



SUPPLIER AGREEMENT

**FOR THE PROVISION OF PASSENGER
TRANSPORT SERVICES**

between

**(1) THE MAYOR AND BURGESSES OF
THE LONDON BOROUGH OF MERTON**

-and-

**(2) THE SERVICE
PROVIDER**

WHEREAS: -

- A. The London Borough of Merton Council (“the Council”) is a London Borough Council constituted under the London Government Act 1963 and enters into this Supplier Agreement pursuant to its powers under the Local Government Contracts Act 1997.
 - B. The Council placed a Contract Notice on 05 March 2021 (“the Contract Notice”) in the Contracts Finder Website to establish a Dynamic Purchasing System (“DPS”) for the procurement of passenger transport services (“the Services”).
 - C. The Council has established this DPS in accordance with Regulation 34 of the Public Contracts Regulations, and has been admitting and will continue to admit to the DPS, Service Providers which satisfy the Council’s Selection Criteria and submit “Offers” that comply with the Council’s Service Specification and any additional related documents produced by the Council.
 - D. The Council has contracted with “ adam”, to provide a web-based software system, namely SProc.Net or such other technology as may be agreed between the Council and adam from time to time (the “Application”), to enable the Council to procure Services via the DPS in compliance with the Public Contract Regulations.
 - E. The purpose of this Supplier Agreement is to set out the process by which the Council may, from time to time, award to the Service Provider, once it is admitted to the DPS, Service Agreements for any Services the Council requires and to set out terms and conditions applicable to those Service Agreements.
 - F. The parties acknowledge that the Council shall be under no obligation to award any Service Agreements under this Supplier Agreement.
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NOW IT IS HEREBY AGREED AS FOLLOWS: -

1 DEFINITIONS AND INTERPRETATION

1.1 In this Supplier Agreement:

“adam” refers to adam HTT Limited t/a adam (registered company #7718565) which is the provider of the Application;

“Application” means the proprietary web-based software called SProc.Net, which is owned and operated by adam, or such other technology as may be agreed between the parties;

“Authorised Officer” means the person or people appointed by the Council under Clause 14.1 of this Supplier Agreement whose details are set out in Schedule 1 to this Supplier Agreement or such other person as may be nominated by the Council from time to time and whose details are notified in writing to the Service Provider;

“Award Criteria” means the criteria that the Council will apply to rank Offers submitted by Service Providers participating in a Dynamic Purchasing System process to determine to which Service Provider a Service Agreement should be awarded;

“Best Value” means any method by which the maximum benefit can be derived from relevant resources;

“CCA” means the Civil Contingencies Act 2004;

“Charges” means the sums the Council is to pay the Service Provider for the provision of Services under Service Agreements awarded to the Service Provider as calculated in accordance with the Pricing Details of the relevant Service Agreements;

“Commencement Date” means the start date for delivery of Services as set out in a Service Agreement;

“Completion Date” means the end date for delivery of Services set out in a Service Agreement;

“Confidential information” shall mean all information disclosed by one party to the other, orally in writing or in electronic form relating to the provision of the Services that is not in the public domain (except where disclosure is in the public domain due to a breach of Clause 19). It shall also include information, documents, drawings, reports or data the Service Provider may acquire or generate under or in connection with the provision of the Services.

“Contract Manager” means a representative appointed by the Service Provider under Clause 14.2 of this Supplier Agreement from time to time who will receive and act on any instructions given by the Authorised Officer and whose details are notified in writing to the Council;

“Contractor Personnel” means anyone engaged by the Contractor or by any sub – contractor.

“Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer” take the meaning given in the GDPR.

“Data Protection Legislation” means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 (iii) all applicable Law about the processing of personal data and privacy.

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

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

“Data Subject Access Request” means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

“DPA 2018” means the Data Protection Act 2018.

“Dispute Resolution Procedure” means the procedure set out in Clause 32;

“Dynamic Purchasing System” or “DPS” means the dynamic purchasing system operated via the Application, which applies the procurement methodology provided for by Regulation 34 of the Public Contract Regulations;

“Enrolment Application” means the stage at which a Service Provider is required to submit documents and supporting statements that demonstrate the qualifications and technical ability of the Service Provider to deliver services to the required standards.

“Evaluation Methodology” means the methodology the Council will use to evaluate Enrolment Applications and Offers.

“Exempt Information” means information that potentially falls within an exemption under the FOIA including, but not limited to, confidentiality (section 41 FOIA), trade secrets (section 43 FOIA) and prejudice to commercial interests (section 43 FOIA);

“Expiry Date” means the 31.March 2025 subject to any extension under clause 3.2;

“FOIA” means the Freedom of Information Act 2000;

“Intellectual Property Rights” or “IPR” shall mean intellectual property rights whether vested or contingent and whether currently in existence or otherwise including (without limitation) patents, inventions, trademarks, service marks, logos, design rights, registered designs, copyright, database rights, domain names, trade

or business names, moral rights, trade secrets, the right to sue for passing off and all similar rights whether registered or not (in any country) and all extensions revivals reversions and renewals of any of the above. The above shall include in relation to registerable rights any applications made in respect of such rights.

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

“Law” means any rule of law or equity enactment or any legislation or the like enforceable as law within Great Britain

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

“Offer” means the Service Provider’s tender in response to a published Requirement;

“Open for Offers Period” means the period during which a Service Provider participating in the DPS process may submit Offers against a Requirement;

“Other Information Law” means any applicable legislation or codes governing access to information other than FOIA;

“Pricing Details” means the Service Provider’s costs for carrying out the Requirement referred to in a Service Agreement as contained in the Offer referred to in the Service Agreement;

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

“Public Contract Regulations” means the Public Contract Regulations 2015 as amended from time to time;

“Registration, Accreditation and Enrolment” means the process of approval of service providers for admission to the DPS via the evaluation of Enrolment Applications received from Service Providers to ensure these fulfil the Council’s Selection Criteria for delivery of the Services;

“Relevant Employees” means the employees who are subject to a Relevant Transfer under TUPE Regulations;

“Relevant Transfer” means a relevant transfer for the purposes of TUPE;
“Request to Participate” means the process by which a Service Provider is seeking to join the DPS in response to a published Contract Notice

“Replacement Services” means services that are identical or substantially similar to any of the Services provided by the Service Provider under this Supplier Agreement which the Council receives, following the termination or expiry of a Service Agreement awarded to the Supplier, in substitution for Services so provided by the Supplier;

“Replacement Service Provider” means a third party appointed by the Council from time to time to provide Replacement Services;

“Requirement” means a request issued from time to time by the Council on the SProc.Net Application identifying specific Services for which the Council is seeking to award a Service Agreement and which may include terms and conditions applicable to the provision of those Services which supplement the terms and conditions set out in this Supplier Agreement;

“Selection Criteria” means the criteria that a Service Provider must meet and maintain throughout the duration of the DPS in order to successfully complete and to retain their Registration and Enrolment in the DPS;

“Self-Billing Invoice” means an invoice generated through the SProc.Net Application on the Service Provider’s behalf in accordance with the Self- Billing Procedure;

“Self-Billing Procedure” means the arrangements agreed between the Service Provider and the Council and set out in Schedule 2 under which invoices billing the Council for Services provided to it by the Service Provider are generated at regular intervals through the SProc.Net Application and payment in respect of the invoices is processed;

“Service Agreement” means a contract awarded by the Council accepting an Offer by the Service Provider.

“Service Category” means a category of vehicle listed in the Service Specification in relation to which a Service Provider may be admitted to the DPS to provide Services;

“Service Receipt” means a record of Services delivered over a stated period and of the Charges for them, uploaded by the Service Provider onto the SProc.Net Application for agreement by the Council;

”Services” means the passenger transport services that the Service Provider agrees to provide to the Council pursuant to a Service Agreement awarded in accordance with this Supplier Agreement as more fully described in the Service Specification and further detailed by the Requirement associated with the relevant Service Agreement;

“Service Specification” means the specification by the Council of Services which the Council may procure via the DPS as set out in Schedule 3;

“Staff” includes employees, and where the context permits any sub- contractors, agents and volunteers, employed or otherwise engaged by the Service Provider in the provision of the Services;

“Sub-contractor” means a person to whom the Service Provider subcontracts any of its obligations under this Supplier Agreement;

”Supplier Agreement” means this overarching agreement, consisting of these terms and conditions and any schedules to them, setting out the process to apply

when the Council wishes to award Service Agreements via the DPS and the terms and conditions applicable to the carrying out of Service Agreements

“Supplier Application Guide” means the application guide issued by the Council detailing the operation of the DPS and stored on <http://demand.sproc.net>;

“Supplier Operational Guide” means operational guide issued by the Council detailing the operation of the DPS and stored on <http://demand.sproc.net>;

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulation 2006.

