

**DATED** \_\_\_\_\_ **2025**

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

**AND**

**(2) [PROVIDER]**

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**DYNAMIC PURCHASING SYSTEM AGREEMENT FOR  
THE PROVISION OF  
TRANSPORT SERVICES TO  
THE LONDON BOROUGH OF BEXLEY**

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**THIS AGREEMENT** is made on

2025

**BETWEEN:-**

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BEXLEY** whose principal place of business is at Civic Offices, 2 Watling Street, Bexleyheath Kent DA6 7AT ("**the Council**"); and
- (2) **[PROVIDER]** (Company Number: **[REDACTED]**) whose registered office is at **[REDACTED]** (the "**Provider**").

**BACKGROUND**

- (A) The Council placed a contract notice in the UK e-notification Find a Tender Service ("FTS") seeking responses to its Request to Participate from potential providers for the provision of transport services under the Dynamic Purchasing System established by the Council in accordance with Regulation 34 of the Public Contracts Regulations 2015.
- (B) The Provider submitted a completed Request to Participate in response to the contract notice and on the basis of the Provider's Request to Participate the Council admitted the Provider onto the Dynamic Purchasing System to be able to provide transport services to the Council on a call-off basis.
- (C) This Agreement sets out the award and ordering procedure for Services which may be required, the terms and conditions for any Contract which may be concluded, and the obligations of the Provider during and after the term of this Agreement.
- (D) The Council will place Orders for the Services via the Technology on the terms and conditions of Contract set out in Schedule 5 to this Agreement. The terms and conditions of Contract shall be assigned to any Order placed through these arrangements.
- (E) The Parties acknowledge that there is no guarantee or exclusivity of work to the Provider or to any other provider under these arrangements.
- (F) The Dynamic Purchasing System shall be managed by the Council and potential providers may apply to be appointed to the Dynamic Purchasing System in accordance with the information contained in the DPS Application Guide.

**IT IS AGREED** as follows:-

**1. INTERPRETATION**

- 1.1 Unless the context otherwise requires, the following words and expressions shall have the following meanings:-

<b>"Accreditation and Enrolment"</b>	means the process of evaluation of a Provider's Request to Participate and the subsequent admittance to the DPS of Providers that fulfil the Council's Selection Criteria.
<b>"Agreement"</b>	means this agreement together with all Schedules and Appendices hereto
<b>"Approval" and</b>	means the prior written approval of the Council
<b>"Approved"</b>	

<b>"Audit"</b>	means an audit carried out pursuant to Clause 16
<b>"Auditor"</b>	means the Council's internal auditor and/or the National Audit Office or an auditor appointed by the Audit Commission as the context requires
<b>"Authorised Officer"</b>	means the Deputy Director, Educational Achievement & Inclusion or any other person appointed by the Council and notified to the Provider in writing to act as the Authorised Officer and/or his/her assistant for the Contract
<b>"Award Criteria"</b>	means the Council's Award Criteria for Contracts referred to in the DPS Operational Guide and as may be further specified in the ITT as the context requires
<b>"Bribery Act"</b>	means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.
<b>"Call-Off"</b>	means the issue of an Invitation to Tender in relation to any Contract to be awarded under the Dynamic Purchasing System to a Provider admitted to the Dynamic Purchasing System
<b>"Change in Law"</b>	means any change in Law which impacts on the performance of the Services and which comes into force after the Commencement Date.
<b>"Commencement Date"</b>	means 23 <sup>rd</sup> February 2025 or such later date as the Council may notify the Provider in writing
<b>"Commercially Sensitive Information"</b>	means the particular Confidential Information as may be set out in Schedule 8 hereto
<b>"Comparable Supply"</b>	means the supply of services to another customer of the Provider that are the same or similar to any of the Services.
<b>"Complaint"</b>	means any formal complaint raised by the Council in relation to the performance of the Agreement or any Contract in accordance with Clause 34
<b>"Confidential Information"</b>	means any information which has been designated as confidential by any Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which would or would be likely to prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights, know-how of either Party and all personal data and sensitive data within the meaning of the DPA 2018/UK GDPR and any Commercially Sensitive Information as may be set out in Schedule 8 hereto.
<b>"Contract" or "Service Agreement"</b>	means the legally binding call-off agreement (made pursuant to the provisions of this Agreement) for the provision of Services made between the Council and the Provider, comprising an Order and the Contract Terms and Conditions
<b>"Contracting Authority"</b>	has the meaning given in Regulation 2 of the Public Contracts Regulations 2015

<b>“Contract Period”</b>	has the meaning given in the Contract Terms and Conditions
<b>“Contract Price”</b>	has the meaning given in clause 13.1
<b>“Contract Terms and Conditions”</b>	means the terms and conditions of a Contract as set out in Schedule 5
<b>“Contract Manager”</b>	means the person nominated by the Provider in accordance with Clause 15
<b>“Controller”</b>	has the meaning given in the UK GDPR
<b>“Council Data”</b>	<p>(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</p> <p>(i) supplied to the Provider by or on behalf of the Council; and/or</p> <p>(ii) which the Provider is required to generate, process, store or transmit pursuant to this Agreement; or</p> <p>(b) any Personal Data for which the Council is the Data Controller.</p>
<b>"Cyber Security Incident"</b>	means the loss or unauthorised destruction, alteration, disclosure of, access to, or control of a Digital Environment
<b>"Cyber Security"</b>	means technologies, processes, procedures and controls that are designed to protect Digital Environments from Cyber Security Incidents
<b>“Data Loss Event”</b>	means any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach
<b>“Data Protection Impact Assessment”</b>	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data carried out in accordance with Section 3 of the UK GDPR and sections 64 and 65 of the DPA 2018.
<b>“Data Protection Legislation”</b>	means (i) all applicable UK law relating to the processing of personal data and privacy, including but not limited to the UK GDPR, and (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; and (iii) (to the extent that it may be applicable) the EU GDPR) The UK GDPR and EU GDPR are defined in section 3 of the DPA 2018
<b>“Data Protection Officer”</b>	has the meaning given in the UK GDPR.
<b>“Data Subject”</b>	has the meaning given in the UK GDPR.
<b>“Data Subject Request”</b>	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.

<b>“Default”</b>	means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of the Agreement and in respect of which such Party is liable to the other
<b>"Digital Environment"</b>	means the information technology systems, operational technology systems, networks, internet-enabled applications or devices and the data contained within such systems
<b>“DPA 2018”</b>	means the Data Protection Act 2018
<b>“DPS Application Guide”</b>	means the guide produced by the Council detailing the process for joining the DPS in the form included in Schedule 10 (DPS Application Guide) hereto as may be updated by the Council from time to time
<b>“DPS Operational Guide”</b>	means the guide produced by the Council detailing the operation of the DPS in the form included in Schedule 11 (DPS Operational Guide) hereto as may be updated by the Council from time to time
<b>“Dynamic Purchasing System or “DPS””</b>	means the electronic system which is (a) established by the Council hereunder to purchase transport Services; and (b) open throughout its duration for the admission of economic operators which (i); submit a Request to Participate in accordance with the requirements of the Council and (ii) satisfy the Selection Criteria.
<b>"Environmental Information Regulations" or “EIR”</b>	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations
<b>“Exit Day”</b>	has the meaning given in the European Union (Withdrawal) Act 2018
<b>“FOIA”</b>	means the Freedom of Information Act 2000 and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation
<b>“Fraud”</b>	means any fraudulent act constituting an offence under Laws or any attempt to defraud any public body in relation to this Agreement
<b>“General Change in Law”</b>	means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Provider) or which affects or relates to a Comparable Supply.
<b>“Good Industry Practice”</b>	means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances
<b>“Index”</b>	means the ONS Index D7EG Passenger Transport by Road as published by the Office of National Statistics or any government department upon which duties in connection with the compilation and maintenance of the Index have devolved

