



SERVICES CONTRACT

THE COUNTY COUNCIL OF DURHAM (1)

AS COUNCIL

AND

[PROVIDER NAME] (2)

AS PROVIDER

CONTRACT FOR THE
PROVISION OF [CONTRACT TITLE]

PROCONTRACT REFERENCE: DN[]

OJEU REFERENCE: []

DATE OF AGREEMENT:

Helen Lynch
Head of Legal and Democratic Services
Durham County Council
County Hall
Durham
DH1 5UL

CONTRACT PARTICULARS

Contract Title	Contract for [insert]	
Council	The Council of the County of Durham	
Provider	<i>Insert name of organisation</i>	
Documents included in the Contract	Contract Particulars; Terms and Conditions; Schedules: <ol style="list-style-type: none">1. Clarifications2. Pricing Schedule3. Specification4. Form of Tender5. Tender6. Processing of Personal Data and Data Subjects7. TUPE list8. National TOMs Framework	
Commencement Date	<i>insert</i>	
Contract Period (and any option to extend)	<i>insert</i>	
Summary of Services	<i>insert or Refer to Specification</i>	
Contract Price	<i>[£] or [see attached Pricing Schedule]</i>	
Payment Terms	<i>Insert or [see attached Pricing Schedule]</i>	
Delivery Instructions	<i>Insert where applicable or [see Specification]</i>	
Monitoring Requirements	<i>Insert where applicable or [see Specification/other]</i>	
Key Personnel	<i>Insert where applicable</i>	
Council Authorised Officer(s)		
Name	Position	Contact Details
<i>Insert</i>		

Contract Manager	
Name	Contact Details
<i>Insert</i>	

Insurance <i>(delete/amend as applicable)</i>	
Insurance type:	Minimum level
Employer's Liability Insurance	£[] million
Public Liability Insurance	£[] million
Professional Indemnity Insurance	£[] million
Product Liability Insurance	£[] million
Motor Vehicle	<i>insert</i>

**Signed on behalf of THE COUNTY COUNCIL
OF DURHAM by**

Name

Position

**Signed on behalf of THE COUNTY COUNCIL
OF DURHAM by**

Name

Position

Signed on behalf of the Provider by

Name

Position

[Signed] [Witnessed] on behalf of the Provider by

Name

Position

[Address]

[Delete as applicable]

CONTENTS

PART A - OPERATIVE PROVISIONS

PART B - PROVISION OF SERVICES

- B1 Contract Period
- B2 Goods
- B3 The Services
- B4 Manner of Carrying out the Services
- B5 Key Personnel
- B6 Contract Manager and Authorised Officer
- B7 Safeguarding Children and Vulnerable Adults
- B8 Employees

PART C – PRICE AND PAYMENT

- C1 Contract Price
- C2 Payment and VAT
- C3 Recovery of Sums
- C4 Euros

PART D – DEFAULT, DISRUPTION AND TERMINATION

- D1 Termination on insolvency and change control
- D2 Termination on Default
- D3 The Public Contracts Regulations 2016
- D4 Break
- D5 Consequences of Expiry or Termination
- D6 Disruption
- D7 Recovery on Termination

PART E - INSURANCE AND LIABILITIES

- E1 Liability, indemnity and Insurance
- E2 Warranties and Representations

PART F – PROTECTION OF INFORMATION

- F1 Intellectual Property
- F2 Confidential Information
- F3 Data Protection
- F4 Freedom of Information
- F5 Publicity, Media and Official Enquiries
- F6 Security
- F7 Records and Audit Access
- F8 Record Keeping and Monitoring
- F9 Benchmarking

PART G - STATUTORY OBLIGATIONS

- G1 Health and Safety
- G2 Corporate Requirements
- G3 Law and Change in Law
- G4 TUPE Indemnity
- G5 Pensions
- G6 Business Continuity Plan
- G7 Community Safety

G8 Environmental Requirements

PART H – GENERAL PROVISIONS

- H1 Dispute Resolution Procedure
- H2 Control of the Contract
- H3 Third Party Rights
- H4 No Waiver
- H5 Severance
- H6 Assignment, Sub-contracting and Responsibilities
- H7 Force Majeure
- H8 Prevention of Bribery
- H9 Costs and Expenses
- H10 No Agency or Partnership
- H11 Non Solicitation and Offers of Employment
- H12 Inspection of Provider's Premises
- H13 Law and Jurisdiction

SCHEDULE 1 CLARIFICATIONS

SCHEDULE 2 PRICING SCHEDULE

SCHEDULE 3 SPECIFICATION

SCHEDULE 4 FORM OF TENDER

SCHEDULE 5 TENDER

SCHEDULE 6 PROCESSING OF PERSONAL DATA AND DATA SUBJECTS

SCHEDULE 7 LIST OF ELIGIBLE EMPLOYEES AND THIRD-PARTY EMPLOYEES (TUPE)

SCHEDULE 8 NATIONAL THEMES, OUTCOMES, AND MEASURES (TOMs)

DURHAM COUNTY COUNCIL

CONTRACT FOR [INSERT]

DURHAM COUNTY COUNCIL
STANDARD TERMS AND CONDITIONS FOR SERVICES

PART A - OPERATIVE PROVISIONS

A1. DEFINITIONS

A1.1 The terms and expressions used in these Terms and Conditions shall have the meanings set out below:-

“Authorised Officer”	the person duly appointed by the Council in accordance with clause B6.3 and notified in writing to the Provider to act as the representative of the Council for the purpose of this Contract or as amended from time to time and in default of such notification the Council’s Corporate Procurement Manager or similar responsible officer;
“Bribery Act”	the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;
“Business Day”	any day other than a Saturday or Sunday or a public or bank holiday in England;
“Business Continuity Plan”	the plan setting out the Provider’s proposed methodology to ensure continuance of the Contract in the event of an emergency;
“Caldicott Guardian”	where relevant the senior officer responsible for safeguarding the confidentiality of Service Users’ information;
“Change in Law”	the coming into effect or repeal (without re-enactment or consolidation) in England of any Law, or any amendment or variation to any Law, or any judgement of a relevant court of law which changes binding precedent in England in each case after the date of this Contract;
“Commencement Date”	the commencement date stated in the Contract Particulars;
“Commercially Sensitive Information”	any Confidential Information comprised of information: (a) which is provided by the Provider and designated as commercially sensitive information by the Council for the period set out in the Contract; and/or (b) that constitutes a trade secret;

"Confidential Information"

(a) any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Act 2018; and

(b) the Commercially Sensitive Information;

and does not include any information:

- (i) Which was public knowledge at the time of disclosure (otherwise than by breach of Clause 6.3 (Confidential Information));
- (ii) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (iii) which is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (iv) is independently developed without access to the Confidential Information;

"Contract"

the written agreement between the Council and the Provider;

"Contracting Authority"

any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015 *other* than the Council;

"Contract Particulars"

the document detailing the specific core terms agreed between the parties with regard to the Services which shall include but not be limited to, the Commencement Date, Authorised Officer, Contract Manager, Key Personnel, Contract Period and Monitoring Requirements;

"Contract Manager"

the person named in the Contract Particulars as the contract manager and any replacement from time to time in accordance with clause B6.1;

"Contract Period"

the period of the contract as set out in the Contract Particulars;

"Contract Price"

the price (exclusive of any applicable VAT), payable to the Provider by the Council under the Contract, as set out in the Contract Particulars and/or the Pricing Schedule, for the full and proper performance by the Provider of its obligations under the Contract;

"Control"

control as defined by the Corporation Tax Act 2010;

"Controller"

has the meaning given to it in the GDPR;

"Convictions"

other than in relation to minor road traffic offences, any previous pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by Section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order;

"Council"

the County Council of Durham of County Hall, Durham DH1 5UL, and where the context so admits any person which takes over or assumes the statutory functions or administrative responsibilities

	of the Council (whether in part or totally) or which is controlled by or is under common control with the Council (and the expression “control” shall mean the power to direct or cause the direction of the general management and policies of the person in question but only for so long as such control exists);
“Data Loss Event”	any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
“Data Protection Legislation”	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the Data Protection Act 2018 subject to Royal Assent to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about processing of personal data and privacy;
“Data Protection Impact Assessment”	has the meaning given to it in the GDPR;
“Data Protection Officer”	takes the meaning given in the GDPR;
“Data Subject”	takes the meaning given in the GDPR;
“Data Subject Access Request”	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
"Default"	any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other;
“Delivery Instructions”	Where relevant, the instructions provided in the Contract Particulars and any other information that the Council considers appropriate to the provision of the Services;
“DPA 2018”	the Data Protection Act 2018;
“Effective Date”	the date(s) on which the Services (or any part of the Services), transfer from the Authority or any Third Party Employer to the Provider or Sub-Contractor, and a reference to the Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to the Provider or Sub-Contractor.
"Environmental Information Regulations"	the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
“Employee”	any person employed by the Provider to perform the Contract which will also include the Provider's servants, agents, voluntary and unpaid workers and Sub-Contractors and representatives, employed by the Provider in the performance of the Services;
“FOIA”	the Freedom of Information Act 2000;
“Force Majeure”	any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical

warfare; or any other disaster, natural or man-made, but excluding:

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

"Fraud"	any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud a Contracting Authority or the Council;
"Future Service Provider"	each and every service provider who shall provide any service equivalent to any of the Services immediately after expiry or earlier termination of this Agreement;
"GDPR"	the General Data Protection Regulation (Regulation (EU) 2016/679);
"Good Industry Practice"	the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced Provider engaged in the supply of services similar to the Services under the same or similar circumstances as those applicable to this Contract;
"Goods"	any goods to be supplied as specified in the Contract;
"Guidance"	any applicable guidance or directions with which the Provider is bound to comply;
"Information"	has the meaning given under Section 84 of the FOIA;
"Intellectual Property Rights" and "IPRs"	patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;
"Key Personnel"	those persons named in the Contract Particulars as being key personnel in respect of this Contract and any replacement from time to time under clause B5.3;
"Law"	any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body of which the Provider is bound to comply;
"LED"	Law Enforcement Directive (Directive (EU) 2016/680)
"Liabilities"	all costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought;