- 1.2 The headings of these clauses shall not affect the interpretation thereof.
- 1.3 The masculine includes the feminine and vice versa.
- 1.4 The singular includes the plural and vice versa.
- 1.5 Reference to any enactment, order, regulation or other similar instrument, shall be construed as a reference to the enactment, order, regulation or instrument as amended by any subsequent enactment, order, regulation or instrument.
- 1.6 The documents listed in clause 1.7 (the Contract Documents) together constitute the entire agreement between the parties relating to the provision of the Services. The Contract Documents supersede any representations, documents, negotiations or understandings, whether oral or written, made, carried out or entered into before the date this Supplier Agreement is accepted by the Supplier, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.
- 1.7 In the event of any inconsistency or conflict between the provisions of different documents forming part of the Contract Documents, the provisions of the document ranking higher in the following order of priority of documents shall prevail over the provisions of the documents ranking lower:
 - 1.7.1 Any Service Agreement awarded under this Supplier Agreement;
 - 1.7.2 The Clauses of this Supplier Agreement;
 - 1.7.3 The Schedules of this Supplier Agreement;
 - 1.7.4 The Enrolment Application Form
 - 1.7.5 The Evaluation Methodology;
 - 1.7.6 The Supplier Application Guide.
 - 1.7.7 The Supplier Operational Guide
- 1.8 None of the provisions of this Supplier Agreement are intended to relate to any non-commercial matter within the meaning of Section 17(5) of the Local Government Act 1988, except to the extent that its inclusion is permitted by Section 18(2) of that Act.

2 SCOPE OF SUPPLIER AGREEMENT

- 2.1 The purpose of this Supplier Agreement is to set out the process which will apply to the awarding of Service Agreements by the Council via the DPS for the provision of Services by the Service Provider and the terms and conditions which will apply to any such Service Agreements.
- 2.2 The Council may from time to time individually or jointly procure Services from the Service Provider via the DPS in accordance with the procedure set out in the Supplier Application Guide and this Supplier Agreement but the Council shall not be obliged to award any Service Agreements via the DPS to the Service Provider and even where the Council has followed the procedures in the Supplier Application Guide and this Supplier Agreement leading up to the award of a Service Agreement it may decline to award a Service Agreement.
- 2.3 The Service Provider shall provide the Council with any Services required in accordance with a Service Agreement which shall be deemed to incorporate the terms and conditions of this Supplier Agreement relating to the provision of Services and may include additional terms and conditions.
- 2.4 The Service Provider shall provide the Services in a professional and prompt manner using reasonable skill, care and diligence and suitably qualified Staff in sufficient numbers.
- 2.5 The parties shall work together and individually, in accordance with this Supplier Agreement, to achieve a transparent and co-operative exchange of information in all matters relating to this Supplier Agreement.

3 TERM OF THIS SUPPLIER AGREEMENT

- 3.1 This Supplier Agreement shall be for a term commencing on the date of this Supplier Agreement and ending on the Expiry Date subject to termination under this Supplier Agreement or at law.
- 3.2 The Council may extend this Supplier Agreement for a further two (2) periods of one (1) year by giving no less than one (1) month's written notice to the Service Provider.

4 SERVICE AGREEMENT AWARD PROCEDURE

- 4.1 Where the Council requires specific Services for which it is seeking to award a Service Agreement via the DPS, unless an exception in section 7 of the Supplier Application Guide applies, it shall:
- 4.1.1 identify the relevant Service Category which the Services required fall into;
 - 4.1.2 issue a Requirement via the DPS to all Service Providers who have been admitted to the DPS in relation to that Service Category notifying them of the opportunity to submit an Offer for the Requirement and of the Open for Offers Period;

- 4.1.3 conduct a tender exercise via the DPS among the Service Providers to whom the Requirement has been issued;
 - 4.1.4 allow each Service Provider participating in the tender exercise to submit revised Offers up to the close of the Open for Offers Period;
 - 4.1.5 subject to clause 4.1(f), award the Service Agreement for the Requirement to the Service Provider which has, at the close of the Open for Offers Period, submitted the top-ranked Offer in accordance with the Evaluation Methodology;
 - 4.1.6 despite having issued a Requirement and followed the procedure under this clause 4.1, be entitled at all times prior to making an award of a Service Agreement for the Requirement, opt not to do so
- 4.2 The Council aims to keep Offer Periods open, and the Service Provider mutually agrees, for 10 calendar days during school holiday periods with regards to school transport; and for 3 calendar days in respect of all other periods and services; but the Council reserves the right to reduce these periods for the contingency of the Service.
- 4.3 Where an Offer received by the Council abnormally low, the Council may reject the Offer provided it (following the Public Contracts Regulations as applicable):
- 4.3.1 requests in writing from the Service Provider submitting the Offer details of the constituent elements of the Offer which are considered to contribute to it being abnormally low;
 - 4.3.2 takes account of the evidence supplied by the Service Provider;
 - 4.3.3 verifies those constituent elements with the Service Provider; and
 - 4.3.4 concludes that the Service Provider would not be able to carry out the Services to the required standards.

5 WARRANTIES AND REPRESENTATIONS

- 5.1 The Service Provider warrants and represents to the Council that:-
- 5.1.1 (it has full capacity and authority and all necessary consents to enter into and perform its obligations under this Supplier Agreement and any Service Agreement awarded under it;
 - 5.1.2 the Supplier Agreement has been entered into by a duly authorised representative of the Service Provider;

5.1.3 as at the date of entering into this Supplier Agreement, all information, contained in the Service Provider's Requests to Participate (including statements made in relation to the categories referred to in Chapter 2, Section 5 of the Public Contract Regulations) are true, accurate and not misleading save as may have been specifically disclosed in writing to the Council prior to the Service Provider entering into this Supplier Agreement and it will promptly advise the Council of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or statements and representations to be false or misleading.

6 PAYMENT AND VAT

6.1 In consideration of the Service Provider undertaking to provide any Services required by the Council under a Service Agreement awarded under this Supplier Agreement, the Council undertakes to pay the Service Provider the Charges for such Services.

6.2 The parties acknowledge that at the Council's sole discretion, *adam* may act as the Council's payment service provider for making payments to the Service Provider in respect of Charges that have become payable.

6.3 Subject to the correction of any errors, Self-Billing Invoices shall be payable in accordance with the terms of the Self Billing Agreement (Schedule 2), by the Council or *adam*, as applicable.

6.4 The Service Provider shall not suspend the provision of the Services if any payment is overdue unless it is entitled to terminate this Supplier Agreement or the relevant Service Agreement awarded under it pursuant to clause 31.2 for failure to pay the Charges.

6.5 For the avoidance of doubt the Charges shall be deemed to be fully inclusive of

6.5.1 the value of the Services as specified in Schedule 3 of this Supplier Agreement subject to any further details in the Requirement referred to in the Service Agreement to which the Charges relate; and

6.5.2 all traveling expenses, insurance costs and all other miscellaneous expenses incurred by the Service Provider in the organisation and provision of the Services to which the Charges relate.

6.6 The Charges are exclusive of VAT which shall be added at the prevailing rate as applicable and paid by the Council following receipt of a valid VAT invoice.

6.7 If the Council and the Service Provider fail to reach agreement on any VAT matter pursuant to this Supplier Agreement, the Council and the Service

Provider may refer the matter to Her Majesty's Revenue and Customs or a VAT tribunal for determination.

- 6.8 The Service 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 Service Provider's failure to account for, or to pay, any VAT relating to payments made to the Service Provider under this Supplier Agreement.

7 RECOVERY OF SUMS DUE

- 7.1 Wherever under this Supplier Agreement any sum of money is recoverable from or payable by the Service Provider to the Council, that sum may be deducted from any sum then due, or which at any later time may become due to the Service Provider under this Supplier Agreement or any other agreement which the Service Provider has with the Council.
- 7.2 The Service Provider shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Service Provider has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Service Provider.

8 NOT USED

9 SUFFICIENCY OF INFORMATION

- 9.1 The Service Provider will be deemed to have satisfied itself as regards the nature and extent of the Services required by the Council and as to the accuracy and sufficiency of the Charges provided for by the Pricing Details of a Service Agreement awarded under this Supplier Agreement prior to agreeing to undertake the provision of Services. The Service Provider will be deemed to have obtained for itself all necessary information as to the risks, contingencies and any other circumstances which might reasonably influence or affect the Service Provider in the provision of Services.

