

Dated: _____

**THE MAYOR AND BURGESSES OF THE LONDON
BOROUGH OF NEWHAM**

and

[NAME OF PROVIDER] (2)

**SERVICES AGREEMENT FOR THE PROVISION OF
DISABLED CHILDREN AND YOUNG PEOPLE SERVICES**

THIS DEED is dated [DATE]

between :

- (1) **The Mayor and Burgesses of the London Borough of Newham** of Newham Town Hall East Ham London E6 2RP ("**the Council**"); and
- (2) **[THE PROVIDER]** (Company Number:) whose registered address is **at []** ("**the Provider**")

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

BACKGROUND

- (A) The Council is a local authority and a best value authority with duties and powers to make arrangements to secure continuous improvement in the way it exercises its functions, having regard to a combination of economy, efficiency and effectiveness pursuant to Part I of the Local Government Act 1999.
- (B) The Council placed a Contract Notice on 13th day of March 2020 ("the Contract Notice") in the Official Journal of the European Union to establish a Dynamic Purchasing System ("DPS") for the procurement of Newham's SEND Services.
- (C) The Council has established a DPS in accordance with Regulation 34 of the Public Contracts Regulations 2015 ('the Regulations'), and has admitted and will continue to admit to DPS Providers which satisfy the Council's Accreditation & Enrolment as set out in SEND Application Guide and will procure Services via the DPS in compliance with the Regulations.
- (D) The parties acknowledge that the Council shall be under no obligation to award any contract, agreement or enter into any contractual relationship under the DPS or under these terms and conditions.
- (E) This Agreement sets out the terms and conditions on and subject to which the Provider will supply the Services to the Council where the Provider is successful for any mini competition under the DPS.
- (F) The Council reserves the right to amend, alter and supplement these terms and conditions in the light of the methods agreed for reviewing and revising the Outcomes as referred to in the Specifications at Schedules 2.

SECTION A: PRELIMINARIES

1 DEFINITIONS AND INTERPRETATION

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

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

Agreement means this services agreement concluded between the Council and the Provider for the provision of the Services comprising of the Agreement and Schedules and other documents as listed on SProc.Net;

Audit Agents means:

- (a) the Council's statutory and regulatory auditors and any other auditors appointed by the Council; and

- (b) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office.

Authority's Award Criteria means the award criteria to be applied to Supplemental Offers received through mini-competitions held for the award of Services Agreements for Services as set out in the SEND Operational Guide and SEND Application guide.

Charges means the charges for the provision of the Services set out in or otherwise calculated in accordance with the Provider's Offer.

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

Commencement Date means the date the Agreement starts as set out on SProc.Net.

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

Confidential Information means:

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

but not including any Information which:

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

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

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

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

Council Data means:

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

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

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

Data Controller has the meaning given in the Data Protection Legislation.

Data Loss Event: means any event that results, or may result, in unauthorised access to Personal Data held by the Provider 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 (as defined by the Data Protection Legislation).

Data Processor has the meaning given in the Data Protection Legislation

Data Protection Legislation means, for the periods in which they are in force in the United Kingdom, the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the GDPR and all applicable Laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner, in each case as amended or substituted from time to time;

Data Subject has the meaning given in the Data Protection Legislation.

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

Default means any failure by the Provider to perform its material obligations under this Agreement.

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

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

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

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

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

EIR means the Environmental Information Regulations 2004 and any subordinate legislation from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such Regulations.

Expiry Date means the date the Agreement expires as set out on SProc.Net.

Extension Period means any agreed extension period as set out in the SProc.Net.

FOIA means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to the Freedom of Information Act 2000.

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

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

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

GDPR means (a) the General Data Protection Regulation (Regulation (EU) 2016/679) which comes into force on 25 May 2018; and (b) any equivalent legislation amending or replacing the General Data Protection Regulation;

General Anti-Abuse Rule means:

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

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

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

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

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

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

LGA 1999 means the Local Government Act 1999.

London Living Wage means the basic hourly wage of £10.55 (before tax, other deductions and any increase for overtime) as may be updated from time to time by the Greater London Employer, or any successor body carrying out the relevant calculation.

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

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

Occasion of Tax Non-Compliance means:

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

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

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

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

Prohibited Act means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council or its members, a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;

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

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

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

Provider's Offer means the Provider's response to the Council's Requirements as published on the DPS for the award of this Agreement to deliver the Services.

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

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

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

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

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

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

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

Representatives means the Council Representative and the Provider Representative and **Representative** shall mean either one of them as the context so requires as identified on SProc.Net.

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

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

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

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

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

Services means the whole of the services or any of them to be supplied by the Provider as identified in the Services Specification (affixed at Schedule 2) pursuant to this Agreement from time to time.

Service Receipts means the agreed record within SProc.Net of the completed delivery of Services as quantified and agreed between the Parties.

Services Specification means the specification of the Services as set out in Schedule 2 of this Agreement;

SProc.Net means the proprietary web-based software owned and operated by the Technology Provider, currently called SProc.Net or such other technology as agreed between the Parties.

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

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

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

Supplemental Offer: means the documents submitted by a Provider to a Council in response to the Council's Requirements as published on the DPS.

Technology Provider means adam HTT Limited trading as *adam* (registered company 07716565)

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

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

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

1.2 In this Agreement, unless the context otherwise requires:

- 1.2.1 words in the singular include the plural and vice versa and words importing a gender includes the other gender and the neuter;
- 1.2.2 references to a person include an individual, supplier, body corporate, corporation, unincorporated association, firm, partnership or other legal entity;
- 1.2.3 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
- 1.2.4 any phrase introduced by the terms "**including**", "**include**", "**in particular**", "**for example**" or any similar expression shall be construed as illustrative and shall not limit the generality of the words preceding those terms;
- 1.2.5 references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly unless expressly stated otherwise in this Agreement;
- 1.2.6 references to Clauses and Schedules are, unless otherwise specified, references to the clauses and schedules of this Agreement and references in any Schedule to

Paragraphs and Parts are, unless otherwise specified, references to the paragraphs and parts of the Schedule or the Part of the Schedule in which the references appear;

1.2.7 the Schedules form part of this Agreement; and

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

1.3 If there is any conflict between the Clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:

1.3.1 the Clauses;

1.3.2 the Services Specification;

1.3.3 any other Schedules;

1.3.4 the Provider's Offer;

1.3.5 the Tender Clarifications;

1.3.6 the Council's Requirements as published on the DPS [13th March 2020]

2 CONTRACT TERM

2.1 Subject to Clauses 23 (Termination for Breach) and 42.1.4 where applicable, this Agreement shall take effect on the Commencement Date and shall continue in force for the Contract Term.

3 DUE DILIGENCE

3.1 Subject to Clause 3.2, the Provider acknowledges that it is the Provider's responsibility to carry out such due diligence as it considers appropriate before entering into this Agreement and, in so doing, that it:

3.1.1 has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Council all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this Agreement;

3.1.2 has received all information requested by it from the Council pursuant to Clause 3.1.1 to enable it to determine whether it is able to provide the Services in accordance with the terms of this Agreement;

3.1.3 has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council pursuant to Clause 3.1.2;

3.1.4 has raised all relevant due diligence questions with the Council before the Commencement Date; and

3.1.5 has entered into this Agreement in reliance on its own due diligence alone.

3.2 Save as provided in this Agreement, no representations, warranties or conditions are given or assumed by the Council in respect of any information which is supplied to the Provider by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by Law.

4 WARRANTIES

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

SECTION B: THE SERVICES

5 THE SERVICES

- 5.1 The Provider shall commence the provision of the Services on the Commencement Date and shall thereafter continue to provide the Services throughout the Contract Term in accordance with the terms of this Agreement.
- 5.2 The Provider shall at all times during the Contract Term perform the Services under this Agreement in accordance with:

- 5.2.1 all applicable Law and Guidance;
- 5.2.2 the Required Professional Standard;
- 5.2.3 the Services Specification;
- 5.2.4 the Performance Levels;
- 5.2.5 all relevant rules, codes, policies, procedures and standards of the Councils which may be referred to in the Services Specification; and
- 5.2.6 the Provider's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 5.2.1 to 5.2.5.

5.3 The Provider shall:

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

PROVIDER PERSONNEL

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

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

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

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

5.6 Where the Council exercises its right to refuse admission to any person employed or engaged by the Provider pursuant to Clause 5.5, the Council shall notify the Provider in writing of such refusal

without delay, including the identity of the person who has been refused such admission and the Council's reasons for refusing admission to such persons.

6 COUNCIL'S PREMISES AND ASSETS

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

SECTION C: PAYMENT, TAXATION AND BEST VALUE PROVISIONS

7 CHARGES AND INVOICING

- 7.1 In consideration of the provision of the Services by the Provider in accordance with this Agreement, the Council shall pay the Charges to the Provider.
- 7.2 The Provider shall submit Service Receipts to the Council on SProc.Net. Once the Technology Provider has collated the Service Receipts and created an invoice for payment of the Charges, and upon receipt of such invoice, the Charges shall be payable as set out in the Services Specification or as otherwise agreed with the Council.
- 7.3 The invoicing provisions set out in Clauses 7.2 to 7.3 shall be included in any Subcontract.
- 7.4 If the Council fails to pay any undisputed Charges properly invoiced under this Agreement, the Provider shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 7.5 The Council may at any time, without limiting any of its other rights or remedies, set off any liability of the Provider to the Council against any liability of the Council to the Provider.