['Measures'

Means any of the actions that represent activities that a Provider could complete to support a particular desired outcome and are referenced NT1 – NT38 in the Tender to National TOMs Framework]

“Monitoring Requirements”

any requirements of the Council in relation to monitoring ongoing performance and delivery of the Services detailed in the Contract Particulars;

"Month"

a calendar month

"Parent Company"

any company which is the ultimate Holding Company of the Provider or any other company of which the ultimate Holding Company of the Provider is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the Provider or which is engaged by the same or similar business to the Provider. The term "Holding Company" shall have the meaning ascribed in Section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto;

"Party"

the Provider or the Council;

“Payment Terms”

the payment terms set out in the Contract Particulars and Clause C2;

“Personal Data”

takes the meaning given in the GDPR;

“Personal Data Breach”

takes the meaning given in the GDPR;

"Premises"

the delivery address where the Services and any Goods are to be supplied, as set out in the Contract Particulars;

“Process”

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

“Processor”

takes the meaning given in the GDPR;

“Prohibited Act”

offering, giving or agreeing to give to any servant of the Council any gift or consideration of any kind as an inducement or reward:

for doing or not doing (or having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with the Council; or

for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Council;

entering into this Contract or any other contract with the Council in connection with which commission has been paid or has been agreed to be paid by the Provider or on its behalf, or to its knowledge, unless before the relevant contract was entered into particulars of such commission and of any of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Council for:

- committing any offence under the Bribery Act 2010

- under Law creating offences in respect of fraudulent acts; or
- at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Council;
- defrauding or attempting to defraud or conspiring to defraud any of the Council;

“Protective Measures”	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;
“Provider”	the provider of the Services and where applicable this shall include the Provider's Employees, Sub-Contractors, agents, representatives, and permitted assigns and, if the Provider is a consortium or consortium leader, the consortium members;
"Quality Standards"	the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Provider would reasonably and ordinarily be expected to comply with (as may be further detailed in the Specification) and any other quality standards set out in the Specification;
"Regulated Activity”	in relation to children as defined in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006; In relation to vulnerable adults as defined in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006;
“Regulated Activity Provider”	as defined in section 6 of the Safeguarding Vulnerable Groups Act 2006;
“Regulatory Body / Bodies”	any government department, regulatory, statutory and other entity, committee, ombudsman or body which, whether under statute, rules, regulations, codes of practice or otherwise, is entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Council;
“Relevant Transfer”	a relevant transfer of the Services for the purposes of TUPE;
“Relevant Transfer Date”	the date on which an Eligible Employee transfers to the Provider and/or one or more Sub-Contractor whether by virtue of any Relevant Transfers or deemed Relevant Transfers or otherwise;
"Replacement Provider"	any third party provider of Services appointed by the Council to supply any services which are substantially similar to any of the Services, and which the Council receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract;

"Request for Information"	shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "Request" shall apply);
"Service User"	a service user of the Council or any other client or customer who is referred or presents to the Provider or otherwise receives Services under this Contract;
"Services"	the Services described in the Specification together with all equipment required and any associated Goods provided by the Provider in relation to those Services;
"Specification"	the document attached at Schedule 3 which more particularly describes the Council's requirements in respect of the Services;
"Staff"	all persons employed or engaged by the Provider or by any Sub-Contractor (including volunteers, agency, locums, casual or seconded personnel) in the provision of the Services or any activity related to, or connected with the provision of the Services;
"Social Value"	means the obligations imposed on the Council by the Public Services (Social Value) Act 2012;
"Sub-Contract"	any contract or agreement, or proposed contract or agreement between the Provider and any third party whereby that third party agrees to provide to the Provider the Services or any part of the Services, or facilities or services necessary for the provision of the Services or any part of the Services, or necessary for the management, direction or control of the Services or any part of the Services;
"Sub-Contractor"	any other person engaged by the Provider from time to time as may be permitted by this Agreement to procure the provision of the Works and/or the Services (or any of them). References to Sub-Contractors means Sub-Contractors (of any tier) of the Provider;
"Sub-processor"	Any third party appointed to process Personal Data on behalf of the Contractor related to this Contract;
"Tender"	the document(s) submitted by the Provider to the Council in response to the Council's invitation to providers for offers to supply it with Services;
"Terms and Conditions"	the terms and conditions set out in this document;
["TOMs"	means the Social Value Framework for Themes, Outcomes, and Measures]
"TUPE"	The Transfer of Undertakings (Protection of Employment) Regulations 2006;
"VAT"	value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994;
"Working Day"	any day other than a Saturday or Sunday or public holiday in England and Wales.

A1.2 The interpretation and construction of the Contract including any schedules and appendices shall be subject to the following provisions:

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

- b) words importing the masculine include the feminine and the neuter;
- c) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- d) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- e) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- f) headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract; and
- g) reference to a clause is a reference to the whole of that clause unless stated otherwise.

A1.3 Provider's Status

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

A1.4 Council's Obligations

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

A1.5 Entire Agreement

- a) This Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.
- b) Each of the Parties acknowledges and agrees that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract. The only remedy available to either Party for any such statements, representation, warranty or understanding shall be for breach of contract under the terms of the Contract.
- c) Nothing in Clauses 1.5(a) and 1.5(b) shall operate to exclude Fraud or fraudulent misrepresentation.
- d) In the event of and only to the extent of any conflict between the Schedules, the clauses of the Contract and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence:
 - i. The Contract Particulars;
 - ii. Clarifications;
 - iii. The Pricing Schedule;
 - iv. The Specification;
 - v. The clauses of the Contract;
 - vi. Form of Tender;

- vii. Tender;
 - viii. The remaining Schedules (if any); and
 - ix. any other document referred to in the clauses of the Contract.
- e) The Contract may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

A1.6 Notices

- a) Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party sending the communication.
- b) Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail. Such letters shall be addressed to the other Party in the manner referred to in Clause 1.6(c). Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Business Day after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.
- c) For the purposes of Clause 1.6(b) the address of each Party shall be:
 - i. for the Council: the address set out in Contract Particulars;
 - ii. for the Provider: the address set out in in Contract Particulars.
- d) Either Party may change its address for service by serving a notice in accordance with this Clause.

A1.7 Mistakes in Information

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

A1.8 Conflicts of Interest

- a) The Provider shall take appropriate steps to ensure that neither the Provider nor any Staff are placed in a position where (in the reasonable opinion of the Council), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider or Staff and the duties owed to the Council under the provisions of the Contract.
- b) The Provider shall promptly notify the Council (and provide full particulars to the Council) if any conflict referred to in Clause A1.8(a) above arises or is reasonably foreseeable.
- c) The Council reserves the right to terminate the Contract immediately by giving notice in writing to the Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Council under the provisions of the Contract. The actions of the Council pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

A1.9 Prevention of Fraud

- a) The Provider shall take all reasonable steps to prevent any Fraud by Staff and the Provider (including its shareholders, members and directors) in connection with the receipt of monies from the Council.
- b) The Provider shall notify the Council immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

- c) If the Provider or its Staff commits any Fraud in relation to this or any other contract with a Contracting Authority or the Council the Council may:
 - i. terminate the Contract with immediate effect by giving the Provider notice in writing and recover from the Provider the amount of any loss suffered by the Council resulting from the termination including the cost reasonably incurred by the Council of making other arrangements for the supply of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period; and/or
 - ii. recover in full from the Provider any other loss sustained by the Council in consequence of any breach of this Clause 1.9.
- d) This Clause shall apply for the duration of the Contract and for a period of two (2) years after expiry of the Contract.

PART B - PROVISION OF SERVICES

B1. CONTRACT PERIOD

- B1.1 This Contract shall commence on the Commencement Date and shall continue for the Contract Period, unless it is otherwise terminated in accordance with the provisions of this Contract, or otherwise lawfully terminated or extended under clause B1.2.
- B1.2 If the Contract Period includes an option to extend and the Council intends to take up the option, the Provider shall be notified in writing within the period stated in writing prior to the commencement of the extension. The provisions of this Contract will apply throughout any such extended period. If no such notification is issued this Contract shall automatically expire after the initial Contract Period.

B2. GOODS

- B2.1 Where Goods are supplied as part of the carrying out by the Provider of the Services:
 - a) The Provider shall supply the Goods in accordance with the Council's requirements and in accordance with any obligations implied by Section 12 or 14 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.
 - b) If requested by the Council the Provider shall provide the Council with samples of Goods for evaluation and approval, at the Provider's cost and expense and such requests shall be acted upon immediately.
 - c) The Provider shall ensure that the Goods are fully compatible with any of the Council's equipment.
 - d) The Provider acknowledges that the Council relies on the skill and judgment of the Provider in the supply of the Goods and the performance of its obligations under the Contract.
 - e) The Provider shall deliver the Goods at the time(s) and date(s) specified.
 - f) Delivery lead times from point of order to receipt of goods should not exceed 4 Business Day.
 - g) Where the Goods are delivered by the Provider, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises.
 - h) Except where otherwise provided in the Agreement, delivery shall include the unloading, stacking or installation of the Goods by the Staff or the Provider's suppliers or carriers at such place as the Council or duly authorised person shall reasonably direct.
 - i) Time of delivery shall be of the essence and if the Provider fails to deliver the Goods within the time specified the Council may release itself from any obligation to accept and pay for the Goods and/or terminate the Contract, in either case without prejudice to any other rights and remedies of the Council.

