Council shall reimburse the Supplier for reasonable travel costs incurred.

13 DISPUTES

- 13.1 The Parties shall resolve Disputes arising out of or in connection with this Agreement in accordance with the procedure set out in Clauses 13.2 to 13.8 below.
- 13.2 The Parties shall attempt, in good faith, to resolve any Dispute promptly by negotiation which shall be conducted as follows:
- 13.2.1 the Dispute shall be referred, by either Party, to the Representatives for resolution;
 - 13.2.2 if the Dispute cannot be resolved by the Representatives within 14 days after the Dispute has been referred to them, either Party may give notice to the other Party in writing (a **Dispute Notice**) that a Dispute has arisen; and
 - 13.2.3 within seven days of the date of the Dispute Notice, each Party shall refer the Dispute to the Chief Executives of the Parties (the **Senior Representatives**) for resolution.
- 13.3 If the Senior Representatives are unable, or fail, to resolve the Dispute within 14 days of the reference to the Senior Representatives pursuant to Clause 13.2.3, the Parties may attempt to resolve the Dispute by mediation in accordance with Clause 13.4.
- 13.4 If, within 21 days of the Dispute Notice, the Parties have failed to agree on a resolution, either Party may refer any Dispute for mediation pursuant to this Clause 13.4:
- 13.4.1 the reference shall be a reference under the Model Mediation Procedure (**MMP**) of the Centre of Dispute Resolution (**CEDR**) for the time being in force;
 - 13.4.2 both Parties shall, immediately on such referral, co-operate fully, promptly and in good faith with CEDR and the mediator and shall do all such acts and sign all such documents as the CEDR or the mediator may reasonably require to give effect to such mediation, including a contract in, or substantially in, the form of CEDR's Model Mediation Contract for the time being in force; and
 - 13.4.3 to the extent not provided for by such contract of the MMP:
 - (a) the mediation shall commence by either Party serving on the other written notice setting out, in summary form, the issues in dispute and calling on that other Party to agree the appointment of a mediator;
 - (b) unless otherwise agreed or determined, the Parties will share equally the costs of mediation; and
 - (c) the mediation shall be conducted by a sole mediator (which shall not exclude the presence of a pupil mediator) agreed between the Parties or, in default of agreement, appointed by CEDR.
- 13.5 If and to the extent that the parties do not resolve any Dispute or any issue in the course of any mediation, either Party may commence or continue court proceedings in respect of such unresolved Dispute or issue.
- 13.6 Nothing in this Clause shall prevent either Party from instigating legal proceedings where an order for an injunction, disclosure or legal precedent is required.

- 13.7 Without prejudice to the Council's right to seek redress in court, the Supplier shall continue to provide the Services and to perform its obligations under this Agreement notwithstanding any Dispute or the implementation of the procedures set out in this Clause.
- 13.8 Where a Dispute has been referred to mediation under this Agreement and the Supplier is in a related dispute with a sub-contractor which is substantially the same as the matter referred to mediation hereunder, the Parties consent to the joinder of such sub-contractor as a party to the mediation (subject to such sub-contractor having agreed to be subject to the same or substantially the same obligations as those imposed on the Parties by Clauses 13.2 to 13.7) and to the reference of such related dispute to the mediator appointed hereunder and further agree that the mediator shall have power to order the consolidation of such mediation proceedings and/or to order the holding of concurrent mediation sessions.
- 13.9 The Parties shall continue to perform their obligations under this Agreement in accordance with its terms until any Dispute has been resolved.

SECTION E: INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

14 INTELLECTUAL PROPERTY RIGHTS

- 14.1 All Intellectual Property Rights in any materials provided by the Council to the Supplier for the purposes of this Agreement shall remain the property of the Council. In so far as it is able the Council shall grant (or procure from any third party licensor the grant) to the Supplier of a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement for the sole purpose of enabling the Supplier to perform its obligations under the Agreement.
- 14.2 In the absence of prior written agreement by the Council to the contrary, all Intellectual Property created by the Supplier or any employee, agent or subcontractor of the Supplier:
- 14.2.1 in the course of performing the Services; and
 - 14.2.2 exclusively for the purpose of performing the Services,
- shall vest in the Council on creation.
- 14.3 The Supplier shall indemnify the Council against all claims, actions, proceedings and any Losses, costs, fees and expenses incurred by the Council arising from or incurred by reason of any alleged infringement of any third party's Intellectual Property Rights by the Intellectual Property created by the Supplier during the course of the provision of the Services, except to the extent that they have been caused by or contributed to by the Council's acts or omissions.

15 DATA PROTECTION

- 15.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Supplier is the Processor. The only processing that the Supplier is authorised to do is as listed in Schedule 8 and may not be determined by the Supplier.
- 15.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 15.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
- 15.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 15.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;

- 15.3.3 an assessment of the risks to the rights and freedoms of the Data Subjects; and
- 15.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 15.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement;
 - 15.4.1 process that Personal Data only in accordance with Schedule 8, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
 - 15.4.2 ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
 - (a) nature of the data to be protected;
 - (b) harm that might result from a Data Loss Event;
 - (c) state of technological development; and
 - (d) cost of implementing any measures;
 - 15.4.3 ensure that:
 - (a) the Supplier Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 8);
 - (b) it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that they:
 - (i) are aware of and comply with the Processor's duties under this clause;
 - (ii) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
 - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data; and
 - 15.4.4 not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (a) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
 - (b) the Data Subject has enforceable rights and effective legal remedies;
 - (c) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and

- (d) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- 15.4.5 at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.
- 15.5 Subject to clause 15.6, the Processor shall notify the Controller immediately if it:
 - 15.5.1 receives a Data Subject Request (or purported Data Subject Request);
 - 15.5.2 receives a request to rectify, block or erase any Personal Data;
 - 15.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 15.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - 15.5.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 15.5.6 becomes aware of a Data Loss Event.
- 15.6 The Processor's obligation to notify under clause 15.5 shall include the provision of further information to the Controller in phases, as details become available.
- 15.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 15.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
 - 15.7.1 the Controller with full details and copies of the complaint, communication or request;
 - 15.7.2 such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - 15.7.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 15.7.4 assistance as requested by the Controller following any Data Loss Event;
 - 15.7.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 15.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
 - 15.8.1 the Controller determines that the processing is not occasional;
 - 15.8.2 the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - 15.8.3 the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

- 15.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 15.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 15.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:
- 15.11.1 notify the Controller in writing of the intended Sub-processor and processing;
 - 15.11.2 obtain the written consent of the Controller;
 - 15.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 15 such that they apply to the Sub-processor; and
 - 15.11.4 provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 15.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 15.13 The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 15.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

16 CONFIDENTIALITY AND TRANSPARENCY

Confidentiality

- 16.1 For the purposes of this Clause 16, the term "**Disclosing Party**" shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and "**Recipient**" shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 16.2 Except to the extent set out in this Clause 16 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:
- 16.2.1 treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
 - 16.2.2 not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner's prior written consent;
 - 16.2.3 not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Agreement; and
 - 16.2.4 immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 16.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
- 16.3.1 the Recipient is required to disclose the Confidential Information by Law, provided that Clause 17 (Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs; or

- 16.3.2 the need for such disclosure arises out of or in connection with:
- (a) any legal challenge or potential legal challenge against a Party arising out of or in connection with this Agreement; or
 - (b) the purpose of the examination and certification of the either Party's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6 (1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council is making use of any Services provided under this Agreement.

16.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or the Relevant Authority requiring such disclosure and the Confidential Information to which such disclosure would apply.

16.5 Subject to this Clause 16, either Party may only disclose the Confidential Information of the other Party on a confidential basis to:

16.5.1 its personnel who are directly involved in the provision or receipt of the Services (as the case may be) and need to know the Confidential Information to enable performance by the respective Party of its obligations under this Agreement; and

16.5.2 its professional advisers for the purposes of obtaining advice in relation to this Agreement.

Where a Party discloses the Confidential Information of the other Party pursuant to this Clause 16.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.

16.6 The Council may disclose the Confidential Information of the Supplier:

16.6.1 strictly on a confidential basis for the purpose of Clause 11 (Audit); or

16.6.2 to a Successor Body which substantially performs any of the duties previously performed by the Council.

16.7 Nothing in this Clause 16 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

Transparency

16.8 The Supplier acknowledges that the Council is required to comply with The Code of Recommended Practice on Data Transparency for Local Authorities published by The Department for Communities and Local Government under section 2 of the Local Government Planning and Land Act 1980 (the "**Transparency Code**").