10 CONTRACTUAL RELATIONSHIP

- 10.1 The Service Provider is not an employee or an agent of the Council. Neither the Service Provider nor its employees or agents shall in any circumstances hold themselves out as being the employee or agent of the Council nor are they authorised to enter into any contract on behalf of the Council or in any other way to bind the Council to the performance, variation, release or discharge of any obligation.
- 10.2 The Service Provider is responsible for all acts and omissions of its employees and agents and the Council is not responsible, and cannot be held liable, for any act or omission of any person engaged by the Service Provider in relation to the Services.

- 10.3 The Service Provider is responsible for the payment of all taxes, National Insurance contributions, and levies of any kind which it is obliged by law to pay. The Service Provider is also responsible for the payment of all fees/wages, income taxes, National Insurance contributions, and levies of any kind, relating to or arising out of the engagement of any person employed or contracted by the Service Provider in relation to the provision of the Services.
- 10.4 The Service Provider shall indemnify the Council against any liability which is levied, demanded or assessed on the Council at any time in respect of the Service Providers failure to pay taxes, National Insurance or levies of any kind which the Service Provider is obliged by law to pay.

11 ADVERTISING

- 11.1 No advertisement of any description indicating that the Service Provider is acting for the Council is permitted on premises, equipment, materials or consumables utilised in the provision of the Services save to the extent that this Supplier Agreement indicates otherwise without the prior written consent of the Authorised Officer which shall not be unreasonably withheld. Any advertisement which is placed on the Council's premises with consent shall be promptly removed on the termination or expiry of any Service Agreement awarded under this Supplier Agreement to which the advertisement relates.

12 BEST VALUE

- 12.1 The Council has a statutory duty to provide Best Value pursuant to the provisions of the Local Government Act 1999 which includes the need for continuous improvement in the standard of the Services and quality within financial restrictions. The Service Provider shall work with the Council to identify develop and deliver Best Value services under the terms and conditions of this Supplier Agreement within available resources.
- 12.2 Services required of the Service Provider by the Council shall include but not necessarily be restricted to provision of Services that are cost effective, efficient, timely, reliable, responsive, consistent, courteous and that give effect to the Council's priorities.
- 12.3 The Service Provider shall facilitate periodical and regular inspections and reviews by the Council of performance standards and shall, where possible, suggest improvements in the way the Services are provided.

13 STATUTORY AND OTHER REGULATIONS

- 13.1 The Service Provider shall at its own expense comply with all statutory and other provisions to be performed and observed in connection with provision of the Services and shall indemnify the Council against any claims, actions, proceedings, loss, liability, penalties, costs or expense made or incurred as a result of any failure in compliance.

14 MONITORING

- 14.1 The Council shall each appoint an Authorised Officer who will have responsibility for managing and issuing instructions to the Service Provider in respect of the provision of the Services.
- 14.2 The Service Provider shall appoint a Contract Manager who will have responsibility on behalf of the Service Provider for the management of the provision of the Services under any Service Agreements awarded to the Service Provider.
- 14.3 The Service Provider's provision of the Services shall be monitored by the Authorised Officer, who shall be entitled to make recommendations to the Service Provider for improving the standard of the Service Provider's performance in providing the Services.
- 14.4 The Contract Manager will meet regularly with the Authorised Officer ("the Liaison Meeting") to discuss the Services being provided and to provide the Council with progress reports. Upon receiving a request to do so the Service Provider shall attend any meeting(s) arranged by the Authorised Officer (or his representative) for the purpose of reviewing the Service Provider's performance.
- 14.5 At Liaison Meetings the Authorised Officer and Contract Manager will review, among other things, any issues relating to the day to day provision of the Services, and any Supplier Agreement monitoring systems detailed in the Service Specification, including but not limited to, such things as user feedback.
- 14.6 The Authorised Officer shall keep minutes of all Liaison Meetings.
- 14.7 The Service Provider shall permit the Council or appointed representative access to its premises and to inspect vehicles for contract compliance visits. Such visits may be announced or unannounced. The Council will supply the Service Provider with a copy of any report compiled following any contract compliance visit.
- 14.8 The Service Provider shall provide the Council with monitoring information in accordance with its requirements and within any timescales communicated to it by the Authorised Officer. Further monitoring requirements may be contained in the Service Specification.
- 14.9 The Service Provider shall maintain proper records and accounts in relation to the provision of the Services. The financial accounts held in respect of the Services must be separate from the Service Provider's other accounts and all documents relevant to the Services and this Supplier Agreement must be made available for inspection by the Authorised Officer.
- 14.10 If following a review of the Services it is apparent to the Council that the Services are not being carried out to the satisfaction of the Council the parties will agree a plan and timescale for corrective action. If this is not

achieved to the Council's satisfaction, the Council may issue a default notice in accordance with the provisions of Clause 30 of this Supplier Agreement.

15 INDEMNITIES AND INSURANCES

- 15.1 The Service Provider shall indemnify the Council against all claims, demands, proceedings, actions, damages, costs, expenses and any other liabilities in respect of, or arising out of, the provision of the Services in relation to the injury to or death of any person, or loss of or damage to any property including property belonging to the Council or financial loss arising from any advice given or omitted to be given by the Service Provider or any other loss which is caused directly or indirectly by any act or omission of the Service Provider. This does not apply to the extent that such injury, death, loss or damage arises out of the act, default, or negligence of the Council, its employees, or agents not being the Service Provider or persons engaged by the Service Provider.
- 15.2 The Service Provider's liability under Clause 15.1 for losses relating to death or personal injury or for any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982 shall be unlimited.
- 15.3 The Service Provider shall effect and maintain as a minimum a policy or policies of insurance of the type set out in Clause 15.4. The Service Provider shall also ensure that any of its sub-contractors who are providing any or all of the Services on its behalf maintain equivalent insurances as a minimum.
- 15.4 The insurances referred to in Clause 15.3 are as follows:
- 15.4.1 public liability insurance that covers the Service Provider's liabilities under Clause 15.1 in a sum of not less than £10,000,000 (ten million pounds) for any one occurrence or series of occurrences arising out of any one event;
- 15.4.2 employer's liability insurance in a sum of not less than £5,000,000.00 (five million pounds) for any one occurrence or series of occurrences arising out of any one event and which complies with the Employers' Liability (Compulsory Insurance) Act 1969 and the Road Traffic Act 1988;
- 15.5 The Service Provider shall supply to the Council upon request a copy of the insurance policies or a certificate from its insurers or brokers confirming the policies which it is required to maintain under this Clause 15.
- 15.6 If, for whatever reason, the Service Provider fails to give effect to and maintain the insurances required by this Supplier Agreement the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.

16 EQUAL OPPORTUNITIES

16.1 In providing the Services, the Service Provider shall to the same extent as if it were a public authority within the meaning of the Equality Act 2010 (“the 2010 Act”) (or any European equivalent) comply with the 2010 Act together with all applicable amendments, regulations and Codes of Practice or any future or other legislation which concerns discrimination in employment and service delivery (the “Equalities Provisions”) and shall in particular comply with the public sector equality duty under Section 149 and shall have due regard to the need to:

16.1.1 eliminate discrimination (whether direct or indirect), harassment, victimisation and any other conduct that is prohibited by or under the 2010 Act;

16.1.2 advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

16.1.3 foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

16.2 The Service Provider shall take all reasonable steps to ensure that the employees or agents of the Service Provider and of its Sub- contractors engaged in the provision of the Services shall provide the Services in accordance with the obligations imposed on the Service Provider by Clause 16.1.

16.3 The Service Provider shall notify the Council immediately in writing upon becoming aware of any investigation or proceedings brought against the Service Provider under the Equalities Provisions in connection with the Service Provider’s provision of the Services.

16.4 If requested to do so by the Council, the Service Provider shall fully co-operate at its own expense with the Council in connection with any legal proceedings, ombudsman inquiries or arbitration in which the Council may become involved arising from any breach of the Council’s duties under the Equalities Provisions due to the alleged acts or omissions of the Service Provider or of the servants or employees or agents of the Service Provider and of its Sub-contractors engaged in the provision of the Services.

17 HUMAN RIGHTS

17.1 The Service Provider shall ensure that it provides the Services in compliance with the provisions of the Human Rights Act 1998 (“HRA”).

17.2 The Service Provider shall indemnify the Council in respect of any cost claim or damages that the Council may incur in respect of any breach or contravention of the HRA arising out of any act or omission on the part of

the Service Provider its employees agents or subcontractors in providing the Services under this Supplier Agreement.