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

8 VALUE ADDED TAX AND PROMOTING TAX COMPLIANCE

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

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

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

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

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

8.4.2 promptly provide to the Council:

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

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

SECTION D: CONTRACT GOVERNANCE

9 GOVERNANCE

9.1 The Parties shall comply with the provisions of the Services Specification in relation to the management and governance of this Agreement.

10 THE PROVIDER'S RECORDS AND PROVISION OF INFORMATION

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

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

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

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

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

10.2.4 personnel records on the Provider Personnel engaged in the provision of the Services;
and

10.2.5 all documents relating to the Required Insurances and any claims in respect of them,
together the "**Records**".

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

10.3.1 make the relevant Records available for inspection by the Audit Agents; and

10.3.2 provide or procure access to such facilities to enable the Audit Agents to visit any
place where the Records are held for the purposes of such inspection,

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

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

11 AUDIT

11.1 Subject always to Clauses 15 (Data Protection) and 16 (Confidentiality and Transparency) of this
Agreement, the Provider shall at all reasonable times during the Contract Term and during normal
business hours, afford to or procure for any Audit Agent access to and permission to copy and
remove any copies of any books records information and data in the possession or control of the
Provider which relate to or have been used in connection with the performance of the Services.

11.2 The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not
unreasonably disrupt the Provider or delay the provision of the Services by the Provider or adversely
affect the performance by the Provider of its obligations under this Agreement.

11.3 Subject to the Provider's obligations of confidentiality, the Provider shall provide the Council (and its
Audit Agents) with all reasonable co-operation, access and assistance in relation to each audit.

11.4 The Council shall provide at least ten Working Days' notice of any audit unless such audit is
conducted in respect of a suspected fraud, in which event no notice shall be required.

11.5 The Parties shall bear their own costs and expenses incurred in respect of compliance with their
obligations under this Clause 11.

12 SCRUTINY/CABINET ATTENDANCE

12.1 Where the value of the Services to be supplied under the Agreement exceeds one hundred thousand
pounds (£100,000) in value during the Contract Term and for a period of six years after termination
of expiry of the Agreement the Council reserves the right to require the Provider to:

12.1.1 provide all reasonable assistance for the purposes of answering the Council's
questions pertaining to the operation of the Agreement (including but not limited to the
Provider's performance of the Agreement); and,

12.1.2 attend the Council's Scrutiny Committee and/or Cabinet as and when reasonably
required by the Council,

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

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

13 DISPUTES

13.1 The Parties shall resolve Disputes arising out of or in connection with this Agreement in accordance with the procedure set out in Clauses 13.2 to 13.8 below.

13.2 The Parties shall attempt, in good faith, to resolve any Dispute promptly by negotiation which shall be conducted as follows:

13.2.1 the Dispute shall be referred, by either Party, to the Representatives for resolution;

13.2.2 if the Dispute cannot be resolved by the Representatives within 14 days after the Dispute has been referred to them, either Party may give notice to the other Party in writing (a **Dispute Notice**) that a Dispute has arisen; and

13.2.3 within seven days of the date of the Dispute Notice, each Party shall refer the Dispute to the Chief Executives of the Parties (the **Senior Representatives**) for resolution.

13.3 If the Senior Representatives are unable, or fail, to resolve the Dispute within 14 days of the reference to the Senior Representatives pursuant to Clause 13.2.1, the Parties may attempt to resolve the Dispute by mediation in accordance with Clause 13.4.

13.4 If, within 21 days of the Dispute Notice, the Parties have failed to agree on a resolution, either Party may refer any Dispute for mediation pursuant to this Clause 13.4:

13.4.1 the reference shall be a reference under the Model Mediation Procedure (**MMP**) of the Centre of Dispute Resolution (**CEDR**) for the time being in force;

13.4.2 both Parties shall, immediately on such referral, co-operate fully, promptly and in good faith with CEDR and the mediator and shall do all such acts and sign all such documents as the CEDR or the mediator may reasonably require to give effect to such mediation, including a contract in, or substantially in, the form of CEDR's Model Mediation Contract for the time being in force; and

13.4.3 to the extent not provided for by such contract of the MMP:

(a) the mediation shall commence by either Party serving on the other written notice setting out, in summary form, the issues in dispute and calling on that other Party to agree the appointment of a mediator;

(b) unless otherwise agreed or determined, the Parties will share equally the costs of mediation; and

(c) the mediation shall be conducted by a sole mediator (which shall not exclude the presence of a pupil mediator) agreed between the Parties or, in default of agreement, appointed by CEDR.

13.5 If and to the extent that the parties do not resolve any Dispute or any issue in the course of any mediation, either Party may commence or continue court proceedings in respect of such unresolved Dispute or issue.

13.6 Nothing in this Clause shall prevent either Party from instigating legal proceedings where an order for an injunction, disclosure or legal precedent is required.

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

SECTION E: INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

14 INTELLECTUAL PROPERTY RIGHTS

- 14.1 All Intellectual Property Rights in any materials provided by the Council to the Provider for the purposes of this Agreement shall remain the property of the Council but the Council hereby grants the Provider a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement for the sole purpose of enabling the Provider to perform its obligations under the Agreement.
- 14.2 In the absence of prior written agreement by the Council to the contrary, all Intellectual Property created by the Provider or any employee, agent or subcontractor of the Provider:
- 14.2.1 in the course of performing the Services; or
 - 14.2.2 exclusively for the purpose of performing the Services,
- shall vest in the Council on creation.
- 14.3 The Provider shall indemnify the Council against all claims, actions, and Losses arising from or incurred by reason of any infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Council's acts or omissions.

15 DATA PROTECTION

- 15.1 The Parties acknowledge that 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 4 by the Council and may not be determined by the Provider.
- 15.2 The Provider shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.
- 15.3 The Provider shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment (being an assessment by the Council of the impact of the envisaged processing on the protection of Personal Data) prior to commencing any processing. Such assistance may, at the discretion of the Council, include:
- 15.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 15.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;

- 15.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 15.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 15.4 the Provider shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- 15.4.1 process that Personal Data only in accordance with Schedule 4, 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;
 - 15.4.2 ensure that it has in place Protective Measures (namely 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), which have been reviewed and approved by the Council as appropriate to protect against a Data Loss Event having taken account of the:
 - (a) nature of the data to be protected;
 - (b) harm that might result from a Data Loss Event;
 - (c) state of technological development; and
 - (d) cost of implementing any measures;
 - 15.4.3 ensure that :
 - (a) the Provider Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 4);
 - (b) it takes all reasonable steps to ensure the reliability and integrity of any Provider Personnel who have access to the Personal Data and ensure that they:
 - (i) are aware of and comply with the Provider's duties under this clause;
 - (ii) are subject to appropriate confidentiality undertakings with the Provider or any sub-processor;
 - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council or as otherwise permitted by this Agreement; and
 - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data;
 - 15.4.4 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 Law Enforcement Directive (Directive (EU) 2016/680) 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;
- 15.4.5 at the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the Agreement unless the Provider is required by Law to retain the Personal Data.
- 15.5 Subject to clause 15.6, the Provider shall notify the Council immediately if it:
 - 15.5.1 receives a Data Subject Request (or purported Data Subject Request);
 - 15.5.2 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 15.5.3 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - 15.5.4 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 15.5.5 becomes aware of a Data Loss Event.
- 15.6 The Provider's obligation to notify under clause 15.5 shall include the provision of further information to the Council in phases, as details become available.
- 15.7 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 15.5 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:
 - 15.7.1 the Council with full details and copies of the complaint, communication or request;
 - 15.7.2 such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - 15.7.3 the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 15.7.4 assistance as requested by the Council following any Data Loss Event;
 - 15.7.5 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.
- 15.8 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:
 - 15.8.1 the Council determines that the processing is not occasional;
 - 15.8.2 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; or

- 15.8.3 the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 15.9 The Provider shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor.
- 15.10 The Provider shall designate a data protection officer if required by the Data Protection Legislation.
- 15.11 Before allowing any sub-processor to process any Personal Data related to this Agreement, the Provider must:
 - 15.11.1 notify the Council in writing of the intended sub-processor and processing;
 - 15.11.2 obtain the written consent of the Council;
 - 15.11.3 enter into a written agreement with the sub-processor which gives effect to the terms set out in this clause such that they apply to the sub-processor; and
 - 15.11.4 provide the Council with such information regarding the sub-processor as the Council may reasonably require.
- 15.12 The Provider shall remain fully liable for all acts or omissions of any sub-processor.
- 15.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than 30 Working Days' notice to the Provider amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

16 CONFIDENTIALITY AND TRANSPARENCY

Confidentiality

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

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

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

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

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

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

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

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

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

16.6.2 to a proposed Successor Body.

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

Transparency

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

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

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

16.9.2 the Provider shall provide reasonable assistance to the Council to enable the Council to publish this Agreement.

17 FREEDOM OF INFORMATION

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

Information, the Council shall, in good faith, consider any objections and/or representations made by the Provider regarding the disclosure of such Commercially Sensitive Information prior to responding to the Request for Information. The Provider acknowledges that the Council is responsible for determining in its absolute discretion whether the Commercially Sensitive Information is exempt from disclosure in accordance with the provisions of the Codes, FOIA or the EIR.