16.9 The Supplier acknowledges that the Council may be required to publish this Agreement (with the exception of any Commercially Sensitive Information), including from time to time agreed changes to this Agreement, to the general public in accordance with the Transparency Code provided that, in doing so:

16.9.1 the Council shall consult with the Supplier prior to publishing the Agreement in order to discuss in good faith and agree any redactions (such agreement not to be unreasonably withheld or delayed); and

16.9.2 the Supplier shall provide reasonable assistance at no additional cost to the Council to enable the Council to publish this Agreement.

17 FREEDOM OF INFORMATION

- 17.1 The Supplier acknowledges that the Council is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- 17.1.1 provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and EIRs;
 - 17.1.2 transfer to the Council all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two Working Days of receipt;
 - 17.1.3 provide the Council with a copy of all Information belonging to the Council requested in the Request for Information which is in its possession or control in the form that the Council reasonably requires within ten Working Days (or such other period as the Council may reasonably specify) of the Council's request for such Information; and
 - 17.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Council.
- 17.2 The Supplier acknowledges that the Council may in certain circumstances be required under the FOIA and EIRs to disclose Information without consulting or obtaining consent from the Supplier. The Council shall take all reasonable steps to notify and consult the Supplier about all Requests for Information (in accordance with the Secretary of State for Constitutional Affairs' section 45 Code of Practice on the Discharge of the Functions of Public Authorities) under Part 1 of the FOIA and the Code of Practice on the discharge of the obligations of public authorities under the Environmental Information Regulations 2004 (together the **Codes**) to the extent that it is permissible and reasonably practical for it to do so and shall take the Supplier's views into account regarding the relevant Request for Information.
- 17.3 Subject to Clauses 17.4 and 17.5, where the Council receives a Request for Information in relation to Information that the Supplier is holding on its behalf, and which the Council does not hold itself, the Council shall transfer to the Supplier such Request for Information that it receives as soon as practicable and in any event within five Working Days of receiving a Request for Information and the Supplier shall:
- 17.3.1 provide the Council with a copy of all such Information in the form that the Council reasonably requires as soon as reasonably practicable and in any event within ten Working Days (or such other period as the Council may specify, acting reasonably) of the Council's request; and
 - 17.3.2 provide all necessary assistance as reasonably requested by the Council in connection with any such Information, to enable the Council to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Section 5 of the EIR as applicable.
- 17.4 Subject to Clause 17.2, following notification under Clause 17.3 and up until such time as the Supplier has provided the Council with all the Information specified in Clause 17.3.1, the Supplier may make representations to the Council as to whether or not or on what basis Information requested should be disclosed, and whether further Information should reasonably be provided in order to identify and locate the Information requested, and the Council shall take such representations into account provided always that the Council shall be responsible for determining at its absolute discretion:
- 17.4.1 whether the Information is exempt from disclosure under the FOIA or the EIR as applicable; and
 - 17.4.2 whether the Information is to be disclosed in response to a Request for Information.
- 17.5 Without prejudice to Clause 17.4, if the Council receives a Request for Information (whether via the Supplier or otherwise) which relates to or requires the disclosure of Commercially Sensitive Information, the Council shall, in good faith, consider any objections and/or representations made by

the Supplier regarding the disclosure of such Commercially Sensitive Information prior to responding to the Request for Information. The Supplier acknowledges that the Council is responsible for determining in its absolute discretion whether the Commercially Sensitive Information is exempt from disclosure in accordance with the provisions of the Codes, FOIA or the EIR.

- 17.6 If, in response to a Request for Information, the Council concludes that it is obliged to disclose some or all of the Commercially Sensitive Information it shall (in accordance with any recommendations of the Codes) take all reasonable steps to give the Supplier notice in writing of its decision prior to the disclosure of the Commercially Sensitive Information.
- 17.7 In the event of a request from the Council pursuant to Clause 17.3 the Supplier shall as soon as practicable, and in any event within five Working Days of receipt of such request, inform the Council of the Supplier's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Council under section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Council's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in section 12(1) of the FOIA and as set out in the Fees Regulations, the Council shall inform the Supplier in writing whether or not it still requires the Supplier to comply with the request and where it does require the Supplier to comply with the request the ten Working Days period for compliance shall be extended by such number of additional days for compliance as the Council is entitled to under section 10 of the FOIA. In such case, the Council shall notify the Supplier of such additional days as soon as practicable after becoming aware of them and shall reimburse the Supplier for such costs as the Supplier incurs in complying with the request.
- 17.8 Notwithstanding the provisions of this Clause 17, in the event that the Supplier is considered and/or treated as a "public authority" (as defined in FOIA and the EIR, as applicable) for the purposes of FOIA and the EIR, nothing in this Agreement shall prevent and/or hinder the Supplier from performing its statutory duties pursuant to FOIA and the EIR in its capacity as a "public authority" and the Supplier shall have no liability to the Council under this Agreement in respect of the performance of such statutory duties by the Supplier.
- 17.9 For the purpose of this Clause 17, "**Information**" has the meaning given under section 84 of the FOIA and the meaning attached to "environmental information" contained in section 2 of the EIR as appropriate.

18 PRESS STATEMENTS AND PUBLICATION OF THE AGREEMENT

- 18.1 The Supplier, including but not limited to all Supplier Personnel and Subcontractors, shall not:
- 18.1.1 communicate with representatives of the press, television or radio or other media;
 - 18.1.2 issue any press release or public statement;
 - 18.1.3 grant permission to film or photograph in the Council Premises;
 - 18.1.4 engage in any marketing activity; or
 - 18.1.5 make any other announcements or publications, including via social media or otherwise,
- relating to, in connection with, or arising out of the delivery of the Services without obtaining the Council's prior written approval as to the contents thereof and the manner of its presentation and publication.
- 18.2 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 Agreement is not Confidential Information. The Council shall be responsible for determining in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.
- 18.3 The Council may consult with the Supplier to inform its decision regarding any redactions but the Council shall have the final decision in its absolute discretion.

18.4 The Supplier shall assist and cooperate with Council to enable the Council to publish this Agreement.

SECTION F: LIABILITIES AND INSURANCE

19 LIABILITY

19.1 Subject to clause 19.2, the Supplier shall indemnify and keep indemnified the Council against all liabilities, costs, expenses, damages and losses incurred by the Council arising out of or in connection with:

19.1.1 the Supplier's breach or negligent performance or non-performance of this Agreement;

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

19.1.3 the enforcement of this Agreement.

19.2 The indemnity under clause 19.1 shall apply except insofar as the liabilities, costs, expenses, damages and losses incurred by the Council are directly caused (or directly arise) from the negligence or breach of this Agreement by the Council.

19.3 Nothing in this Agreement shall limit or exclude the Supplier's or the Council's liability for:

19.3.1 death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;

19.3.2 fraud or fraudulent misrepresentation;

19.3.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and

19.3.4 any other liability which cannot be limited or excluded by applicable Law.

19.4 Nothing in this Agreement shall limit or exclude the Supplier's liability under Clause 8.3 (VAT indemnity), Clause 14.3 (IPR indemnity), Clause 23.2 (Termination for Breach indemnity), Clause 28 (Human Rights Act indemnity) [and clause 2.5 of Schedule 3 (TUPE indemnity)] and no amounts awarded or agreed to be paid under those clauses or schedule shall count towards the cap on the Supplier's liability.

19.5 Subject to Clause 19.3, 19.4 and 19.7, neither party shall have any liability to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise for any indirect or consequential loss arising under or in connection with this Agreement.

19.6 Subject to Clause 19.1 and Clause 19.2, the Supplier's total aggregate liability to the Council, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement shall in no event exceed the amount in each Contract Year set out in the Contract Details.

19.7 Notwithstanding the provisions of Clause 19.5 but subject always to Clause 19.6, the Supplier assumes responsibility for the following losses which may be recoverable by the Council:

19.7.1 the Council's additional operational and administrative costs and expenses arising from a Default;

19.7.2 the Council's wasted expenditure or charges reasonably incurred by the Council arising from a Default;

19.7.3 any compensation or interest paid to a third party by the Council arising from a Default;

- 19.7.4 any loss or corruption to or alteration of any Council Data; and
- 19.7.5 any fines, expenses or other losses suffered or incurred by the Council arising from a breach by the Supplier of any Law.
- 19.8 Nothing in this Agreement shall be taken as in any way reducing or affecting a general duty to mitigate loss suffered by a party.