<b>“Information”</b>	has the meaning given under Section 84 of the Freedom of Information Act 2000
<b>“Intellectual Property Rights” or “IPR”</b>	means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off
<b>“Invitation to Tender”, “ITT” or “Requirement”</b>	means the invitation to tender documentation issued by the Council in relation to a Call-Off under the DPS
<b>“Joint Controllers”</b>	has the meaning given in Article 26 of the UK GDPR.
<b>“Law”</b>	means any applicable Act of Parliament (including amendments thereto), subordinate legislation within the meaning of Section 2(1) of the Interpretation Act 1978, exercise of any statutory power or duty, retained case law, retained EU law and retained general principles of EU law (each within the meaning of Section 6 of the European Union (Withdrawal) Act 2018, regulatory policy, guidance or industry code or code of practice, judgment of a relevant court of law, or directives or requirements of any Regulatory Body of which the Provider is bound to comply
<b>“Law Enforcement Processing”</b>	means processing under Part 3 of DPA 2018.
<b>“Lots” or “Service Categories”</b>	means the lots advertised in the FTS e-notice and referred to in the Procurement Documents being Adult Social Care & Health or Children's Services
<b>“Malicious Software”</b>	means any software program or code intended to destroy, interfere with, corrupt or have a disruptive effect on the Digital Environment, whether or not its operation is immediate or delayed, and whether such software program or code is introduced wilfully, negligently or without knowledge of its existence
<b>“Management Information”</b>	means the management information specified in Schedule 6
<b>“Month”</b>	means a calendar month
<b>“Offer”</b>	has the meaning given for the term “Tender” below
<b>“Order”</b>	means an order for Services served by the Council on the Provider via the Technology incorporating (without limitation) the ITT, the Contract Terms and Conditions and the Tender in accordance with the Ordering Procedures
<b>“Ordering Procedures”</b>	means the procedures specified in Clause 7 (Establishing the DPS, Call-Off and Ordering Procedures) and in the DPS Operational Guide (as the case may be)



<b>“Parent Company”</b>	means any company which is the ultimate Holding Company of the Provider and which is either responsible directly or indirectly for the business activities of the Provider or which is engaged in the same or similar business to the Provider. <b>Holding Company</b> shall have the meaning ascribed by section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto
<b>“Party”</b>	means the Council and/or the Provider as the context requires
<b>“Personal Data”</b>	has the meaning given in the UK GDPR.
<b>“Personal Data Breach”</b>	has the meaning given in the UK GDPR
<b>“Pricing Matrices”</b>	means the pricing matrices set out in Schedule 3.
<b>“Processor”</b>	has the meaning given in the UK GDPR.
<b>“Procurement Documents”</b>	has the meaning given in the Public Contracts Regulations 2015
<b>“Prohibited Act”</b>	<p>means any of the following:</p> <ul style="list-style-type: none"> <li>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to: <ul style="list-style-type: none"> <li>(i) induce that person to perform improperly a relevant function or activity; or</li> <li>(ii) reward that person for improper performance of a relevant function or activity;</li> </ul> </li> <li>(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;</li> <li>(c) committing any offence: <ul style="list-style-type: none"> <li>(i) under the Bribery Act;</li> <li>(ii) under legislation creating offences concerning fraudulent acts;</li> <li>(iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Council; or</li> <li>(iv) defrauding, attempting to defraud or conspiring to defraud the Council.</li> </ul> </li> </ul>
<b>“Protective Measures”</b>	means appropriate technical and organisational measures designed to ensure compliance with obligations of the Parties arising under Data Protection Legislation and this Agreement 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 such measures adopted by it including any outlined in Appendix 1 to Schedule 5.
<b>“Provider”</b>	means the economic entity with whom the Council enters into the Agreement

<b>“Regulations”</b>	means the Public Contracts Regulations 2015
<b>“Regulatory Bodies”</b>	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the Council and “Regulatory Body” shall be construed accordingly.
<b>“Request for Information”</b>	shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply)
<b>“Request to Participate”</b>	means the accreditation & enrolment documentation issued by the Council (including the Selection Questionnaire) to be completed by Providers seeking admission onto the Dynamic Purchasing System
<b>“Requirement”</b>	has the meaning given for the term “Invitation to Tender” / “ITT” above.
<b>“Selection Criteria”</b>	means the criteria set by the Council to evaluate the responses to the Request to Participate submitted by Providers for their admission onto the Dynamic Purchasing System and which Providers must meet and maintain throughout the Term
<b>“Selection Questionnaire” or “SQ”</b>	means the accreditation & enrolment questionnaire issued by the Council as part of the Request to Participate and completed by the Provider seeking admission onto the Dynamic Purchasing System
<b>“Self-Billing Agreement”</b>	means the agreement between the Council and the Provider included hereto as Schedule 9 (Self-Billing Agreement), whereby the Provider agrees to receive pre-populated Self-Bill Invoices generated via the Technology for the billing and payment of the Contract Price.
<b>“Self-Bill Invoice”</b>	means the invoice produced via the Technology on behalf of the Provider through which the Council shall process payment of the Contract Price.
<b>“Service Agreement”</b>	has the meaning given for the term “Contract” above.
<b>“Service Categories”</b>	has the meaning given for the term “Lots” above.
<b>“Services”</b>	means the transport services detailed in Schedule 1 and in the Order
<b>“Service User”</b>	means the person for whom Services are commissioned (and their authorised representatives, as the case may be) in accordance with the Contract.
<b>“Specification”</b>	means the Council's specification attached at Schedule 1 hereto
<b>“Staff”</b>	means all persons employed or engaged by the Provider to perform its obligations under this Agreement or Contracts including the Provider's servants, agents, suppliers and sub-contractors.
<b>“Sub-processor”</b>	means any third Party appointed to process Personal Data on behalf of that Processor related to this Agreement.

<b>"Technology"</b>	the proprietary web-based software owned and operated by the Technology Provider, currently called SProc.Net or such other technology as may be notified by the Council.
<b>"Technology Provider"</b>	the owner and provider of the Technology, currently The Access Group Limited and/or Access UK Limited or such other technology provider as may be notified by the Council.
<b>"Tender" or "Offer"</b>	means the document(s) submitted by the Provider to the Council via the Technology in response to the Council's ITT
<b>"Tenderer"</b>	means a company, organisation, individual or other entity participating in the tender process
<b>"Term"</b>	means the period of three (3) years four (4) months commencing on the Commencement Date or until 31 <sup>st</sup> July 2028 (whichever date is the earlier) and subject to early termination of this Agreement in accordance with the terms hereof
<b>"UK GDPR"</b>	the UK Data Protection Regulation has the meaning given in section 3(10) of the DPA 2018 as supplemented by section 205(4) of the DPA 2018
<b>"Variation Procedure"</b>	means the procedure set out in Schedule 7
<b>"Working Day"</b>	means any day other than a Saturday or Sunday or public holiday in England and Wales

- 1.2 The interpretation and construction of this Agreement shall all be subject to the following provisions:-
- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa; references to one gender includes a reference to the other genders;
  - 1.2.2 references to a clause is a reference to the whole of that clause unless stated otherwise;
  - 1.2.3 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended, extended, consolidated or re-enacted by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted, and shall also include a reference to any subordinate legislation made under it, relevant guidance or code of practice issued by a competent authority for the time being in force;
  - 1.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
  - 1.2.5 the Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement shall include the Schedules;
  - 1.2.6 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
  - 1.2.7 headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement; and

- 1.2.8 in the event and to the extent only of any conflict between the Clauses and the remainder of the Schedules, the Clauses shall prevail over the remainder of the Schedules.

## **2. STATEMENT OF INTENT**

- 2.1.1 In delivering the Services, the Provider shall operate at all times in accordance with any and all of the Council's published policies and objectives.
- 2.1.2 The Provider has been appointed and the Council has entered into this Agreement on the basis of the Provider's response to the Request to Participate and, in particular, the representations made by the Provider to the Council in relation to its competence, professionalism and ability to provide the Services in an efficient and cost effective manner.
- 2.1.3 The Provider acknowledges that it will not be able to bid for any further competitions under the DPS following the issue of any Invitation to Tender if it has not signed and returned this Agreement;
- 2.1.4 The Provider shall perform all Contracts entered into with the Council in accordance with:
- (a) The requirements of this Agreement;
  - (b) The terms and conditions of the Contract; and
  - (c) The relevant Legislation, Codes of Conduct and Regulations governing the delivery of the Services.