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

18 PRESS STATEMENTS AND PUBLICATION OF THE AGREEMENT

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

- 18.3 The Council may consult with the Provider to inform its decision regarding any redactions but the Council shall have the final decision in its absolute discretion.
- 18.4 The Provider shall assist and cooperate with Council to enable the Council to publish this Agreement.

SECTION F: LIABILITIES AND INSURANCE

19 LIABILITY

- 19.1 Nothing in this Agreement shall limit or exclude the Provider's or the Council's liability for:
- 19.1.1 death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;
 - 19.1.2 fraud or fraudulent misrepresentation;
 - 19.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
 - 19.1.4 any other liability which cannot be limited or excluded by applicable Law.
- 19.2 The Provider shall indemnify and keep indemnified the Council against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of this agreement, to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself or of its employees or of any of its Representatives or sub-contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of this agreement or applicable law by the Council or its Representatives (excluding any Provider's Personnel).
- 19.3 Nothing in this Agreement shall limit or exclude:
- 19.3.1 the Provider's liability under Clause 8.3 (VAT indemnity), Clause 14.3 (IPR indemnity), Clause 23.2 (Termination for Breach indemnity), Clause 28 (Human Rights Act indemnity) and Schedule 3 (TUPE indemnities) and no amounts awarded or agreed to be paid under those clauses or schedule shall count towards the cap on the Provider's liability; or
 - 19.3.2 the Council's liability under Schedule 3 (TUPE indemnities).
- 19.4 Subject to Clauses 19.1, 19.2 and 19.5, neither party shall have any liability to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise for any indirect or consequential loss arising under or in connection with this Agreement.
- 19.5 Subject to Clause 19.1 and Clause 19.2, the Provider's total aggregate liability to the Council, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement shall in no event exceed either:
- 19.5.1 the amount in each Contract Year set out on SProc.Net; or
 - 19.5.2 the percentage set out on SProc.Net of the aggregate Charges payable under or pursuant to this Agreement in the subsequent Contract Year in respect of which the claim arises.
- 19.6 Notwithstanding the provisions of Clause 19.2 but subject always to Clause 19.4, the Provider assumes responsibility for the following losses which may be recoverable by the Council:
- 19.6.1 the Council's additional operational and administrative costs and expenses arising from a Default;

- 19.6.2 the Council's wasted expenditure or charges reasonably incurred by the Council arising from a Default;
 - 19.6.3 any compensation or interest paid to a third party by the Council arising from a Default;
 - 19.6.4 any loss or corruption to or alteration of any Council Data; and
 - 19.6.5 any fines, expenses or other losses suffered or incurred by the Council arising from a breach by the Provider of any Law.
- 19.7 Nothing in this Agreement shall be taken as in any way reducing or affecting a general duty to mitigate loss suffered by a party.

20 INSURANCE

- 20.1 Without prejudice to Clause 19 (Liability), the Provider shall at its own cost effect and maintain in force with reputable insurance companies such policies of insurance as set out on SProc.Net (the **Required Insurances**).
- 20.2 Each Party shall, during the term of this Agreement do nothing to invalidate any insurance policy and use its reasonable endeavours to procure that the terms of such policies are not altered in such a way as to have a material adverse effect on the benefit of such policies as they were at the Commencement Date.
- 20.3 Following a written request of the Council (acting reasonably) for the same, the Provider shall provide the Council with:
- 20.3.1 copies of all insurance policies relating to the Required Insurances (or a broker's verification of insurance) and the Council shall be entitled to inspect such insurance policies at reasonable times during ordinary business hours; and
 - 20.3.2 evidence that the premiums payable under the insurance policies relating to the Required Insurances have been paid and that the insurances are in full force and effect.
- 20.4 Without prejudice to the Council's other rights under this Agreement, if, for whatever reason, the Provider fails to give effect to and maintain the Required Insurances, the Council may make alternative arrangements to keep such insurance in force and may recover the costs of such arrangements from the Provider.
- 20.5 The Council shall immediately notify the Provider of any claims or potential claims of which it becomes aware in relation to any risk covered by any of the Required Insurances and for which it reasonably believes that the Provider is responsible and shall provide the Provider with all information and assistance it may reasonably require in order for the Provider to effectively manage such claim.

SECTION G: REMEDIES AND RELIEF

21 FORCE MAJEURE

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

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

22 CONTINUED PERFORMANCE

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

SECTION H: TERMINATION AND EXIT MANAGEMENT

23 TERMINATION FOR BREACH

- 23.1 This Agreement shall terminate automatically on the Expiry Date unless it is terminated earlier in accordance with this Agreement. For the avoidance of doubt the Provider shall not be entitled to any compensation on expiry. Without limiting its other rights or remedies, the Council may terminate the Agreement with immediate effect by giving written notice to the Provider if:
- 23.1.1 the Provider commits a material breach of the Agreement which is not capable of remedy;
- 23.1.2 the Provider commits a Default provided that if the Default is capable of remedy, the Council may only terminate this Agreement under this Clause 23 if the Provider has failed to remedy such Default within 28 days of receipt of notice from the Council;
- 23.1.3 subject to Clause 29 (Prevention of Fraud and Bribery) the Provider commits a Prohibited Act;
- 23.1.4 a representation and warranty given by the Provider pursuant to Clause 4 (Warranties) being materially untrue or misleading;
- 23.1.5 the Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a Provider) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the

Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

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

24 CONSEQUENCES OF EXPIRY OR TERMINATION

- 24.1 The termination or expiry of this Agreement shall not affect:
- 24.1.1 the continuing rights and obligations of the Parties pursuant to Clauses 10 (The Provider's Records and Provision of Information), 11 (Audit), 15 (Data Protection), 16 (Confidentiality and Transparency), 17 (Freedom of Information), 19 (Liability), 20 (Insurance), 23 (Termination for Breach) and this Clause 24 and any other provision of this Agreement that expressly or by implication is intended to come into or continue in force after the termination or expiry of this Agreement; and

- 24.1.2 any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry of this Agreement.
- 24.2 Six months prior to the end of the Contract Term (or earlier upon the Council's request) irrespective of whether the Agreement is re-tendered or not, the Provider shall submit to the Council all relevant data held by the Provider in respect of the contract which the Council may reasonably need for future reference or to maintain performance of the contract internally or through another Provider. Such data shall be supplied electronically in the relevant Microsoft product (which is the Council's standard software currently) or in such other electronic product as may be Council's standard at the time, and in e-gif compliant format (if applicable).

SECTION I: COMPLIANCE WITH LAWS

25 HEALTH AND SAFETY

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

26 ENVIRONMENTAL

- 26.1 The Provider shall:
 - 26.1.1 when working on premises where the Services are being provided, perform this Agreement in accordance with the Council's environmental policy, which is committed to the prevention of pollution, reduction of our CO2 emissions, minimise the environmental impacts associated with all activities, products and services of the Council's business;
 - 26.1.2 follow a sound environmental management policy so that its activities comply with all applicable environmental legislation and regulations and that the Services are procured, and delivered in ways that are appropriate from an environmental protection perspective; and
 - 26.1.3 comply with all applicable environmental legislation and other requirements as appropriate to the Services, which may apply in the performance of this Agreement.

27 EQUAL OPPORTUNITIES

- 27.1 The Provider shall not unlawfully harass or victimise a person or discriminate either directly or indirectly because of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, colour, nationality, ethnic or national origin, religion, or belief, sex, or sexual orientation (the **Protected Characteristics**) and without prejudice to the generality of the foregoing the Provider shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010, the Human Rights Act 1998 or other relevant legislation, or any statutory modification or re-enactment thereof.
- 27.2 The Provider shall give due regard to the need to eliminate discrimination, advance equality and foster good relations within the meaning and scope of the Public Sector Equality Duty in Section 149 of the Equality Act 2010 in the execution of the Agreement.

- 27.3 The Provider shall take all reasonable steps to secure the observance of Clauses 27.1 and 27.2 by all servants, employees or agents of the Provider and all suppliers and Subcontractors employed in the execution of the Agreement.
- 27.4 The Provider shall demonstrate to the Council that it has a policy to comply with its statutory obligations under the legislation referred to above in Clauses 27.1 and 27.2.
- 27.5 If there should be any findings of unlawful discrimination made against the Provider by any court or employment tribunal, or an adverse finding in a formal investigation by a Commission, the Provider shall take appropriate steps to prevent repetition of the unlawful discrimination.
- 27.6 The Council reserve the right to test the Provider's equality performance through the life of the Agreement. The Provider shall cooperate with the Council regarding the provision of a date and/or access for site visits as reasonably required by the Council.

28 HUMAN RIGHTS ACT 1998

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

29 PREVENTION OF FRAUD AND BRIBERY

- 29.1 The Provider represents and warrants that as at the Commencement Date neither it, nor to the best of its knowledge any of the Provider Personnel have at any time prior to the Commencement Date:
- 29.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - 29.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government contracts on the grounds of a Prohibited Act.
- 29.2 The Provider shall not during the Contract Term of this Agreement:
- 29.2.1 commit a Prohibited Act; and/or
 - 29.2.2 do or suffer anything to be done which would cause the Council to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 29.3 The Provider shall during the Contract Term of this Agreement:
- 29.3.1 establish, maintain and enforce, and require that its Subcontractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
 - 29.3.2 keep appropriate records of its compliance with its obligations under Clause 29.3.1 and make such records available to the Council on request.
- 29.4 The Provider shall as soon as reasonably practicable notify the Council in writing if it becomes aware of any breach of Clause 29.2.1 and/or 29.2.2, or has reason to believe that it has:
- 29.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 29.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in

government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

29.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly connected with this Agreement has committed or attempted to commit a Prohibited Act.