18 HEALTH AND SAFETY AT WORK

- 18.1 The Service Provider shall observe the provisions of the Health and Safety at Work Act 1974 and the Management of Health and Safety at Work Regulations 1999 and all other regulations, approved Codes of Practice and amendments thereto pertaining to the health and safety of employees and members of the public and shall ensure that its agents, employees and sub-contractors are competent to carry out their respective tasks with due regard to the Service Provider's obligations under these Acts and other instruments.
- 18.2 The Service Provider shall provide, maintain and make available for inspection by the Council's Authorised Officer all records reasonably requested by the Council relating to the Service Provider's compliance with clause 18.1.
- 18.3 The Service Provider shall promptly notify the Authorised Officer of any health and safety hazards which may arise in connection with the provision of the Services.

19 CONFIDENTIALITY

- 19.1 "Confidential information" shall mean all information disclosed by one party to the other, orally in writing or in electronic form relating to the provision of the Services that is not in the public domain (except where disclosure is in the public domain due to a breach of this Clause 19). It shall also include information, documents, drawings, reports or data the Service Provider may acquire or generate under or in connection with the provision of the Services.
- 19.2 Subject to sub-clause 19.7, neither party shall, without the prior written consent of the other, publish or disclose to any person, or permit any such disclosure by any of its employees or representatives, any Confidential Information received by it in relation to the Services or the party's business generally.
- 19.3 Each party:
- 19.3.1 shall treat all Confidential Information as secret and confidential and safeguard it accordingly;
 - 19.3.2 shall not disclose any Confidential Information to any third party without the prior written consent of the other party, except to such extent as may be necessary for the provision of the Services; and,
 - 19.3.3 shall not use any Confidential Information otherwise than for the purposes of the provision of the Services

- 19.4 The Service Provider shall take all necessary precautions to ensure that all Confidential Information obtained from the Council under or in connection with the provision of the Services :-
- 19.4.1 shall ensure that the Confidential Information is given only to such of the staff and professional advisors or consultants engaged to advise it in connection with the provision of the Services as is strictly necessary for the provision of the Services and then only to the extent necessary for the activities of each member of staff or of such professional advisors or consultants in the provision of the Services;
- 19.4.2 shall ensure that the Confidential Information is treated as confidential and not disclosed (without prior approval of the Council) or used by any staff or any such professional advisors or consultants otherwise than for the purposes of the provision of the Services.
- 19.5 Where it is considered necessary in the opinion of the Council, the Service Provider shall ensure that its staff or such professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with the provision of the Services.
- 19.6 The provisions of Clause 19.2 and 19.3 above shall not apply to any information:-
- 19.6.1 which is or becomes public knowledge (otherwise than by breach of this Clause 19); or
- 19.6.2 which is in the possession of the party concerned, without restriction as to its disclosure, before receiving it from the disclosing party; or
- 19.6.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
- 19.6.4 which is independently developed without access to the Confidential Information.
- 19.7 Nothing in this Clause 19 shall prevent the Council:-
- 19.7.1 disclosing any Confidential Information which is required to be disclosed by an order of court or other tribunal or required to be disclosed in accordance with any law, statute, proclamation, by-law, directive, decision, regulation, rule, order, notice, rule of court, delegated or subordinate legislation; or
- 19.7.2 disclosing any Confidential Information in accordance with Clause 22.1 and 22.2 (FOIA provisions);
- 19.7.3 disclosing any information for the purpose of (i) the examination and certification of the Council's accounts; or (ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the

economy, efficiency and effectiveness with the Council have used their resources;

19.7.4 disclosing any information obtained from the Service Provider: (i) to any other department, office or agency of the Crown; or (ii) to any person engaged in providing any services to the Council for any purpose relating to or ancillary to the provision of the Services; provided that in disclosing information under sub-paragraph 19.7.4 (i) or (ii) the Council discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

19.8 The obligations imposed by this Clause shall apply during the continuance of this Supplier Agreement and indefinitely after its expiry or termination.

20 INTELLECTUAL PROPERTY RIGHTS

20.1 The Service Provider hereby grants to the Council an irrevocable non-exclusive royalty-free licence to use any material created by the Service Provider in the provision of the Services in which, but for this sub-clause the Service Provider would own the IPR (including but not limited to data, working papers and the contents of any report).

20.2 The Service Provider agrees that the Council may without let or hindrance publish, alter, release, license or otherwise exploit and deal with such material as it thinks fit, via any medium.

20.3 The Service Provider undertakes to do all such acts or things and execute and /or procure the execution of all such documents the Council may request from time to time in order to perfect or confirm the Council's licence or use of the material referred to in sub-clause 20.1.

20.4 The Service Provider agrees to waive all moral rights in respect of the material referred to in sub-clause 20.1.

20.5 Where the IPR in material used in the provision of the Services or forming a material part of any report or data prepared for use by the Council are owned by a third party the Service Provider shall obtain the necessary licence for use of such material by the Council.

20.6 The Service Provider shall keep the Council fully indemnified against all losses and all actions claims proceedings costs and damages (including any damages or compensation paid by the Council on the advice of its legal advisor and after consultation with the Service Provider to compromise or settle any claim and all legal costs or other expenses) arising out of any breach of IPR of a third party in material supplied by the Service Provider in the provision of the Services.

21 DATA PROTECTION

- 21.1 The expiry or earlier termination of the Contract shall not affect the continuing rights and obligations of the Service Provider and the Council under this clause. The Parties acknowledge that for the purposes of the Data Protection Legislation, they shall be the Controller of their respective orders (and where necessary shall both be Controllers) and the Service Provider is the Processor. The only processing that the Service Provider is authorised to do by the Council is listed in Schedule 4 to this clause and may not be determined by the Service Provider.
- 21.2 The Service Provider shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.
- 21.3 The Service Provider shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council include:
- 21.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 21.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 21.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 21.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 21.4 The Service Provider shall, in relation to any Personal Data processed in connection with its obligations under the Agreement:
- 21.4.1 process that Personal Data only in accordance with Schedule 4 of this Agreement, unless the Service Provider is required to do otherwise by Law. If it is so required, the Service Provider shall promptly notify the Council before processing the Personal Data unless prohibited by Law;
 - 21.4.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;

21.4.3 ensure that:

- (i) the Service Provider Personnel do not process Personal Data except in accordance with the Agreement (and in particular Schedule 4 to this Agreement);
- (ii) it takes all reasonable steps to ensure the reliability and integrity of any Service Provider Personnel who have access to the Personal Data and ensure that they:
 - (a) are aware of and comply with the Service Provider's duties under this clause
 - (b) are subject to appropriate confidentiality undertakings with the Service Provider or any Sub-processor
 - (c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the or as otherwise permitted by this Agreement; and
 - (d) have undergone adequate training in the use, care, protection and handling of Personal Data; and

21.4.4 not transfer Personal Data outside of the EU unless the prior written consent of the has been obtained and the following conditions are fulfilled:

- (i) the Council or the Service Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Council ;
- (ii) the data subject has enforceable rights and effective legal remedies enforceable in the territory to which the Personal Data is to be transferred ;
- (iii) the Service 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
- (iv) the Service Provider complies with any reasonable instructions notified to it in advance by the with respect to the processing or the Personal Data;

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

21.5 The Service Provider shall notify the Council immediately if it:

21.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);

21.5.2 receives a request to rectify, block or erase any Personal Data;

21.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

- 21.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- 21.5.5 receives a request from any third party for disclosure of Personal Data, or
- 21.5.6 becomes aware of a Data Loss Event
- 21.6 The Service Provider's obligation to notify under clause 1.5 shall include the provision of further information to the Council in phases, as details become available.
- 21.7 Taking into account the nature of the processing, the Service 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 21.5 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:
 - 21.7.1 such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - 21.7.2 the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 21.7.3 assistance as requested by the Council following any Data Loss Event;
 - 21.7.4 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.
- 21.8 The Service Provider shall maintain complete and accurate records and information to demonstrate its compliance with the clause. This requirement does not apply where the Service Provider employs fewer than 250 staff, unless:
 - 21.8.1 the Council determines that the processing is not occasional;
 - 21.8.2 the Council determines the processing includes special categories or data as referred to Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - 21.8.3 the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 21.9 The Contactor shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor.

- 21.10 The Service Provider shall designate a data protection officer if required by the Data Protection Legislation.
- 21.11 Before allowing any Sub-processor to process Personal Data related to this Agreement, the Service Provider must:
- 21.11.1 notify the Council in writing of the intended Sub-processor and processing;
 - 21.11.2 obtain the written consent of the Council;
 - 21.11.3 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
 - 21.11.4 provide the Council with such information regarding the Sub-processor as the Council may reasonably require.
- 21.12 The Service Provider shall remain fully liable for all acts or omissions of any Sub-processor.
- 21.13 The Council may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 21.14 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 Service Provider amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 21.15 Upon termination of the Contract the Service Provider shall:
- 21.15.1 cease processing Personal Data on behalf of the Council ;
and
 - 21.15.2 at the Council's request, either forthwith return to the all copies of the Personal Data which it is processed on behalf of the Council , or destroy the same within 14 days of being requested to do so by the Council .
- 21.16 The Service Provider shall ensure that all personnel do not publish, disclose or divulge any of the Personal Data to any third party, unless directed in writing by the to do so.
- 21.17 The Service Provider shall fully indemnify the Council, its employees or agents against the cost of dealing with any claims made in respect of any information subject to Data Protection Legislation, which claims would not have arisen but for some act, omission or negligence on the part of the Service Provider, his employees or agents in the provision of the Services.