20 INSURANCE

- 20.1 Without prejudice to Clause 19 (Liability), the Supplier shall at its own cost effect and maintain in force with reputable insurance companies such policies of insurance as set out in the Contract Details (the **Required Insurances**).
- 20.2 The Supplier shall not, during the term of this Agreement do anything to invalidate any insurance policy and use its reasonable endeavours to procure that the terms of such policies are not altered in such a way as to have a material adverse effect on the benefit of such policies as they were at the Commencement Date.
- 20.3 Following a written request of the Council (acting reasonably) for the same, the Supplier shall provide the Council with:
 - 20.3.1 copies of all insurance policies relating to the Required Insurances (or a broker's verification of insurance) and the Council shall be entitled to inspect such insurance policies at reasonable times during ordinary business hours; and
 - 20.3.2 evidence that the premiums payable under the insurance policies relating to the Required Insurances have been paid and that the insurances are in full force and effect.
- 20.4 Without prejudice to the Council's other rights under this Agreement, if, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, the Council may make alternative arrangements to keep such insurance in force and may recover the costs of such arrangements from the Supplier.
- 20.5 The Council shall immediately notify the Supplier of any claims or potential claims of which it becomes aware in relation to any risk covered by any of the Required Insurances and for which it reasonably believes that the Supplier is responsible and shall provide the Supplier with all information and assistance it may reasonably require in order for the Supplier to effectively manage such claim.

SECTION G: REMEDIES AND RELIEF

21 FORCE MAJEURE

- 21.1 Subject to the remaining provisions of this Clause 21, neither Party shall in any circumstances be liable to the other Party for any delay, or non-performance of its obligations under this Agreement to the extent that such delay or non-performance is due to a Force Majeure Event.
- 21.2 In the event that either Party (the **Affected Party**) is delayed or prevented from performing its obligations under this Agreement due to a Force Majeure Event, the Affected Party shall:
 - 21.2.1 give notice in writing of such delay or prevention to the other Party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof, its estimated duration and any action proposed to mitigate its effect;
 - 21.2.2 use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Agreement; and
 - 21.2.3 resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

- 21.3 The Affected Party cannot claim relief if the Force Majeure Event is attributable to the Affected Party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 21.4 As soon as practicable following the Affected Party's notification pursuant to Clause 21.2, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement.
- 21.5 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event unless agreed otherwise by the Parties in writing.
- 21.6 In the event that the Supplier is prevented from carrying out its obligations under the Agreement by any act of Force Majeure which continues for a period of 25 days, the other Party may terminate the Agreement by notice in writing giving 14 Days' notice. Where this Agreement is terminated pursuant to this Clause 21.6 the Council shall not be liable to the Supplier for any Losses arising out of the termination.

22 CONTINUED PERFORMANCE

- 22.1 Save as may be required to give effect to the granting of relief from obligations under Clause 21 (Force Majeure), the Parties shall continue to perform their obligations under this Agreement notwithstanding the giving of any notice of termination, or natural expiry, of this Agreement until the termination or expiry of this Agreement becomes effective in accordance with the relevant provision.

SECTION H: TERMINATION AND EXIT MANAGEMENT

23 TERMINATION FOR BREACH

- 23.1 This Agreement shall terminate automatically on the Expiry Date unless it is terminated earlier in accordance with this Agreement. For the avoidance of doubt the Supplier shall not be entitled to any compensation on expiry. Without limiting its other rights or remedies, the Council may terminate the Agreement with immediate effect by giving written notice to the Supplier if:
- 23.1.1 the Supplier commits a material breach of the Agreement which is not capable of remedy;
 - 23.1.2 the Supplier commits a Default provided that if the Default is capable of remedy, the Council may only terminate this Agreement under this Clause 23 if the Supplier has failed to remedy such Default within 28 days of receipt of notice from the Council;
 - 23.1.3 subject to Clause 29 (Prevention of Fraud and Bribery) the Supplier commits a Prohibited Act;
 - 23.1.4 a representation and warranty given by the Supplier pursuant to Clause 4 (Warranties) being materially untrue or misleading;
 - 23.1.5 the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a Supplier) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
 - 23.1.6 the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a Supplier) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;

- 23.1.7 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a Supplier) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- 23.1.8 a creditor or encumbrancer of the Supplier 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 its assets and such attachment or process is not discharged within 14 days;
- 23.1.9 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier (being a Supplier);
- 23.1.10 a floating charge holder over the assets of the Supplier (being a Supplier) has become entitled to appoint or has appointed an administrative receiver;
- 23.1.11 a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- 23.1.12 the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business;
- 23.1.13 makes an assignment of this Agreement in breach of Clause 32 (Assignment and other dealings);
- 23.1.14 breaches any of its obligations under Clause 20 (Insurance);
- 23.1.15 fails to provide the Services during a continuous period of four days or for a total period of ten days in any three month period during the Agreement Period other than as a result of a Force Majeure Event; or
- 23.1.16 if any of the provisions of Regulation 73(1) of the Public Contract Regulations 2015 apply; or,
- 23.1.17 The Council receives any claim that the procurement of the Services or the award of this Agreement has breached any of the provisions of the Public Contracts Regulations 2015.
- 23.2 If this Agreement is terminated by the Council for cause such termination shall be at no loss or cost to the Council and the Supplier hereby indemnifies the Council against any such loss or costs which the Council may suffer as a result of any such termination for cause including the cost of procuring and implementing replacement services.

24 CONSEQUENCES OF EXPIRY OR TERMINATION

- 24.1 The termination or expiry of this Agreement shall not affect:
- 24.1.1 the continuing rights and obligations of the Parties pursuant to Clauses 10 (The Supplier's Records and Provision of Information), 11 (Audit), 15 (Data Protection), 16 (Confidentiality and Transparency), 17 (Freedom of Information), 19 (Liability), 20 (Insurance), 23 (Termination for Breach) and this Clause 24 and any other provision of this Agreement that expressly or by implication is intended to come into or continue in force after the termination or expiry of this Agreement; and
- 24.1.2 any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry of this Agreement.
- 24.2 The Supplier shall, within three months after the Commencement Date, produce an Exit Plan for the orderly transition of the Services from the Supplier to the Council or the Replacement Supplier in the

event of the termination or expiry of this Agreement. Within 10 Business Days after the submission of that Exit Plan, the Parties shall meet and use all reasonable endeavours to agree the contents of that Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Business Days either Party may refer the Dispute for resolution in accordance with the Dispute Resolution Procedure.

- 24.3 The Exit Plan shall:
- 24.3.1 facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Council and shall ensure that there is no disruption in the supply of the Services and no deterioration in the quality of delivery of the Services; and
 - 24.3.2 detail how the Services will transfer to the Replacement Supplier and/or the Council including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Council's technology components from any technology components run by the Supplier or any of its Subcontractors (where applicable).
- 24.4 The Supplier shall keep the Exit Plan under review. Following any update, the Supplier shall submit the revised Exit Plan to the Council for review and approval.
- 24.5 In the event of the termination or expiry of this Agreement for any reason, the provisions of the Exit Plan shall come into effect and the Supplier shall co-operate with the Council and/or the Replacement Supplier to the extent reasonably required to facilitate the smooth migration of the Services from the Supplier to the Council or the Replacement Supplier.
- 24.6 On reasonable notice, the Supplier shall provide to the Council and/or to its Replacement Supplier (subject to the Replacement Supplier entering into reasonable written confidentiality undertakings with the Supplier), such material and information as the Council shall reasonably require in order to facilitate the preparation by the Council of any invitation to tender.
- 24.7 On termination of this Agreement and on satisfactory completion of the Exit Plan (or where reasonably so required by the Council prior to such completion) the Supplier shall submit to the Council all relevant data held by the Supplier in respect of the contract which the Council may reasonably need for future reference or to maintain performance of the contract internally or through another Supplier. Such data shall be supplied electronically in the relevant Microsoft product (which is the Council's standard software currently) or in such other electronic product as may be Council's standard at the time, and in e-gif compliant format (if applicable).

SECTION I: COMPLIANCE WITH LAWS

25 HEALTH AND SAFETY

- 25.1 The Supplier shall perform its obligations under this Agreement (including those in relation to the Services) in accordance with:
- 25.1.1 all applicable Law regarding health and safety; and
 - 25.1.2 the Council's health and safety policy.
- 25.2 The Supplier shall notify the Council as soon as practicable of any health and safety incidents or material health and safety hazards on any premises where the Services are being provided of which it becomes aware and which relate to or arise in connection with the performance of this Agreement. Each Party shall instruct their personnel (as applicable) to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

26 ENVIRONMENTAL

- 26.1 The Supplier shall:
- 26.1.1 when working on premises where the Services are being provided, perform this Agreement in accordance with the Council's environmental policy, which is committed to the prevention

of pollution, reduction of our CO2 emissions, minimise the environmental impacts associated with all activities, products and services of the Council's business;

- 26.1.2 follow a sound environmental management policy so that its activities comply with all applicable environmental legislation and regulations and that the Services are procured, and delivered in ways that are appropriate from an environmental protection perspective; and
- 26.1.3 comply with all applicable environmental legislation and other requirements as appropriate to the Services, which may apply in the performance of this Agreement.