29.5 If the Provider makes a notification to the Council pursuant to Clause 29.4, the Provider shall respond promptly to the Council's reasonable enquiries and cooperate with any investigation carried out by the Council (acting reasonably) in respect of such notification.

29.6 If the Provider is in breach of Clauses 29.1 and/or 29.2 the Council may by notice require the Provider to remove from performance of this Agreement any member of staff or Subcontractor whose acts or omissions have caused the breach.

29.7 Any notice served by the Council under Clause 29.6 shall specify the nature of the Prohibited Act, the identity of the person who the Council reasonably believes has committed the Prohibited Act and the action that the Council requires the Provider to take as a result.

SECTION J: MISCELLANEOUS AND GOVERNING LAW

30 COMPLAINTS/LOCAL GOVERNMENT OMBUDSMAN

30.1 The Provider shall keep a record of any complaints received (whether received orally or in writing, and whether from members of the Council, members of the public or otherwise) and of the action taken by the Provider to remedy or fully investigate each such complaint. Such records shall be kept available for inspection by the Council's Representative at all reasonable times during normal working hours.

30.2 The Provider shall provide the Council with all reasonable cooperation and assistance in relation to any investigation by the Local Government Ombudsman in connection with the performance by the Provider of the Services under this Agreement.

31 VARIATION

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

32 ASSIGNMENT AND OTHER DEALINGS

32.1 Neither Party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed).

32.2 The Council may at its discretion assign, novate, or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement to a body other than the Council which performs any of the functions that previously had been performed by the Council (a **Successor Body**).

32.3 In the event that the Provider enters into a Subcontract, the Subcontract must include terms:

32.3.1 requiring the Subcontractor to pay any undisputed sums due to the Provider within 30 days of receipt of a valid invoice;

32.3.2 requiring the counterparty to that Subcontract to include in any subcontract it awards a provision having the same effect as Clause 32.3.1; and

32.3.3 refrain from acting, or act, in any way which would cause the Provider to be in breach of this Agreement.

32.3.4 imposing the same data protection obligations as set out in Clause 15

32.4 The Provider may not subcontract any part of this Agreement without the prior written consent of the Council. The Provider shall ensure that any Subcontractor that performs any part of the Services pursuant to this Clause 32 shall be fully supplied with all relevant information about the Provider's obligations under this Agreement.

32.5 The Provider shall notify the Council of any change to the details of a Subcontractor as soon as reasonably practicable, in accordance with Regulation 71(4)(a) of the Public Contract Regulations 2015.

32.6 Notwithstanding any subcontracting permitted under this Clause 32, the Provider shall be responsible and liable for the acts and omissions of its Subcontractors as if they were its own acts and omissions.

33 ENTIRE AGREEMENT

33.1 This Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.

33.2 Neither Party has been given, nor entered into this Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.

33.3 Nothing in this Clause 33 shall exclude any liability in respect of misrepresentations made fraudulently.

34 WAIVER AND CUMULATIVE REMEDIES

34.1 A waiver of any right or remedy under this Agreement or by Law is only effective if given in writing, which expressly states that a waiver is intended, and such waiver shall not be deemed a waiver of any subsequent breach or default.

34.2 A failure or delay by a Party in ascertaining or exercising any right or remedy provided under this Agreement or by Law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by Law shall prevent or restrict the further exercise of that or any other right or remedy.

34.3 Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.

35 SEVERANCE

35.1 If any provision of this Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Agreement shall not be affected.

35.2 In the event that any deemed deletion under Clause 35.1 is so fundamental as to prevent the accomplishment of the purpose of this Agreement or materially alters the balance of risks and rewards in this Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Agreement and, to the extent that is reasonably possible, achieves the Parties' original intentions.

35.3 If the Parties are unable to agree on the revisions to this Agreement within five Working Days of the date of the notice given pursuant to Clause 39 (Notices) the matter shall be dealt with in accordance with the Dispute Resolution Procedure.

36 FURTHER ASSURANCES

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

37 RELATIONSHIP OF THE PARTIES

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

38 THIRD PARTY RIGHTS

38.1 A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

38.2 The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.

39 NOTICES

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

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

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

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

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

40 GOVERNING LAW AND JURISDICTION

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

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

41 THE LONDON LIVING WAGE

41.1 It is a condition of this Agreement that for the duration of the Agreement and any extensions thereof the Provider:

41.1.1 pays all Provider Personnel who are employed by the Provider to perform the Services not less than the London Living Wage (unless otherwise directed by the Council) as set annually by the Greater London Employer (GLA);

41.1.2 agrees to increase the amount which it pays to Provider Personnel by the same amount as any increase to the London Living Wage within twelve (12) months of the date on which any increase in the London Living Wage is announced by the GLA (unless otherwise directed by the Council); and

41.1.3 co-operate and provide all reasonable assistance to the Council in monitoring the effect of the London Living Wage on the quality of the Services provided under this Agreement.

41.2 If the Provider sub-Contracts all or part of the provision of the Services to a sub-contractor, the Provider shall procure that the terms contained in this Clause 41 shall apply to all Provider Personnel who are employed by the sub-contractor to perform the Services (or part of them) provided the employment is based within the geographical limits of London.

42 OPTIONAL CLAUSES AND SCHEDULES

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

42.1.1 Price Variation;

42.1.2 Safeguarding and Improper Conduct;

42.1.3 Social Networking/Internet;

42.1.4 No Fault Termination; and

42.1.5 Collaborative Procurement – Right of Other Bodies to Participate

shall only apply if affixed to this Agreement within Schedule 1.

THIS DOCUMENT HAS BEEN EXECUTED AS A DEED AND IS DELIVERED AND TAKES EFFECT ON THE DATE STATED AT THE BEGINNING OF IT.

[Executed as a deed by **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF NEWHAM** by affixing its Common Seal hereto in the presence of:

.....
Authorised Signatory]

OR

**[SIGNED for and on behalf of the
THE LONDON BOROUGH
OF NEWHAM**

Signature:

.....

Name:

.....

Executed as a deed by **[NAME OF
COMPANY]** acting by either: two of its
directors; a director and its company
secretary or by a single director in the
presence of a witness

.....
Director Signature

Witness signature:

.....
Director Name (BLOCK CAPITALS)

Witness name:

Address:

.....
Director Signature

.....

.....

.....
Director Name (BLOCK CAPITALS)

OR

[SIGNED FOR AND ON BEHALF OF
THE
[NAME OF COMPANY]

SIGNATURE:

.....

Name:

.....]

SCHEDULE 1 – OPTIONAL CLAUSES

1 PRICE VARIATION

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

2 SAFEGUARDING AND IMPROPER CONDUCT

- 2.1 The Provider acknowledges that the Council is a regulated activity provider with ultimate responsibility for the management and control of the regulated activity provided under this Agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
- 2.2 The Provider shall
- 2.2.1 Ensure that all individuals engaged in regulated activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service;
 - 2.2.2 Monitor the level and validity of the checks under this Clause 2.2 for each member of Provider Personal;
 - 2.2.3 Not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out regulated activity or who may otherwise present a risk to Service Users;
 - 2.2.4 At the Commencement Date have in place an improper conduct policy and use reasonable endeavours to ensure all Provider Personnel comply with its policy;
 - 2.2.5 ensure adequate training is annually provided to Provider Personal on the prevention of improper conduct, identifying incidents, and reporting processes; and
 - 2.2.6 Comply with all the Council's Safeguarding Procedures.
- 2.3 The Provider warrants that at all times for the purposes of this Agreement it has no reason to believe that any person who is or will be employed or engaged by the Provider in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 2.4 The Council shall immediately notify the Provider of any information it reasonably requests to enable it to be satisfied that the obligations of this Clause 2 have been met.
- 2.5 The Provider shall refer information about any person carrying out the Services to the Disclosure and Barring Service where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to Service Users, or children or vulnerable adults.

3 SOCIAL NETWORKING AND INTERNET

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

4 NO FAULT TERMINATION

- 4.1 Without limiting its other rights or remedies, the Parties may terminate this Agreement by giving the other party a minimum of 12 months written notice.

5 COLLABORATIVE PROCUREMENT – RIGHT OF OTHER BODIES TO PARTICIPATE

- 5.1 For the purposes of this Clause "**Partner Organisation**" mean such other contracting authorities as are permitted, in accordance with the relevant Official Journal of the European Union contract notice, to access this Agreement.
- 5.2 The Parties agree and acknowledge that the Council enters into this Agreement for itself and for the benefit of Partner Organisations.
- 5.3 In addition to the specific Services expressly required to be provided to the Council pursuant to this Agreement, any Partner Organisation, with the prior written consent of the Council (which consent the Council may in its absolute discretion refuse), may require the provision by the Provider of any of the Services under this Agreement subject to the same or substantially the same terms and conditions contained herein and subject to the additional conditions set out in Clause 5.4.
- 5.4 If and to the extent that any such additional Services under this Agreement are required to be provided by the Provider to any Partner Organisation:
 - 5.4.1 each and every such Partner Organisation shall enter into a specific contract with the Provider for such additional Services incorporating by reference or otherwise the same or substantially the same terms and conditions contained in this Agreement (but not the provisions of this Clause 5);
 - 5.4.2 any non-substantial amendments to the terms and conditions in this Agreement agreed between the Provider and the Partner Organisation shall be clearly set out in such specific contract; and
 - 5.4.3 in order to enter into a specific contract with the Provider the Partner Organisation may, in accordance with relevant public procurement regulations, consult the Provider in writing requesting the Provider to supplement the Provider's Offer as may be necessary.
- 5.5 The Council does not guarantee that any Partner Organisation will require the Provider to provide any additional Services under this Agreement or otherwise and nothing in this Agreement shall give the Provider a right to receive such requirement for additional Services.
- 5.6 The Council shall not in any circumstances be liable to the Provider or any Partner Organisation for payment or otherwise in respect of any such additional Services required to be provided by the Provider to any Partner Organisation.