- j) The Council shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Council elects not to accept such over-delivered Goods it shall give notice in writing to the Provider to remove them within five (5) Business Day and to refund to the Council any expenses incurred by it as a result of such over-delivery (including but not limited to the costs of moving and storing the Goods), failing which the Council may dispose of such Goods and charge the Provider for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Provider unless they are accepted by the Council. The Council shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery.
- k) Unless expressly agreed to the contrary, the Council shall not be obliged to accept delivery by instalments. If, however, the Council does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to any other rights or remedies of the Council, entitle the Council to terminate the whole of any unfulfilled part of the Contract without further liability to the Council.
- l) The Provider shall deliver the Goods in accordance with the requirements of any Supply Chain Agreement relevant to the appropriate delivery point.
- m) Title and risk in the Goods shall, without prejudice to any other rights or remedies of the Council, pass to and remain with the Council on the supply, installation or delivery of the Goods whichever is the earliest.
- n) Where specified by the Council on dispatch of any consignment of the Goods the Provider shall send the Council an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. Where the Goods, having been placed in transit, fail to be delivered to the Council on the due date for delivery, the Council shall, (provided that the Council has been advised in writing of the dispatch of the Goods), within ten (10) Business Day of the notified date of delivery, give notice to the Provider that the Goods have not been delivered and may request the Provider free of charge to deliver substitute Goods within the timescales specified by the Council or terminate the Contract.
- o) The Council or its authorised representatives may inspect or test the Goods either completed or in the process of manufacture during normal business hours on reasonable notice at the Provider's premises and the Provider shall provide all reasonable assistance in relation to any such inspection or test free of charge. No failure to make complaint at the time of any such inspection or test and no approval given during or after such inspection or test shall constitute a waiver by the Council of any rights or remedies in respect of the Goods and the Council reserves the right to reject the Goods in accordance with Clause 2.1(p)
- p) The Council may by written notice to the Provider reject any of the Goods which fail to conform to the approved sample or fail to meet the Contract requirements. Such notice shall be given within a reasonable time after delivery to the Council of such Goods. If the Council rejects any of the Goods pursuant to this Clause the Council may (without prejudice to other rights and remedies) either:
 - i. have such Goods promptly, and in any event within 3 Business Day, either repaired by the Provider or replaced by the Provider with Goods which conform in all respects with the approved sample and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or
 - ii. treat the Contract as discharged by the Provider's breach and obtain a refund from the Provider in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Council in obtaining other goods in replacement provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement goods.
- q) The issue by the Council of a receipt note for the Goods shall not constitute any acknowledgement of the condition, quantity or nature of those Goods.
- r) Any Goods rejected or returned by the Council as described in Clause 2.1(p) shall be returned to the Provider at the Provider's risk and expense.
- s) The Goods shall be packed and marked in a proper manner and in accordance with the Council's instructions and any statutory requirements and any requirements of the carriers. In

particular the Goods shall be marked with the batch number, order number (or other reference number if appropriate) and the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.

- t) The Supplier shall use all reasonable endeavours to reduce the quantity of packaging and use recyclable material where this is possible but does not compromise health and safety.

B3. THE SERVICES

- B3.1 In consideration of the payment of the Contract Price, the Provider shall supply the Services during the Contract Period in relation to this Contract in a proper, skilful and workmanlike manner; and in accordance with the Council's requirements
- B3.2 The Council may inspect and examine the manner in which the Provider provides the Services on reasonable notice.
- B3.3 Timely supply of the Services shall be of the essence of this Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.

B4. MANNER OF CARRYING OUT THE SERVICES

- B4.1 The Provider shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of Services has not been specified in this Contract, the Provider shall agree the relevant standard of the Services with the Council prior to the supply of the Services and, in any event, the Provider shall perform its obligations under this Contract in accordance with the Law and Good Industry Practice.
- B4.2 The Provider shall ensure that a sufficient number of Employees are in place to supply the Services and that all Employees supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.
- B4.3 The Council shall have the right to require the Provider to attend such ad hoc performance review meetings as the Council (acting reasonably) shall request.
- B4.4 If the Provider at any time becomes aware of any material matter that could affect the performance of the Services in accordance with this Contract, the Provider shall inform the Council immediately.
- B4.5 The Provider shall at all times assist the Council in complying with its Social Value obligations through the provision of the Services under this Contract [and in particular shall carry out the Social Value activities identified by the Provider in the Tender]

B5. KEY PERSONNEL

- B5.1 The Provider acknowledges that all Key Personnel whose details are contained in the Contract Particulars are essential to the proper provision of the Services to the Council under this Contract.
- B5.2 The Key Personnel shall not be released from supplying the Services without the agreement of the Council, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances.
- B5.3 Any replacements to the Key Personnel shall be subject to the agreement of the Council. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- B5.4 The Council shall not unreasonably withhold its agreement under clauses B5.2 or B5.3. Such agreement shall be conditional on appropriate arrangements being made by the Provider to minimise any adverse impact on this Contract which could be caused by a change in Key Personnel.

B6. CONTRACT MANAGER AND AUTHORISED OFFICER

- B6.1 The Provider shall employ a competent and authorised Contract Manager empowered to act on behalf of the Provider for all purposes connected with this Contract.

- B6.2 If the Contract Manager's details are not specified in the Contract Particulars, the Provider shall within seven (7) days of the date of this Contract give notice in writing to the Council of the identity of the Contract Manager. The Provider shall within seven (7) days give notice in writing to the Council of any change in the identity, postal address, email address and telephone numbers of the person appointed as Contract Manager. The Provider shall give maximum possible notice to the Council before changing its Contract Manager.
- B6.3 The Council shall appoint an Authorised Officer who shall be empowered to act on behalf of the Council for all purposes connected with this Contract.
- B6.4 If the Authorised Officer's details are not specified in the Contract Particulars, the Council shall within seven (7) days of the date of this Contract give notice in writing to the Provider of the identity of the Authorised Officer. The Council shall within seven (7) days give notice in writing to the Provider of any change in the identity, postal address, email address and telephone number of the person appointed Authorised Officer.

B7. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS

- B7.1 The parties acknowledge that where the Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006 the Provider shall:
- (a) 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; and
 - (b) monitor the level and validity of the checks under this clause B7.1 for each member of staff.
 - (c) 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.
- B7.2 The Provider warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Provider in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- B7.3 The Provider shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause B7 have been met.
- B7.4 The Provider shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to any Service Users or children or vulnerable adults.

B8. EMPLOYEES

- B8.1 The Council (acting reasonably) may:-
- (a) instruct the Provider that disciplinary action is taken against any Employee (in accordance with the terms and conditions of employment of the employee concerned) where such Employee misconducts himself or is incompetent or negligent in his duties (in which case the Council shall co-operate with any disciplinary proceedings and shall be advised in writing of the outcome); or
 - (b) where the Council has reasonable grounds for considering that the presence or conduct of an Employee at any location relevant to the performance of the Services is undesirable (including circumstances where the Council reasonably considers that the Employee may not be authorised to work in the UK) require the exclusion of the relevant Employee from the relevant location(s).
- B8.2 The Provider shall comply with any notice issued by the Council pursuant to clause (b) from time to time requiring the exclusion from any relevant location of any Employee who in the opinion of the Council (which it shall not be required to explain or disclose to the Provider) is not acceptable on the grounds that the presence or conduct of the Employee is undesirable. The Provider shall not employ such persons again in the provision of the Services without the written consent of the Council.

B8.3 Where the Council exercises its rights under clause B8 and it can be shown that:

- (a) the Provider has acted in accordance with the relevant provisions of this clause B8; and
- (b) the Council did not act reasonably in instructing the Provider not to employ and/or in requiring any exclusion;

then the Council shall indemnify the Provider and keep the Provider indemnified from and against any injury, claims, costs and expenses (including legal expenses) and or damage suffered or incurred by the Provider, provided that the Provider has used its reasonable endeavours to re-deploy that person elsewhere and/or to mitigate the claim.

B9. Modern Slavery, Child Labour and Inhumane Treatment

The "Modern Slavery Helpline" refers to the point of contact for reporting suspicion, seeking help or advice and information on the subject of modern slavery available online at:

<https://www.modernslaveryhelpline.org/report> or by telephone on 08000 121 700.

B9.1 The Supplier:

- a) shall not use, or allow its Subcontractors to use, forced, bonded or involuntary prison labour;
- b) shall not require any Supplier staff or Subcontractor staff to lodge deposits or identify papers with the Employer or deny Supplier staff freedom to leave their employer after reasonable notice;
- c) warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world.
- d) warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offenses anywhere around the world.
- e) shall make reasonable enquiries to ensure that its officers, employees and Subcontractors have not been convicted of slavery or human trafficking offences anywhere around the world.
- f) shall have and maintain throughout the term of each Contract its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and shall include in its contracts with its subcontractor's anti-slavery and human trafficking provisions;
- g) shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under a Contract;
- h) shall prepare and deliver to the Council at the commencement of each Contract and updated on a frequency defined by the Authority, a slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business;
- i) shall not use, or allow its employees or Subcontractors to use, physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Subcontractors;
- j) shall not use, or allow its Subcontractors to use, child or slave labour;
- k) shall report the discovery or suspicion of any slavery or trafficking by it or its Subcontractors to the Authority and Modern Slavery Helpline.

PART C - PRICE AND PAYMENT

C1. Contract Price

C1.1 In consideration of the Provider's performance of its obligations under the Contract, the Council shall pay the Contract Price in accordance with Clause C2 (Payment and VAT).

C1.2 The Council shall, in addition to the Contract Price and following evidence of a valid VAT invoice, pay the Provider a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

C2. Payment and VAT

C2.1 In consideration of the Provider performing its obligations under the Contract, the Council shall pay all sums due to the Provider in cleared funds within 30 days of a valid invoice, submitted in accordance with the Payment Terms set out in the Contract Particulars.

C2.2 The Provider shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation reasonably required by the Council to substantiate the invoice.

C2.3 If the Council agrees to delivery by instalments in accordance with Clause B2(k) payments may also be made in corresponding instalments at the discretion of the Council.

C2.4 Where the Provider enters into a sub-contract with a supplier or Provider for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Provider to the sub-Provider within a specified period not exceeding thirty (30) days from the receipt of a valid invoice.

C2.5 The Provider shall add VAT to the Contract Price at the prevailing rate as applicable.

C2.6 The Provider shall indemnify the Council on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Council at any time in respect of the Provider's failure to account for or to pay any VAT relating to payments made to the Provider under the Contract. Any amounts due under this Clause C2.6 shall be paid by the Provider to the Council not less than five (5) Business Day before the date upon which the tax or other liability is payable by the Council.