27 EQUAL OPPORTUNITIES

- 27.1 The Supplier shall not unlawfully harass or victimise a person or discriminate either directly or indirectly because of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, colour, nationality, ethnic or national origin, religion, or belief, sex, or sexual orientation (the **Protected Characteristics**) and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010, the Human Rights Act 1998 or other relevant legislation, or any statutory modification or re-enactment thereof.
- 27.2 The Supplier shall give due regard to the need to eliminate discrimination, advance equality and foster good relations within the meaning and scope of the Public Sector Equality Duty in Section 149 of the Equality Act 2010 in the execution of the Agreement.
- 27.3 The Supplier shall take all reasonable steps to secure the observance of Clauses 27.1 and 27.2 by all servants, employees or agents of the Supplier and all suppliers and Subcontractors employed in the execution of the Agreement.
- 27.4 The Supplier shall demonstrate to the Council that it has a policy to comply with its statutory obligations under the legislation referred to above in Clauses 27.1 and 27.2.
- 27.5 If there should be any findings of unlawful discrimination made against the Supplier by any court or employment tribunal, or an adverse finding in a formal investigation by a Commission, the Supplier shall take appropriate steps to prevent repetition of the unlawful discrimination.
- 27.6 The Council reserve the right to test the Supplier's equality performance through the life of the Agreement. The Supplier shall cooperate with the Council regarding the provision of a date and/or access for site visits as reasonably required by the Council.

28 HUMAN RIGHTS ACT 1998

- 28.1 The Supplier shall comply in all respects with the provision of the Human Rights Act 1998 and will indemnify the Council against all actions, costs, expenses, claims, proceedings and demands which may be brought against the Council for a breach of statutory duty under the Act attributable to the Supplier.

29 PREVENTION OF FRAUD AND BRIBERY

- 29.1 The Supplier represents and warrants that as at the Commencement Date neither it, nor to the best of its knowledge any of the Supplier Personnel have at any time prior to the Commencement Date:
 - 29.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - 29.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government contracts on the grounds of a Prohibited Act.
- 29.2 The Supplier shall not during the Contract Term of this Agreement:

- 29.2.1 commit a Prohibited Act; and/or
 - 29.2.2 do or suffer anything to be done which would cause the Council to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 29.3 The Supplier shall during the Contract Term of this Agreement:
- 29.3.1 establish, maintain and enforce, and require that its Subcontractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
 - 29.3.2 keep appropriate records of its compliance with its obligations under Clause 29.3.1 and make such records available to the Council on request.
- 29.4 The Supplier shall as soon as reasonably practicable notify the Council in writing if it becomes aware of any breach of Clause 29.2.1 and/or 29.2.2, or has reason to believe that it has:
- 29.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 29.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - 29.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly connected with this Agreement has committed or attempted to commit a Prohibited Act.
- 29.5 If the Supplier makes a notification to the Council pursuant to Clause 29.4, the Supplier shall respond promptly to the Council's reasonable enquiries and cooperate with any investigation carried out by the Council (acting reasonably) in respect of such notification.
- 29.6 If the Supplier is in breach of Clauses 29.1 and/or 29.2 the Council may by notice require the Supplier to remove from performance of this Agreement any member of staff or Subcontractor whose acts or omissions have caused the breach.
- 29.7 Any notice served by the Council under Clause 29.6 shall specify the nature of the Prohibited Act, the identity of the person who the Council reasonably believes has committed the Prohibited Act and the action that the Council requires the Supplier to take as a result.

SECTION J: MISCELLANEOUS AND GOVERNING LAW

30 COMPLAINTS/LOCAL GOVERNMENT OMBUDSMAN

- 30.1 The Supplier shall keep a record of any complaints received (whether received orally or in writing, and whether from members of the Council, members of the public or otherwise) and of the action taken by the Supplier to remedy or fully investigate each such complaint. Such records shall be kept available for inspection by the Council's Representative at all reasonable times during normal working hours.
- 30.2 The Supplier shall provide the Council with all reasonable cooperation and assistance in relation to any investigation by the Local Government Ombudsman in connection with the performance by the Supplier of the Services under this Agreement.

31 VARIATION

- 31.1 No amendment or variation of this Agreement shall be effective unless it is in writing and signed by the Parties (acting through their Representatives) and is expressed to be for the purpose of such amendment or variation.

32 ASSIGNMENT AND OTHER DEALINGS

- 32.1 The Supplier shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of the Council (such consent not to be unreasonably withheld or delayed).
- 32.2 The Council may at its discretion assign, novate, or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement to a body other than the Council which performs any of the functions that previously had been performed by the Council (a **Successor Body**).
- 32.3 The Supplier may not subcontract any part of this Agreement without the prior written consent of the Council. In the event that the Council consents to the Supplier entering into a Subcontract, the Subcontract must include terms:
- 32.3.1 requiring the Supplier to pay any undisputed sums due to the Sub-Contractor within 30 days of receipt of a valid invoice;
 - 32.3.2 requiring the counterparty to that Subcontract to include in any subcontract it awards a provision having the same effect as Clause 32.3.1; and
 - 32.3.3 refrain from acting, or act, in any way which would cause the Supplier to be in breach of this Agreement.
- 32.4 The Supplier shall ensure that any Subcontractor that performs any part of the Services pursuant to this Clause 32 shall be fully supplied with all relevant information about the Supplier's obligations under this Agreement. The Supplier shall remain responsible for all acts and omissions of its Subcontractors and the acts and omissions of those employed or engaged by the Subcontractors as if they were its own. An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation on the Supplier to procure that its employees, staff and agents and Subcontractors' employees, staff and agents also do, or refrain from doing, such act or thing.
- 32.5 The Supplier shall notify the Council of any change to the details of a Subcontractor as soon as reasonably practicable, in accordance with Regulation 71(4)(a) of the Public Contract Regulations 2015.
- 32.6 Notwithstanding any subcontracting permitted under this Clause 32, the Supplier shall be responsible and liable for the acts and omissions of its Subcontractors as if they were its own acts and omissions.

33 ENTIRE AGREEMENT

- 33.1 This Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 33.2 Neither Party has been given, nor entered into this Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.
- 33.3 Nothing in this Clause 33 shall exclude any liability in respect of misrepresentations made fraudulently.

34 WAIVER AND CUMULATIVE REMEDIES

- 34.1 A waiver of any right or remedy under this Agreement or by Law is only effective if given in writing, which expressly states that a waiver is intended, and such waiver shall not be deemed a waiver of any subsequent breach or default.
- 34.2 A failure or delay by a Party in ascertaining or exercising any right or remedy provided under this Agreement or by Law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by Law shall prevent or restrict the further exercise of that or any other right or remedy.
- 34.3 Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.

35 SEVERANCE

- 35.1 If any provision of this Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Agreement shall not be affected.
- 35.2 In the event that any deemed deletion under Clause 35.1 is so fundamental as to prevent the accomplishment of the purpose of this Agreement or materially alters the balance of risks and rewards in this Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Agreement and, to the extent that is reasonably possible, achieves the Parties' original intentions.
- 35.3 If the Parties are unable to agree on the revisions to this Agreement within five Working Days of the date of the notice given pursuant to Clause 39 (Notices) the matter shall be dealt with in accordance with the Dispute Resolution Procedure.

36 FURTHER ASSURANCES

- 36.1 At its own expense, each Party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.

37 RELATIONSHIP OF THE PARTIES

- 37.1 Except as expressly provided otherwise in this Agreement, nothing in this Agreement, nor any actions taken by the Parties pursuant to this Agreement, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

38 THIRD PARTY RIGHTS

- 38.1 A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 38.2 The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.

39 NOTICES

- 39.1 Any notice or other communication given to a Party under or in connection with this Agreement shall be in writing marked for the attention of the Party's Representative and shall be delivered by hand or

by pre-paid first-class post or other next working day delivery service [or by email] at its registered office (if a company) or its principal place of business (in any other case).

39.2 Any notice or communication shall be deemed to have been received:

39.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; or

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

[39.2.3 if sent by email at the time the transmission is received, provided that any email sent after 1700hrs on any Business Day shall be deemed to have been received at 0900 hrs on the following Business Day]

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

40 GOVERNING LAW AND JURISDICTION

40.1 This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England.

40.2 Subject to Clause 13 (Disputes), the Parties agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

41 OPTIONAL CLAUSES AND SCHEDULES

41.1 The following Clauses, set out in Schedule 1 (Optional Clauses), relating to:

41.1.1 Price Variation;

41.1.2 Safeguarding and Improper Conduct;

41.1.3 Social Networking/Internet;

41.1.4 No Fault Termination; and

41.1.5 Collaborative Procurement – Right of Other Bodies to Participate

shall only apply if specifically stated in the Contract Details.

41.2 If specifically stated in the Contract Details, where the Services supplied include the supply of Goods, then the provisions of Schedule 2 (Goods) shall apply to the supply of the Goods in addition to the terms and conditions of this Agreement.