- 5.7 It shall be the responsibility of any Partner Organisation to satisfy itself that entering into any contract with the Provider under Clause 5.4.1 of this Agreement does not breach any relevant public procurement regulations, the general European Community procurement principles or its own contracting rules and procedures.

SCHEDULE 2 – SERVICE SPECIFICATION

Schedule 3 – [TUPE/Pension /Not Used – Delete sections within this Schedule as appropriate]

PART 1 – RELEVANT TRANSFERS

1 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2 TUPE

2.1 Relevant Transfers

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

- (a) the Relevant Transfer Date; and
- (b) where the identity of a provider (including the Council) of any works or services which constitutes or which will constitute part of the service is changed, whether in anticipation of changes pursuant to the Agreement or not;

shall constitute a Relevant Transfer and that the contracts of employment of any Relevant Employees will have effect (subject to Regulation 4(7) of TUPE) thereafter as if originally

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

2.1.2 The Council will comply with its obligations under TUPE in respect of each Relevant Transfer pursuant to the Agreement and the Provider will comply and will procure that each Subcontractor will comply with its obligations (including without limitation the obligation under Regulation 13(4) of TUPE) in respect of each Relevant Transfer pursuant to the Agreement and each of the Council and the Provider will indemnify the other against any Direct Losses sustained as a result of any breach of this paragraph 2.1 by the Party in default.

2.2 Emoluments and outgoings

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

2.3 Employment costs

2.3.1 The Council has supplied to the Provider information, prior to the time for return of tenders, which is contained in Part Two to this Schedule (the First Employee List) in relation to each of those employees of the Council [and of any sub-contractor of the Council] who it is expected, if they remain in the employment of the Council [or of any subcontractor of the Council] until immediately before the Relevant Transfer Date, would be Relevant Employees. The Council gives no warranty as to the accuracy or completeness of the information in respect of those employees of the Council.

2.3.2 The Council shall supply to the Provider an update of the First Employee List at [three (3) monthly] intervals from the date of this Agreement. The Council shall also provide an updated list to include all Employee Liability Information twenty (20) Working Days before the Relevant Transfer Date. This list is known as the First Employee List. The Council shall also supply to the Provider within five (5) Working Days after the Relevant Transfer Date information, which was correct as at the Relevant Transfer Date, in respect of the Transferring Employees on all the same matters as should be provided in the First Employee List. This list is the "Final Employee List" and where there is more than one Relevant Transfer Date the "Final Employee List" means each list so prepared in respect of each part of the service and at each Relevant Transfer Date. The Council shall give no warranty as to the accuracy or completeness of any information in respect of those employees of the Council contained in any update of the First Employee List or in the Final Employee List.

2.3.3 2.3.3 Without prejudice to paragraph 1.3.1 above, the Council will [or will procure if it has the contractual or legal power to do so and shall otherwise use all reasonable endeavours to procure that each relevant subcontractor of the Council will]:

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

The Council gives no warranty as to the accuracy or completeness of the Employee Liability Information supplied by the Council [or any of its subcontractors].

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

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

2.3.5 If at any time (including, for the avoidance of doubt, after the submission of the Final Employee List) the Remuneration Costs and/or the Reorganisation Costs require to be adjusted on account of any differences between the information contained in the First Employee List and that contained in the Final Employee List, or on account of any inaccuracies in or omissions from the information contained in the First Employee List or the Final Employee List then (subject to paragraph 1.3.6, 1.3.7 and 1.3.9) there shall be a corresponding adjustment to the Service Charge to compensate for any such difference.

2.3.6 If the circumstances described in paragraph 1.3.5 arise:

- (a) in circumstances where there are more Relevant Employees than shown on the Final Employee List then the Parties shall discuss the implications for the Provision of Service; and
- (b) the Provider and the relevant Subcontractor shall take all reasonable steps to mitigate any additional costs and any adjustment to the Service Charges shall be calculated as if they had done so.

2.3.7 In calculating any adjustment to be made to the Service Charges pursuant to paragraph 1.3.5:

- (a) no account shall be taken of a decrease in the Remuneration Costs or Reorganisation Costs to the extent that it arises from a reduction in the number of Relevant Employees or their whole time equivalent such that there are, immediately after the Relevant Transfer Date, fewer suitably qualified persons available than are required in order to establish the Proposed Workforce;
- (b) to avoid double counting, no account shall be taken of any change to the Remuneration Costs or Reorganisation Costs to the extent that the Provider has been or will be compensated as a result of any indexation of the Service Charges under this Agreement;
- (c) to avoid doubt any changes in costs which fall to be dealt with under Clause 14 (Change in Law) which arise from a Change in Law shall be dealt with in accordance with the provisions of paragraph 1.3.5;

- (d) no adjustments under paragraph 1.3.5 shall be made in respect of overpayments made by the Provider or a Subcontractor to Relevant Employees which arise from reliance on the Final Employee List to the extent that the Provider or the Subcontractor is unable to correct overpayments in respect of continuing employment having taken reasonable steps to do so;
- (e) if there are underpayments by the Provider or a Subcontractor to Relevant Employees, whether claimed or established as unlawful deductions from wages or as a breach of contract, which arise from reliance on the Final Employee List, there shall be an immediate increase to the amount due to the Provider in respect of all such liabilities of the Provider or the Subcontractor for all such underpayments which are retrospective (save that any such liabilities which relate to the period prior to the Relevant Transfer Date shall be dealt with in accordance with paragraph 1.2.1) and an appropriate increase in respect of such liabilities of the Provider which represent ongoing costs; and
- (f) in order to prevent duplication, no adjustment shall be made under this paragraph 1.3.7 if any indemnity given by the Council under any other provision of this Agreement would apply.

2.3.8 Either party may propose an adjustment to the Service Charges pursuant to paragraph 1.3.5 by giving not less than [ten (10)] Working Days' notice to the other. Each party will provide or procure the provision to the other, on an open book basis, access to any information or data which the other party reasonably requires for the purpose of calculating or confirming the calculation of any adjustment pursuant to paragraph 1.3.5.

2.3.9 In relation to all matters described in paragraphs 1.3.6 and 1.3.7 the Provider and the Council shall, and the Provider shall procure that the relevant Subcontractor shall, co-operate with the other or others and take all reasonable steps to mitigate any costs and expenses and any adverse effect on industrial or employee relations.

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

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

2.4 Union Recognition

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

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

2.5 Indemnities

- 2.5.1 The Council will indemnify and keep indemnified in full the Provider (for itself and for the benefit of each relevant Subcontractor) against all Direct Losses incurred by the Provider or any relevant Subcontractor in connection with or as a result of:
- (a) a breach by the Council of its obligations under paragraph 1.2.1 of Part 1 of this Schedule,
 - (b) subject to paragraph 1.5.4 of Part 1 of this Schedule any claim or demand by or on behalf of any Transferring Employee arising out of the employment of any Transferring Employee provided that this arises from any act, fault or omission of the Council in relation to any Transferring Employee prior to the Relevant Transfer Date (save where such act, fault or omission arises as a result of the Provider's or any relevant Subcontractor's failure to comply with Regulation 13 of TUPE).
- 2.5.2 Where any liability in relation to any Transferring Employee, in respect of his or her employment by the Council or its termination which transfers in whole or part in accordance with TUPE and/or the Directive, arises partly as a result of any act or omission occurring on or before the Relevant Transfer Date and partly as a result of any act or omission occurring after the Relevant Transfer Date, the Council will indemnify and keep indemnified in full the Provider or the relevant Subcontractor against only such part of the Direct Losses sustained by the Provider or any Subcontractor in consequence of the liability as is reasonably attributable to the act or omission occurring before the Relevant Transfer Date.
- 2.5.3 The Council will indemnify, and keep indemnified, in full the Provider (for itself and for the benefit of each relevant Subcontractor) against all Direct Losses incurred by the Provider or any relevant Subcontractor in connection with, or as a result of, any claim or demand by any Transferring Employee arising out of the employment of any Transferring Employee provided that this arises from any act, fault or omission of the Council prior to the Relevant Transfer Date.
- 2.5.4 The indemnities contained in paragraphs 1.5.1 to 1.5.3 shall apply as if references in those clauses to any Transferring Employee also included a reference to any Relevant Employee and references to any act, fault or omission of the Council also included a reference to the relevant Third Party Contractor of the Relevant Employee prior to the Relevant Transfer Date to the extent that the Council recovers any sum in respect of the subject matter of those indemnities from such Third Party Contractor under any indemnity or other legal entitlement it has against such Third Party Contractor. The Council will use all reasonable endeavours to recover any such sums under any such entitlement as in mentioned in this paragraph 1.5.4.
- 2.5.5 The Provider will indemnify and keep indemnified in full the Council and at the Council's request each and every New Employer against:
- (a) all Direct Losses incurred by the Council or any New Employer in connection with or as a result of any claim or demand against the Council or any New Employer by (i) any person who is or has been employed or engaged by the Provider or any Subcontractor in connection with the provision of any works or services under the Agreement or (ii) any trade union or staff association or employee representative in respect of such person, in either case where such claim arises as a result of any act, fault or omission of the Provider and/or any Subcontractor after the Relevant Transfer Date,
 - (b) all Direct Losses incurred by the Council or any New Employer in connection with or as a result of a breach by the Provider of its obligations under paragraph 1.2.2 of Part 1 of this Schedule and

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

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

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

2.5.7 For the avoidance of doubt, the indemnities in paragraphs 1.5.4 and 1.5.5 of Part 1 of this Schedule will not apply in respect of any sum for which the Council is to indemnify the Provider or a relevant Subcontractor pursuant to paragraph 1.5.1 of Part 1 of this Schedule or to the extent that the claim arises from a wrongful act or omission of the Council.