C2.7 The Provider shall not suspend the supply of the Services unless the Provider is entitled to terminate the Contract under Clause D2 (Termination on Default) for failure to pay undisputed sums of money.

C2.8 Interest shall be payable by the Council on the late payment of any undisputed sums of money properly invoiced under the provisions of this Clause C2 in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

C2.9 All payments to the Provider will be made via either BACS transfer or using a Procurement Card. The Council is under no obligation to make payments to the provider by any method other than BACS transfer or Procurement Card, unless they have specifically agreed in writing to do so. Where Procurement Cards are to be used the Council may allocate a specific embedded or lodged card to the Provider. Where this option is used, the Provider shall hold the card details securely and shall use the embedded card details to charge against the purchase of goods.

C3. Recovery of Sums Due

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

C3.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

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

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

C4. Euros

C4.1 Any requirement of Law to account for the Services in Euros (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Provider free of charge to the Council.

C4.2 The Council shall provide all reasonable assistance to facilitate compliance with Clause C4.1 by the Provider.

DEFAULT, DISRUPTION AND TERMINATION

D1. Termination on insolvency and change of control

D1.1 The Council may terminate the Contract with immediate effect by giving notice in writing where the Provider is a company and in respect of the Provider:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- (c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986; or
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- (f) it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or
- (g) being a "small company" within the meaning of Section 382 of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in Clause D1.1(a) - (g) occurs under the law of any other jurisdiction.

D1.2 The Council may terminate the Contract with immediate effect by notice in writing where the Provider is an individual and:

- (a) an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Provider's creditors; or
- (b) a petition is presented and not dismissed within 14 days or order made for the Provider's bankruptcy; or
- (c) a receiver, or similar officer is appointed over the whole or any part of the Provider's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- (d) the Provider is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of Section 268 of the Insolvency Act 1986; or
- (e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider's assets and such attachment or process is not discharged within 14 days; or
- (f) being an individual, dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or

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

D1.3 The Provider shall notify the Council immediately if the Provider undergoes a change of control as defined by section 450, 451,707 and 1124 of the Corporation Tax Act 2010 ("Change of Control"). The Council may terminate the Contract by notice in writing with immediate effect within six months of:

- (a) being notified that a Change of Control has occurred; or
- (b) where no notification has been made, the date that the Council becomes aware of the Change of Control;

but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

Termination due to Death or Removal of Service User

[D1.4 The Council may terminate the Contract with immediate effect by giving notice in writing where the Service User dies or for whatever reason is admitted to hospital or to any other care facility.]

D2. Termination on Default

D2.1 [Except in the case of TOMs (clause H2.6),] The Council may terminate the Contract by giving written notice to the Provider with immediate effect if the Provider commits a Default and if:

- (a) the Provider has not remedied the Default to the satisfaction of the Council within three (3) Business Day, or such other period as may be specified by the Council, after issue of a written notice specifying the Default and requesting it to be remedied; or
- (b) the Default is not, in the opinion of the Council, capable of remedy; or
- (c) the Default is a material breach of the Contract.

[D2.2 The following shall always be considered to be material breaches which are not capable of remedy:

- a) the Council having issued five (5) notices and/or requests for meetings under Clause D2.2 below in a rolling twelve (12) month period, regardless of whether the issues identified have subsequently been remedied. This breach shall not be considered capable of remedy;
- b) there is evidence of deliberate misuse of drugs and/or medicines by the Provider when delivering services to Service Users under this Contract; or
- c) there is evidence of deliberate abuse and/or mistreatment of Service Users by the Provider.]

Dealing with Non-Material Breaches

D2.3 [If from time to time the Provider is in breach of its obligations under this Contract which is not material (having regard to clauses D1 and D2), the Council may (without limiting its rights and remedies) do either of the following at its discretion and at any time for as long whilst the relevant breach has not been remedied to the reasonable satisfaction of the Council may:

- a) issue the Provider a notice identifying with sufficient clarity and detail the relevant breach, remedial action required (to be carried out at no further charge to the Council) and the deadline by which the relevant action must be completed to the reasonable satisfaction of the Council. That deadline shall not be less than 28 days from the date of the notice, except that a shorter deadline may be required where (on a reasonable view) the relevant breach causes (or creates an unreasonable risk of causing) death or personal injury or property loss or damage to any Service User or other person or any breach of relevant Law by the Council or by the Provider;
- (b) require a meeting between relevant personnel of the Council and the Provider. The Provider shall properly prepare for and attend such meeting promptly if requested by the Council (and in any case, if requested by the Council, within ten (10) Business Day for the date requested with a view to discussing the relevant breach, the actions required of the Provider to remedy it, and deadlines in doing so, and other matters which the Council reasonably considers

relevant. That relevant deadline shall not be less than 28 days from the date of the notice, except that a shorter deadline may be required where (on a reasonable view) the relevant breach causes (or creates an unreasonable risk of causing) death or personal injury or property loss or damage to any Service User or any person or any breach of relevant Law by the Council or by the Provider.]

D2.4 If the Council fails to pay the Provider undisputed sums of money when due, the Provider shall notify the Council in writing of such failure to pay. If the Council fails to pay such undisputed sums within ninety (90) Business Day of the date of such written notice, the Provider may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Council exercising its rights under Clause D7 (Recovery on Termination).

D3 The Public Contracts Regulations 2015

D3.1 The Council reserves the right to terminate the Contract where:

- a) the Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of the Public Contracts Regulations 2015; or
- b) the Provider has, at the time of contract award, been in one of the situations referred to in regulation 57(1) of the Public Contracts Regulations 2015, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure; or
- c) the contract should not have been awarded to the Provider in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of TFEU.

D4. Break

D4.1 The Council shall have the right to terminate the Contract at any time by giving ninety (90) days written notice to the Provider.

D5. Consequences of Expiry or Termination

D5.1 Where the Council terminates the Contract under Clauses D2 (Termination on Default) and then makes other arrangements for the supply of Services, the Council may recover from the Provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Council throughout the remainder of the Contract Period. The Council shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under Clause D2 (Termination on Default), no further payments shall be payable by the Council to the Provider until the Council has established the final cost of making those other arrangements.

D5.2 Subject to Clause E1 where the Council terminates the Contract under Clauses D3 (the Public Contracts Regulations 2015) or D4 (Break), the Council shall indemnify the Provider against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Provider by reason of the termination of the Contract, provided that the Provider takes all reasonable steps to mitigate such loss. Where the Provider holds insurance, the Provider shall reduce its unavoidable costs by any insurance sums available. The Provider shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Provider as a result of termination under Clause D4 (Break).

D5.3 The Council shall not be liable under Clause D5.2 to pay any sum which:

- (a) was claimable under insurance held by the Provider, and the Provider has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
- (b) when added to any sums paid or due to the Provider under the Contract, exceeds the total sum that would have been payable to the Provider if the Contract had not been terminated prior to the expiry of the Contract Period.

D5.4 Save as otherwise expressly provided in the Contract:

- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Council or the Provider under Clauses C2 (Payment and VAT), D7 (Recovery upon Termination), H8 (Prevention of Bribery), F2 (Confidential Information), F4 (Freedom of Information), F7 (Records and Audit Access), H2.6 (Cumulative Remedies), E1 (Liability, Indemnity and Insurance), D5 (Consequences of Expiry or Termination), and H13 (Law and Jurisdiction).

D6. Disruption

- D6.1 The Provider shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Council, its employees or any other Provider employed by the Council.
- D6.2 The Provider shall immediately inform the Council of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- D6.3 In the event of industrial action by the Staff, the Provider shall seek the Council's Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under the Contract.
- D6.4 If the Provider's proposals referred to in Clause D6.3 are considered insufficient or unacceptable by the Council acting reasonably then the Contract may be terminated with immediate effect by the Council by notice in writing.
- D6.5 If the Provider is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Council, an appropriate allowance by way of extension of time will be approved by the Council. In addition, the Council will reimburse any additional expense reasonably incurred by the Provider as a direct result of such disruption.

D7. Recovery upon Termination

- D7.1 On the termination of the Contract for any reason, the Provider shall:
 - (a) immediately return to the Council all Confidential Information and any IPRs belonging to the Council, in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Services;
 - (b) immediately deliver to the Council all property (including materials, documents, information and access keys) that may have been provided to the Provider by the Council. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
 - (c) assist and co-operate with the Council to ensure an orderly transition of the provision of the Services to the Replacement Provider and/or the completion of any work in progress.
 - (d) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Council for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Council or the Replacement Provider to conduct due diligence.
- D7.2 If the Provider fails to comply with Clause D7.1 (a) and (b), the Council may recover possession thereof and the Provider grants a licence to the Council or its appointed agents to enter (for the purposes of such recovery) any premises of the Provider or its permitted suppliers or Sub-Contractors where any such items may be held.
- D7.3 Where the end of the Contract Period arises due to the Provider's Default, the Provider shall provide all assistance under Clause D7.1 (c) and (d) free of charge. Otherwise, the Council shall pay the Provider's reasonable costs of providing the assistance and the Provider shall take all reasonable steps to mitigate such costs.

PART E - INSURANCE AND LIABILITIES

LIABILITIES

E1. Liability, Indemnity and Insurance

E1.1 Nothing in the Contract shall be construed to limit or exclude either Party's liability for:

- (a) death or personal injury caused by its negligence or that of its Staff;
- (b) Fraud or fraudulent misrepresentation by it or its Staff; or
- (c) any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;

E1.2 Subject to Clause E1.3 the Provider shall indemnify and keep indemnified the Council in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported supply, of the Services or the performance or non-performance by the Provider of its obligations under the Contract or the presence of the Provider or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Provider, or any other loss which is caused directly or indirectly by any act or omission of the Provider. The Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Council or by breach by the Council of its obligations under the Contract.