22 FREEDOM OF INFORMATION

- 22.1 The Service Provider recognises that the Council is subject to legal duties which may require the release of information under FOIA or any Other Information Law and that the Council may be under an obligation to provide information on request. Such information may include matters relating to, arising out of or under, this Supplier Agreement in any way
- 22.2 Notwithstanding anything in this Supplier Agreement to the contrary, in the event that the Council receives a request for information under the FOIA or any Other Information Law, the Council shall be entitled to disclose all information and documentation (in whatever form) as is necessary to respond to that request in accordance with the FOIA or Other Information Law, save that in relation to any such information that the Council believes is Exempt Information, the Council shall use reasonable endeavours to consult the Service Provider as soon as practicable after receipt of such a request and shall not:
- 22.2.1 confirm or deny that the information in question is held by the Council; or
- 22.2.2 disclose the information requested,
- to the extent that in the Council's opinion (having taken into account the views of the Service Provider) that exemption is or may be applicable in accordance with the relevant section of FOIA in the circumstances to all or any of the information requested.
- 22.3 Where the Council consults with the Service Provider in accordance with Clause 22.2 above, the Service Provider shall make its written representations as to whether it believes the information falls within an exemption under the FOIA to the Council within 14 days of receiving the Council's request for consultation.
- 22.4 The Service Provider shall indemnify the Council for any costs that the Council incurs, including but not limited to external legal costs, in seeking to maintain the withholding of information arising out of or under the Supplier Agreement in any way that the Service Provider wishes it to withhold, including but not limited to responding to information notices or lodging appeals against a decision of the Information Commissioner in relation to disclosure.
- 22.5 In any event the Council shall not be liable for any loss, damage, harm or other detriment however caused arising from the disclosure of any Exempt Information or other information relating to this Supplier Agreement under FOIA or Other Information Law.
- 22.6 The Service Provider will at all times assist the Council to enable the Council to comply fully with its obligation under FOIA governing access to information or Other Information Law or related guidelines or codes of practice. In particular it acknowledges that the Council is entitled to any

and all information relating to or arising in the course of the performance of this Supplier Agreement. In the event that the Council receives a request for information under the FOIA or Other Information Law, and requires the Service Provider's assistance in obtaining all or any such information, the Service Provider will respond to any such request for assistance at its own cost and promptly and in any event within 10 days of receiving the Council's request (or other reasonable time period specified by the Council when making the request).

22.7 Other than as set out above the Council shall have no obligation to consult the Service Provider where any request for information, whether under the FOIA or otherwise, touches or concerns this Supplier Agreement.

22.8 In no event shall the Service Provider respond directly to a request for information unless expressly authorised to do so by the Council.

23 CORRUPTION

23.1 The Service Provider shall not offer or give, to any employee, agent, servant or representative of the Council any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or having refrained from doing any act in relation to the obtaining or execution of this or any other contract with the Council, or for showing or refraining from showing favour or disfavour to any person in relation to this or any other contract with the Council. The Service Provider warrants that it has not otherwise done anything contrary to the Bribery Act 2010 or incited any breach of section 117(2) of the Local Government Act

23.2 Where the Service Provider or the Service Provider's employees, servants, sub-contractors, suppliers or agents or anyone acting on the Service Provider's behalf, engages in conduct prohibited by clause 23.1 in relation to this or any other contract with the Council, the Council has the right to:

23.2.1 terminate the Supplier Agreement and any Service Agreement awarded under it and recover from the Service Provider the amount of any loss suffered by the Council resulting from the termination; or

23.2.2 recover in full from the Service Provider any other loss sustained by the Council in consequence of any breach of this clause, whether or not the Supplier Agreement or any Service Agreement awarded under it has been terminated.

24 ILLEGALITY

24.1 If any provision or term of the Supplier Agreement or any part of it or Service Agreement awarded under it shall become unenforceable for any reason whatsoever, including but without limitation by reason of the provisions of any legislation, Regulation, Order, Direction of the Secretary of State or other provision having the force of law or by reason of any decision of any Court of competent jurisdiction, the validity and enforceability of the remainder of the Supplier Agreement or Service

Agreement awarded under it shall not be affected thereby and shall remain in full force and effect. Where any such provision or decision substantially affects or alters the ability of either of the parties to comply fully with its contractual obligations the parties shall negotiate in good faith to amend and modify the provisions and terms of the Supplier Agreement or of any Service Agreement awarded under it as may be necessary or desirable in the circumstances.

25 FORCE MAJEURE

- 25.1 Neither party to this Supplier Agreement shall be liable to the other nor held in breach of the Supplier Agreement or of any Service Agreement awarded under it if either party is prevented, hindered or delayed in the performance of its obligations under the Supplier Agreement by any act of God, war, riot, civil commotion, explosion, fire, radiation, major incident government action, interruption in the supply of power, labour dispute (other than a dispute concerning the Service Provider's employees or the employees of its sub-contractors), epidemic or other circumstances beyond the control of the parties which prevents a party from, or hinders or delays a party in, performing its obligations under this Supplier Agreement (and which the application of due diligence and foresight could not have prevented).
- 25.2 If due to any of the circumstances listed in Clause 25.1 either party is prevented, hindered or delayed in the performance of their obligations under this Supplier Agreement that party shall as soon as reasonably practicable notify the other in writing of such prevention, hindrance or delay and the reasons therefor whereupon the operation of this Supplier Agreement or of any Service Agreement awarded under it that is affected shall be suspended. The Council shall not be liable to make payment to the Service Provider during such suspension.
- 25.3 The suspension of the operation of this Supplier Agreement or of any Service Agreement awarded under it shall continue during the period (and only during the period) that such prevention, hindrance or delay due to the circumstances listed in Clause 25.1 continues to affect it. Upon those circumstances ceasing to prevent, hinder or delay the performance of the obligations of the party relying upon it that party shall give written notice to the other party of this fact.
- 25.4 If either party is prevented from performing their obligations due to any of the circumstances listed in Clause 25.1 for longer than two weeks either party may immediately terminate the Supplier Agreement or the Service Agreement, whichever may be affected.

26 BUSINESS CONTINUITY

- 26.1 The Service Provider acknowledges and accepts that the Council has obligations under the CCA and upon the award of a Service Agreement under this Supplier Agreement and prior to the commencement of the

Service Agreement shall carry out a risk assessment of the issues that could prevent its provision of the Services.

26.2 The Service Provider undertakes during and after the subsistence of a Service Agreement awarded under this Supplier Agreement to provide any information, documentation and assistance the Council may reasonably require in order to enable the Council to comply with its obligations under section 2 of the CCA (Duty to assess, plan and advise).

26.3 In the event of an Emergency (as defined in Part 1 or Part 2 of the CCA), the Service Provider shall use its best endeavours to comply with any instructions whatsoever of the Council in relation to such Emergency, notwithstanding that such instructions may be given by an officer of the Council other than the Authorised Officer the Service Provider would usually deal with in respect of this Supplier Agreement.

26.4 The Council shall remunerate and indemnify the Service Provider for any claims, costs and losses that the Service Provider may suffer as a direct consequence of compliance with the Council's instructions during and in respect of an Emergency.

26.5 The Council shall use all reasonable endeavours to ensure that any instruction given to the Service Provider pursuant to sub-clause 26.3 shall be:

26.5.1 reasonably necessary for the prevention or mitigation of the Emergency;

26.5.2 reasonably within the power and ability of the Service Provider to comply with, having regard to the nature of the Service Provider's business and its obligations to the Council under this Supplier Agreement.

26.6 Notwithstanding Clause 25, during the subsistence of each Service Agreement awarded under this Supplier Agreement the Service Provider shall have in place such measures as may be reasonably practicable and sufficient so that as far as reasonably possible it is able to continue to perform its obligations under each such Service Agreement in the event of an Emergency or a Disruptive Event ("Business Continuity Measures")

26.7 A Disruptive Event means any event falling outside the definition of an Emergency that may result from:

26.7.1 Inability by the Service Provider to access the premises from which it provides the Services;

26.7.2 General failure of the Service Provider's staff to attend work or perform their functions;

26.7.3 Failure of or disruption to the IT and communications systems, or the loss of data and/or records of, the Service Provider;

26.7.4 (Loss of or damage to equipment, resources or materials of the Service Provider;

26.7.5 A disruption in provision of goods or services to the Service Provider by any third party.

26.8 The Service Provider shall use its best endeavours to ensure that its contracts with any Sub-contractors contain provisions similar to those in this Clause 26 as far as necessary to allow the Service Provider to perform its obligations under this Clause 26.