41.3 If specifically stated in the Contract Details, then the provisions of Schedule 3 (TUPE) shall apply to this Agreement.

41.4 If specifically stated in the Contract Details, then the provisions of Schedule 4 (Charges and Payments) shall apply to this Agreement.

41.5 If specifically stated in the Contract Details, then the provisions of Schedule 5 (Specification) shall apply to this Agreement.

41.6 If specifically stated in the Contract Details, then the provisions of Schedule 6 (Tender Submission) shall apply to this Agreement.

41.7 If specifically stated in the Contract Details, then the provisions of Schedule 7 shall apply to this Agreement.

41.8 If specifically stated in the Contract Details, then the provisions of Schedule 8 shall apply to this Agreement.

42 MODERN SLAVERY

42.1 To the extent that the Modern Slavery Act 2015 may apply to the Supplier, the Supplier:

a) represents and warrants that it is compliant with its obligations under the Modern Slavery Act 2015 and that neither the Supplier nor any of its officers, employees subcontractors, agents or other persons associated with it:

i) have been convicted of any offence involving slavery and human trafficking anywhere in the world;

ii) have been or are the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body anywhere in the world regarding any offence or alleged offence of or in connection with slavery and human trafficking.

b) shall implement and maintain throughout the term of this Agreement due diligence procedures for its own suppliers, sub-contractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

c) shall report to the Council any breach or alleged breach of the Supplier's anti-slavery and human trafficking policies and procedures or those of its suppliers, sub-contractors and other participants in its supply chain and shall provide reasonable assistance to the Council to allow the Council to carry out any audit of the Suppliers anti-slavery and human trafficking policies and procedures or those of any suppliers, sub-contractors and other participants in its supply chains.

43 COUNTERPARTS

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

Executed [as a deed] by the parties (or on their behalf by their respective authorised representatives) on the respective date or dates indicated below.

[The Common Seal of Herefordshire Council was affixed in the presence of:]

[SIGNED on behalf of Herefordshire Council by:]

Signature:

Name of signatory (print):

Title or role of signatory (print):

Date:

[The Corporate seal of the Supplier was affixed in the presence of:]

[SIGNED on behalf of the Supplier by two Directors or one Director and the Company Secretary]

Signature:

Name of signatory (print):

Title or role of signatory (print): **[Director]**

Date:

Signature:

Name of signatory (print):

Title or role of signatory (print): **[Director or Company Secretary]**

Date:

Example Template

SCHEDULE 1 – OPTIONAL CLAUSES

Only those Optional Clauses listed in the Contract Details shall apply to this Agreement.

1 PRICE VARIATION

- 1.1 One month prior to each anniversary of the Commencement Date, the Supplier may apply to the Council for an increase in Charges. Charges may only be adjusted in accordance with:
- 1.1.1 the price variation formula set out in the Schedule 4 (Charges and Payments); and
 - 1.1.2 following written evidence from the Supplier that the relevant change in cost has taken place.
- 1.2 The Council shall, in its absolute discretion but at all times acting reasonably, consider whether and to what extent the Charges will be adjusted. The Council shall notify the Supplier of its decision in writing and any adjustments shall apply to this Agreement with effect from the next anniversary of the Commencement Date.
- 1.3 Both parties agree to act reasonably and in good faith in the operation of this Clause.

2 SAFEGUARDING AND IMPROPER CONDUCT

- 2.1 The Supplier acknowledges that the Council is a regulated activity provider with ultimate responsibility for the management and control of the regulated activity provided under this Agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
- 2.2 The Supplier shall
- 2.2.1 Ensure that all individuals engaged in regulated activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service;
 - 2.2.2 Monitor the level and validity of the checks under this Clause 2.2 for each member of Supplier Personal;
 - 2.2.3 Not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out regulated activity or who may otherwise present a risk to Service Users;
 - 2.2.4 At the Commencement Date have in place an improper conduct policy and use reasonable endeavours to ensure all Supplier Personnel comply with its policy;
 - 2.2.5 ensure adequate training is annually provided to Supplier Personal on the prevention of improper conduct, identifying incidents, and reporting processes; and
 - 2.2.6 Comply with all the Council's Safeguarding Procedures.
- 2.3 The Supplier warrants that at all times for the purposes of this Agreement it has no reason to believe that any person who is or will be employed or engaged by the Supplier in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 2.4 Where a DBS check discloses a conviction, caution or other information the Supplier shall notify the Council. Where the outcome of a DBS Check suggests that the member of Supplier Personnel should not be engaged to provide or supervise the provision of the Services, the Council shall, acting reasonably, be entitled to require the Supplier to remove the member of Supplier Personnel from the Services. Upon being advised of this requirement the Supplier shall immediately remove the member

of Supplier Personnel and shall not re-instate that person without the prior written consent of the Council.

- 2.5 The Council shall in no circumstances be liable either to the Supplier and or any member of its Supplier Personnel in respect of any liability, loss or damage occasioned by any action whatsoever taken in accordance with clause 2.4 above and the Supplier shall fully and promptly indemnify and keep the Council and where relevant any Replacement Supplier indemnified against any claim made by such member of Supplier Personnel.
- 2.6 The Supplier shall immediately notify the Council of any information it reasonably requests to enable it to be satisfied that the obligations of this Clause 2 have been met.
- 2.7 The Supplier shall refer information about any person carrying out the Services to the Disclosure and Barring Service where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to Service Users, or children or vulnerable adults.

3 SOCIAL NETWORKING AND INTERNET

- 3.1 The Supplier is only permitted to use social media platforms to market or deliver the Services when the Council has given prior written approval to do so.
- 3.2 If, subject to Clause 3.1, the Supplier uses social media platforms to market or deliver the Services, all Supplier Personnel who administer them must ensure they are used in a professional context and have undertaken eSafety training.
- 3.3 If the Supplier uses social media platforms to market or deliver the Services, a risk assessment must be undertaken and can be requested by the Council at any time.
- 3.4 The Supplier must have a social networking and/or social media policy and guidance for all Supplier Personnel.

4 NO FAULT TERMINATION

- 4.1 Without limiting its other rights or remedies, the Parties may terminate this Agreement by giving the other party a minimum of [3] [6] [X] months written notice.

5 COLLABORATIVE PROCUREMENT – RIGHT OF OTHER BODIES TO PARTICIPATE

- 5.1 For the purposes of this Clause "**Partner Organisation**" mean such other contracting authorities as are permitted, in accordance with the relevant Official Journal of the European Union contract notice, to access this Agreement.
- 5.2 The Parties agree and acknowledge that the Council enters into this Agreement for itself and for the benefit of Partner Organisations.
- 5.3 In addition to the specific Services expressly required to be provided to the Council pursuant to this Agreement, any Partner Organisation, with the prior written consent of the Council (which consent the Council may in its absolute discretion refuse), may require the provision by the Supplier of any of the Services under this Agreement subject to the same or substantially the same terms and conditions contained herein and subject to the additional conditions set out in Clause 5.4.
- 5.4 If and to the extent that any such additional Services under this Agreement are required to be provided by the Supplier to any Partner Organisation:
- 5.4.1 each and every such Partner Organisation shall enter into a specific contract with the Supplier for such additional Services incorporating by reference or otherwise the same or substantially the same terms and conditions contained in this Agreement (but not the provisions of this Clause 5);

- 5.4.2 any non-substantial amendments to the terms and conditions in this Agreement agreed between the Supplier and the Partner Organisation shall be clearly set out in such specific contract; and
- 5.4.3 in order to enter into a specific contract with the Supplier the Partner Organisation may, in accordance with relevant public procurement regulations, consult the Supplier in writing requesting the Supplier to supplement the Supplier's Tender Response as may be necessary.
- 5.5 The Council does not guarantee that any Partner Organisation will require the Supplier to provide any additional Services under this Agreement or otherwise and nothing in this Agreement shall give the Supplier a right to receive such requirement for additional Services.
- 5.6 The Council shall not in any circumstances be liable to the Supplier or any Partner Organisation for payment or otherwise in respect of any such additional Services required to be provided by the Supplier to any Partner Organisation.
- 5.7 It shall be the responsibility of any Partner Organisation to satisfy itself that entering into any contract with the Supplier under Clause 5.4.1 of this Agreement does not breach any relevant public procurement regulations, the general European Community procurement principles or its own contracting rules and procedures.

Example Template

SCHEDULE 2 – SUPPLY OF GOODS

1 DEFINITIONS

In this Schedule, unless the context requires otherwise, capitalised terms shall have the meaning given to that term as set out below or the meaning given to such term where it is defined elsewhere in this Agreement:

Delivery Date the date which the Goods are delivered to the Council by the Supplier in accordance with the terms and conditions of this Agreement.