## **PART ONE: DPS ARRANGEMENTS AND AWARD PROCEDURE**

### **3. TERM OF AGREEMENT**

- 3.1 The Agreement shall take effect on the Commencement Date and (unless it is otherwise terminated in accordance with the terms of this Agreement) shall continue in force for a period of four (4) years or until 23rd February 2029 (whichever date is the earlier).
- 3.2 Not used

### **4. SCOPE OF AGREEMENT**

- 4.1 This Agreement governs the relationship between the Council and the Provider in respect of the provision of the Services by the Provider to the Council.
- 4.2 The Council appoints the Provider to the Dynamic Purchasing System and, subject to the terms of this Agreement, the Provider shall be eligible to receive Orders for the Services during the Term. The Council may require the re-submission of an updated Selection Questionnaire or any information provided as part of the Accreditation or Enrolment process and may perform audit checks of any Provider to ensure it continues to meet the minimum standards of the DPS throughout the Term.
- 4.3 The Council (subject to the following provisions of this Clause 4) may at its absolute discretion and from time to time order Services from the Provider in accordance with the Ordering Procedures during the Term. If there is a conflict between Clause 7 (Establishing the DPS, Call-Off and Ordering Procedures) and the Regulations, the Council shall comply with the Regulations.

- 4.4 The Provider acknowledges that there is no obligation for the Council to purchase any Services from the Provider during the Term.
- 4.5 No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Council in respect of the total quantities or values of the Services to be ordered by it pursuant to this Agreement and the Provider acknowledges and agrees that it has not entered into this Agreement on the basis of any such undertaking, statement, promise or representation.
- 4.6 If and to the extent that any Services under this Agreement are required the Parties shall:
- 4.6.1 enter into a contract for the Services in accordance with the Contract Terms and Conditions;
- 4.6.2 comply with the Ordering Procedures.

#### **4A ROLE OF TECHNOLOGY PROVIDER**

- 4A.1 The Provider acknowledges and agrees that the Technology Provider is authorised by the Council on its behalf (without limitation) to:
- 4A.1.1 conduct initial checks in relation to the Accreditation and Enrolment of Providers who have requested to be admitted to the DPS;
- 4A.2 not used;
- 4A.3 monitor the Provider's ongoing compliance with the Selection Criteria and may validate the information provided by the Provider with third party agencies or professional bodies;
- 4A.4 collect and collate Management Information on behalf of the Council.
- 4A.2 Unless otherwise notified in writing by the Council, the Provider agrees to use the Technology for (without limitation) the submission of its completed Request to Participate, Tenders, invoices and for all transactions under the Dynamic Purchasing System in accordance with the DPS Operational Guide.

#### **5. PROVIDER'S APPOINTMENT**

The Council appoints the Provider as a potential provider of the Services referred to in the Specification and the Provider shall be eligible to be considered for the award of Orders for such Services by the Council during the Term.

#### **6. NON-EXCLUSIVITY**

The Provider acknowledges that, in entering this Agreement, no form of exclusivity or volume guarantee has been granted by the Council for Services from the Provider and that the Council is at all times entitled to enter into other contracts and arrangements with other providers for the provision of any or all services which are the same as or similar to the Services.

#### **7. ESTABLISHING THE DPS, CALL-OFF AND ORDERING PROCEDURES**

##### **Establishing the Dynamic Purchasing System**

- 7.1 The Dynamic Purchasing System is established by the Council under the Restricted Procedure subject to the provisions in regulation 34 of the Regulations.
- 7.2 The Council shall:

- 7.2.1 operate the DPS in line with the DPS Operational Guide and may update the DPS Operational Guide at any time;
- 7.2.2 offer Providers unrestricted, direct access to relevant template documentation relating to the Dynamic Purchasing System by electronic means during the Term;
- 7.2.3 allow Providers the opportunity to submit a completed Request to Participate within the Dynamic Purchasing System via the Technology as part of the Accreditation and Enrolment process;
- 7.2.4 use reasonable endeavours to complete the evaluation of a completed Request to Participate within 10 Working Days from the date of its submission (but failing that within such longer period as the Council may determine);

### **Call-Off Procedure**

- 7.3 The Council ordering Services under the Dynamic Purchasing System shall:-
  - 7.3.1 identify the relevant Services/Lots which its Service requirements fall into;
  - 7.3.2 invite all Providers admitted to the relevant Lot (where applicable) to submit Tenders via the Technology for each Call-Off under the DPS;
  - 7.3.3 issue the ITT setting out the Council's requirements and including such further information as required and a deadline by which the Providers' Tenders must be submitted;
  - 7.3.4 evaluate all Tender submissions received via the Technology within the ITT deadline in accordance with the relevant Award Criteria;
  - 7.3.5 once the evaluation is complete the preferred Provider will be selected and all Providers will be notified of the award decision and provided with feedback relating to their submission; and
  - 7.3.6 a contract notice will be published on FTS (as applicable).

### **Ordering Procedure**

- 7.4 Subject to clause 7.3, the Council may place an Order by serving an Order via the Technology on the Provider.
- 7.5 The Provider agrees to submit all Tenders via the Technology and that all Tenders shall remain open for acceptance for thirty (30) days (or such other period specified in the Invitation to Tender issued by the Council in accordance with the Ordering Procedures).

### **Accepting and Declining Orders**

- 7.6 Following receipt of an Order, the Provider shall promptly and in any event within a reasonable period (taking into account all relevant circumstances in relation to the subject matter and nature of an Order) determined by the Council and notified to the Provider in writing either in the ITT or at the same time as the submission of the Order (which in any event shall not exceed two (2) Working Days) acknowledge receipt of the Order via the Technology and either:-
  - 7.6.1 notify the Council that it declines to accept the Order; or
  - 7.6.2 notify the Council that it accepts the Order
 in accordance with the Ordering Procedures.

- 7.7 Where the Council has issued an Order and the Provider:-
- 7.7.1 notifies the Council that it declines to accept an Order; or
- 7.7.2 the time-limit referred to in Clause 7.6 has expired;
- then the offer from the Council to the Provider shall lapse and the Council may offer that Order via the Technology to the Provider that submitted the next most economically advantageous tender in accordance with the relevant Award Criteria and having due regard to the Provider's ability to meet the Council's requirement.
- 7.8 The Provider in agreeing to accept such an Order pursuant to Clause 7.6 above shall enter a Contract with the Council for the provision of Services referred to in that Order.
- 7.9 If the Provider modifies or imposes conditions on the fulfilment of an Order, then the Council may either at its sole discretion (and subject always to compliance with the Regulations):
- 7.9.1 re-issue the Order incorporating the modifications or conditions; or
- 7.9.2 treat the Provider's response as notification of its inability to fulfil the Order and the provisions of clause 7.7 shall apply.
- 7.10 The Parties acknowledge and agree that the placement of an Order is an "invitation to treat" by the Council. Accordingly, the Provider's notification that it accepts the Order shall constitute its offer to the Council. The Council by confirming its acceptance of the Provider's offer completes the formation of a Contract.
- 7.11 The Parties agree that it is the reasonable expectation of the Council that the Provider shall accept all Orders notified to it pursuant to this Clause 7 (Establishing the DPS, Call-Off and Ordering Procedures). The Provider shall use best endeavours to accept all such Orders and where an Order is declined provide evidence in writing that it has complied with this clause promptly at the request of the Council.

## **PART TWO: PROVIDER'S GENERAL OBLIGATIONS**

### **8. WARRANTIES AND REPRESENTATIONS**

- 8.1 The Provider warrants and represents to the Council that:-
- 8.1.1 it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform its obligations under this Agreement;
- 8.1.2 this Agreement is executed by a duly authorised representative of the Provider;
- 8.1.3 in entering into this Agreement or any Contract it has not committed any Fraud;
- 8.1.4 as at the Commencement Date, all information, statements and representations contained in the Accreditation and Enrolment, Request to Participate and the SQ response remain true, accurate and not misleading save as may have been specifically disclosed in writing to the Council prior to the execution of the Agreement;

- 8.1.5 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under this Agreement and any Contract which may be entered into with the Council;
  - 8.1.6 it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Agreement and any Contract which may be entered into with the Council;
  - 8.1.7 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue;
  - 8.1.8 it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under this Agreement and any Contract which may be entered into with the Council;
  - 8.1.9 neither it nor any of its employees nor anyone acting on its behalf has committed a Prohibited Act;
  - 8.1.10 it has not directly or indirectly canvassed any member or official of the Council with a view to gaining more favourable consideration of its Tender and has complied in all respects with the conditions and instructions of tendering;
  - 8.1.11 it has not submitted the Tender or entered into this Agreement in reliance upon any representation or statement (whether made orally in writing or otherwise) which may have been made by the Council;
  - 8.1.12 it is of sound financial standing and has sufficient working capital, staff and other resources available to it to carry out its obligations under the Agreement and perform the Services in accordance with any Contract for the entire duration of the Contract, (including any extension);
  - 8.1.13 it will make available to the Council, if requested, copies of its audited accounts within 30 days of the formal adoption of such accounts by the Provider; and
- 8.2 The Provider shall repeat the warranties and representations throughout the Term.