26.9 The Service Provider shall indemnify and keep indemnified the Council for any claims, loss or damage incurred by the Council as a result of the Service Provider's breach of this Clause 26.

27 ASSIGNMENT AND SUB-CONTRACTING

27.1 The Service Provider shall not assign, sub-contract, or delegate in whole or in part any of its duties in relation to provision of the Services under this Supplier Agreement without the prior written consent of the Council, which may be given or withheld in the Council's sole discretion and subject to any conditions which the Council sees fit to impose.

27.2 sub-contracted, the Service Provider shall ensure that the Service Provider enters into a legally binding contract with the sub-contractor in a form approved in writing by the Authorised Officer prior to the commencement of that sub-contract. A copy of each sub-contract will be sent by the Service Provider to the Council immediately.

27.3 It shall be a condition of any subcontract entered into by the Service Provider that the Sub-Contractor shall not enter into a further subcontract in respect of the Services or any part of the Services under the subcontract without notifying the Service Provider. Upon receipt of any such notification from the Sub-Contractor and before giving its consent, the Service Provider shall inform the Council of the Sub-Contractor's intention to further sub-contract the Services or part of the Services and shall obtain the Council's written consent thereto, which consent may be given or withheld at the Council's sole discretion and subject to any conditions the Council may see fit to impose and in any event shall be in accordance with the Public Contracts Regulations.

27.4 Nothing in this Clause 27 shall alleviate the Service Provider of its obligations in relation to the provision of the Services under this Supplier Agreement generally. In particular, notwithstanding the grant of consent or imposition of conditions by the Council, the Service Provider shall remain ultimately responsible for any Sub-contractors and for the provision of the Services in all respects.

28 WAIVER

- 28.1 Failure by the Council at any time to enforce the provisions of and applicable under this Supplier Agreement or to require performance by the Service Provider of any of the provisions of and applicable under this Supplier Agreement shall not be construed as a waiver of or as creating an estoppel in connection with any such provision and shall not affect the validity of this Supplier Agreement or any part thereof or the right of the Council to enforce any provision in accordance with its terms.

29 VARIATION

- 29.1 Any variation to this Supplier Agreement shall only be valid if it has been agreed by the Council and the Service Provider in written form.
- 29.2 Variations to any Service Agreement awarded under this Supplier Agreement shall be at the Council's sole discretion and confirmed to the Service Provider concerned via the DPS Change Order process.

30 PERFORMANCE DEFAULT

- 30.1 Without prejudice to the Council's right to terminate this Supplier Agreement or any Service Agreement awarded under it in accordance with these terms and conditions and without prejudice to any other claim or remedy the Council may have against the Service Provider, the Council may in the event that the Service Provider: -

30.1.1 has been deemed to have committed a persistent default (in relation to performance of the Services), or

30.1.2 has been deemed to have committed a serious default (in relation to performance of either of the Services)

issue the Service Provider with a written notice (a "Default Notice") detailing the default, the actions (if any) to be taken to rectify the default and the timeframe for doing so.

- 30.2 If the Service Provider fails to comply with the Default Notice or if the breach is incapable of remedy, the Council shall be entitled to claim and/or deduct from any monies that may be due to the Service Provider such sums to reflect the actual loss to the Council arising out of the breach including administration costs.
- 30.3 If the Service Provider complies with a Default Notice to the reasonable satisfaction of the Council the Service Provider may be charged the Council's reasonable costs (if any) arising from the breach.
- 30.4 Notwithstanding the provisions of clauses 30.2 and 30.3, if the Service Provider is issued with a Default Notice under clause 30.1, the Council shall have the right to treat this as a ground for immediate termination of

the Service Agreement in respect of which the Default Notice was issued and / or of the Supplier Agreement in accordance with clause 31.4

31 TERMINATION OF SUPPLIER AGREEMENT OR SERVICE AGREEMENT

- 31.1 Notwithstanding any other provision of this Supplier Agreement the Council may terminate this Supplier Agreement on a no fault basis at any time by giving the Service Provider 30 calendar days' notice in writing. The Council may extend the period of notice at any time before it expires subject to agreement on the level of services to be provided by the Service Provider during the period of extension.
- 31.2 Due to the nature of the Passenger Transport Services being provided, the Council may terminate a Service Agreement awarded under this Supplier Agreement at any time, by giving the Service Provider immediate notice.
- 31.3 If either party commits a fundamental breach of its obligations under this Supplier Agreement including in relation to a Service Agreement awarded under it then the other party may, without prejudice to any accrued rights or remedies, terminate this Supplier Agreement or the Service Agreement concerned by notice in writing having immediate effect.
- 31.4 The Council may terminate this Supplier Agreement or a Service Agreement awarded under it by notice in writing having immediate effect, without prejudice to any accrued rights or remedies, if any one or more of the following occurs:
- 31.4.1 the Service Provider has been issued a Default Notice;
 - 31.4.2 any information provided by the Service Provider during the process of selection of the Service Provider for the award of this Supplier Agreement or of a Service Agreement proves materially untrue or incorrect;
 - 31.4.3 the Service Provider has obtained or received by whatever means any information which has given or was intended or likely to give the Service Provider any unfair advantage over any other participant in relation to the process for the award of this Supplier Agreement or the award of any Service Agreement under it;
 - 31.4.4 an event described in Clause 23 (Corruption) or it is entitled to under clause 38;
 - 31.4.5 the Service Provider's directors become bankrupt or the Service Provider makes a composition or arrangement with its creditors, or has a proposal in respect of its company for voluntary arrangement for a composition of debts, or scheme of

arrangement approved in accordance with the Insolvency Act 1986;

- 31.4.6 the Service Provider has an application made under the Insolvency Act 1986 to the Court for the appointment of an administrative receiver or has an administrative receiver appointed;
 - 31.4.7 the Service Provider has a provisional liquidator, receiver, or manager of its business or undertaking duly appointed;
 - 31.4.8 the Service Provider has possession taken, by or on behalf of the holder of any debentures secured by a floating charge, of any property comprised in, or subject to, the floating charge;
 - 31.4.9 the Service Provider is in circumstances that entitle the Court or a creditor to appoint, or have appointed, a receiver, a manager, or administrative receiver or which entitle the Court to make a winding-up order;
 - 31.4.10 if there is a change of control in the shareholding of the Service Provider;
 - 31.4.11 where the Council has, on grounds of breach of contract, terminated a contract between itself and the Service Provider other than this Supplier Agreement;
 - 31.4.12 where the Service Provider or any of its employees or sub-contractors becomes embroiled in matters attracting significant negative publicity liable to reflect adversely on the Council, including but not limited to any occasion on which any of these persons is convicted of an arrestable offence;
 - 31.4.13 where the Service Provider is an individual if he shall die or be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983 or any amendment thereto.
- 31.5 If the Council terminates this Supplier Agreement or a Service Agreement awarded under it under this Clause 31 or any other clause the Council shall:
- 31.5.1 cease to be under any obligation to make further payment to the Service Provider until all costs and damage resulting from or arising out of termination of this Supplier Agreement or a Service Agreement awarded under it have been calculated; and
 - 31.5.2 be entitled to deduct such costs from any sum or sums which would have been due to the Service Provider and/or be entitled to recover the costs from the Service Provider as a debt; and

31.5.3 be entitled to carry out this Supplier Agreement or any Service Agreement awarded under it itself in whole or in part or engage any other person to provide the Services.