Delivery Location the address which the Goods are delivered to the Council by the Supplier in accordance with the terms and conditions of this Agreement.

Goods means the whole of the Goods or any of them to be provided by the Supplier as identified in the Goods Specification pursuant to this Agreement from time to time.

Goods Specification means the specification of the Goods set out in the Invitation to Tender.

Replacement Goods means any Goods which are the same as or substantially similar to any of the Goods and which the Council receives in substitution for any of the Goods following the expiry or termination of this Agreement, whether those Goods are provided by the Council internally and/or by any third party.

2 THE GOODS

2.1 The Supplier shall ensure that the Goods:

2.1.1 correspond with their description and the Goods Specification;

2.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Council expressly or by implication, and in this respect the Council relies on the Supplier's skill and judgement;

2.1.3 where they are manufactured products, be free from defects in design, material and workmanship and remain so for 12 months after delivery; and

2.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

2.2 The Supplier shall commence the supply of the Goods on the Commencement Date and shall thereafter continue to provide the Goods throughout the Contract Term in accordance with the terms of this Agreement.

2.3 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Agreement.

3 DELIVERY AND INSPECTION

3.1 The Council may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Agreement.

3.2 If following such inspection or testing the Council considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at Paragraph 2.1, the Council shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

- 3.3 The Council may conduct further inspections and tests after the Supplier has carried out its remedial actions.
- 3.4 The Supplier shall ensure that:
- 3.4.1 the Goods are properly packed and secured in such manner as to enable them to reach their Delivery Location in good condition;
 - 3.4.2 each delivery of the Goods is accompanied by a delivery note which shows the date of the order, the order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - 3.4.3 if the Supplier requires the Council to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.
- 3.5 The Supplier shall deliver the Goods:
- 3.5.1 on the Delivery Date;
 - 3.5.2 at the Delivery Location; and
 - 3.5.3 during the Council's normal business hours or as instructed by the Council.
- 3.6 Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location.
- 3.7 The Supplier shall not deliver the Goods in instalments without the Council's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Council to the remedies set out in Paragraph 4.

4 REMEDIES

- 4.1 If the Goods are not delivered on the Delivery Date, or do not comply with the undertakings set out in Paragraph 2.1, then, without limiting any of its other rights or remedies, and whether or not it has accepted the Goods, the Council may exercise any one or more of the following remedies :
- 4.1.1 to terminate this Agreement in accordance with Clause 23 (Termination for Breach);
 - 4.1.2 to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
 - 4.1.3 to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
 - 4.1.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
 - 4.1.5 to recover from the Supplier any costs incurred by the Council in obtaining substitute goods from a third party; and
 - 4.1.6 to claim damages for any other costs, loss or expenses incurred by the Council which are in any way attributable to the Supplier's failure to carry out its obligations under the Agreement.
- 4.2 This Paragraph shall also apply to any repaired or Replacement Goods supplied by the Supplier.

4.3 The Council's rights and remedies under the Agreement are in addition to its rights and remedies implied by statute and common law.

5 TITLE AND RISK

5.1 Title and risk in the Goods shall pass to the Council upon Delivery.

Example Template

SCHEDULE 3 – TUPE/EMPLOYMENT

Part 1 – RELEVANT TRANSFERS

1 DEFINITIONS

1.1 In this Schedule, the following terms have the following meanings:

Direct Losses means all damages, losses, liabilities, claims, actions, costs, reasonable expenses (including legal or professional services, legal costs being on an agent/employer paying basis) proceedings, demands and charges whether arising under statute, contract or at common law, but to avoid doubt, excluding Indirect Losses.

Directive means the EC Acquired Rights Directive 77/187 as amended.

Employee Liability Information has the meaning given to it in Regulation 11 of TUPE.

Indirect Losses means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature but excluding any of the same that relates to loss of revenue under the Agreement.

Relevant Employees means the employees who are the subject of a Relevant Transfer.

Relevant Transfer means a relevant transfer for the purposes of TUPE.

Relevant Transfer Date means the date on which a Relevant Employee transfers to the Supplier and/or one or more Subcontractors by virtue of a Relevant Transfer.

Retendering Information has the meaning set out in paragraph 1.7.1(a) of Part 1 of this Schedule.

Return Date has the meaning set out in paragraph 1.8.2 of Part 1 of this Schedule.

Returning Employees has the meaning set out in paragraph 1.8.2 of Part 1 of this Schedule.

Third Party Contractor means any contractor (other than the Supplier) engaged by or on behalf of the Council to perform any service equivalent to a Service or any part of the Services;

Transferring Employee means an employee of the third party contractor whose contract of employment becomes, by virtue of the application of TUPE in relation to the provision of works and services pursuant to the Agreement between the Council and the Supplier, a contract of employment with someone other than the third party contractor

TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (2006/246) and or any other regulations enacted for the purpose of implementing the Directive into English law.

2 TUPE

2.1 Relevant Transfers

2.1.1 The Council and the Supplier agree that the following events:

- (a) the Relevant Transfer Date; and
- (b) where the identity of a third party contractor or the Council of any works or services which constitutes or which will constitute part of the service is changed, whether in anticipation of changes pursuant to the Agreement or not, constitute a Relevant Transfer and that the contracts of employment of any Relevant Employees will have effect (subject to Regulation 4(7) of TUPE) thereafter as if originally made between those employees and the Supplier and/or its Subcontractor except insofar as such

contracts relate to those parts of an occupational pension scheme relating to the old age, invalidity and survivors' benefits (save as required under section 257 and 258 of the Pensions Act 2004). On the occasion of a Relevant Transfer (save on expiry or termination of the Agreement) the Supplier will procure that the former and the new Subcontractor will both comply with their obligations under TUPE.

2.1.2 The Council will procure if it has the contractual or legal power to do so and shall otherwise use all reasonable endeavours to procure that any third party contractor of a Relevant Employee will comply with its obligations under TUPE in respect of each Relevant Transfer pursuant to the Agreement and the Supplier will comply and will procure that each Subcontractor will comply with its obligations (including without limitation the obligation under Regulation 13(4) of TUPE) in respect of each Relevant Transfer pursuant to the Agreement.

2.2 Emoluments and outgoings

2.2.1 The Council will procure that any Third Party Contractor of a Transferring Employee is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees, including without limitation all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the Relevant Transfer Date.

2.2.2 The Supplier will be responsible or will procure that any relevant Subcontractor is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees and any other person who is or will be employed or engaged by the Supplier or any Subcontractor in connection with the provision of the service, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the Relevant Transfer Date.

2.3 Employment costs

2.3.1 The Council has supplied to the Supplier information, prior to the time for return of tenders, which is contained in Part Two to this Schedule (the First Employee List) in relation to each of those employees of the Third Party Contractor who it is expected, if they remain in the employment of the Third Party Contractor until immediately before the Relevant Transfer Date, would be Transferring Employees. The Council gives no warranty as to the accuracy or completeness of the information.

2.3.2 The Third Party Contractor shall provide all Employee Liability Information twenty (20) Working Days before the Relevant Transfer Date. This list is known as the First Employee List. The Third Party Contractor shall also supply to the Supplier within five (5) Working Days after the Relevant Transfer Date information, which was correct as at the Relevant Transfer Date, in respect of the Transferring Employees on all the same matters as should be provided in the First Employee List. This list is the "Final Employee List" and where there is more than one Relevant Transfer Date the "Final Employee List" means each list so prepared in respect of each part of the service and at each Relevant Transfer Date. The Council shall give no warranty as to the accuracy or completeness of any information in respect of those employees of the Third Party Contractor contained in any update of the First Employee List or in the Final Employee List.

2.3.3 Without prejudice to paragraph 2.3.2 above, the Council will procure if it has the contractual or legal power to do so and shall otherwise use all reasonable endeavours to procure that each Third Party Contractor or subcontractor will:

- (a) provide the Employee Liability Information to the Supplier at such time or times as are required by TUPE and
- (b) update the Employee Liability Information to take account of any changes as required by TUPE.

2.3.4 The Supplier has provided to the Council, and the Council has agreed, the details set out in Part Three to this Schedule (Workforce Information) which show, in respect of each of the parts of the service, the following information:

- (a) the workforce which the Supplier proposes to establish to provide the service (the "**Proposed Workforce**") classified by reference to grade, job description, hours worked, shift patterns, pay scales, rates of pay, terms and conditions and pension arrangements;
- (b) the monthly costs of employing the Relevant Employees who are expected to be engaged in the Provision of the Service. These costs (the "**Remuneration Costs**") have been calculated on the basis of (amongst other things) the information contained in the First Employee List; and
- (c) the costs, including any lump sum payments, which have been agreed between the Parties for the purposes of any reorganisation which may be required to establish the Proposed Workforce or a workforce which is as close as reasonably practicable to the Proposed Workforce [(including but not limited to costs associated with dismissal by reason of redundancy or capability and costs of recruitment)]. These costs (the "**Reorganisation Costs**") have been calculated by the Supplier on the basis of (amongst other things) the information contained in the First Employee List

2.3.5 The Council and the Supplier will, (and the Supplier will procure that each and every Subcontractor will) take all reasonable steps, including co-operation with reasonable requests for information, to ensure that each and every Relevant Transfer pursuant to the Agreement takes place smoothly with the least possible disruption to the service being provided to the Council under the Agreement and to the employees who transfer.