2.6 Provision of details and indemnity

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

2.7 Retendering

2.7.1 The Provider will (and will procure that any Subcontractor will) within the period of twelve (12) months immediately preceding the expiry of this Agreement or following the service of a notice under Clauses 32 (Default), 34 (Termination for Breach), 35 (No Fault Termination) or as a consequence of the Council notifying the Provider of its intention to re-tender this Agreement:

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

2.7.2 Without prejudice to paragraphs 1.7.1 and 1.7.3 of Part 1 of this Schedule, the Provider will provide and will procure that any Subcontractor will provide the Employee Liability Information to the Council at such time or times as are required by TUPE, and will warrant at the time of providing such Employee Liability Information, that such information will be updated to take account of any changes to such information as is required by TUPE.

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

2.8 Termination of Agreement

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

2.8.2 For the purposes of paragraph 1.8.1 and this paragraph 1.8.2, “**Returning Employees**” will mean those employees wholly or mainly engaged in the provision of the service as the case may be as immediately before the expiry or termination of this Agreement whose employment transfers to the Council or a New Employer pursuant to TUPE. Upon

expiry or termination of the Agreement for whatever reason (such date being termed the “Return Date”), the provisions of this paragraph 1.8.2 will apply:

- (a) The Provider will or will procure that all wages, salaries and other benefits of the Returning Employees and other employees or former employees of the Provider or the Subcontractor (who had been engaged in the provision of the service) and all PAYE tax deductions, pension contributions and national insurance contributions relating thereto in respect of the employment of the Returning Employees and such other employees or former employees of the Provider or Subcontractors up to the Return Date are satisfied,
- (b) Without prejudice to paragraph 1.8.2(a) of Part 1 of this Schedule, the Provider will:
 - (i) remain (and procure that Subcontractors will remain) (as relevant) responsible for all the Provider’s or Subcontractor’s employees (other than the Returning Employees) on or after the time of expiry or termination of the Agreement and will indemnify the Council and any New Employer against all Direct Losses incurred by the Council or any New Employer resulting from any claim whatsoever whether arising before on or after the Return Date by or on behalf of any of the Provider’s or Subcontractor’s employees who do not constitute the Returning Employees,
 - (ii) in respect of those employees who constitute Returning Employees the Provider will indemnify the Council and any New Employer against all Direct Losses incurred by the Council or any New Employer resulting from any claim whatsoever by or on behalf of any of the Returning Employees in respect of the period on or before the Return Date (whether any such claim, attributable to the period up to and on the Return Date, arises before, on or after the Return Date) including but not limited to any failure by the Provider or any Subcontractor to comply with its or their obligations under Regulation 13 of TUPE and/or Article 6 of the Directive as if such legislation applied, even if it does not in fact apply save to the extent that any such failure to comply arises as a result of an act or omission of the Council or any New Employer.
- (c) The Council will be entitled to assign the benefit of this indemnity to any New Employer.
- (d) The Council will indemnify the Provider (for itself and for the benefit of each relevant Subcontractor) in respect of those employees who constitute Returning Employees against all Direct Losses incurred by the Provider or any relevant Subcontractor in connection with or as a result of any failure by the Council or any New Employer to comply with its or their obligations under Regulation 13 of TUPE and/or Article 6 of the Directive as if such legislation applied, even if it does not in fact apply save to the extent that any such failure to comply arises as a result of an act or omission of the Provider or any relevant Subcontractor.

2.9 Subcontractors

- 2.9.1 In the event that the Provider enters into any subcontract in connection with this Agreement, it will impose obligations on such Subcontractor in the same terms as those imposed on it pursuant to this paragraph 1 and Schedule 9 (Pensions) and will procure that the Subcontractor complies with such terms. The Provider will indemnify and keep the Council indemnified in full against all Direct Losses, incurred by the Council or any New Employer as a result of or in connection with any failure on the part of the Provider to comply with this paragraph and/or the Subcontractor’s failure to comply with such terms.

2.10 Data Protection

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

Part 2 – PENSIONS

1 DEFINITIONS

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

Administering Authority means [] of [] acting in its capacity as the administering authority of the [] Pension Fund for the purposes of the LGPS Regulations.

Admission Body is a transferee admission body for the purposes of regulation 3 of the LGPS Regulations.

[Capped Rate shall mean [insert figure]% of Pensionable Pay.]

Cessation Date means any date on which the Provider or any Sub-Contractor ceases to be an Admission Body other than as a result of the termination of the Agreement or because it ceases to employ any Eligible Employees.

[Collar Rate shall mean [insert figure]% of Pensionable Pay.]

Eligible Employees means

- (a) the Transferring Employees who are active members of or eligible to join the LGPS on a Relevant Transfer Date; [and]
- (b) [the Transferring Original Employees who are active members of or eligible to join the LGPS or a broadly comparable pension scheme provided by their existing employer on a Relevant Transfer Date]; [and]
- (c) any other individuals nominated by the Provider or relevant Subcontractor (as appropriate),
- (d) for so long as they are employed in connection with providing the Service or part of the service.

Exit Contribution has the meaning set out in paragraph 2.14.2 of Part 1 of this Schedule.

First Contractor means the person with whom the Council initially contracted for the provision of services which are similar to the Services.

Fund means the [] Pension Fund within the LGPS.

Government Actuary's Department means the Government Actuary's Department of Finlaison House, 15–17 Furnival Street, London, EC4A 1AB.

Initial Employer Contribution Rate shall mean [insert figure]% of Pensionable Pay.

Intervening Contract means a contract with the Council for the provision of services which are similar to the Services, at times after they were provided under a contract with the First Contractor and before they are to be provided by the Provider.

LGPS Regulations means the Local Government Pension Scheme Regulations 2013 (SI 2013/2356).

Local Government Pension Scheme and LGPS means the Local Government Pension Scheme established pursuant to regulations made by the Secretary of State in exercise of powers under Sections 7 and 12 of the Superannuation Act 1972 as amended from time to time.

Past Service Reserve means the actuarial value, calculated on the basis that the provisions of Section 62 of the Pensions Act 1995 applies directly to the Local Government Pension Scheme or Provider Scheme (the “**Transferring Scheme**”), of the aggregate of the benefits, whether immediate, prospective or contingent, payable under the Transferring Scheme to and in respect of each transferring member, his spouse and dependants, by reference to pensionable service in the Transferring Scheme, but making proper allowance for projected increases in the rate of pensionable salary of each transferring member from the cessation of pensionable service to the expected date of withdrawal, retirement or death and increases (whether or not pursuant to a legal obligation) in pensions in payment using demographic and actuarial assumptions which are overall no less conservative than those adopted for the most recent funding valuation of the Transferring Scheme.

Pensionable Pay has the meaning set out in the LGPS Regulations.

Provider Admission Agreement has the meaning as referred to in paragraph 3.1.1 of Part 1 of this schedule.

Provider Scheme means the retirement benefits scheme or schemes established or to be established under paragraph 2.7.1 of Part 1 of this Schedule.

Transfer Amount means the aggregate of the Transfer Values as at the Relevant Transfer Date of, respectively, those Eligible Employees who elect to transfer their benefits.

Transfer Value means the actuarial value of the benefits of each member of the Local Government Pension Scheme or Provider Scheme (on a secondary transfer of employees), as the case may be, who elects to transfer their benefits pursuant to the terms of the Agreement calculated on a Past Service Reserve basis and without any reduction having been applied to reflect any deficiencies in the assets relative to the liabilities of the Local Government Pension Scheme or Provider Scheme.

Transferring Original Employee means an employee of the Council:

- (a) who became, by the application of the Transfer of Undertakings (Protection of Employment) Regulations 1981 or TUPE in relation to what was done for the purposes of carrying out a contract between the Council and the First Contractor, an employee of someone other than Council;
- (b) whose contract of employment on each occasion when an Intervening Contract was carried out became, by virtue of the application of the Transfer of Undertakings (Protection of Employment) Regulations 1981 or TUPE in relation to what was done for the purposes of carrying out the Intervening Contract, a contract of employment with someone other than the existing employer; and
- (c) whose contract of employment becomes, by virtue of the application of TUPE in relation to what is done for the purposes of carrying out this Agreement between the Council and the Provider, a contract of employment with someone other than Council.