- 31.6 Where the Supplier Agreement or a Service Agreement awarded under it shall terminate for whatsoever reason the Service Provider shall within 14 days from termination (or such reasonable period specified by the Council) provide the Council with sufficient information, material and documentation necessary to enable the Council or a third party to continue or to re-procure the provision of the Service(s). Without prejudice to the Council's other remedies, failure to comply with this Clause 31 may result in the Council withholding any payment due until reasonable compliance by the Service Provider.
- 31.7 In addition and without prejudice to this Clause 31 if the Council terminates the Supplier Agreement or a Service Agreement awarded under it in accordance with 31.2 or 31.3 the Service Provider shall fully indemnify the Council in respect of any loss or damage suffered as a consequence of termination including the cost of providing the Services for the remainder of the period of the Supplier Agreement or Service Agreement awarded under it to the extent that such cost exceeds the payment that otherwise would have been payable to the Service Provider.
- 31.8 The rights of the Council under this clause are in addition to, and without prejudice to, any other rights that the Council may have at law or under this Supplier Agreement.
- 31.9 Clauses 19 (Confidentiality), 20 (IPR), 21 (Data Protection) and 22 (FOIA) shall survive the termination of this Supplier Agreement and of any Service Agreement awarded under it

32 DISPUTE RESOLUTION

- 32.1 In the event of a disagreement or dispute between the parties in relation to the Services or in relation to the interpretation of the terms of and applicable under this Supplier Agreement, the parties shall, in the first instance, endeavour to resolve the disagreement or dispute themselves (or through their representatives).
- 32.2 In the event of a failure to reach an agreement in accordance with Clause 32.1 above within a reasonable time then the disagreement or dispute shall be referred to any mediation or conciliation procedure either within the Council or by reference to a third independent party agreed by the parties or failing agreement, appointed by the Authorised Officer. Any such mediation or conciliation will not be binding on the parties.
- 32.3 If such dispute or difference is not resolved within twenty-one days of the dispute being referred to mediation or conciliation under Clause 32.2 above then such dispute or difference shall if so agreed by the parties be referred to an arbitrator agreed between the parties or in default of such agreement to be nominated by the President of the Chartered Institute of Arbitrators and such a referral to arbitration shall be deemed to be a

referral in accordance with the Arbitration Act 1996 and any statutory modification or re-enactment thereof for the time being in force.

- 32.4 The costs of mediation, conciliation and/or the appointment of the arbitrator shall be shared equally between the parties and the arbitrator shall determine which party shall pay any costs subsequently incurred.

33 NOTICES

- 33.1 Notices served under this Supplier Agreement including in respect of any Service Agreement awarded under it shall be issued via the DPS to the appropriate Contract Manager. Any notices sent by post shall be deemed to have been received by the addressee 2 days after the day on which they were posted (excluding weekends and public holidays).

- 33.2 Notices served under this Supplier Agreement by a Service Provider should be sent by email, and copied by post, to the Authorised Officer listed in Schedule 1 or other such person as nominated from time to time by the Council.

34 CONTRACTS (RIGHTS OF THIRD PARTIES)

- 34.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Supplier Agreement and no person who is not a party to this Supplier Agreement shall be entitled to enforce any of the provisions of this Supplier Agreement pursuant to that Act.

35 GOVERNING LAW

- 35.1 The terms applicable under this Supplier Agreement are governed by, and are to be construed in accordance with, the law of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

36 CONTRACT EXECUTION COSTS

- 36.1 Each party shall bear its own costs of and incidental to the preparation and execution of this Supplier Agreement and of any Service Agreement awarded under it.

37 STAFF RECRUITMENT, SAFEGUARDING, VETTING AND TRAINING

- 37.1 The Service Provider shall select, train and engage in and about the provision of the Services only such persons as are of good character and who are appropriately skilled and experienced.

Safeguarding

- 37.2 The Service Provider shall:
- 37.2.1 ensure that all individuals engaged in the provision of the Services are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service (“DBS”) including a check against the adults' barred list or the children's barred list, as appropriate;
 - 37.2.2 monitor the level, i.e. enhanced or standard, and validity of the checks under this clause 37.2 for each member of staff involved in delivering the Services; and
 - 37.2.3 comply with the Council’s safeguarding policies in force from time to time.
- 37.3 The Service 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 Service Provider in the provision of the Services is barred from the regulated activity as defined by the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time. The Service Provider shall 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.
- 37.4 The Service Provider shall immediately notify the Council of any information that it reasonably requests to enable the Council to be satisfied that the obligations of this clause 37 have been met.
- 37.5 The Service Provider shall refer information about any person carrying out the Services to the DBS where the Service Provider 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 the service users.
- 37.6 The Service Provider shall have in force and shall maintain a safeguarding of vulnerable adults and children policy.
- 37.7 The Service Provider shall have in place a robust safeguarding training programme for its entire staff (including volunteers) appropriate to their level of responsibility. Further, the Service Provider shall maintain appropriate records of training for the Council’s audit purposes and make these available to the upon request.
- 37.8 The Service Provider shall establish clear policies to deal with dangerous, exploitative or unsafe behaviour and practice and provide training to all the Service Provider’s Personnel to develop appropriate skills and knowledge.

37.9 The Service Provider shall have in place and shall have implemented robust up-to-date procedures, (including whistle-blowing policy and recruitment checks), for avoiding and responding to actual or suspected physical, sexual, psychological, financial or material and discriminatory abuse and acts of neglect or omission. Such procedures shall be reviewed at least once every year.

37.10 The Service Provider shall ensure that its disciplinary procedures are compatible with the responsibility to protect vulnerable groups. This will include making provision to suspend an employee, for example, pending the outcome of a safeguarding investigation. It should be noted that suspension may be in the best interests of the employee and/or the alleged victim of abuse. Decisions on suspension from duty will be the outcome of a risk assessment, which process will incorporate consideration of the potential harms/dangers to the individual(s) concerned. The Service Provider must take account of applicable employment Law. Decisions on whether or not to suspend an employee will be the responsibility of the Service Provider and must be fully documented and communicated to the Council in writing within 24 hours.

37.11 The Council may require the Service Provider's staff to be withdrawn and an acceptable person substituted in the event of:

37.11.1 the Service Provider failing to comply with the provisions set out in this clause 37 in relation to the protection of vulnerable groups; or

37.11.2 the Service Provider's Personnel refusing to complete a disclosure statement/application; or

37.11.3 the disclosure at any stage of information that in the reasonable opinion of the renders the Service Provider's Personnel unsuitable for the work involved.

any such decision by the will be taken in compliance with applicable laws.

37.12 The Service Provider shall ensure that it complies with its statutory duties under the Asylum and Immigration Act 1996 in relation to the engagement of Staff.

37.13 The Service Provider must operate an equal opportunities policy with regard to all aspects of the engagement of Staff.

37.14 The Service Provider shall comply with any statutory requirements in relation to the recruitment of persons who have a criminal record and to disclosures under the Police Act 1997. The Service Provider shall ensure that all Staff who may be required to come into contact with children or vulnerable adults have, before they are so engaged, appropriate levels of Disclosure and Barring Service checks done having regard to the nature of the work they are required to do.

- 37.15 The Service Provider shall upon reasonable request produce evidence to the Council that the checks done in accordance with clause 37.4 are satisfactory.
- 37.16 The Service Provider shall ensure that all Staff who may be required to come into contact with children or vulnerable adults in the provision of the Services are appropriately trained and up to date with current practice and perform their duties in accordance with the requirements of any child and vulnerable adult protection procedures laid down by the Council's Safeguarding Team and any other relevant statutory requirements and government guidance relating to safeguarding children and vulnerable adults and have an understanding of their roles and responsibilities with regards to safeguarding their welfare as appropriate.
- 37.17 The Service Provider shall ensure that managers in charge of recruitment, vetting and monitoring of Staff are adequately trained.
- 37.18 The Service Provider shall provide training on a continuing basis for all Staff employed in delivering the Supplier Agreement and any Service Agreements awarded under it.
- 37.19 The Council reserves the right to visit the Service Provider's organisation to audit, inspect and monitor the Service Provider's compliance with this clause 37.

38 NON-EXCLUSIVITY AND SUSPENSION

- 38.1 This Agreement shall not be exclusive to the Service Provider and nothing in this Agreement shall be deemed to require that the enter into a Service Agreement with the Service Provider and neither this Agreement or a Service Agreement shall require that the shall be required to place a minimum or any level of business with the Service Provider.
- 38.2 The Council may at their absolute discretion require the suspension or removal of a driver or other employee from the performance of the Services and the Service Provider shall immediately comply with the direction of the .
- 38.3 For the avoidance of doubt, the may suspend the performance of the Services where it is aware that the Service Provider is incapable of performing the Services due to illness, injury, a driver's car being written off or such other reason that renders the driver and / or Service Provider unable to perform the Services. The shall be entitled to terminate this Agreement or the Services Agreement after two weeks of suspension under this clause 38.3 to the extent that the Service Provider is unable to perform the Services. This clause 38.3 shall be in addition to any other right of termination and shall not preclude the right to recover damages under this Agreement or the Service Agreement.