2.3.6 In addition to the Employee Liability Information covered under TUPE Regulation 11(2), training records are provided to the Supplier showing what training and qualifications are held by each Transferring Employee and the expiry dates of that training and qualification. This information is provided at least forty-five (45) days prior to the Relevant Transfer Date. Also, copies of full employee files for all Transferring Employees are provided to the Supplier within two weeks of the Relevant Transfer Date.

2.4 Union Recognition

2.4.1 The Third Party Contractor will supply to the Supplier no later than three (3) months prior to the Relevant Transfer Date true copies of any union recognition agreement(s) and the Supplier will and will procure that each and every Subcontractor will in accordance with TUPE recognise the trade unions representing Transferring Employees (as relevant to each Subcontractor) after the transfer to the same extent as they were recognised before the Relevant Transfer Date.

2.4.2 The Supplier will procure that, on each occasion on which the identity of a Subcontractor changes pursuant to this Agreement, in the event that there is a Relevant Transfer, the new Subcontractor will in accordance with TUPE recognise the trade unions representing the employees whose contracts of employment transfer to the new Subcontractor to the same extent as they were recognised before the change of identity of the Subcontractor in respect of the provision of any works or services in connection with this Agreement.

2.5 Indemnities

2.5.1 The Supplier will indemnify and keep indemnified in full the Council and each and every New Employer against:

- (a) all Direct Losses incurred by the Council or any New Employer in connection with or as a result of any claim or demand against the Council or any New Employer by (i) any person who is or has been employed or engaged by the Supplier or any Subcontractor in connection with the provision of any works or services under the

Agreement or (ii) any trade union or staff association or employee representative in respect of such person, in either case where such claim arises as a result of any act, fault or omission of the Supplier and/or any Subcontractor after the Relevant Transfer Date,

- (b) all Direct Losses incurred by the Council or any New Employer in connection with or as a result of a breach by the Supplier of its obligations in Part 1 of this Schedule and
- (c) all Direct Losses incurred by the Council or any New Employer in connection with or as a result of any claim by any Relevant Employee, trade union or staff association or employee representative (whether or not recognised by the Supplier and/or the relevant Subcontractor in respect of all or any of the Relevant Employees) arising from or connected with any failure by the Supplier and/or any Subcontractor to comply with any legal obligation to such trade union, staff association or other employee representative whether under Regulation 13 of TUPE, under the Directive or otherwise and, whether any such claim arises or has its origin before or after the Relevant Transfer Date.

2.5.2 The Supplier will indemnify and keep indemnified in full the Council, against all Direct Losses incurred by the Council in connection with or as a result of:

- (a) the change of identity of Council occurring by virtue of TUPE to the Supplier or the relevant Subcontractor being significant and detrimental to any of the Relevant Employees or to any person who would have been a Relevant Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of TUPE) on or before the Relevant Transfer Date as a result of the change in Council and whether such claim arises before or after the Relevant Transfer Date,
- (b) any proposed or actual change by the Supplier or any Subcontractor to the Relevant Employees working conditions, terms or conditions or any proposed measures of the Supplier or the relevant Subcontractor which are to any of the Relevant Employees material detriment or to the material detriment of any person who would have been a Relevant Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of TUPE) on or before the Relevant Transfer Date as a result of any such proposed changes or measures and whether such claim arises before or after the Relevant Transfer Date and
- (c) any claim arising out of any misrepresentation or mis-statement whether negligent or otherwise made by the Supplier or Subcontractor to the Relevant Employees or their representatives whether before on or after the Relevant Transfer Date and whether liability for any such claim arises before on or after the Relevant Transfer Date.

2.6 Provision of details and indemnity

2.6.1 The Supplier will immediately upon request by the Council provide to the Council details of any measures (as referred to in Regulation 13 of TUPE) which the Supplier or any Subcontractor envisages it or they will take in relation to any employees who are or who will be the subject of a Relevant Transfer, and if there are no measures, confirmation of that fact, and will indemnify the Council against all Direct Losses resulting from any failure by the Supplier to comply with this obligation.

2.7 Retendering

2.7.1 The Supplier will (and will procure that any Subcontractor will) within the period of twelve (12) months immediately preceding the expiry of this Agreement or following the service of a notice under Clause 23 (Termination for Breach), or Schedule 1 paragraph 4 (No Fault Termination) or as a consequence of the Council notifying the Supplier of its intention to re-tender this Agreement:

- (a) on receiving a request from the Council provide in respect of any person engaged or employed by the Supplier or any Subcontractor in the provision of any service which is part of the service (the “**Assigned Employees**”) full and accurate details regarding the number, age, sex, length of service, job title, grade and terms and conditions of employment of and other matters affecting each of those Assigned Employees who it is expected, if they remain in the employment of the Supplier or of any Subcontractor as the case may be until immediately before the termination date, would be Returning Employees (the “**Retendering Information**”),
- (b) provide the Retendering Information promptly and at no cost to the Council,
- (c) notify the Council forthwith in writing of any material changes to the Retendering Information promptly as and when such changes arise,
- (d) be precluded from making any material increase or decrease in the numbers of Assigned Employees other than in the ordinary course of business and with the Council’s prior written consent (not to be unreasonably withheld or delayed),
- (e) be precluded from making any increase in the remuneration or other change in the terms and conditions of the Assigned Employees other than in the ordinary course of business and with the Council’s prior written consent, which should not be unreasonably withheld and
- (f) be precluded from transferring any of the Assigned Employees to another part of its business or moving other employees from elsewhere in its or their business who have not previously been employed or engaged in providing any part of the service to provide any such works and services save with the Council’s prior written consent (not to be unreasonably withheld or delayed).

2.7.2 Without prejudice to paragraphs 2.7.1 and 2.7.3 of Part 1 of this Schedule, the Supplier will provide and will procure that any Subcontractor will provide the Employee Liability Information to the Council at such time or times as are required by TUPE, and will warrant at the time of providing such Employee Liability Information, that such information will be updated to take account of any changes to such information as is required by TUPE.

2.7.3 The Supplier will and will keep indemnified in full the Council and any New Employer against all Direct Losses arising from any claim by any Party as a result of the Supplier or Subcontractor failing to provide or promptly to provide the Council and/or any New Employer where requested by the Council with any Retendering Information and/or Employee Liability Information or to provide full Retendering Information and/or Employee Liability Information or as a result of any material inaccuracy in or omission from the Retendering Information and/or Employee Liability Information provided that this indemnity will not apply in respect of the Retendering Information to the extent that such information was originally provided to the Supplier by the Council and was materially inaccurate or incomplete when originally provided.

2.8 Termination of Agreement

2.8.1 On the expiry or earlier termination of this Agreement, the Council and the Supplier agree that it is their intention that TUPE will apply in respect of the provision thereafter of any works and services equivalent to one or more of the works and services which are part of the service but the position will be determined in accordance with the law at the date of expiry or termination as the case may be and this paragraph is without prejudice to such determination.

2.8.2 For the purposes of paragraph 2.8.1 and this paragraph 2.8.2, “**Returning Employees**” will mean those employees wholly or mainly engaged in the provision of the service as the case may be as immediately before the expiry or termination of this Agreement whose employment transfers to the Council or a New Employer pursuant to TUPE. Upon expiry or

termination of the Agreement for whatever reason (such date being termed the “**Return Date**”), the provisions of this paragraph will apply:

- (a) The Supplier will or will procure that all wages, salaries and other benefits of the Returning Employees and other employees or former employees of the Supplier or the Subcontractor (who had been engaged in the provision of the service) and all PAYE tax deductions, pension contributions and national insurance contributions relating thereto in respect of the employment of the Returning Employees and such other employees or former employees of the Supplier or Subcontractors up to the Return Date are satisfied,
- (b) Without prejudice to paragraph 2.8.2(a) of Part 1 of this Schedule, the Supplier will:
 - (i) remain (and procure that Subcontractors will remain) (as relevant) responsible for all the Supplier’s or Subcontractor’s employees (other than the Returning Employees) on or after the time of expiry or termination of the Agreement and will indemnify the Council and any New Employer against all Direct Losses incurred by the Council or any New Employer resulting from any claim whatsoever whether arising before on or after the Return Date by or on behalf of any of the Supplier’s or Subcontractor’s employees who do not constitute the Returning Employees,
 - (ii) in respect of those employees who constitute Returning Employees the Supplier will indemnify the Council and any New Employer against all Direct Losses incurred by the Council or any New Employer resulting from any claim whatsoever by or on behalf of any of the Returning Employees in respect of the period on or before the Return Date (whether any such claim, attributable to the period up to and on the Return Date, arises before, on or after the Return Date) including but not limited to any failure by the Supplier or any Subcontractor to comply with its or their obligations under Regulation 13 of TUPE and/or Article 6 of the Directive as if such legislation applied, even if it does not in fact apply save to the extent that any such failure to comply arises as a result of an act or omission of the Council or any New Employer.
- (c) The Council will be entitled to assign the benefit of this indemnity to any New Employer.