E1.3 Subject to Clause E1.1, in no event shall either Party be liable to the other for any:

- (a) loss of profits;
- (b) loss of business;
- (c) loss of revenue;
- (d) loss of or damage to goodwill;
- (e) loss of savings (whether anticipated or otherwise); and/or
- (f) any indirect or consequential loss or damage.

E1.4 The Council may, amongst other things, recover as a direct loss:

- (a) any additional operational and/or administrative expenses arising from the Provider's Default;
- (b) any wasted expenditure or charges rendered unnecessary and/or incurred by the Council arising from the Provider's Default; and
- (c) the additional cost of procuring replacement Services following termination of the Contract as a result of a Default by the Provider.

E1.5 Nothing in the Contract shall impose any liability on the Council in respect of any liability incurred by the Provider to any other person, but this shall not be taken to exclude or limit any liability of the Council to the Provider that may arise by virtue of either a breach of the Contract or by negligence on the part of the Council, or the Council's employees, servants or agents.

E1.6 The Provider shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover (which as a minimum shall comply with the level of cover set out in the Tender) in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider. Such insurance shall be maintained during the period over which the Contract is performed and for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.

E1.7 The Provider shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.

- E1.8 The Provider shall give the Council, on request, copies of all insurance policies referred to in this Clause E1 or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- E1.9 If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by the provisions of the Contract the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.
- E1.10 The provisions of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Contract. It shall be the responsibility of the Provider to determine the amount of insurance cover that will be adequate to enable the Provider to satisfy any liability referred to in Clause E1.2.

E2. Warranties and Representations

E2.1 The Provider warrants and represents that:

- (a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Contract;
- (b) the Contract is executed by a duly authorised representative of the Provider;
- (c) in entering the Contract it has not committed any Fraud;
- (d) as at the Commencement Date, all information, statements and representations contained in the Tender and the Business Questionnaire or SQ Response are true, accurate and not misleading save as may have been specifically disclosed in writing to the Council prior to execution of the Contract and it will advise the Council of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
- (e) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract;
- (f) it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Contract;
- (g) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue;
- (h) it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (i) the obligations undertaken by the Provider shall be discharged and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
 - ii. In the three (3) years prior to the date of the Contract:
 - I. it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts; and
 - II. it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - III. it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

PART F - PROTECTION OF INFORMATION

F1. INTELLECTUAL PROPERTY

F1.1 All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:-

- (a) provided to the Provider by the Council shall remain the property of the Council; or
- (b) prepared by or for the Provider specifically for the use, or intended use, in relation to the performance of this Contract

shall belong to the Council subject to any exceptions set out in the Contract Particulars.

F1.2 The Provider shall obtain any necessary approval before using any material, in relation to the performance of this Contract which is or may be subject to any third party Intellectual Property Rights. The Provider shall procure that the owner of the Intellectual Property Rights grants to the Council a non-exclusive licence, or if the Provider is itself a licensee of those rights, the Provider shall grant to the Council an authorised sub-licence, to use, reproduce, and maintain the Intellectual Property Rights. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-licence, transfer, novate or assign to other Councils, the replacement Provider or to any other third party providing services to the Council, and shall be granted at no cost to the Council.

F1.3 It is a condition of this Contract that the Services will not infringe any Intellectual Property Rights of any third party and the Provider shall during and after the Contract Period on written demand indemnify and keep indemnified without limitation the Council against all Liabilities which the Council may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim relates to the act or omission of the Council.

F1.4 At the termination of this Contract the Provider shall at the request of the Council immediately return to the Council all materials, work or records held in relation to the Services, including any back-up media.

F2. CONFIDENTIAL INFORMATION

F2.1 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

- (a) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
- (b) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

F2.2 Clause F2.1 shall not apply to the extent that:

- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause F4 (Freedom of Information);
- (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- (c) such information was obtained from a third party without obligation of confidentiality;
- (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
- (e) it is independently developed without access to the other party's Confidential Information.

F2.3 The Provider may only disclose the Council's Confidential Information to its Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

F2.4 The Provider shall not, and shall procure that its Staff do not, use any of the Council's Confidential Information received otherwise than for the purposes of this Contract.

F2.5 At the written request of the Council, the Provider shall procure that those members of the Staff identified in the Council's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Contract.

F2.6 Nothing in this Agreement shall prevent the Council from disclosing the Provider's Confidential Information:

- (a) for the purpose of the examination and certification of the Council's accounts;
- (b) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources.
- (c) where such information is in the Tender information/documentation (submitted to the Council during the Tender process) to other Contracting Authorities for the purpose of ensuring effective public sector procurement processes, including the benchmarking of costs against other organisations to ensure value for money is being obtained.

F2.7 The Council shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee or third party or Sub-Provider to whom the Provider's Confidential Information is disclosed pursuant to Clause F2.6 is made aware of the Council's obligations of confidentiality.

F2.8 Nothing in this Clause F2 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.

F3 DATA PROTECTION

F3.1 The Parties acknowledge their respective obligations arising under Data Protection Legislation and must assist each other as necessary to enable each other to comply with these obligations.

F3.2 Notwithstanding the general obligations of clause F3, the Provider shall

- a) provide the Council with such information as the Council may require to satisfy itself that the Provider is complying with its obligations under the DPA 2018 promptly and in any event within 5 Business Day;
- b) promptly notify the Council of any breach of the security measures required to be put in place pursuant to this clause F3.2
- c) ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of any of its obligations under the DPA 2018;
- d) notify the Council when any Data Subject Access Request is received relating to data for which the Council is the Controller

F3.3 The Provider must:

- (a) nominate an Information Governance Lead, to be responsible for information governance;
- (b) where relevant nominate a Caldicott Guardian;
- (c) ensure that the Council is kept informed at all times of the identities of the Information Governance Lead and, where relevant, the Caldicott Guardian;

Controller Responsibilities

F3.4 The Parties acknowledge that:

- a) in relation to Personal Data collected and processed by the Provider for the purpose of delivering the Services the Provider will be sole Controller; and

- b) in relation to Personal Data provided by the Council to the Provider for the purpose of delivering the Services the Council will be the sole Controller and the Provider will be the Processor; and
- c) in relation to Personal Data required by the Council for the purposes of quality assurance, performance management and contract management, the Council and the Provider will be joint Controllers.

The Provider as a Controller

Where paragraphs F3.4 (a) and/or (c) apply to any Personal Data then paragraphs F3.5 to F3.7 below shall apply:

F3.5 The Provider must ensure that all Personal Data processed by the Provider in the course of delivering the Services is processed in accordance with the relevant Parties' joint obligations under the DPA 2018.

F3.6 The Provider's obligations in relation to Personal Data processed by the Provider in the course of delivering the Services include:

- a) maintaining and operating policies relating to confidentiality, data protection and information disclosures that comply with Data Protection Legislation and where relevant the Caldicott Principles;
- b) maintaining and operating policies that describe the personal responsibilities of Staff for handling Personal Data and applying those policies conscientiously;
- c) maintaining and operating agreed protocols to govern the disclosure of Personal Data.

F3.7 The Provider must have in place a communications strategy and implementation plan to ensure that Service Users are provided with, or have made readily available to them, the following information:

- (a) the identity of the Controller,
- (b) if it has nominated a representative for the purposes of the Data Protection Legislation, the identity of that representative,
- (c) the purpose or purposes for which the Personal Data are intended to be processed, and
- (d) any further information which is necessary, having regard to the specific circumstances in which the Personal Data are or are to be processed, to enable processing in respect of the Service User to be fair.

The Provider as a Data Processor

Where paragraph F3.4 (b) applies to any Personal Data then clauses F3.8 to F3.20 below shall apply:

F3.8 The Parties acknowledge that where for the purposes of the Data Protection Legislation, the Council is the Controller and the Provider is the Processor the only processing that the Provider is authorised to do is listed in **Schedule 6/ Service Specification** by the Council and may not be determined by the Provider.

F3.9 The Provider shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.

F3.10 The Provider shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:

- a) a systemic description of the envisaged processing operations and the purpose of the processing;
- b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;

- c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

F3.11 The Provider shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

- a) Process that Personal Data only in accordance with **Schedule 6/ Service Specification**, unless the Provider is required to do otherwise by Law. If it is so required the Provider shall promptly notify the Council before processing the Personal Data unless prohibited by Law;
- b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event having taken account of the:
 - 1. nature of the data to be protected;
 - 2. harm that might result from a Data Loss Event;
 - 3. state of technological development; and
 - 4. cost of implementing any measures;
- c) ensure that:
 - i. the Provider Staff do not process Personal Data except in accordance with this Contract (and in particular **Schedule 6/ Service Specification**);
 - ii. it takes all reasonable steps to ensure the reliability and integrity of any Provider Staff who have access to the Personal Data and ensure that they:
 - a. are aware of and comply with the Provider's duties under this clause;
 - b. are subject to appropriate confidentiality undertakings with the Provider or any Sub-processor;
 - c. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Council or as otherwise permitted by this Contract; and
 - d. have undergone adequate training in the use, care, protection and handling of Personal Data; and
 - iii. not transfer Personal Data outside of the EU unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
 - a) the Council or the Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Council;
 - b) the Data Subject has enforceable rights and effective legal remedies;
 - c) the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Council in meeting its obligations); and
 - d) the Provider complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;

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

F3.12 Subject to clause F3.9 the Provider shall notify the Council immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
- (e) 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

- (f) becomes aware of a Data Loss Event.

F3.13 The Provider's obligation to notify under clause F3.9 shall include the provision of further information to the Council in phases, as details become available.

F3.14 Taking into account the nature of the processing, the Provider shall provide the Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause F3.12 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:

- (a) the Council with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Council following any Data Loss Event;
- (e) assistance as requested by the Council with respect to any request from the Information Commissioner's Office, or any consultation by the Council with the Information Commissioner's Office.

F3.15 The Provider shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Provider employs fewer than 250 staff, unless:

- (a) the Council determines that the processing is not occasional;
- (b) the Council determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- (c) the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

F3.16 The Provider shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor.

F3.17 The Provider shall designate a data protection officer if required by the Data Protection Legislation.