## **9. PREVENTION OF BRIBERY AND FRAUD**

- 9.1 The Provider:
- (a) shall not, and shall procure that any of its agents, contractors or sub-contractors and all Staff shall not, in connection with this Agreement commit a Prohibited Act;
  - (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the entering into this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Agreement.
- 9.2 The Provider shall if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;



- 9.3 The Provider shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any agents, contractors or sub-contractors or Staff from committing a Prohibited Act and shall enforce it where appropriate.
- 9.4 If any breach of clause 9.1 is suspected or known, the Provider must notify the Council immediately.
- 9.5 If the Provider notifies the Council that it suspects or knows that there may be a breach of clause 9.1, the Provider must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation. This obligation shall continue for 12 years following the expiry or termination of this Agreement.
- 9.6 If the Provider, its agents, contractors or sub-contractors or Staff (in all cases whether or not acting with the Provider's knowledge) breaches clause 9.1 the Council may:
- (a) terminate the Agreement by written notice with immediate effect and recover from the Provider the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council making other arrangements for the supply of the Services and any additional expenditure incurred by the Council throughout the remainder of the Agreement term; and/or
  - (b) recover in full from the Provider any other loss sustained by the Council and any Service User in consequence of any breach of that Clause.
- 9.7 Any notice of termination under clause 9.6 must specify:
- (a) the nature of the Prohibited Act;
  - (b) the identity of the party whom the Council believes has committed the Prohibited Act; and
  - (c) the date on which this Agreement will terminate.
- 9.8 Despite clause 35 (Dispute Resolution), any dispute relating to:
- (a) the interpretation of clause 9.1; or
  - (b) the amount or value of any gift, consideration or commission,
- shall be determined by the Council and its decision shall be final and conclusive.
- 9.9 Any termination under this clause 9 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

## **10. CONFLICTS OF INTEREST**

- 10.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any Staff are placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider or Staff and the duties owed to the Council under the provisions of this Agreement or any Contract. The Provider will disclose to the Council full particulars of any such conflict of interest which may arise.
- 10.2 The Provider and its Staff shall act with due diligence and in accordance with ethical business standards. The Provider must have appropriate procedures and controls in place to ensure that actual or potential conflicts of interest are avoided.
- 10.3 The Council reserves the right to terminate this Agreement immediately by giving notice in writing to the Provider and/or to take such other steps it deems necessary where, in

the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Council under the provisions of this Agreement or any Contract. The action of the Council pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

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

## **11. NOT USED**

## **12. CONTRACT PERFORMANCE**

- 12.1 The Provider shall perform all Contracts entered into with the Council in accordance with:-

12.1.1 the requirements of this Agreement; and

12.1.2 the terms and conditions of the respective Contracts.

- 12.2 In the event of, and only to the extent of any conflict or inconsistency between the terms and conditions of this Agreement, the terms and conditions of a Contract such conflict or inconsistency shall be resolved according to the following order of priority:

12.2.1 the Order except the Contract Terms and Conditions and the Provider's Tender

12.2.2 the Contract Terms and Conditions

12.2.3 the terms and conditions of this Agreement and the Schedules to the Agreement; and

12.2.4 any other document referred to in the Contract; and

12.2.5 the Provider's Tender

## **13. PRICES FOR SERVICES**

- 13.1 The price payable to the Provider by the Council under a Contract for Services shall be set out in the Order (the "**Contract Price**").

- 13.2 The Contract Price shall be fixed until the first anniversary of the Contract Period and thereafter shall be subject to clause 3.1 of the Contract Terms and Conditions.

- 13.3 The Council shall, in addition to the Contract Price pay the Provider a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

- 13.4 Unless otherwise notified by the Council, the Parties shall comply with the Self-Billing Agreement for all invoicing and payment transactions for Contracts made pursuant to this Agreement.

- 13.5 No claim by the Provider will be allowed for any addition to the Contract Price for any Contract on the grounds of any matter relating to any document forming part of the Contract or any ambiguity or discrepancy therein on which the Provider could have satisfied itself by reference to the Customer before the Commencement Date of the Contract.

- 13.6 Any disputes regarding invoices shall be dealt with in accordance with clause 35 (Disputes) of the Contract.

#### **14. NON-DISCRIMINATION**

- 14.1 The Provider shall:

- 14.1.1 Perform its obligations hereunder in accordance with:

- (a) all applicable equality Law including but not limited to the Equality Act 2010 and the Human Rights Act 1998 (whether in relation to race, sex, gender reassignment, age, religion or belief, disability, sexual orientation, pregnancy, maternity or otherwise)
- (b) the Council's equality and diversity policies as may be provided to the Provider from time to time;
- (c) any other requirements and instructions which the Council reasonably imposes in connection with any equality obligations imposed on the Council at any time under applicable equality Law; and

- 14.1.2 take all necessary steps, and inform the Council of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

- 14.2 The Provider shall comply with the provisions of clause 14.1 both in relation to the Provider's employment practices and in relation to the provision of the Services under any Contract, including the use of any Premises (as defined in Schedule 5 hereto).

- 14.3 The Provider shall adopt and implement policies and practices which ensure that it complies with the obligations set out above.

- 14.4 The Provider shall provide such information as the Council may reasonably request for the purpose of assessing the Provider's compliance with this Clause.

#### **14A ANTI – SLAVERY AND HUMAN TRAFFICKING**

- 14A.1 The Provider represents and warrants that:

- (a) neither the Provider nor any of its Staff or directors have been convicted of any offence involving slavery or human trafficking nor have they been or are the subject of any investigation, inquiry, or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking; and
- (b) it has implemented due diligence procedures to ensure that there is no slavery or human trafficking in its supply chains.

- 14A.2 In performing its obligations hereunder the Provider shall:

- (a) comply with all applicable anti-slavery and human trafficking Laws, including but not limited to the Modern Slavery Act 2015;
- (b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and
- (c) use reasonable endeavours to ensure that its supply chains shall comply with all applicable anti-slavery and human trafficking Laws, including but not limited to the Modern Slavery Act 2015.

- 14A.3 The Provider shall notify the Council as soon as it becomes aware of:
- (d) any breach or potential breach of clause 14A.2(a) above
  - (e) any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Agreement or any Contract.
- 14A.4 If the Provider, its agents, contractors or sub-contractors or Staff breaches anti-slavery or human trafficking Laws and/or this Clause 14A the Council may:
- (a) terminate the Agreement by written notice with immediate effect and recover from the Provider the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the supply of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period; and/or
  - (b) recover in full from the Provider any other loss sustained by the Council in consequence of the breach.
- 14A.5 Any notice of termination under clause 14A.4 must specify:
- (a) the nature of the breach of anti-slavery or human trafficking Laws and/or this clause 14A;
  - (b) the identity of the party whom the Council believes has committed the breach of anti-slavery or human trafficking Laws; and
  - (c) the date on which this Agreement will terminate.

#### **14B STATUTORY REQUIREMENTS, CONSENTS AND CHANGE IN LAW**

- 14B.1 The Provider shall be responsible for obtaining all licenses, authorisations, consents or permits required in relation to the performance of the Agreement and any Contract.
- 14B.2 The Provider shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Agreement and any Contract nor be entitled to an increase in the Contract Price as a result of:
- 14B.2.1 a General Change in Law; or
  - 14B.2.2 a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Commencement Date.
- 14B.3 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in Clause 14B2.2), the Provider shall:
- 14B3.1 notify the Council as soon as reasonably practicable of the likely effects of that change, including:
    - (a) Whether any variation is required to the Services, the Contract Price or this Agreement; and
    - (b) Whether any relief from compliance with the Provider's obligations is required; and
  - 14B3.2 Provide the Council with evidence;

- (a) That the Provider has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its sub-contractors;
- (b) As to how the Specific Change in Law has affected the cost of providing the Services; and
- (c) Demonstrating that any expenditure that has been avoided has been taken into account in amending the Contract Price.