2.9 Subcontractors

- 2.9.1 In the event that the Supplier enters into any subcontract in connection with this Agreement, it will impose obligations on such Subcontractor in the same terms as those imposed on it pursuant to this schedule and Schedule 9 (Pensions) and will procure that the Subcontractor complies with such terms. The Supplier will indemnify and keep the Council indemnified in full against all Direct Losses, incurred by the Council or any New Employer as a result of or in connection with any failure on the part of the Supplier to comply with this paragraph and/or the Subcontractor’s failure to comply with such terms.

2.10 Data Protection

- 2.10.1 Where the Council holds information in respect of any of the Supplier’s employees, the Council will comply with (and ensure that all its employees comply with) any notification requirements under the Data Protection Legislation and will observe its obligations under the Data Protection Legislation which arise in connection with the Agreement.

Part 2 – PENSIONS

1.1 Supplier Scheme

1.1.1 The Supplier will or will procure that any relevant Subcontractor will not later than the Relevant Transfer Date or the Cessation Date (as the case may be) nominate to the Council in writing the occupational pension scheme or schemes which it proposes will be “**the Supplier Scheme**”. Such pension scheme or schemes must be:

- (a) established within 3 months after to the Relevant Transfer Date,
- (b) registered within the meaning of the Finance Act 2004, and

1.1.2 The Supplier agrees that it will and will procure that any relevant Subcontractor will procure that:

the Eligible Employees will by three (3) months after the Relevant Transfer Date or as soon as reasonably practicable be offered membership of the Supplier Scheme with effect from and including the Relevant Transfer Date),

1.1.3 If the Supplier Scheme is terminated, a replacement pension scheme will be provided with immediate effect for those Eligible Employees who are still employed by the Supplier or relevant Subcontractor

1.2 Undertaking from the Supplier

1.2.1 The Supplier undertakes to the Council (for the benefit of the Council itself and for the Council as agent and trustee for the benefit of the Eligible Employees) that:

- (a) all information which the Council or the Administering Authority or their respective professional advisers may reasonably request from the Supplier or any relevant Subcontractor for the administration of the LGPS or concerning any other matters raised in paragraphs 2.7 or 3.8 of Part 1 of this Schedule or Part 2 of this Schedule (Bulk Transfer Terms) will be supplied to them as expeditiously as possible,
- (b) it will not and will procure that any relevant Subcontractor will not, without the consent in writing of the Council (which will not be unreasonably withheld but will be subject to the payment by the Supplier or the relevant Subcontractor of such reasonable costs as the Council or the Administering Authority may require) consent to instigate, encourage or assist any event which could impose on the Council a cost in respect of any Eligible Employee greater than the cost which would have been payable in respect of that Eligible Employee had that consent, instigation, encouragement or assistance not been given,
- (c) until the Relevant Transfer Date, it will not and will procure that any relevant Subcontractor will not issue any announcements (whether in writing or not) to the Eligible Employees concerning the matters stated in paragraphs 2.1 to 2.6 of Part 1 of this Schedule inclusive without the consent in writing of the Council and the Administering Authority (not to be unreasonably withheld or delayed),
- (d) it will not and will procure that any relevant Subcontractor will not take or omit to take any action which would materially affect the benefits under the LGPS or under the Supplier Scheme of any Eligible Employees who are or will be employed wholly or partially in connection with the provision of the service without the prior written agreement of the Council (not to be unreasonably withheld or delayed) provided that the Supplier and/or such Subcontractor will be so entitled without the requirement of consent to give effect to any pre-existing contractual obligations to any Eligible Employees.

1.3 Pension issues on expiry or termination of the Agreement

The Supplier (and procures that each relevant Subcontractor):

- 1.3.1 maintains such documents and information as will be reasonably required to manage the pension rights of and aspects of any onward transfer of any person engaged or employed by the Supplier or any Subcontractor in the provision of any service which is part of the provision of the service on the expiry or termination of this Agreement (including without limitation identification of the Eligible Employees),
- 1.3.2 promptly provides to the Council such documents and information mentioned in paragraph 2.12.1 above which the Council or the Administering Authority may reasonably request in advance of the expiry or termination of this Agreement and
- 1.3.3 fully co-operates (and use best endeavours to procure that the trustees of the Supplier's Scheme will fully co-operate) with the reasonable requests of the Council or the Administering Authority relating to any administrative tasks necessary to deal with the pension rights of and aspects of any onward transfer of any person engaged or employed by the Supplier or any Subcontractor in the provision of any service which is part of the

Example Template

SCHEDULE 4– CHARGES AND PAYMENTS

Insert Text Here

[Insert the schedule of fees plus any payment arrangements here]

Notes:

[Payment is normally made by the Council within 30 days of receipt of a valid undisputed VAT invoice from the Supplier and any subcontract between the Supplier and its subcontractors must include a similar provisions]

[The Supplier must ensure that it has received a valid Order form or Purchase Order Number prior to commencing any manufacture or supply of the Goods or delivery of Services. The Council shall have no obligation to make any payment unless the Purchase Order Number is stated on the Supplier's invoice.]

Example Template

SCHEDULE 5 – SPECIFICATION

Insert Specification Here

Example Template

SCHEDULE 6 – SUPPLIER’S TENDER RESPONSE [OR QUOTATION IF DIRECT AWARD]

Insert relevant excerpts/tender submission here

Example Template

SCHEDULE 7 – OTHER DOCUMENTATION (OPTIONAL)

Insert Text Here or other relevant appended documents

Example Template

SCHEDULE 8 – DATA PROCESSING, PERSONAL DATA AND DATA SUBJECTS

This Schedule shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

1. The contact details of the Controller's Data Protection Officer are:

Carol Trachonitis - Head of Information Compliance and Equality
 Herefordshire Council, Plough Lane Hereford, HR4 0LE
 Corporate Services

2. The contact details of the Processor's Data Protection Officer are:

[REDACTED]

3. The Processor shall comply with any further written instructions with respect to processing by the Controller.

4. Any such further instructions shall be incorporated into this Schedule.

Description	Details <i>[This schedule may need more detailed or specific information in certain circumstances depending on the nature of the services or the Personal Data]</i>
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Supplier is the Processor in accordance with Clause 1.1.
Subject matter of the processing	The subject matter of the Personal Data being processed will include Personal Data relating to Data Subjects who are Employees of the Council and/or Service Users or recipients of the Services or in respect of any matter on which the Services are being sought by the Council or which is otherwise relevant to the provision of the Services.
Duration of the processing	The processing of Personal Data by the Supplier will be carried out for the period during which the Services are required and any period during which the Supplier is required to maintain records in accordance with this Agreement and any regulatory and legal requirements.
Nature and purposes of the processing	<p>The processing of Personal Data will include the transmission of Personal Data relating to Data Subjects required in order for the Supplier to effectively provide the Services. It may involve being processed on systems of the Supplier for the purposes of delivering the Services.</p> <p>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</p>
Type of Personal Data being Processed	Personal Data may include Special Categories of Personal Data dependent on the Services being provided and the nature of the Personal Data required to be processed in order for the Services to be provided, including but not limited to, name, address, date of birth, contacts details,

	telephone number and email address, health or biometric data, etc of the Data Subject
Categories of Data Subject	Any Service User who is the recipient of the Services, or their personal representatives, any employee or representative of the Council (including volunteers, agents, and temporary workers).
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	Any Personal Data of Data Subjects shall be retained by the Provider only for as long as is necessary for the performance of the Services and/or in compliance with the management information retention provisions (if applicable) set out in this Agreement. All Personal Data shall be either destroyed or returned to the Council on termination of the Services.

Further details or instructions about the processing of Personal Data may be further specified by the Council in writing, which may include additional instructions in relation to the processing of Personal Data and may require, amongst other things that the Parties enter into an Information Sharing Agreement in relation to the processing of Personal Data for the purposes of the Services.

[Where there are multiple parties who are joint data controllers a specific Information Sharing Agreement will be required. Consult legal services in that case]

Example Template