2 PENSIONS

2.1 Provider to become an Admission Body

2.1.1 Where the Provider or a Subcontractor employs any Eligible Employees from a Relevant Transfer Date and chooses to offer those Eligible Employees membership of the LGPS, the Provider will procure that it and/or each relevant Subcontractor will become an Admission Body in accordance with the [] Pension Fund Admissions Policy a copy of which is attached at Part 4 of this Schedule. The Provider will before the Relevant Transfer Date execute and procure that each relevant Subcontractor executes a

“Provider Admission Agreement” which is substantially in the form set out in Part 3 of this Schedule which will have effect from and including the Relevant Transfer Date.

2.2 Provider Admission Agreement

2.2.1 The Council will before the Relevant Transfer Date execute any Provider Admission Agreements as referred to in paragraph 2.1.1 of Part 1 of this Schedule and will procure that the Administering Authority executes each such Provider Admission Agreement before the Relevant Transfer Date.

2.3 Indemnity for a breach of the Provider Admission Agreement

2.3.1 Without prejudice to the generality of this paragraph 3, the Provider hereby indemnifies the Council from and against all Direct Losses suffered or incurred by it or them which arise from any breach by the Provider or any Subcontractor of the terms of the Provider Admission Agreement to the extent that such liability arises before or as a result of the termination or expiry of this Agreement (howsoever caused) except in respect of any losses which are caused by or result from an act or omission of the Council.

2.4 [Indemnity or Bond

2.4.1 Without prejudice to the generality of the requirements of this paragraph 3, the Provider will use all reasonable endeavours to procure that it and each relevant Subcontractor will as soon as reasonably practicable obtain any indemnity or bond required in accordance with the Provider Admission Agreement and which is substantially in the form set out in Part 5 of this Schedule.]

OR

Council Guarantee

2.4.2 Without prejudice to the generality of the requirements of this paragraph 3, the parties agree that the Council shall, in lieu of the requirement for the Provider to obtain any indemnity or bond, provide a Guarantee to the Provider in accordance with the Provider Admission Agreement and which is substantially in the form set out in Part 5 of this Schedule.]¹

2.5 Right of set-off

2.5.1 Council will have a right to set off against any payments due to the Provider under the Agreement an amount equal to any overdue Council and employee contributions and other payments (and interest payable under the LGPS Regulations) due from the Provider or from any relevant Subcontractor (as applicable) under the Provider Admission Agreement.

2.6 Provider ceases to be an Admission Body

2.6.1 If the Provider or any Subcontractor employs any Eligible Employees from a Relevant Transfer Date and:

- (a) the Provider or any relevant Subcontractor does not choose to offer those Eligible Employees membership of the LGPS or
- (b) the Council, the Provider or any relevant Subcontractor are of the opinion that it is not possible to operate the provisions of paragraphs 2.1 to 2.4 of Part 1 of this Schedule inclusive or

¹ Note: Drafting to be inserted depending on the final position as to whether a bond or indemnity will be provided in relation to the Company's participation as an Admission Body to the LGPS.

- (c) if for any reason after the Relevant Transfer Date the Provider or any relevant Subcontractor ceases to be an Admission Body other than on the date of termination or expiry of the Agreement or because it ceases to employ any Eligible Employees;

then the provisions of paragraphs 2.1 to 2.4 of Part 1 of this Schedule inclusive will not apply (without prejudice to any rights of the Council under those paragraphs) and the provisions of paragraph 2.7 of Part 1 of this Schedule will apply.

2.7 Provider Scheme

2.7.1 The Provider will or will procure that any relevant Subcontractor will not later than the Relevant Transfer Date or the Cessation Date (as the case may be) nominate to the Council in writing the occupational pension scheme or schemes which it proposes will be **“the Provider Scheme”** for the purposes of this paragraph 2.7. Such pension scheme or schemes must be:

- (a) established within 3 months prior to the Relevant Transfer Date or as soon as reasonably practicable after the Cessation Date (as the case may be) and maintained until any payment to be made under Part 2 of this Schedule (Bulk Transfer Terms) is made,
- (b) reasonably acceptable to the Council (such acceptance not to be unreasonably withheld or delayed),
- (c) registered within the meaning of the Finance Act 2004, and
- (d) certified by the Government Actuary’s Department or an actuary nominated by the Council in accordance with relevant guidance produced by the Government Actuary’s Department as providing benefits which are the same as, broadly comparable to, or better than those benefits provided by the LGPS. [However, in the case of Eligible Employees who are Transferring Original Employees and who are being offered membership of the Provider Scheme with effect from the Relevant Transfer Date, the Provider Scheme must be certified as providing benefits which are the same as, broadly comparable to or better than provided under their pension scheme immediately before the Relevant Transfer Date (where this scheme was not the LGPS)].

2.7.2 The Provider undertakes to the Council (for the benefit of the Council itself and for the Council as agent and trustee for the benefit of the Eligible Employees) that it will and will procure that any relevant Subcontractor will procure that:

- (a) the Eligible Employees will by three (3) months before the Relevant Transfer Date or as soon as reasonably practicable after the Cessation Date (as the case may be) be offered membership of the Provider Scheme with effect from and including the Relevant Transfer Date or Cessation Date (as the case may be),
- (b) the Provider Scheme will provide benefits in respect of the Eligible Employees’ periods of service on and after the Relevant Transfer Date or Cessation Date (as the case may be) which the Government Actuary’s Department or an actuary nominated by the Council in accordance with relevant guidance produced by the Government Actuary’s Department will certify to be the same as, broadly comparable to or better than the benefits which the Eligible Employees were entitled to under the LGPS at the Relevant Transfer Date or the Cessation Date (as the case may be). [In the case of Eligible Employees who are Transferring Original Employees, the benefits provided from the Relevant Transfer Date must be the same as, broadly comparable to or better than the benefits provided by their pension scheme immediately before the Relevant Transfer Date (where this scheme was not the LGPS)],

- (c) on and from the Relevant Transfer Date or Cessation Date (as the case may be) until the earlier of:
 - (i) three (3) months after the date on which the Eligible Employees are first able to join the Provider Scheme and
 - (ii) the date on which the Eligible Employee joins the Provider Scheme, the Provider will provide death benefits for and in respect of the Eligible Employees which are certified by the Government Actuary's Department or an actuary nominated by the Council in accordance with relevant guidance produced by the Government Actuary's Department as being broadly comparable to those that would otherwise have been provided in respect of those Eligible Employees by the LGPS.
- (d) if the Provider Scheme is terminated, a replacement pension scheme will be provided with immediate effect for those Eligible Employees who are still employed by the Provider or relevant Subcontractor. The replacement scheme must comply with this paragraph 2.7 as if it were the Provider Scheme and
- (e) before the Relevant Transfer Date or Cessation Date (as the case may be) the Provider will use best endeavours to procure that the trustees of the Provider Scheme will undertake by deed to the Council and to the Administering Authority that they will comply with the provisions of paragraphs 2.7.1.1 to 2.7.1.4, 2.8.1.1, 2.8.1.2 and 2.8.1.4 of Part 1 of this Schedule and Part 2 of this Schedule (Bulk Transfer Terms) as are relevant to them.

2.7.3 Part 2 of this Schedule (Bulk Transfer Terms) shall form the basis which shall apply in relation to the terms for bulk transfers from the LGPS to the Provider Scheme following the Relevant Transfer Date and any subsequent bulk transfers on termination or expiry of the Agreement and, in the event that the provisions of this paragraph 2.7 apply, the Council and the Provider shall use their best endeavours to agree the bulk transfer terms which shall apply based on those terms set out in Part 2 of this Schedule.

2.8 Undertaking from the Provider

- 2.8.1 The Provider undertakes to the Council (for the benefit of the Council itself and for the Council as agent and trustee for the benefit of the Eligible Employees) that:
- (a) all information which the Council or the Administering Authority or their respective professional advisers may reasonably request from the Provider or any relevant Subcontractor for the administration of the LGPS or concerning any other matters raised in paragraphs 2.7 or 3.8 of Part 1 of this Schedule or Part 2 of this Schedule (Bulk Transfer Terms) will be supplied to them as expeditiously as possible,
 - (b) it will not and will procure that any relevant Subcontractor will not, without the consent in writing of the Council (which will not be unreasonably withheld but will be subject to the payment by the Provider or the relevant Subcontractor of such reasonable costs as the Council or the Administering Authority may require) consent to instigate, encourage or assist any event which could impose on the Council a cost in respect of any Eligible Employee greater than the cost which would have been payable in respect of that Eligible Employee had that consent, instigation, encouragement or assistance not been given,
 - (c) until the Relevant Transfer Date, it will not and will procure that any relevant Subcontractor will not issue any announcements (whether in writing or not) to the Eligible Employees concerning the matters stated in paragraphs 2.1 to 2.6 of Part 1 of this Schedule inclusive without the consent in writing of the Council and the Administering Authority (not to be unreasonably withheld or delayed),

- (d) it will not and will procure that any relevant Subcontractor will not take or omit to take any action which would materially affect the benefits under the LGPS or under the Provider Scheme of any Eligible Employees who are or will be employed wholly or partially in connection with the provision of the service without the prior written agreement of the Council (not to be unreasonably withheld or delayed) provided that the Provider and/or such Subcontractor will be so entitled without the requirement of consent to give effect to any pre-existing contractual obligations to any Eligible Employees.