14B.4 Following notification and receipt of evidence in accordance with clause 14B.3 the Council may in its absolute discretion request a variation to the Services, Contract Price and/or the Agreement and the provisions of Clause 14B.5 and Clause 14B.6 shall apply.

14B.5 Where the Council requests a variation under Clause 14B.4, it shall specify a time limit within which the Provider shall respond. The time limit shall be reasonable having regard to the nature of the variation. If the Provider accepts the variation it shall confirm the same in writing. Any services carried out by the Provider pursuant to any variation shall be carried out to the standards set out in this Agreement.

14B.6 In the event that the Parties are unable to agree the variation to the Specification, the Contract Price and/or the Agreement, the Council may:

- (a) allow the Provider to fulfil its obligations under the Agreement without implementing the variation; or
- (b) terminate the Agreement with immediate effect

### **PART THREE: PROVIDER'S INFORMATION OBLIGATIONS**

## **15. CONTRACT MANAGEMENT AND PROVISION OF MANAGEMENT INFORMATION**

15.1 The Provider shall appoint a suitably qualified competent and experienced Contract Manager fluent in the English language who will be in full charge of the performance of the Provider's obligations under the Agreement and who will be empowered to act on behalf of the Provider for all purposes connected thereto. Such person is to be continuously available during any specified operating hours, or at such other times as specified by the Council. Any notice, information, instruction or other communication given or made to the Contract Manager shall be deemed to have been given or made to the Provider. The Contract Manager shall be available to meet the Authorised Officer at all reasonable times during the term of this Agreement or any Contract.

15.2 The Provider shall forthwith give notice in writing to the Authorised Officer of the identity, and office addresses, telephone numbers and e-mail address of the person appointed as Contract Manager and of any person appointed to act as deputy for the Contract Manager together with the telephone numbers and e-mail addresses of the Provider's

employees who will act in the absence of the Contract Manager and/or the deputy Contract Manager.

- 15.3 The Provider will comply with the reasonable instructions given by the Authorised Officer or a deputy and where the instruction would amount to a variation to this Agreement, such variation will be dealt with in accordance with this Agreement.
- 15.4 The Authorised Officer is authorised to negotiate the terms of any Orders issued by the Council and is responsible for ensuring that the Services meet or continues to meet the needs of the Council.
- 15.5 The Provider shall submit Management Information to the Council in the form set out in Schedule 6 throughout the Term and thereafter in respect of any Contract entered into with the Council.
- 15.6 Not used.
- 15.7 The Council may make changes to the Management Information which the Provider is required to supply and shall give the Provider at least one (1) month's written notice of any changes.
- 15.8 The Authorised Officer and the Contract Manager shall meet in accordance with the details set out in the Specification and/or **Error! Reference source not found.** and the Provider shall, at each meeting, present its previously circulated Management Information in the format set out in that Schedule.

## **16. AUDIT**

- 16.1 The Provider shall keep and maintain until twelve (12) years after the date of termination or expiry (whichever is the earlier) of this Agreement (or as long a period as may be agreed between the Parties), full and accurate records of the operation of this Agreement including the Services provided under it, all expenditure made by the Provider, all payments made by the Council and the Provider's compliance with Data Protection Legislation and the FOIA.
- 16.2 The Provider shall on request afford the Council or its representatives such access to those records as may be required in connection with the Agreement and any Contract.

## **17. CONFIDENTIALITY**

- 17.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Agreement, each Party shall:
  - (a) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
  - (b) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 17.2 Clause 17.1 shall not apply to the extent that:
  - 17.2.1 such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the EIR pursuant to clause 19.5 (Freedom of Information);
  - 17.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

- 17.2.3 such information was obtained from a third party without obligation of confidentiality;
  - 17.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or
  - 17.2.5 it is independently developed without access to the other party's Confidential Information.
  - 17.2.6 such disclosure is required to enable a determination to be made under the dispute resolution procedure or in connection with a dispute between the Provider and one of its sub-contractors;
  - 17.2.7 the disclosure is by the Council of any Confidential Information which the Provider (acting reasonably) has agreed is no longer commercially sensitive.
- 17.3 The Provider may only disclose the Council's Confidential Information to its Staff and any sub-contractors who are directly involved in the provision of the Services and who need to know the information in order to perform the Services, and shall ensure that such Staff and any sub-contractors are aware of and shall comply with these obligations as to confidentiality.
- 17.4 The Provider shall not, and shall procure that its Staff and any sub-contractors do not, use any of the Confidential Information received otherwise than for the purposes of this Agreement.
- 17.5 Nothing in this Agreement shall prevent the Council from disclosing the Provider's Confidential Information:
- 17.5.1 to any Government Department, Contracting Authority, or regulatory body who shall be entitled to further disclose the Confidential Information to other Government Departments, Contracting Authorities or regulatory bodies.
  - 17.5.2 to any consultant, contractor or other person engaged by the Council;
  - 17.5.3 for the purpose of the examination and certification of the Council's accounts;
  - 17.5.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 or Sections 44 and 46 of the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Council has used its resources.
- 17.7 The Council shall use reasonable endeavours to ensure that any Government Department, Contracting Authority, regulatory body, employee, third party or Sub-contractor to whom the Provider's Confidential Information is disclosed pursuant to clause 17.5 is made aware of the Council's obligations of confidentiality.
- 17.8 Nothing in this clause 17 shall prevent any Party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.

## **18. DATA PROTECTION**

- 18.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Provider is the Processor unless otherwise specified in Appendix 1 to Schedule 5. The only processing that the Processor is authorised to do is listed in Appendix 1 to Schedule 5 by the Controller and may not be determined by the Processor. The term "processing" and any associated terms are to be read in accordance with Article 4 of the UK GDPR.

- 18.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 18.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
  - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data
- 18.4 The Processor shall, in relation to any Personal Data processed in connection with the Contract
- (a) process that Personal Data only in accordance with Appendix 1 to Schedule 5, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law
  - (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject. In the event of the Controller reasonably rejecting Protective Measures put in place by the Processor, the Processor must propose alternative Protective Measures to the satisfaction of the Controller. Failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures. Protective Measures must take 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;
  - (c) ensure that:
    - (i) Staff do not process Personal Data except in accordance with this Agreement (and in particular Appendix 1 to Schedule 5)
    - (ii) It takes reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
      - (A) are aware of and comply with the Processor's duties under this clause:
      - (B) are subject to appropriate confidentiality undertakings with the Processor 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 Controller or as otherwise permitted by this Agreement; and
  - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
  - (i) the destination country has been recognised as adequate by the UK government in accordance with Article 45 UK GDPR or section 74 of the DPA 2018;
  - (ii) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or Section 75 DPA 2018) as determined by the Controller;
  - (iii) the Data Subject has enforceable rights and effective legal remedies;
  - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data; and
  - (v) the Processor complies with its obligations under Data Protection Legislation by providing an appropriate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations);
- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

18.5 Subject to clause 18.6, the Processor shall notify the Controller immediately it:

- (a) receives a Data Subject Request (or purported Data Subject Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- (e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

18.6 The Processor's obligation to notify under clause 18.5 shall include the provision of further information to the Controller, as details become available.

- 18.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 18.5 (and insofar as possible within the timescales reasonably required by the Controller) including but not limited to promptly providing:
- (a) the Controller with full details and copies of the complaint, communication or request;
  - (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - (d) assistance as requested by the Controller following any Data Loss Event;
  - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 18.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the processing is not occasional;
  - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; and
  - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 18.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 18.10 Each Party shall designate a data protection officer if required by Data Protection Legislation.
- 18.11 Before allowing any Sub-processor to process any Personal Data, the Processor must:
- (a) notify the Controller in writing of the intended Sub-processor and processing;
  - (b) obtain the written consent of the Controller;
  - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 18 such that they apply to the Sub-processor; and
  - (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 18.12 The Processor shall remain fully liable for all acts or omissions of any Sub-processors.
- 18.13 The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 18.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may upon not less than 30 Working Days' notice

to the Provider amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

- 18.15 Where the Parties include two or more Joint Controllers as identified in Appendix 1 to Schedule 5 in accordance with GDPR Article 26, the Parties shall enter into a Joint Controller Agreement on the terms provided by the Council in replacement of Clauses E1.1-E1.14 for the Personal Data under Joint Control.