39 TUPE COMPLIANCE ON TERMINATION

Handover on termination

- 39.1 During the 12 months preceding the expiry of this Supplier Agreement or of a Service Agreement awarded under it or after the Council has given notice to terminate this Supplier Agreement or such Service Agreement or at any other time as directed by the Council, and within 15 working days of being so requested by the Council, the Service Provider shall fully and accurately disclose to the Council any and all information in relation to all Staff who are Relevant Employees as the Council may request, in particular but not necessarily restricted to any of the following:
- 39.1.1 a list of employees employed by the Service Provider;
 - 39.1.2 a list of agency workers, agents and independent contractors engaged by the Service Provider;
 - 39.1.3 the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of those Staff;
 - 39.1.4 the terms and conditions of employment of the Relevant Employees, their age, salary, date continuous employment commenced and (if different) the commencement date, enhancement rates, any other factors affecting their redundancy entitlement and any outstanding claims arising from employment.
- 39.2 The Service Provider shall warrant the accuracy of all the information provided to the Council pursuant to Clause 38.1.1 and authorises the Council to use any and all the information as it may consider necessary for the purposes of its business or for informing any tenderer for any services which are substantially the same as the Services (or any part thereof).
- 39.3 During the 12 months preceding the expiry of this Supplier Agreement or of any Service Agreement awarded under it where notice to terminate this Supplier Agreement or such Service Agreement for whatever reason has been given, the Service Provider shall allow the Council or such other persons as may be authorised by the Council to communicate with and meet the Relevant Employees and their trade union or employee representatives as the Council may reasonably request.
- 39.4 During the 12 months preceding the expiry of this Supplier Agreement or of a Service Agreement awarded under it or where notice to terminate this Supplier Agreement or such Service Agreement for whatever reason has been given, the Service Provider shall not without the prior written consent of the Council unless bona fide in the ordinary course of business:

39.4.1 vary or purport or promise to vary the terms and conditions of employment of any employee employed in connection with the Services;

39.4.2 materially increase or decrease the number of employees employed in connection with the Services; or

39.4.3 assign or redeploy any employee employed in connection with the Services to other duties unconnected with the Services.

Indemnities

39.5 The Service Provider shall indemnify the Council and any Replacement Service Provider and keep the Council and any Replacement Service Provider indemnified in full from and against all direct, indirect or consequential liability, loss, damages, injury, claims, costs and expenses (including legal expenses), which the Council and any Replacement Service Provider shall take all reasonable steps to mitigate, awarded against or incurred or paid by the Council or any Replacement Service Provider as a result of or in connection with the employment or termination of employment of any employee of the Service Provider during any period prior to the date of expiry or termination of this Supplier Agreement or of a Service Agreement awarded under it.

Sub-contractors

39.6 In the event that the Service Provider enters into any sub-contract in connection with this Supplier Agreement or a Service Agreement awarded under it, it shall impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this Clause 38 and shall procure that the Sub-Contractor complies with such terms. The Service Provider shall indemnify the Council and keep the Council indemnified in full from and against all direct, indirect or consequential liability, loss, damages, injury, claims, costs and expenses (including legal expenses) awarded against or incurred or paid by the Council as a result of or in connection with any failure on the part of the Sub-Contractor to comply with such terms.

SCHEDULES

- 1. AUTHORISED OFFICER'S DETAILS**
 - 2. SELF-BILLING AGREEMENT**
 - 3. SERVICE SPECIFICATION**
 - 4. DATA PROTECTION**
 - 5. SIGNATURES**
-

SCHEDULE 1 - AUTHORISED OFFICER'S DETAIL

NAME: Bridget Creasey
POSITION: Principal Transport Commissioning Officer

ADDRESS: London Borough of Merton
CSF Contract Team
Civic Centre
London Road
Morden
London SM4 5DX

TELEPHONE: 020 8545 4869

EMAIL: bridget.creasey@merton.gov.uk

SCHEDULE 2- SELF-BILLING AGREEMENT

London Borough of Merton Self-Billing Agreement

This Self-Billing Agreement made as of **05.03.2021** (“Effective Date”)

BETWEEN

(1) **London Borough of Merton** (the “Council”)

and

(2) **Insert Supplier Name** (Insert Company Number) of Insert Company Address (the “Supplier”)

(Each a “Party”, together the “Parties”)

WHEREAS:

- (A) The Council and the Supplier have entered into agreement(s) which govern the relationship between the Parties. The Council and the Supplier have entered or will enter into Service Agreements at various times for the Services.
- (B) The Council and the Supplier have agreed to use a self-billing procedure for all transactions (the “Relevant Transactions”) in respect of the Services;
- (C) The Council and the Supplier shall adhere to the conditions imposed by HM Revenue and Customs in respect of self-billing invoices, as may be amended from time to time;
- (D) The Council and the Supplier agree that this Self-Billing Agreement shall be incorporated into the terms and conditions of each of the Supplier Agreements.

Definitions:

“**Agreement**” means the agreement between the Council and the Supplier for the provision of Services as set out in SProc.Net

All terms defined within the Supplier Agreement shall have the same meaning when used within this Self-Billing Agreement.

It is agreed as follows:

1. The Supplier hereby agrees:
 - i. to accept electronically delivered Self-Bill Invoices raised on its behalf by the Council in respect of all Relevant Transactions;
 - ii. not to issue VAT invoices in respect of the Services;
 - iii. where for internal compliance reasons it raises dummy invoices, the Supplier will reconcile such dummy invoices to the Self-Bill Invoice.
 - iv. to reconcile their account with any factoring company as may be applicable from time to time.
 - v. to only submit paper-copy Service Receipts where pre-agreed in writing with the Council;
 - vi. subject to (v) above, to ensure the Technology’s Service Receipt submission system is used to capture all hours worked in respect of the Services;
 - vii. to ensure that rates, hours, hours types and expenses are verified prior to submission or on-line entry of Service Receipts;

- viii. to raise any discrepancies between a Self-Billing Invoice received from the Council and invoicing data in its internal records within seven (7) days of receipt of such Self-Bill Invoice;
 - ix. to notify the Council immediately if the Supplier changes its VAT registration number, ceases to be VAT registered or sells or otherwise disposes of all or part of its business;
 - x. to respond to any request for confirmation of its VAT registration details within seven (7) days of receipt of the request.
2. The Supplier agrees and acknowledges that where there is any breach whatsoever of Clause 1 above, the Council may at its sole discretion delay or not process payment of the sums due to the Supplier from such Self-Bill Invoices that the breach pertains to.
3. The Council agrees:
 - i. wherever reasonably possible, to provide a valid Self-Billing VAT invoice to the Supplier on a regular (e.g. weekly or monthly) basis;
 - ii. to include on each invoice the Supplier's name, address and VAT registration number, invoice total and details of applicable VAT at the prevailing rate;
 - iii. to inform the Supplier of any relevant changes to the Council's VAT registration status, and enter into a new Self-Billing agreement should this be necessary;
4. The Council will not accept any liability for payment of any of the Supplier's services where the Supplier does not hold a valid signed/approved Service Receipt, as applicable, or where the Service Receipt has not been authorised via the Technology's online Service Receipt system, SProc.Net, or such other application as directed by the Council from time to time.
5. For the avoidance of doubt, any payment properly due to the Supplier will be made in accordance with the terms and conditions of the Agreement between the Parties.
6. The Parties shall, without limitation to the foregoing, comply at all times with all conditions imposed by HM Revenue & Customs in respect of Self-Bill invoicing processes.
7. The Supplier acknowledges and accepts that the Self-Bill process and payments made under this Self-Billing Agreement shall be performed via the Technology Provider acting as the Council's third-party, payment service provider, (adam HTT Limited (trading as *adam* limited registered company number: 07718565) or such other body as may be appointed by the Council from time to time, and payment shall be dependent upon the Technology Provider receiving cleared funds from the Council. For the avoidance of doubt, this arrangement shall not be construed as transferring to the payment service provider any debt that is owed by the Council to the Supplier, and any disputes regarding the Relevant Transactions must be managed between the Supplier and the Council directly.
8. For the avoidance of doubt, this Self-Billing process shall be co-terminous with the duration of the Supplier Agreement but shall be subject to annual review by the parties.
9. This Self-Billing Agreement shall be read in accordance with the laws of England and Wales and shall be subject to the exclusive jurisdiction of the English courts.

SCHEDULE 3– SERVICE SPECIFICATION

Attached

SCHEDULE 4– Data Protection Instructions

Processing, Personal Data and Data Subjects

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

| Description | Details |
|--|--|
| Subject matter of the processing | Personal details of persons transported and their families/carers |
| Duration of the processing | The period of the contract as required thereafter. |
| Nature and purposes of the processing | To administer and manage the provisions of the services – please refer to the Service Specification |
| Type of Personal Data | All personal data such as: name, address, date of birth, NI number, telephone number, learner number, images, biometric data, health conditions. |
| Categories of Data Subject | TBC |
| 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 | As per guidelines TBC |

SCHEDULE 5 – SIGNATURE DOCUMENT

Not in use – electronic signature