F3.18 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Provider must:

- (a) notify the Council in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Council;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause F3 such that they apply to the Sub-processor; and
- (d) provide the Council with such information regarding the Sub-processor as the Council may reasonably require.

F3.19 The Provider shall remain fully liable for all acts or omissions of any Sub-processor.

F3.20 The Council may, at any time on not less than 30 Business Day' notice, revise this clause F3 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 Contract).

F3.21 The Parties agree to take account of any guidance issued whether before or after the Commencement Date by the Information Commissioner's Office or the Crown Commercial Service. The Council may on not less than 30 Business Day' notice to the Provider amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office or the Crown Commercial Service.

F4 FREEDOM OF INFORMATION

F4.1 The Provider acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.

F4.2 The Provider shall and shall procure that its Sub-Contractors shall:

- (a) transfer to the Council all Requests for Information that it receives as soon as practicable and, in any event, within [two] Business Day of receiving a Request for Information;
- (b) provide the Council with a copy of all Information in its possession, or power in the form that the Council requires within [five] Business Day (or such other period as the Council may specify) of the Council's request; and
- (c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

F4.3 The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

F4.5 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.

F4.6 The Provider acknowledges that (notwithstanding the provisions of Clause F4.2) the Council may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Provider or the Services:

- (a) in certain circumstances without consulting the Provider; or
- (b) following consultation with the Provider and having taken their views into account;
- (c) provided always that where F4.2 applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.

F4.7 The Provider shall ensure that all Information is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

F5. Publicity, Media and Official Enquiries

- F5.1 The Provider shall not make any press announcements or publicise the Contract in any way without the Council's prior Approval and shall take reasonable steps to ensure that its servants, employees, agents, Sub-Contractors, suppliers, professional advisors and consultants comply with this Clause.
- F5.2 The Council shall be entitled to publicise the Contract in accordance with any legal obligation upon the Council, including any examination of the Contract by the Auditor.
- F5.3 The Provider shall not do anything or cause anything to be done, which may damage the reputation of the Council or bring the Council into disrepute.

F6. Security

- F6.1 The Provider shall comply with all reasonable security requirements of the Council while on the Premises and shall ensure that all Staff complies with such requirements.
- F6.2 The Council shall provide the Provider upon request copies of its written security procedures and shall afford the Provider upon request an opportunity to inspect its physical security arrangements.

F7. Records and Audit Access

- F7.1 The Provider shall keep and maintain until one (1) year after the date of termination or expiry (whichever is the earlier) of the Contract (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including the Services provided under it, the Contracts entered into with the Contracting Authority and the amounts paid by each Contracting Authority.
- F7.2 The Provider shall keep the records and accounts referred to in Clause F7.1 above in accordance with good accountancy practice.
- F7.3 The Provider shall on request afford the Council, the Council's representatives and/or the Auditor such access to such records and accounts as may be required from time to time.
- F7.4 The Provider shall provide such records and accounts (together with copies of the Provider's published accounts) during the Contract Period and for a period of one (1) year after the expiry of the Contract Period to the Council and the Auditor.
- F7.5 The Council shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Provider or delay the supply of the Services save insofar as the Provider accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Council.
- F7.6 Subject to the Council's rights of Confidential Information, the Provider shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each audit, including:
- (a) all information requested by the Council within the scope of the audit;
 - (b) reasonable access to sites controlled by the Provider and to Equipment used in the provision of the Services; and
 - (c) access to Staff.
- F7.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 6.6, unless the audit reveals a material Default by the Provider in which case the Provider shall reimburse the Council for the Council's reasonable costs incurred in relation to the audit.

F8. RECORD KEEPING AND MONITORING

- F8.1 In order to assist the Council in its record keeping and monitoring requirements including auditing and National Audit Office requirements, the Provider shall keep and maintain for six (6) years (or such longer time period required in accordance with any specific legislation) after this Contract has been completed, full and accurate records of this Contract including the Services supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Provider shall on request allow the Council or the

Council's representatives such access to (and copies of) those records as may be required by the Council in connection with this Contract.

F8.2 Where Monitoring Requirements are set out in the Contract Particulars, the Provider shall comply with Monitoring Requirements at its own cost. The Council reserve the right to request from the Provider all necessary supporting information in relation to the Monitoring Requirements.

F9. BENCHMARKING

F9.1 The Council shall be entitled to regularly benchmark the Contract Price and level of performance by the Provider of the supply of the Services and/or Services, against other suppliers providing services substantially the same as the Services and/or Services during the Contract Period.

F9.2 The Council, acting reasonably, shall be entitled to use any model to determine the achievement of value for money and to carry out the benchmarking evaluation as referred to in Clause F9.1 above.

F9.3 The Provider shall use all reasonable endeavours and act in good faith to supply information required by the Council in order to undertake the benchmarking and such information requirements shall be at the discretion of the Council.

F9.4 Where, as a consequence of any benchmarking carried out by the Council, the Council decides improvements to the Services and/or Services should be implemented such improvements shall be implemented by way of a Variation under Clause H2.3 at no additional cost to the Council.

F9.5 The benefit of any work carried out by the Provider at any time during the Contract Period to update, improve or provide the Services and/or Services, facilitate their delivery to any customer and/or any alterations or variations to prices or the provision of services, shall, after consultation with the Council be implemented by the Provider in accordance with Clause H2.3 and at no additional cost to the Council.

PART G - STATUTORY OBLIGATIONS

G1. HEALTH AND SAFETY

G1.1 The Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Employees and other persons working in the performance of its obligations under this Contract.

G1.2 The Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Council on request. The Provider acknowledges that its health and safety policy statement is subject to approval by the Council.

G2. CORPORATE REQUIREMENTS

G2.1 The Provider shall comply with all obligations under the Human Rights Act 1998.

G2.2 The Provider will have in place appropriate policies and rules, including, but not limited to:-

- a) equality and diversity policies;
- b) child protection and safeguarding policies;
- c) sustainability;
- d) information security rules;
- e) whistleblowing and/or confidential reporting policies; and
- f) all site rules relevant to the fulfilment of the Provider's obligations in the performance of the Services.

G2.3 The Provider shall produce them upon request of the Council.

G2.4 The Provider shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or

otherwise) and shall take all reasonable steps to secure the observance of this Clause G2 by all servants, employees or agents of the Provider and all suppliers and Sub-Contractors employed in the execution of the Contract

G2.5 The Provider shall comply with all relevant legislation relating to its Employees however employed including (but not limited to) the compliance in law of the ability of the Employees to work in the United Kingdom.

G2.6 If the Provider has a finding against it relating to its obligations under clause G2 it will provide the Council with:-

- (a) details of the finding; and
- (b) the steps the Provider has taken to remedy the situation.

G3 LAW AND CHANGE IN LAW

G3.1 The Provider shall comply at all times with the Law in its performance of this Contract.

G3.2 On the occurrence of a Change in Law which has a direct effect upon the Contract Price the parties shall meet within fourteen (14) days of the Provider notifying the Council of the Change in Law to consult and seek to agree the effect of the Change in Law and any change in the Price as a result following the principle that this clause is not intended to create an artificial cushion from market forces for the Provider. If the parties, within fourteen (14) days of this meeting, have not agreed the occurrence or the impact of the Change in Law, either party may refer the matter to dispute resolution in accordance with clause H1.

G3.3 Any agreed additional sums payable as a result of the operation of clause G3.2 shall be included in the Contract Price. For the avoidance of doubt nothing in this Contract is intended to allow the Provider double recovery of any increase in costs.

G4 TUPE INDEMNITY

For the purposes of this clause only the following definitions shall take effect:-

“Current Employer” the employer of the Transferring Employees immediately before the Commencement Date;

“Employment Costs” remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees and including without limitation all wages, holiday pay, bonuses, commissions, payment of PAYE, national insurance contributions and pensions contributions;

“Prohibited Act” include any of the following (i) termination of employment of any Employees; or (ii) the alteration or change of terms or conditions of any Employees; or (iii) the recruitment of any employees; or (iv) relocation or assignment to new duties of any Employees.

“Transferring Employee(s)” those employees employed wholly or mainly by the Current Employer in providing the Services described in the Specification prior to the Commencement Date.

G4.1 The Council and the Provider acknowledge that where as a result of TUPE the contracts of employment between the Current Employer and the Transferring Employees (except in so far as such contracts relate to any occupational pension scheme as defined in Regulation 10 of TUPE) transfer, they will have effect after the Commencement Date as if originally made between the Provider and the Transferring Employees.

G4.2 All Employment Costs in respect of the period:

- (a) up to and including the Commencement Date in relation to the Transferring Employees (whether or not due for payment at that date) will be borne by the Current Employer;
- (b) after the Commencement Date will be borne by the Provider;

- (c) and will if necessary be apportioned on a time basis between the Provider and the Current Employer.

G4.3 The Provider will keep the Council and any Replacement Provider indemnified in full against all Liabilities arising directly or indirectly and whether incurred by the Council pursuant to an indemnity provided to the Replacement Provider in connection with:

- (a) the employment or termination of employment of any of the Employees (whether or not terminated by notice and, if so terminated, whenever that notice expires);
- (b) any act, omission or default of the Provider in respect of the employment of the Transferring Employees;
- (c) the Provider's failure to inform or consult as required under Regulation 13 of TUPE except to the extent that any such action or claim (or any part of such action or claim) arises from any failure by the Council or the Replacement Provider to give the Provider the information required from the Council or the Replacement Provider to enable the Provider to comply with its obligations under TUPE; and
- (d) the Provider's failure to provide the employee liability information under Regulation 11 of TUPE.

any claim by a Transferring Employee that such person is entitled for any reason to take early retirement benefits pursuant to the terms of any pension scheme in which the Council or the replacement Provider is not then participating, or pursuant to the Transferring Employee's terms and conditions of employment;

G4.4 In the event of expiry or termination of this Contract or whenever reasonably requested by the Council in preparation for tendering arrangements the Provider will (if the Council has reasonable grounds to believe that TUPE will apply to any employees of the Provider or its Sub-Contractors on expiry or termination in connection with a service provision change) provide the Council with such assistance as the Council may require and provide at no cost to the Council any information the Council (whether on its own account or on behalf of any potential or confirmed Replacement Provider) may request in relation to the Employees including but not limited to, providing employee liability information as required under Regulation 11 of TUPE.