#### **18A.1 Council Data and Security Requirements**

- 18A.1.1 The Provider shall not delete or remove any proprietary notices contained within or relating to the Council Data.
- 18A.1.2 The Provider shall not store, copy, disclose, or use the Council Data except as necessary for the performance by the Provider of its obligations under this Agreement or as otherwise expressly authorised in writing by the Council.
- 18A.1.3 To the extent that Council Data is held and/or processed by the Provider, the Provider shall supply that Council Data to the Council as requested by the Council in a format reasonably requested by the Council.
- 18A.1.4 The Provider shall preserve the integrity of Council Data and prevent the corruption or loss of Council Data at all times that the relevant Council Data is under its control or the control of any sub-contractor.
- 18A.1.5 The Provider shall perform secure back-ups of all Council Data and shall ensure that up-to-date back-ups are stored off-site. The Provider shall ensure that such back-ups are available to the Council (or to such other person as the Council may direct) at all times upon request and are delivered to the Council at no less than 6 monthly intervals (or such other intervals as may be agreed in writing between the Parties).
- 18A.1.6 The Provider shall ensure that any system on which the Provider holds any Council Data, including back-up data, is a secure system that complies with the reasonable security requirements of the Council.
- 18A.1.7 If the Council Data is corrupted, lost or sufficiently degraded as a result of the Provider's Default so as to be unusable, the Council may:
- (a) require the Provider (at the Provider's expense) to restore or procure the restoration of the Council Data as soon as practicable but not later than 5 Working Days from the date of receipt of the Council's notice; and/or
  - (b) itself restore or procure the restoration of the Council Data, and shall be repaid by the Provider any reasonable expenses incurred in doing so.
- and the Provider shall be liable for the cost of the reconstitution of that data and shall reimburse the Council in respect of any charge levied for its transmission and any other costs in connection with such Default
- 18A.1.8 If at any time the Provider suspects or has reason to believe that the Council Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Provider shall notify the Council immediately and inform the Council of the remedial action the Provider proposes to take.
- 18A.1.9 The Provider shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the Parties) to check for and delete Malicious Software from the Provider's ICT systems

and the Council's ICT systems which interface with the Provider's ICT systems or which are necessary for the Council to receive the Services

18A.1.10 Notwithstanding Clause 18A.1.9, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Council Data or to the Council's ICT systems, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.

18A.1.11 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 18A.1.10 shall be borne by the Parties as follows:

- (a) by the Provider where the Malicious Software originates directly or indirectly from the Provider or from the Council Data (whilst the Council Data was under the control of the Provider) unless the Provider can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Council when provided to the Provider; and
- (b) otherwise by the Council.

18A.1.12 In relation to its Digital Environment, the Provider shall:

- (a) implement appropriate Cyber Security measures and systems and otherwise use reasonable endeavours to maintain its Cyber Security;
- (b) have in place appropriate plans and procedures to allow it to respond efficiently and effectively to a Cyber Security Incident;
- (c) regularly review its Cyber Security arrangements to verify its application in practice and maintain and keep records evidencing the same.

18A.1.13 The Provider shall:

- (a) notify the Council immediately if it becomes aware of any Cyber Security Incident that could potentially affect the Council, and respond without delay to all queries and requests for information from the Council about any Cyber Security Incident, whether discovered by the Provider or the Council, in particular noting that the Council may be required to comply with statutory or other regulatory timescales in responding to the same;
- (b) use all reasonable endeavours to ensure business continuity for the Council at all times; and
- (c) use all reasonable endeavours to cooperate with the Council in all aspects of its compliance with all applicable legislation including, without limitation, any requests for information if there is a suspected or actual Cyber Security Incident and any inspections by regulators.

18A.1.14 The Provider shall ensure throughout the Contract Period that its ICT network and information systems and its maintenance and operating procedures are sufficient to ensure compliance with this clause 18A.1 (Council Data and Security Requirements), the requirements of the Contract and the Specification.

## **19. FREEDOM OF INFORMATION**

- 19.1 The Provider acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable it to comply with its Information disclosure obligations.
- 19.2 The Provider shall:
- 19.2.1 and shall procure that its sub-contractors shall transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
  - 19.2.2 provide the Council with a copy of all Information in its possession, or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council's request; and
  - 19.2.3 provide all necessary assistance as reasonably requested by the Council to enable it to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 19.3 The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations but in doing so shall take into account any representations from the Provider acting reasonably, as to whether the Information should be disclosed or not.
- 19.4 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 19.5 The Provider acknowledges that the Council may be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Provider or the Services:
- 19.5.1 in certain circumstances without consulting the Provider; or
  - 19.5.2 following consultation with the Provider and having taken their views into account;
  - 19.5.3 provided always that where 19.5.1 applies the Council shall take reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.
- 19.6 The Provider shall ensure that all Information held on behalf of the Council is retained for disclosure and shall permit the Council to inspect such Information as reasonably requested from time to time.
- 19.7 The Provider acknowledges that any Commercial Sensitive Information submitted by the Provider is of indicative value only and that the Council may be obliged to disclose it in accordance with this Clause 19.
- 19.8 In the event that the Council incurs any costs, including but not limited to external legal costs, in seeking to maintain the withholding of any Information at the Provider's request, including but not limited to responding to information notices or lodging appeals against a decision of the Information Commissioner in relation to disclosure, the Provider shall indemnify the Council.

- 19.9 The Council shall not be liable for any loss, damage, harm or other detriment arising from the disclosure of any Information under FOIA or other applicable legislation governing access to information unless the Council has acted negligently or should properly have considered the Information that it has disclosed to have been legitimately exempted from disclosure under the provisions of the FOIA or other legislation.
- 19.10 The Provider shall indemnify the Council against any costs or losses incurred as a result of the Provider negligently disclosing any Information designated as exempt from disclosure under the provisions of the FOIA or other legislation or other information.
- 19.11 Notwithstanding any other term of this Agreement, the Provider consents to the publication of this Agreement in its entirety (including variations), subject only to the redaction of information by the Council (acting in its absolute discretion) that is exempt from disclosure in accordance with the provisions of the FOIA and Environmental Information Regulations.
- 20. PUBLICITY**
- 20.1 The Provider shall not make any press announcements or publicise this Agreement in any way or use the Council's name or logo in any promotion or marketing without the Council's prior written consent (not to be unreasonably withheld or delayed).
- 20.2 The Provider shall use all reasonable endeavours to ensure that its servants, employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with Clause 20 (Publicity).

## **PART FOUR: TERMINATION AND SUSPENSION**

### **21. TERMINATION**

#### **Termination on Default**

- 21.1 The Council may terminate the Agreement by giving written notice to the Provider with immediate effect if the Provider commits a Default and if:-
- 21.1.1 the Provider has not remedied the Default to the satisfaction of the Council within ten (10) Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the Default and requesting it to be remedied; or
  - 21.1.2 the Default is not, in the reasonable opinion of the Council, capable of remedy; or
  - 21.1.3 the Default is a material breach of the Agreement; or
  - 21.1.4 the Council has terminated a Contract awarded by the Council under this Agreement as a consequence; or
  - 21.1.5 as a result of the Default, the Provider has brought the Council into disrepute; or
  - 21.1.6 as a result of the Default, the Provider has put at serious risk the health and safety of any Service User

#### **Termination on Financial Standing**

- 21.2 The Council may terminate the Agreement by giving notice to the Provider in writing with effect from the date specified in such notice where (in the reasonable opinion of the Council), there is a material detrimental change in the financial standing and/or the credit rating of the Provider which adversely impacts on the Provider's ability to supply Services under this Agreement.