2.9 Claims from Eligible Employees or Trade Unions

2.9.1 The Provider hereby indemnifies the Council from and against all Direct Losses suffered or incurred by it which arise from claims by Eligible Employees of the Provider and/or of any Subcontractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Eligible Employees which losses:

- (a) relate to pension rights in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of the Agreement; and
- (b) arise out of the failure of the Provider and/or any relevant Subcontractor to comply with the provisions of this paragraph 3 before the date of termination or expiry of the Agreement,

except in respect of any losses which are caused by or result from an act or omission of the Council.

2.10 Liability for costs

2.10.1 The costs of the Council necessarily and reasonably incurred in connection with the Provider Admission Agreement and/or of obtaining the necessary certification of comparability in accordance with paragraph 2.7.1.4 will be borne by the Provider.

2.10.2 The actuarial cost of determining the contribution rate for the Provider or Subcontractor under the Provider Admission Agreement and the Indemnity or Bond required under paragraph 2.4 of Part 1 of this Schedule is to be met by the Council.

2.11 Transfer to another Employer

2.11.1 Save on expiry or termination of the Agreement, if the employment of any Eligible Employee transfers to another Employer (by way of a transfer under TUPE) the Provider will procure that any relevant Subcontractor:

- (a) consults with and inform those Eligible Employees of the pension provisions relating to that transfer and
- (b) procures that the Employer to which the Eligible Employees are transferred (the "**New Employer**") complies with the provisions of this paragraph 3 provided that references to the "Subcontractor" will become references to the New Employer, references to "Relevant Transfer Date" will become references to the date of the transfer to the New Employer and references to "Eligible Employees" will become references to the Eligible Employees so transferred to the New Employer.

2.12 Pension issues on expiry or termination of the Agreement

The Provider (and procures that each relevant Subcontractor):

2.12.1 maintains such documents and information as will be reasonably required to manage the pension rights of and aspects of any onward transfer of any person engaged or employed by the Provider or any Subcontractor in the provision of any service which is part of the

provision of the service on the expiry or termination of this Agreement (including without limitation identification of the Eligible Employees),

2.12.2 promptly provides to the Council such documents and information mentioned in paragraph 2.12.1 above which the Council or the Administering Authority may reasonably request in advance of the expiry or termination of this Agreement and

2.12.3 fully co-operates (and use best endeavours to procure that the trustees of the Provider's Scheme will fully co-operate) with the reasonable requests of the Council or the Administering Authority relating to any administrative tasks necessary to deal with the pension rights of and aspects of any onward transfer of any person engaged or employed by the Provider or any Subcontractor in the provision of any service which is part of the provision of the service on the expiry or termination of the Agreement.

2.13 Third Party Rights

2.13.1 The Provider and any Subcontractor agree that the pension provision contained in paragraphs 2.1, 2.2, 2.6 and 2.7 of Part 1 of this Schedule will be directly enforceable by the Eligible Employees against the Provider or any Subcontractor (as the case may be) under the Contracts (Rights of Third Parties) Act 1999.

2.14 [Funding of initial valuation short falls and exit valuation short falls in respect of Eligible Employees²

2.14.1 At the Transfer Date, the Fund will be deemed to be fully funded in respect of the Eligible Employees and the Council will be responsible for any underfunding prior to the Transfer Date. Any underfunding will be established by the actuarial valuation of the Fund at the date the Provider or a relevant Subcontractor enters into an Admission Agreement in respect of the Eligible Employees. The arrangements regarding any payment to be made to the Fund for any underfunding up to the Transfer Date will be agreed between the Council and the Fund.

2.14.2 At the date of the expiry or earlier termination of the Service Period, the Provider will obtain, or procure that the Administering Authority obtains, an actuarial valuation of the Fund (or revision thereto). If the Provider is required to pay any contribution to the LGPS representing any funding deficit (the "**Exit Contribution**") the Provider shall pay such Exit Contribution to the Fund.

2.14.3 The Provider accepts responsibility for any payment to the Fund to the extent it results from one or more of the following:

- (a) the grant by the Provider of early retirement requests in relation to Eligible Employees,
- (b) granting an augmentation of benefits in relation to an Eligible Employee in relation to the Fund, including, but not limited to, an augmentation under Regulation 31 of the LGPS Regulations, which is in addition to any augmentation that an Eligible Employee is entitled to as a right under the LGPS Regulations,
- (c) the reduction or waiver of any contributions due from any Eligible Employee,
- (d) the award of pay increases to Eligible Employees which in aggregate exceed:
 - (i) the percentage rate allowed for pay increases in the latest valuation of the Fund prior to the award of the pay increase in question or
 - (ii) any pay increases that the Provider is required to make by law (including, for these purposes, pursuant to its obligations arising under, or as a

² DN – Example drafting included for consideration in connection with pension cost funding and how the risks associated with this are to be apportioned between the Council and the Provider.

consequence of, the TUPE Regulations, any code of practice and/or any National Joint Council for Local Government services arrangements),or

- (iii) any pay increases that the Provider is obliged to offer pursuant to the terms and conditions of employment in place with the Eligible Employees as at the Relevant Transfer Date (including under any collective agreement)
- (e) the termination of the employment contract of an Eligible Employee who is aged 55 or over at the time, by reason of redundancy or in the interests of efficiency or otherwise allowing such employee to retire on those grounds,
- (f) the termination of the employment contract of an Eligible Employee on the grounds of permanent ill health or infirmity of mind or body which renders the employee permanently incapable of efficiently discharging the duties of his current employment, in accordance with Regulation 35 of the LGPS Regulations,
- (g) bringing the deferred or active benefit of an Eligible Employee into payment through consent to retiring voluntarily on or after the age of 55,
- (h) exercising any discretion to extend the statutory time frames under Regulation 22 of the LGPS Regulations or
- (i) waiving any reduction to benefits under Regulation 30(6) of the LGPS Regulations.

2.15 Payment of contributions to the Fund and any excesses/reductions below the Initial Employer Contribution Rate

2.15.1 In respect of contributions to be paid to the Fund by the Provider or any relevant Subcontractor, subject to paragraph 2.14.1 of Part 1 of this Schedule, the Provider or relevant Subcontractor shall pursuant to the Provider Admission Agreement pay to the Administering Authority for the credit of the Fund such contributions as are required under Regulation 67 of the LGPS Regulations in respect of the Eligible Employees.

2.15.2 If the contributions payable under paragraph 2.15.1 above exceed the Initial Employer Contribution Rate, then the amount which exceeds the Initial Employer Contribution Rate shall be added as an adjustment to the amount due to the Provider for each month during the period during which the contributions payable in accordance with the Provider Admission Agreement exceed the Initial Employer Contribution Rate up to the Capped Rate.

2.15.3 If the contributions payable under paragraph 2.15.1 above decrease below the Initial Employer Contribution Rate, the reduction below the Initial Employer Contribution Rate shall be subtracted as an adjustment to the amount due to the Provider for each month during the period during which the contributions payable in accordance the Provider Admission Agreement are less than the Initial Employer Contribution Rate down to the Collar Rate.

2.15.4 For the avoidance of doubt:

- (a) to the extent that the contributions payable under paragraph 2.15.1 exceed the Capped Rate, such contributions shall be the responsibility of the Provider;
- (b) to the extent that the contributions payable under paragraph 2.15.1 are below the Collar Rate, the Provider shall retain the benefit of such a reduction; and
- (c) the provisions of paragraph 2.15.2 above shall not apply where any such change in Employer contribution rate arises from any matters for which the Provider is responsible pursuant to paragraph 2.14.3 above.]

2.16 Discretionary benefits

- 2.16.1 Where the Provider or any relevant Subcontractor is an Admission Body, the Provider shall and/or shall procure that any relevant Subcontractor shall award benefits (where permitted) to the Eligible Employees under the LGPS Regulations in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council.
- 2.16.2 Where the award of benefits in paragraph 2.16.1 is not permitted under the LGPS Regulations, or the Provider and/or a Subcontractor is not an Admission Body, the Provider shall and/or shall procure that any Subcontractor shall award benefits to the Eligible Employees which are equivalent to the benefits the Eligible Employees would have received under the LGPS Regulations in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council.
- 2.16.3 Under paragraphs 2.16.1 and 2.16.2, where such benefits are of a discretionary nature, they shall be awarded on the basis of the Council's written policy in relation to such benefits at the time of the Relevant Transfer Date (which the Council shall provide upon request). Where the payment of such benefits is not, for whatever reason, possible, the Provider shall and/or shall procure that any relevant Subcontractor shall compensate the Eligible Employees in a manner which is broadly comparable or equivalent in cash terms.

2.17 [Transferring Original Employees

- 2.17.1 Where there are Transferring Original Employees who are not Eligible Employees but who are active members of or have the right to acquire benefits under an occupational pension scheme provided by their existing employer on a Relevant Transfer Date, the Provider shall and shall procure that any relevant Subcontractor shall provide pension benefits in respect of those Transferring Original Employees' periods of service on and after the Relevant Transfer Date which the Government Actuary's Department or an actuary nominated by the Council shall certify to be the same as, broadly comparable to or better than the benefits provided by the Transferring Original Employees' existing pension scheme immediately before the Relevant Transfer Date.]

SCHEDULE 4 - PROCESSING, PERSONAL DATA AND DATA SUBJECTS

- 1 The Provider shall comply with any further written instructions with respect to processing by the Council.
- 2 Any such further instructions shall be incorporated into this Schedule.

Description	Details
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>[Clearly set out the duration of the processing including dates]</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, students / pupils, members of the public, users of a particular website etc]</i>
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	<i>[Describe how long the data will be retained for, how it be returned or destroyed]</i>