G4.5 The Provider authorises the Council to pass any information supplied to any Replacement Provider or potential Replacement Provider and the Provider will secure all necessary consents from relevant Employees in order to do this.

G4.6 The Provider will keep the Council and any Replacement Provider indemnified in full against all Liabilities arising directly or indirectly in connection with any breach of this clause or inaccuracies in or omissions from the information provided.

[G4.7 [The parties acknowledge that they consider the application of TUPE to be unlikely on termination or expiry of this Contract. Accordingly, except with the prior consent of the Council to do otherwise (such consent not to be unreasonably withheld) the Provider is to use best endeavours to provide the Services in a manner such that no organised grouping of employees of the Provider and/or its Sub-Contractors is formed where such individuals have rights under TUPE against the Council or its subsequent service Provider. The Provider shall indemnify the Council and/or where relevant the Council's subsequent service Providers in full for all losses, liabilities, actions, claims demands, compensation, damages, costs and expenses and increased costs and expenses relating to or arising from or connected with claims made against them respectively by such employees on the grounds of TUPE arising under or in connection with this Contract.]

[G5. PENSIONS]

[Protection of Pensions]

Not used

G6 BUSINESS CONTINUITY PLAN

G6.1 The Civil Contingencies Act 2004 requires the Council to maintain plans to ensure it can continue to perform all of its ordinary functions in the event of an emergency. Organisations providing services or goods which

underpin the Council's service provision must be able to continue to provide in the event of an emergency. The Provider shall use its reasonable endeavours:

- (a) to prepare a robust Business Continuity Plan that ensures the continuation of this Contract;
- (b) on request, to disclose to the Council the contents of its Business Continuity Plan (including any revisions made to it from time to time);
- (c) to allow the Council at its discretion from time to time to monitor the Provider's business continuity arrangements;
- (d) to notify the Council if an incident occurs which activates the Provider's Business Continuity Plan (such notification to be given prior to the issue of any notification to the press or other media); and
- (e) to provide the Council with details of how the Provider managed any incident which resulted in the activation of the Provider's Business Continuity Plan and any consequential amendments made to the Provider's processes and/or procedures thereafter.

G7 COMMUNITY SAFETY

G7.1 The Council has a statutory duty to ensure that it does all that it reasonably can to prevent crime and disorder in its area under the Crime and Disorder Act 1998. The Provider is requested to assist the Council in the provision of the Services, in order to enable the Council to comply with this obligation at no additional expense to the Council.

G8 ENVIRONMENTAL REQUIREMENTS

G8.1 The Provider shall perform its obligations under the Contract in accordance with the Council's environmental policies, which are to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

PART H - GENERAL PROVISIONS

H1. DISPUTE RESOLUTION PROCEDURE

- H1.1 Any dispute arising in relation to any aspect of this Agreement shall be resolved in accordance with this clause H1.
- H1.2 The Provider and the Council shall endeavour to notify each other of any anticipated disputes so that any potential dispute can be avoided by negotiation between them.
- H1.3 Both parties shall endeavour to resolve any failure to agree matters or any disputes by direct negotiations between senior representatives of both parties.
- H1.4 If the parties fail to resolve the dispute through such consultation either party may refer the matter to an adjudicator ("the Adjudicator"). The Adjudicator shall be selected by agreement between the parties, or where the parties are unable to agree on the identity of the adjudicator within fourteen (14) days, the President for the time being of the Chartered Institute of Arbitrators shall appoint the Adjudicator within thirty (30) Business Day of any application for such appointment by either party.
- H1.5 Within five (5) Business Day of nomination in relation to a particular dispute, the Adjudicator shall require the parties to submit in writing their respective arguments. The Adjudicator shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the dispute.
- H1.6 In any event, the Adjudicator shall provide to both parties his written decision on the dispute, within twenty (20) Business Day of the Adjudicator's nomination to consider the relevant dispute (or such other period as the parties may agree after the reference) or thirty (30) Business Day from the date of reference if the party which referred the dispute agrees. The Adjudicator's decision shall not state any reasons for his decision. Unless and until revised, cancelled or varied by the English Courts, the Adjudicator's decision shall be binding on both parties who shall forthwith give effect to the decision.

- H1.7 The Adjudicator's costs of any reference shall be borne as the Adjudicator shall specify or, in default, equally by the parties. Each party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses.
- H1.8 The Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert, and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination.
- H1.9 The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. The Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Agreement.
- H1.10 All information, data or documentation disclosed or delivered by a party to the Adjudicator in consequence of or in connection with his appointment as Adjudicator shall be treated as confidential. The Adjudicator shall not, save as permitted by clause F2 (Confidentiality and Publicity) and clause O (Freedom of Information), disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the party disclosing or delivering the same and all copies shall be returned to such party on completion of the Adjudicator's work.
- H1.11 The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.
- H1.12 If:-
- (a) either party is dissatisfied with or otherwise wishes to challenge the Adjudicator's decision made in accordance with clause H1.6 (Adjudicator's Decision); or
 - (b) both parties agree,
- then either party may (within twenty (20) Business Day of receipt of the Adjudicator's decision, where appropriate), notify the other party of its intention to refer the dispute to the courts.
- H1.13 The parties shall continue to comply with, observe and perform all their obligations hereunder regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution under this clause H1 and shall give effect forthwith to every decision of the Adjudicator and the courts delivered under this clause H1.

H2. CONTROL OF THE CONTRACT

H2.1 Transfer and Sub-Contracting

- (a) The Provider shall not assign, novate, sub-contract or in any other way dispose of the Contract or any part of it without the prior approval of the Council. Sub-contracting any part of the Contract shall not relieve the Provider of any obligation or duty attributable to the Provider under the Contract.
- (b) Where the Authority considers whether there are grounds for the exclusion of a Sub-Provider under Regulation 57 of the Public Contracts Regulations 2015, then:
 - i. if the Authority finds there are compulsory grounds for exclusion, the Provider shall replace or shall not appoint the Sub-Contractor;
 - ii. if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Provider to replace or not to appoint the Sub-Contractor and the Provider shall comply with such a requirement.
- (c) The Provider shall be responsible for the acts and omissions of its Sub-Contractors as though they are its own.
- (d) Where the Council has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Council, be sent by the Provider to the Council as soon as reasonably practicable.

- (e) Subject to Clause H2.1(f), the Council may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
 - i. any Contracting Authority; or
 - ii. any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Council; or
 - iii. any private sector body which substantially performs the functions of the Council;
- (f) provided that any such assignment, novation or other disposal shall not increase the burden of the Provider's obligations under the Contract.
- (g) Any change in the legal status of the Council such that it ceases to be a Contracting Authority shall not, subject to Clause H2.1(f), affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Council.
- (h) If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause H2.1(f) to a body which is not a Contracting Authority or if there is a change in the legal status of the Council such that it ceases to be a Contracting Authority (in the remainder of this Clause both such bodies being referred to as "**the Transferee**"):
 - i. the rights of termination of the Council in Clauses D1 (Termination on insolvency and change of control) and D2 (Termination on Default) shall be available to the Provider in the event of, respectively, the bankruptcy or insolvency, or Default of the Transferee; and
 - ii. the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the previous consent in writing of the Provider.
- (i) The Council may disclose to any Transferee any Confidential Information of the Provider which relates to the performance of the Provider's obligations under the Contract. In such circumstances the Council shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Provider's obligations under the Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee gives a Confidential Information undertaking in relation to such Confidential Information.
- (j) Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

H2.2 Waiver

- (a) The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.
- (b) No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 1.6 (Notices).
- (c) A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

H2.3 Variation

- (a) Subject to the provisions of this Clause H2.3, the Council may request a variation to Services ordered provided that such variation does not amount to a material change to the Contract. Such a change is hereinafter called a "Variation".
- (b) The Council may request a Variation in writing to the Provider giving sufficient information for the Provider to assess the extent of the Variation and any additional cost that may be incurred. The

Provider shall respond to a request for a Variation within the time limits specified in the Variation request. Such time limits shall be reasonable having regard to the nature of the services.

- (c) In the event that the Provider is unable to provide the Variation to the Services or where the Parties are unable to agree a change to the Contract Price, the Council may:
- i. agree to continue to perform their obligations under the Contract without the Variation;
 - or
 - ii. terminate the Contract with immediate effect, except where the Provider has already delivered part or all of the Services, or where the Provider can show evidence of substantial work being carried out to fulfil the Contract, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure detailed at Clause H1.
- (d) If the Parties agree the Variation and any variation in the Contract Price, the Provider shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

H2.4 Severability

- (a) If any provision of the Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed, and the remainder of the provisions hereof shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.
- (b) In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Council and the Provider shall immediately commence good faith negotiations to remedy such invalidity.