**Termination on Insolvency and Change of Control**

- 21.3 The Council may terminate this Agreement with immediate effect by notice in writing where the Provider is a company and in respect of the Provider:-

- 21.3.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- 21.3.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- 21.3.3 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986; or
- 21.3.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- 21.3.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- 21.3.6 it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or
- 21.3.7 being a "small company" within the meaning of Section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- 21.3.8 being a charity, it is removed from the register of charities following an investigation by the Charity Commission; or
- 21.3.9 any event similar to those listed in Clause 21.3.1 to Clause 21.3.8 occurs under the law of any other jurisdiction.

- 21.4 The Council may terminate this Agreement with immediate effect by notice in writing where the Provider is an individual and in respect of the Provider:-

- 21.4.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Provider's creditors; or
- 21.4.2 a petition is presented and not dismissed within 14 days or order made for the Provider's bankruptcy; or
- 21.4.3 a receiver, or similar officer is appointed over the whole or any part of the Provider's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or

- 21.4.4 the Provider is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
  - 21.4.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider's assets and such attachment or process is not discharged within 14 days; or
  - 21.4.6 he dies or is adjudged incapable of managing his affairs in accordance with the Mental Capacity Act 2005; or
  - 21.4.7 he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.
- 21.5 The Provider shall notify the Council immediately if the Provider undergoes a change of control within the meaning of Section 1124 of the Corporation Tax Act 2010 ("**Change of Control**"). The Council may terminate the Agreement by giving notice in writing to the Provider with immediate effect of:-
- 21.5.1 being notified that a Change of Control has occurred; or
  - 21.5.2 where no notification has been made, the date that the Council becomes aware of the Change of Control;

if in the reasonable opinion of the Council, the Change of Control will adversely affect the performance of the Provider's obligations under the Agreement or the provision of the Services. The Agreement shall not be terminated where an approval by the Council was granted prior to the Change of Control.

#### **Termination by the Council**

- 21.6 The Council shall have the right to terminate this Agreement and/or the Dynamic Purchasing System, or to terminate the provision of any part of the Agreement at any time by giving three Months' written notice to the Provider and all other Providers. The Parties acknowledge that if the Council exercises its rights under this Clause 21.6 it shall exercise its equivalent rights under all agreements with the Providers admitted to the Dynamic Purchasing System.

#### **Termination for failure to comply with the minimum requirements of the DPS**

- 21.7 The Council may terminate the Agreement at any time by serving written notice on the Provider if the Provider has failed to maintain the minimum standards of the Dynamic Purchasing System as set out (without limitation) in the Accreditation and Enrolment process, the Request to Participate, the Selection Questionnaire, the DPS Application Guide or the DPS Operational Guide.

#### **Further Grounds for Termination**

- 21.8 The Council may terminate the Agreement with immediate effect at any time by written notice to the Provider where any of the grounds listed below apply:
  - (a) the Agreement has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of the Public Contracts Regulations 2015;
  - (b) the Provider has, at the time of contract award, been in one of the situations referred to in regulation 57(1), including as a result of the application of regulation 57(2), of the Public Contracts Regulations 2015 and should therefore have been excluded from the procurement procedure; or



- (c) the Agreement should not have been awarded to the Provider in view of a serious infringement under the Public Contracts Regulations 2015 that has been declared by a court of competent jurisdiction.

## **22. SUSPENSION OF PROVIDER'S APPOINTMENT**

Without prejudice to the Council's rights to terminate the Agreement in Clause 21 above, if a right to terminate this Agreement arises in accordance with Clause 21, the Council may suspend the Provider's appointment in any or all Contracts by giving notice in writing to the Provider and no further Orders shall be placed with the Provider during the period of suspension. If the Council notifies the Provider in accordance with this Clause 22, the Provider's appointment shall be suspended for the period set out in the notice or such other period notified to the Provider by the Council in writing from time to time.

## **23. CONSEQUENCES OF TERMINATION AND EXPIRY**

- 23.1 Notwithstanding the service of a notice to terminate the Agreement, the Provider shall continue to fulfil its obligations under the Agreement until the date of expiry or termination of the Agreement or such other date as required under this Clause 23.
- 23.2 Unless expressly stated to the contrary, the service of a notice to terminate the Agreement shall not operate as a notice to terminate any Contract made under the Agreement. Termination or expiry of the Agreement shall not cause any Contracts to terminate automatically. For the avoidance of doubt, all Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.
- 23.3 On termination of the Agreement for any reason, the Provider shall:
- 23.3.1 immediately return to the Council all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or sub-contractors, which was obtained or produced in connection with the Agreement;
  - 23.3.2 immediately deliver to the Council all property (including materials, documents, information and access keys) provided to the Provider under the Agreement. Such property shall be handed back in good working order;
  - 23.3.3 (where relevant) assist and co-operate with the Council to ensure an orderly transition of the provision of the Services under any Contract to the Replacement Provider and/or the completion of any work in progress;
  - 23.3.4 promptly provide all information concerning the provision of the Services under any Contract which may reasonably be requested by the Council or relevant Contracting Body for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Council or (where relevant) the Replacement Provider to conduct due diligence.
- 23.4 If the Provider fails to comply with clause 23.3.1 and 23.3.2, the Council may recover possession thereof and the Provider grants a licence to the Council or its appointed agents to enter (for the purposes of such recovery) any premises of the Provider or its permitted suppliers or sub-contractors where any such items may be held.
- 23.5 Where the Contract is terminated due to the Provider's Default, the Provider shall provide all assistance under clause 23.3.3 and 23.3.4 free of charge. Otherwise, the Council shall pay the Provider's reasonable costs of providing the assistance and the Provider shall take all reasonable steps to mitigate such costs.

- 23.6 The Council shall be entitled to require access to data or information arising from the provision of the Services from the Provider until the latest of:-
- 23.6.1 the expiry of a period of twelve (12) years following termination or expiry of the Agreement; or
- 23.6.2 the expiry of a period of twelve (12) years – or such other period as specified in any Contract terms and conditions following the date on which the Provider ceases to provide Services under any Contract.
- 23.7 Termination or expiry of this Agreement shall be without prejudice to any rights, remedies or obligations of any Party accrued under this Agreement prior to termination or expiry.
- 23.6 The provisions of Clauses 8, 9, 10, 16, 17, 18, 18A, 20, 24, 25 and 36 shall survive the termination or expiry of the Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.

## **PART FIVE: INSURANCE AND LIABILITY**

### **24. LIABILITY**

- 24.1 Nothing in this Agreement shall be construed to limit or exclude either Party's liability for:-
- 24.1.1 death or personal injury caused by its negligence;
- 24.1.2 fraud or fraudulent misrepresentation; or
- 24.1.3 any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- 24.1.4 its breach of the DPA 2018/ UK GDPR (as applicable), FOIA/EIR or Intellectual Property Rights; or
- 24.1.5 any liability that may not be excluded or limited by Law.
- 24.2 Subject always to Clauses 24.3 and 24.4, the Provider shall indemnify and keep indemnified the Council in full from and against all claims, proceedings, actions, damages, losses, costs (including all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) and any other liabilities which may arise out of, or in consequence of the supply, or late or purported supply, of the Services or the performance or non-performance of its obligations under the Agreement or any Contract or the presence of the Provider or any staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Provider, or the enforcement of the Agreement or any Contract, or any other loss which is caused by any act or omission of the Provider.
- 24.3 The Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Council or by breach by the Council of its obligations under the Agreement or any Contract (as applicable).
- 24.4 Subject to Clause 24.1, in no event shall either Party be liable to the other for any:-

- (a) loss of profits, business revenue or goodwill; and/or;-
  - (b) indirect or consequential loss or damage.
- 24.5 The Parties acknowledge and agree that the Agreement constitutes a contract for the provision of Services and not a contract of employment. The Provider shall at all times indemnify the Council and keep the Council indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Council is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue or Customs as an employer of the Staff whether during the Term or arising from termination or expiry of the Agreement or arising under any Contract.