H2.5 Remedies in the event of inadequate performance

- (a) Where a complaint is received about the standard of provision of the Services or about the manner in which any Services have been supplied or about the materials or procedures used or about any other matter connected with the performance of the Provider's obligations under the Contract, then the Council shall take all reasonable steps to investigate the complaint. The Council may, in its sole discretion, uphold the complaint, or take further action in accordance with Clause D2 (Termination on Default) of the Contract.
- (b) In the event that the Council is of the reasonable opinion that there has been a material breach of the Contract by the Provider, then the Council may, without prejudice to its rights under Clause D2 (Termination on Default), do any of the following:
- i. without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Council that the Provider will once more be able to supply all or such part of the Services in accordance with the Contract;
 - ii. without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;
 - iii. terminate, in accordance with Clause D2 (Termination on Default), the whole of the Contract; and/or
 - iv. charge the Provider for and the Provider shall pay any costs reasonably incurred by the Council (including any reasonable administration costs) in respect of the supply of any part of the Services by the Council or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Services and provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

- (c) If the Provider fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Council shall instruct the Provider to remedy the failure and the Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within three (3) Business Day of the Council's instructions or such other period of time as the Council may direct.
- (d) In the event that the Provider:
 - i. fails to comply with Clause H2.5 (c) above and the failure is materially adverse to the interests of the Council or prevents the Council from discharging a statutory duty; or
 - ii. persistently fails to comply with Clause H2.5 (c) above;
- (e) the Council may terminate the Contract with immediate effect by giving the Provider notice in writing.
- (f) Without prejudice to any other right or remedy which the Council may have, if any Services are not supplied in accordance with, or the Provider fails to comply with any of the terms of, the Contract the Council shall be entitled to avail itself of any one or more of the following remedies at its discretion whether or not any part of the Services have been accepted by the Council:
 - i. to reject any Goods (in whole or in part) and return them to the Provider at the risk and cost of the Provider on the basis that a full refund for the Goods so returned shall be paid forthwith by the Provider;
 - ii. at the Council's option to give the Provider the opportunity at the Provider's expense to either remedy any defect in the Goods and/or Services or to supply replacement Goods and/or Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
 - iii. to refuse to accept any further deliveries of the Goods but without any liability to the Council;
 - iv. to carry out at the Provider's expense any work necessary to make the Goods and/or Services comply with the Contract; and
 - v. to claim such damages as may have been sustained in consequence of the Provider's breach or breaches of the Contract.

H2.6 TOMs Remedies

- (a) The Provider agrees to fulfil each of the Measures committed by the Provider in the Tender in full. The Provider shall fulfil the identified Measures over the identified contract period [or project term]. Any subsequent Extension Periods and applicable Measures will be agreed by the Council and the Provider.
- (b) Evidence shall be made available to the Council as requested to monitor performance against the chosen Measures. Where it is apparent that Measures may not be achieved the Provider and the Council will agree an action plan to ensure delivery is met within agreed time parameters.
- (c) Failure to achieve any of the Measures as set out in the Provider's Tender following joint discussion and actions agreed between the Provider and the Council will incur a recovery of sums up to 100% of the social value calculated for each Measure that was not fulfilled.
- (d) Where the Provider has partially achieved any Measure(s) agreed but not all, a recovery of sums shall still be applicable. The amount payable to the Council will be the remaining value of Social Value that was not achieved for each individual Measure.]

H2.7 Cumulative Remedies

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

H2.8 Monitoring of Contract Performance

The Provider shall comply with the monitoring arrangements set out in the Contract Particulars including, but not limited to, providing such data and information as the Provider may be required to produce.

H3. **THIRD PARTY RIGHTS**

H3.1 This Contract is enforceable by the original parties to it, by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Contract pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded.

H4. **NO WAIVER**

H4.1 Failure by either party at any time to enforce any one or more of the provisions of this Contract or to require performance by the other party of any of the provisions shall not constitute or be construed as a waiver of the provision or of the right at any time subsequently to enforce all terms and conditions of this Contract nor affect the validity of this Contract or any part of it or the right of the parties to enforce any provision in accordance with its terms.

H4.2 No waiver of any of the provisions of this Contract shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with clause A1.6 (Notices).

H5. **SEVERANCE**

H5.1 If any provision of this Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity shall not impair or affect any other provision all of which shall remain in full force and effect.

H6. **ASSIGNMENT, SUB-CONTRACTING AND RESPONSIBILITY**

H6.1 Subject to any express provision of this Contract, the Provider shall not without the prior written consent of the Council, assign all or any benefit, right or interest under this Contract or sub-contract the provision of the Services.

H6.2 The Council shall be entitled to:-

- (a) assign, novate or dispose of its rights and obligations under this Contract either in whole or part to any Contracting Authority; or
- (b) transfer, assign or novate its rights and obligations where required by Law.

H6.3 The Provider shall remain responsible and liable for the acts and omissions of any other members of a consortium arrangement, Sub-Contractors, servants, agents and Employees as though they were its own.

H7. **FORCE MAJEURE**

H7.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of 6 Months, either Party may terminate the Contract with immediate effect by notice in writing.

H7.2 Any failure or delay by the Provider in performing its obligations under the Contract which results from any failure or delay by an agent,

H7.3 Sub-Contractor or supplier shall be regarded as due to Force Majeure only if that agent, Sub-Contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Provider.

H7.4 If either Party becomes aware of a Force Majeure event or occurrence which gives rise to or which is likely to give rise to any such failure or delay on its part as described in Clause H7.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.

H8. **PREVENTION OF BRIBERY**

H8.1 The Provider:

- a) shall not, and shall procure that any Employee shall not, in connection with this Contract commit a Prohibited Act which for the purposes of this clause H8 only shall be as defined in the Bribery Act;
- b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Contract.

H8.2 The Provider shall:

- a) if requested, provide the Council with any reasonable assistance to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
- b) within 5 Business Day, of the Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Provider) compliance with this clause H8 by the Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Provider shall provide such supporting evidence of compliance as the Council may reasonably request.

H8.3 If breach of clause H8 is suspected or known, the Provider must notify the Council immediately.

H8.4 If the Provider notifies the Council that it suspects or knows that there may be a breach of clause H8, the Provider must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation.

H8.5 Without prejudice to any other rights and remedies available under this Contract, the Council may terminate this Contract by written notice with immediate effect if the Provider or an Employee (in all cases whether or not acting with the Provider's knowledge) breaches clause H8 and recover from the Provider the amount of any loss suffered by the Council arising from the termination, including the cost reasonably incurred by the Council of making other arrangements for the provision of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period. In determining whether to exercise the right of termination under this clause H8.6, the Council shall give all due consideration, where appropriate, to action other than termination of this Contract unless the Prohibited Act is committed by the Provider or a senior officer of the Provider or by an Employee not acting independently of the Provider. The expression "not acting independently of" (when used in relation to the Provider or a Sub-Contractor) means and shall be construed as acting:

- a) with the Provider; or,
- b) with the actual knowledge of any one or more of the directors of the Provider or the Sub-Contractor (as the case may be); or
- c) in circumstances where any one or more of the directors of the Provider or the Sub-Contractor ought reasonably to have had knowledge.

H8.6 Any notice of termination under clause H8.5 must specify:

- a) the nature of the Prohibited Act;
- b) the identity of the party whom the Council believes has committed the Prohibited Act; and
- c) the date on which this Contract will terminate.

H8.7 Notwithstanding clause H1 (Dispute Resolution), any dispute relating to:

- a) the interpretation of this clause H8; or
- b) the amount or value of any gift, consideration or commission,

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

H8.8 Any termination under clause H8 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

H8.9 For the avoidance of doubt, the Provider shall be responsible for the acts and omissions of any Sub-Contractor and for the purpose of this clause H8, any act, default or omission of any Sub-Contractor shall be deemed to be an act, default or omission of the Provider.

H9. COSTS AND EXPENSES

H9.1 Each of the parties will pay their own costs and expenses incurred in connection with the negotiation, preparation, execution, completion and implementation of this Contract.

H10. NO AGENCY OR PARTNERSHIP

H10.1 Nothing contained in this Contract, and no action taken by the parties pursuant to this Contract, will be deemed to constitute a relationship between the parties of partnership, joint venture, principal and agent or employer and employee. Neither party has, nor may it represent that it has, any authority to act or make any commitments on the other party's behalf.

H11. NON SOLICITATION AND OFFERS OF EMPLOYMENT

H11.1 The Provider agrees that it will not, without the prior written consent of the Council, whether directly or indirectly, and whether alone or in conjunction with, or on behalf of, any other person and whether as a principal, shareholder, director, Employee, agent, consultant, partner or otherwise during the Contract Period or for a period of twelve (12) months following termination of this Contract:-

(a) solicit or entice, or endeavour to solicit or entice, away from the Council, any person directly related to the Services employed in a senior capacity in a managerial, supervisory, technical, sales or administrative capacity by, or who is or was a consultant to, the Council at the date of the termination of this Contract or at any time during the period of one month immediately preceding the date of termination; or

(b) attempt, or knowingly assist or procure any other person to do the above.

H12. INSPECTION OF PROVIDER'S PREMISES

H12.1 The Provider shall permit the Council to make any inspections or tests which may reasonably be required in respect of the Provider's premises in relation to this Contract.

H13. LAW AND JURISDICTION

H13.1 This Contract shall be governed by the laws of England and Wales and shall be subject to the exclusive jurisdiction of the English courts.

**SCHEDULE 1
CLARIFICATIONS**

(insert as applicable following award)

**SCHEDULE 2
PRICING SCHEDULE**

(insert following award)

**SCHEDULE 3
SPECIFICATION**

(insert following award)

**SCHEDULE 4
FORM OF TENDER**

(insert following award)

**SCHEDULE 5
TENDER**

(insert following award)

SCHEDULE 6

[NOTE FOR PROCUREMENT OFFICER: WHERE PARTIES ARE CONTROLLERS/JOINT CONTROLLERS, THEN THIS SCHEDULE DOES NOT APPLY.]

PROCESSING OF 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 Controller's Data Protection Officer is contactable at:

DPO@durham.gov.uk or alternatively write to; DPO, Room 143-148, Floor 4, County Hall, Durham County Council, DH1 5UF.

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

[Provider to insert here:]

3. The Contractor shall comply with any further written instructions with respect to processing by the Customer.

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

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

	<i>students / pupils, members of the public, users of a particular website etc]</i>
<p>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</p>	<p>Records and accounts of the operation of the Contract including the Services provided under it, the Contracts entered into with the Council and the amounts paid by the Council shall be retained for six years from the date of termination or expiry of the Contract.</p> <p>Any Service User Personal Data should be returned to the Council or a person nominated by the Council immediately at the end of the Contract.</p>

SCHEDULE 7

[LISTS OF ELIGIBLE EMPLOYEES AND THIRD PARTY EMPLOYEES]

[ONLY WHERE TUPE APPLIES]

(insert as applicable following award)

SCHEDULE 8

NATIONAL THEMES, OUTCOMES, AND MEASURES (TOMs)

Only where TOMs applies