## **25. INSURANCE**

- 25.1 The Provider shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of its obligations under the Agreement and any Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider. Such insurance shall be maintained for the duration of the Agreement and for a minimum of 6 (six) years following the expiration or earlier termination of the Agreement and any Contract.
- 25.2 The Provider shall hold public and third party liability and product liability insurance for not less than £10 million pounds with a minimum of £10 million pounds in respect of any one claim and employer's liability insurance of not less than £10 million pounds with a minimum of £10 million pounds in respect of any one incident at all times. In addition, the Provider shall hold appropriate and adequate vehicle and passenger cover at all times. If required by the nature of the project activities/services to be performed pursuant to the Agreement or any Contract, the Provider shall also hold professional indemnity insurance of not less than £2 million pounds, with a minimum of £2 million pounds in respect of any one incident.
- 25.3 Not used.
- 25.4 The Provider shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 25.5 If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by the provisions of the Agreement or any Contract, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.
- 25.6 The provisions of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Agreement. It shall be the responsibility of the Provider to determine the amount of insurance cover that will be adequate to enable the Provider to satisfy any liability referred to in Clause 24.2.
- 25.7 If the Council reasonably considers that the limits on the insurance set out in clause 25.2 above are insufficient having regard to the specific requirements of the Agreement or any Contract, the Council can require the Provider or the Provider's sub-contractors or suppliers to take out insurances with a higher liability limit at no additional cost to the Council.

- 25.8 Where appropriate, the Provider shall effect and maintain professional indemnity insurance cover during the term of the Agreement and any Contract and ensure that all agents, professional consultants and sub-contractors do the same. To comply with its obligations under this clause and as a minimum, the Provider shall where appropriate ensure professional indemnity insurance held by the Provider and by any agent, sub-contractor or consultant involved in the supply of the Services under any Contract has a limit of indemnity of not less than £2 million for each individual claim or such higher limit as the Council may reasonably require (and as required by law) from time to time. Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of the Agreement and any Contract.

## **PART SIX: OTHER PROVISIONS**

### **26. TRANSFER AND SUB-CONTRACTING**

- 26.1 The Agreement is personal to the Provider and the Provider shall not assign, novate, sub-contract or otherwise dispose of the Agreement or any part thereof without the previous consent in writing of the Council.

- 26.2 The Council shall be entitled to:-

26.2.1 assign, novate or otherwise dispose of its rights and obligations under the Agreement or any part thereof to any other public body; or

26.2.2 novate the Agreement to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Council;

provided that such assignment, novation or disposals shall not increase the burden of the Provider's obligations under the Agreement.

- 26.3 Where pursuant to clause 26.1 the Council has consented to the placing of sub-contracts and the Provider enters into any sub-contract in connection with this Agreement the Provider shall:

26.3.1 remain responsible to the Council for the performance of its obligations under the Agreement notwithstanding the appointment of any sub-contractor and the Provider shall be responsible for the acts defaults and neglects of any sub-contractor, its agents or employees as fully as if they were the acts defaults or neglects of the Provider

26.3.2 impose obligations on its sub-contractors in the same terms as those imposed on it pursuant to this Agreement and shall procure that its sub-contractors comply with such terms; and

26.3.3 provide a copy at no charge to the Council, of any such sub-contract on receipt of a request for such by the Authorised Officer.

### **27. VARIATIONS TO THE AGREEMENT**

Any variations to the Agreement must be made only in accordance with the Variation Procedure set out in Schedule 7.

## **28. RIGHTS OF THIRD PARTIES**

Save as provided in Clauses 4, 7 and 8.2 and any rights specified in the Agreement for the benefit of any third party, a person who is not party to this Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This Clause shall not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.

## **29. SEVERABILITY**

If any provision of the Agreement is held invalid, illegal or unenforceable for any reason by a court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.

## **30. CUMULATIVE REMEDIES**

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

## **31. WAIVER**

- 31.1 The failure of either Party to insist upon strict performance of any provision of the Agreement, or the failure of any Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Agreement.
- 31.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 33.
- 31.3 A waiver of any right or remedy arising from a breach of the Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Agreement.

## **32. ENTIRE AGREEMENT**

- 32.1 This Agreement, the schedules and any documents annexed to it or otherwise referred to in it constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.
- 32.2 Each of the Parties acknowledges and agrees that in entering into this Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Agreement. The only remedy available to any Party of such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Agreement.
- 32.3 Nothing in this Clause 32 shall operate to exclude Fraud or fraudulent misrepresentation.

## **33. NOTICES**

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

33.2 Any notice or other communication which is to be given by any Party to the other shall be given by electronic mail via the Technology or by letter (sent by hand, first class post, recorded delivery or special delivery) addressed to the other Party in the manner referred to in Clause 33.5. Where the relevant notice or other communication is not returned as undelivered, the notice or communication shall be deemed to have been given:

33.2.1 in the case of a letter two (2) Working Days after the day on which the letter was posted; or

33.2.2 in the case of electronic mail four (4) hours if sent before 1700 hours and the next Working Day if sent after 1700 hours,

or in each case sooner where the other Party acknowledges receipt of such item of electronic mail. It is anticipated that the primary means of communication between the Parties shall be electronic mail via the Technology.

33.3 Where the relevant notice or other communication is returned as undelivered, the notice or communication shall be deemed not to have been given.

33.4 In the case of electronic mail, where an automatic out-of-office reply is received the notice or communication shall not be deemed to have been given. In this circumstance, the Party serving the notice or communication must send the notice or communication to an alternative email address noted on the out-of-office reply, including a group email inbox, whereupon the electronic mail will then be deemed to have been given 4 hours after sending, subject to clause 33.2.

33.5 For the purposes of Clause 33.2, the address of each Party shall be:

33.5.1 **For the Council:-**

The London Borough of Bexley

Civic Offices

Address: 2 Watling Street, Bexleyheath, Kent DA6 7AT

For the attention of: Bexley Integrated Transport Unit Manager

Tel: 020 3045 4431

Email: via the Technology as per above

33.5.2 **For the Provider:-**

Address: [REDACTED]

For the attention of: [REDACTED]

Tel: [REDACTED]

33.6 A Party may change its address for service by serving a notice in accordance with this Clause.

## **34. COMPLAINTS HANDLING AND RESOLUTION**

34.1 The Provider shall notify the Council of any Complaint made by any person in relation to the Agreement within two (2) Working Days of becoming aware of that Complaint and such notice shall contain full details of the Provider's plans to resolve such Complaint.

34.2 Without prejudice to any rights and remedies that a complainant may have at Law, including under the Agreement or a Contract, and without prejudice to any obligation of the Provider to take remedial action under the provisions of the Agreement or a Contract, the Provider shall use its best endeavours to resolve the Complaint within ten (10) Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.

- 34.3 Within two (2) Working Days of a request by the Council, the Provider shall provide full details of a Complaint to the Council, including details of steps taken to its resolution.

### **35. DISPUTE RESOLUTION**

- 35.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement within twenty (20) Working Days of either Party notifying the others of the dispute and such efforts shall involve the escalation of the dispute to the Chief Executives of each Party.

- 35.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

- 35.3 If the dispute cannot be resolved by the Parties pursuant to Clause 35.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 35.5 unless:-

35.3.1 the Council considers that the dispute is not suitable for resolution by mediation; or

35.3.2 the Provider does not agree to mediation.

- 35.4 The obligations of the Parties under the Agreement shall not cease or be suspended, or delayed by the reference of a dispute to mediation (or arbitration) and the Provider and its Staff shall comply fully with the requirements of the Agreement at all times.

- 35.5 The procedure for mediation and consequential provisions relating to mediation are as follows:-

35.5.1 a neutral adviser or mediator ("**the Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days either Party may within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to the Parties that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (CEDR) to appoint a Mediator;

35.5.2 the Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held.

35.5.3 unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;

35.5.4 if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;

35.5.5 failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Agreement without the prior written consent of both Parties; and

35.5.6 if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

**36. LAW AND JURISDICTION**

Subject to the provisions of Clause 35, the Council and the Provider accept the exclusive jurisdiction of the English courts and agree that this Agreement and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

**IN WITNESS** whereof this document has been sealed by the Council and executed by the Provider as a Deed the day and year first before written.

The COMMON SEAL OF )

**THE MAYOR AND BURGESSES OF** )

**THE LONDON BOROUGH OF BEXLEY** )

was hereunto affixed in the presence of:

Deputy Director

Deputy Director

**EXECUTED AS A DEED** for and on behalf of

**THE PROVIDER**

(Director)

In the presence of:

(Director/Company Secretary)